

Overall Score:

75 - Moderate

Legal Framework Score:

90 - Strong

Actual Implementation Score:

61 - Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁶Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs 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”

<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Canada Corporations Act (1970, c. C-32), PART II: CORPORATIONS WITHOUT SHARE CAPITAL

<http://lois.justice.gc.ca/eng/C-1.8/index.html>

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs 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/eng/C-1.8/index.html>

except during elections for spending on election advertising, for which donations cannot be accepted from foreign sources, under the Canada Elections Act (2000, c. 9), Part 17 <http://lois.justice.gc.ca/eng/E-2.01/index.html>

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs 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/eng/C-1.8/index.html>

except during elections for spending on election advertising, for which donations of more than CA\$200 (US\$208) and the identity of donors must be disclosed, under the Canada Elections Act (2000, c. 9), Part 17 <http://lois.justice.gc.ca/eng/E-2.01/index.html>

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

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

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

50

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

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”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Canada Corporations Act (1970, c. C-32), PART II: CORPORATIONS WITHOUT SHARE CAPITAL
<http://lois.justice.gc.ca/eng/C-1.8/index.html>

– Internet search and government of Canada web site search produced no examples of barriers to organization of anti-corruption/good governance civil society organizations.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

References:

Young, Lisa and Joanna Everitt, "Advocacy Groups" (Vancouver: UBC Press, 2004)

In mid-2010, a large coalition of NGOs all signed a statement criticizing the government for failing to consult with NGOs on good governance issues.

See details at <http://www.voices-voix.ca>

Democracy Watch interviewed several of the group representatives at a meeting held in February 2010

A June 2009 analysis by the Ottawa Citizen newspaper found that federal Cabinet ministers meet far more with business lobbyists than with NGOs: <http://www.canada.com/business/Raitt+meets+with+lobbyists+most+often/1691144/story.html>

The HR Council for the Voluntary/Non-profit Sector

<http://www.hrcouncil.ca/about-the-sector/overview.cfm>

Charity Village's "Non-Profit Neighborhood" categories of organizations list page <http://www.charityvillage.com/cv/nonpr/index.asp>

Charity Village's "Human Rights and Civil Liberties" organizations list page <http://www.charityvillage.com/cv/nonpr/nonpr19.html>

Democracy Watch's web site shows extensive activity engaging in political and policy-making processes, however in many cases its recommendations have been ignored or it has to take the government to court to force it to follow or change the law

<http://www.dwatch.ca>

The following anti-corruption/good governance organizations are also active, but often ignored by, or compelled to sue, federal government policy-makers:

Canadian Civil Liberties Association

<http://www.ccla.org>

Canadian Taxpayers Federation

<http://www.taxpayer.com/main/index.php>

Council of Canadians

<http://www.canadians.org>

Transparency International Canada

<http://www.transparency.ca>

100: Non-governmental organizations focused on anti-corruption or good governance are an essential component of the political process. NGOs provide widely valued insights and have political power. Those NGOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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.

25:

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

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

References:

- Internet search using Google News, CBC.ca [<http://www.cbc.ca>] and CTV [<http://www.ctv.ca>] and Canada.com [<http://www.canada.com>] produced several articles about the Government of Canada cutting funding of anti-corruption/good governance civil society organizations being shut down in the past year, which caused some of them to shut down the part of their operations that focused on the Government of Canada
- See for example Feb. 2011 CBC.ca articles at: [<http://www.cbc.ca/news/canada/prince-edward-island/story/2011/02/17/pei-kairos-lobby-wicks-oda584.html>] and [<http://www.cbc.ca/news/story/2011/02/11/kairos-speaker-oda.html>]
- And also April 2011 column by Gerald Kaplan in the Globe and Mail at: [<http://www.theglobeandmail.com/news/politics/second-reading/gerald-caplan/more-voices-you-wont-hear-in-the-election-campaign/article1996127/?from=sec368>]
- See full list of groups whose funding has been cut by the national government at: [<http://www.straightgoods.ca/2011/ViewArticle.cfm?Ref=283>]
- See also Voices Coalition website with list of some groups that the national government has cut funding to at: [<http://voices-voix.ca/en/facts/attacks-on-organizations>]
- And also April 2011 summary article on the Canadian Centre for Policy Alternatives about groups whose funding has been cut by the national government, at: [<http://www.policyalternatives.ca/publications/commentary/silencing-dissent-conservative-record>]
- Young, Lisa and Joanna Everitt, “Advocacy Groups” (Vancouver: UBC Press, 2004)
- The HR Council for the Voluntary/Non-profit Sector <http://www.hrcouncil.ca/about-the-sector/overview.cfm>

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

No: A NO score is earned if any NGO 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 NGO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | **No**

References:

While an Internet search and government of Canada web site search produced no direct examples of anti-corruption activists being imprisoned in the past year (or any recent years), hundreds of protesters (and innocent bystanders) at the G20 meeting in Toronto in June 2010 were imprisoned for protesting what was deemed by the Ombudsman of Ontario to be abuses of police power, and several court cases and inquiries continue concerning the detentions. See for details:

<http://www.cbc.ca/canada/toronto/story/2010/12/07/ombudsman-g20-security-rule-report856.html>

<http://www.cbc.ca/canada/toronto/story/2010/12/23/toronto-siu-charges.html>

<http://www.cbc.ca/canada/toronto/story/2010/07/01/toronto-g20-protest.html>

– Democracy Watch also spoke with representatives of several of the organizations whose representatives were detained at the G20 event.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

While an Internet search and government of Canada web site search produced no direct examples of anti-corruption activists being harmed in the past year (or any recent years), some protesters (and innocent bystanders) at the G20 meeting in Toronto in June 2010 were harmed for protesting what was deemed by the Ombudsman of Ontario to be abuses of police power, and a court case and inquiries continue concerning the assault and other harms. See for details:

<http://www.cbc.ca/canada/toronto/story/2010/12/07/ombudsman-g20-security-rule-report856.html>

<http://www.cbc.ca/canada/toronto/story/2010/12/23/toronto-siu-charges.html>

<http://www.cbc.ca/canada/toronto/story/2010/07/01/toronto-g20-protest.html>

– Democracy Watch also spoke with representatives of several of the organizations whose representatives were detained at the G20 event.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

An Internet search (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) and government of Canada web site search produced no examples of anti-corruption activists being killed in the past year (or any recent years).

Yes: A YES score is earned if there were no documented cases of NGO 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 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.

4. Can citizens organize into trade unions?

88

04a. 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”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Canada Labor Code (R.S., 1985, c. L-2)
<http://lois.justice.gc.ca/en/showtdm/cs/L-2>

– Nine out of 13 jurisdictions in Canada recognize union certifications through the union card sign-up system
<http://www.canadianlawsite.ca/unions.htm>

– 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-), 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>] AND for 2008 report [http://www.ilo.org/global/About_the_ILO/Mainpillars/Theightsatwork/lang-en/docName-WCMS_091262/index.htm

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.

04b. 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”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Canada Labor Code (R.S., 1985, c. L-2)
<http://lois.justice.gc.ca/en/showtdm/cs/L-2>

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<http://www.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/baseline-facb.pdf>] AND for 2008 report [http://www.ilo.org/global/About_the_ILO/Mainpillars/Theightsatwork/lang-en/docName-WCMS_091262/index.htm

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

The media in Canada covered human rights codes test cases in 2009-2010 extensively, including many articles containing exaggerated statements about how "outrageous" it was that media corporations would be subjected to a complaint, let alone restrictions, on what they could publish. The media seemed to forget two things about the test cases: 1. that they were unprecedented test cases, and the only way to resolve the issue in question was for the human rights commissions to investigate and rule on the test cases to set a precedent, and; 2. that the media very rarely give as much attention to other unprecedented test cases that other Canadians experience. In other words, the test cases were treated by the media as much more important than other test cases in no small part because the cases involved the media's rights (and this pattern is often seen in the Canadian media, as stories involving journalists or media corporations are given much more attention than stories about other Canadians or Canadian organizations). Not surprisingly, in the end, freedom of the media was confirmed in every one of the test cases.

References:

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"

– However, another ongoing issue is whether journalists and media corporations have the right to protect sources in all situations. One test case was ruled on by the Supreme Court of Canada on an appeal by the National Post newspaper of a provincial Ontario Court of Appeal ruling in Feb. 29, 2008, that a National Post reporter is required to disclose identity of a source who disclosed to the reporter an allegedly fraudulent document that made allegations of conflict of interest, and possibly corruption, on the part of then Prime Minister Jean Chrétien in an investment that also involved the Government of Canada's Business Development of Canada.

See the Court of Appeal ruling at

<http://www.canlii.org/en/on/onca/doc/2008/2008onca139/2008onca139.html>

– The SCC ruled in 2010 that "In appropriate circumstances, accordingly, the courts will respect a promise of confidentiality given to a secret source by a journalist or an editor. The public's interest in being informed about matters that might only be revealed by secret sources, however, is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public's interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence." R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477 <http://scc.lexum.umontreal.ca/en/2010/2010scc16/2010scc16.html>

– Another test case ruled on by the Supreme Court of Canada in 2010 also allowed a journalist to protect his source:

Globe and Mail v. Canada (Attorney General) 2010 SCC 41 <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

– As well, there is an ongoing freedom of the media issue, somewhat settled after recent unprecedented "test cases", concerning the federal and provincial human rights codes which, for example in the following section 13(1) of the Canadian Human Rights Act (R.S., 1985, c. H-6

<http://lois.justice.gc.ca/en/showtdm/cs/H-6>), have measures that state: "13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination."

– At issue in the recent test cases has been what constitutes "likely to expose" person(s) to "hatred or contempt" but in the cases claims that specific articles crossed this threshold were rejected by the federal and Province of British Columbia (B.C.) human rights commissions (and the Ontario commission on a technicality)

– Ongoing issues are the processes used by the human rights commissions to review complaints, and the lack of requirements for complainants to pay any of costs of the person or organization they complain about if the commission rejects the complainants complaint.

See for details the following web pages and articles:

– Canadian Human Rights Commission web page re: section 13

http://www.chrc-ccdp.ca/proactive_initiatives/hoi_hsi/ga_qr/toc_tdm-en.asp

– Canadian Human Rights Commission web page re: review of section 13 and Internet messages

http://www.chrc-ccdp.ca/media_room/news_releases-eng.aspx?id=549

– See link to B.C. Human Rights Commission decision on the complaint entitled "Elmasry obo Muslim residents of the Province of British Columbia and Habib v. Roger's Publishing Ltd. and MacQueen (No. 4)" on following B.C. HRC web page

<http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– “B.C. Human Rights Commission rejects complaint against Maclean’s”, CBC.ca (publishing Canadian Press wire article), Oct. 10, 2008 <http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– <http://www.cbc.ca/canada/story/2009/10/05/human-rights-commission.html>

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

References:

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”

– However, another ongoing issue is whether journalists and media corporations have the right to protect sources in all situations. One test case was ruled on by the Supreme Court of Canada on an appeal by the National Post newspaper of a provincial Ontario Court of Appeal ruling in Feb. 29, 2008, that a National Post reporter is required to disclose identity of a source who disclosed to the reporter an allegedly fraudulent document that made allegations of conflict of interest, and possibly corruption, on the part of then Prime Minister Jean Chrétien in an investment that also involved the Government of Canada’s Business Development of Canada.

See the Court of Appeal ruling at

<http://www.canlii.org/en/on/onca/doc/2008/2008onca139/2008onca139.html>

– The SCC ruled in 2010 that “In appropriate circumstances, accordingly, the courts will respect a promise of confidentiality given to a secret source by a journalist or an editor. The public’s interest in being informed about matters that might only be revealed by secret sources, however, is not absolute. It must be balanced against other important public interests, including the investigation of crime. In some situations, the public’s interest in protecting a secret source from disclosure may be outweighed by other competing public interests and a promise of confidentiality will not in such cases justify the suppression of the evidence.”

R. v. National Post, 2010 SCC 16, [2010] 1 S.C.R. 477 <http://scc.lexum.umontreal.ca/en/2010/2010scc16/2010scc16.html>

– Another test case ruled on by the Supreme Court of Canada in 2010 also allowed a journalist to protect his source:

Globe and Mail v. Canada (Attorney General) 2010 SCC 41 <http://scc.lexum.umontreal.ca/en/2010/2010scc41/2010scc41.html>

– As well, there is an ongoing freedom of the media issue, somewhat settled after recent unprecedented “test cases”, concerning the federal and provincial human rights codes which, for example in the following section 13(1) of the Canadian Human Rights Act (R.S., 1985, c. H-6

<http://lois.justice.gc.ca/en/showtdm/cs/H-6>), have measures that state: “13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”

– At issue in the recent test cases has been what constitutes “likely to expose” person(s) to “hatred or contempt” but in the cases claims that specific articles crossed this threshold were rejected by the federal and Province of British Columbia (B.C.) human rights commissions (and the Ontario commission on a technicality)

– Ongoing issues are the processes used by the human rights commissions to review complaints, and the lack of requirements for complainants to pay any of costs of the person or organization they complain about if the commission rejects the complainants complaint.

See for details the following web pages and articles:

– Canadian Human Rights Commission web page re: section 13

http://www.chrc-ccdp.ca/proactive_initiatives/hoi_hsi/ga_qr/toc_tdm-en.asp

– Canadian Human Rights Commission web page re: review of section 13 and Internet messages

http://www.chrc-ccdp.ca/media_room/news_releases-eng.aspx?id=549

– See link to B.C. Human Rights Commission decision on the complaint entitled “Elmasry obo Muslim residents of the Province of British Columbia and Habib v. Roger’s Publishing Ltd. and MacQueen (No. 4)” on following B.C. HRC web page

<http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– “B.C. Human Rights Commission rejects complaint against Maclean’s”, CBC.ca (publishing Canadian Press wire article), Oct. 10, 2008 <http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– <http://www.cbc.ca/canada/story/2009/10/05/human-rights-commission.html>

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

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

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>

– Searches of the web site of the Canadian Newspaper Association and the Canadian Community Newspapers Association (<http://www.newspaperscanada.ca>) and the web site of the Canadian magazine association (<http://www.magazinescanada.ca/home>) reveals no instances of government barriers to forming a print media entity.

– 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.

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.

75:

50: 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.

25:

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

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

References:

– No print media licenses are required beyond incorporation.

– 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>

– 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.

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– No license is required.

– Under the Canada Corporations Act (1970, c. C-32), media entities can be formed (just like any other corporation is formed), without the need for a license, 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>

– 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.

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– No license is required.

– Under the Canada Corporations Act (1970, c. C-32), media entities can be formed (just like any other corporation is formed), without the need for a license, 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>

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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?

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

– The responsible Cabinet minister under section 5 of the Radiocommunication Act (R.S., 1985, c. R-2) — <http://lois.justice.gc.ca/en/showtdm/cs/R-2> — and the responsible Cabinet minister under section 69.3 (and the entire federal Cabinet under section 12) of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/eng/T-3.4/index.html> — and the entire federal Cabinet under sections 26 and 28 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/eng/B-9.01/index.html> — have the power to not only set the policy framework conditions for, but also to approve or to reject orders with regard to broadcasting companies, radio stations and telecommunications companies made by the Canadian Radio-television and Telecommunications Commission.

– Each of the above-mentioned Acts contains details about the fairly involved application process that anyone wanting to broadcast must go through in order to receive a license to broadcast from the Canadian Radio-television and Telecommunications Commission (CRTC), including broad policy frameworks in section 3 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/en/showtdm/cs/B-9.01> — and section 7 of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/eng/T-3.4/index.html>

– 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.

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

References:

– There is a right of appeal to the Federal Court of Appeal under section 31 of the Broadcasting Act (1991, c. 11) <http://lois.justice.gc.ca/eng/B-9.01/index.html>

– There is a right of appeal to the Federal Court of Appeal under various sections (with regard to offenses 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) <http://lois.justice.gc.ca/eng/T-3.4/index.html>

– Each of the above-mentioned Acts contains details about the fairly involved application process that anyone wanting to broadcast must go through in order to receive a license to broadcast from the Canadian Radio-television and Telecommunications Commission (CRTC), including broad policy frameworks in section 3 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/en/showtdm/cs/B-9.01> — and section 7 of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/eng/T-3.4/index.html>

– 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.

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.

07c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– There is a fairly involved application process that anyone wanting to broadcast must go through in order to receive a license to broadcast from the Canadian Radio-television and Telecommunications Commission (CRTC), including broad policy frameworks in section 3 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/en/showtdm/cs/B-9.01> — and section 7 of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/T-3.4> — and in various sections of the Radiocommunication Act (R.S., 1985, c. R-2) — <http://lois.justice.gc.ca/en/showtdm/cs/R-2>.

– 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

– 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.

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– There is a fairly involved application process that anyone wanting to broadcast must go through in order to receive a license to broadcast from the Canadian Radio-television and Telecommunications Commission (CRTC), including broad policy frameworks in section 3 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/en/showtdm/cs/B-9.01> — and section 7 of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/T-3.4> — and in various sections of the Radiocommunication Act (R.S., 1985, c. R-2) — <http://lois.justice.gc.ca/en/showtdm/cs/R-2>.

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– 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 (including producing market research reports) and all other financial details.

– 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.

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

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.

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no instances of government preventing citizens from accessing on-line content.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found no instances of government preventing citizens from accessing on-line content.

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:

50: 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.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

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.

– As well, there is an ongoing freedom of the media issue, somewhat settled after recent unprecedented “test cases”, concerning the federal and provincial human rights codes which, for example in the following section 13(1) of the Canadian Human Rights Act (R.S., 1985, c. H-6 — <http://lois.justice.gc.ca/en/showtdm/cs/H-6>), have measures that state: “13. (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facilities of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”

– At issue in the recent test cases has been what constitutes “likely to expose” person(s) to “hatred or contempt” but in the cases claims that specific articles crossed this threshold were rejected by the federal and Province of British Columbia (B.C.) human rights commissions (and the Ontario commission on a technicality)

– Ongoing issues are the processes used by the human rights commissions to review complaints, and the lack of requirements for complainants to pay any of costs of the person or organization they complain about if the commission rejects the complainants complaint.

See for details the following web pages and articles: – Canadian Human Rights Commission web page re: section 13 http://www.chrc-ccdp.ca/proactive_initiatives/loi_hsi/ga_qr/toc_tdm-en.asp

– Canadian Human Rights Commission web page re: review of section 13 and Internet messages http://www.chrc-ccdp.ca/media_room/news_releases-eng.aspx?id=549

– See link to B.C. Human Rights Commission decision on the complaint entitled “Elmasry obo Muslim residents of the Province of British Columbia and Habib v. Roger’s Publishing Ltd. and MacQueen (No. 4)” on following B.C. HRC web page <http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– “B.C. Human Rights Commission rejects complaint against Maclean’s”, CBC.ca (publishing Canadian Press wire article), Oct. 10, 2008 <http://www.cbc.ca/canada/story/2008/10/10/macleans-rights.html>

– <http://www.cbc.ca/canada/story/2009/10/05/human-rights-commission.html>

100: 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.

75:

50: 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.

25:

0: 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?

92

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(a) “freedom of conscience and religion”; subsection 2(b) “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”, and subsection 2(d) “freedom of association” <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– 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 defense of truth, but also the defense 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. Both of these defenses were broadened in June 2008 December 2009 rulings by the Supreme Court of Canada. See June 2008 CBC.ca article about one of the rulings at: [<http://www.cbc.ca/news/canada/british-columbia/story/2008/06/27/bc-rafe-mair-wins-libal-lawsuit.html>]

– And see December 2009 CBC.ca article about the other ruling at:
[<http://www.cbc.ca/news/canada/ottawa/story/2009/12/22/supreme-court-libel-responsible-journalism-citizen-star.html>]

See for details the briefs and articles on libel and defamation law the following web pages:
[<http://www.suite101.com/content/supreme-court-of-canada-broadens-defamation-law-a182464>] and
[<http://www.lawsonlundell.com/Resources/News-and-Publications/The-Law-of-Defamation-A-Primer>] and
[<http://www.lawsonlundell.com/Resources/News-and-Publications/Safe-to-Slander-City-Hall-Ontario-Court-Bars-Defamation-Suits-by-Government-Bodies>] and
[<http://www.canadianlawsite.ca/libel-slander-defamation-of-%20character.htm>]

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

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/eng/A-1/index.html>

– See the annual reports of the federal Information Commissioner for details http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx and special reports to Parliament http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren.aspx

– The federal government has also, for several years, been restricting access to specific media outlets by, for example, controlling the list of which media ask questions at official government news conferences in Ottawa

– This 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 lower its press freedom ranking of 13th in the world in 2007-2008 down to 19th in 2010
http://en.rsf.org/press-freedom-index-2008_33.html
http://en.rsf.org/report-canada_170.html

– 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 Commissioner of Lobbyists) address complaints about such unethical activities and relationships.

– For example, see the information contained in the following Democracy Watch news releases about unprecedented ethics complaints and court cases about fundamental government ethics issues, and the very little media coverage received about the complaints and cases, as listed on the following Democracy Watch web page
http://www.dwatch.ca/camp/Ethics_Court_Cases.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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

References:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found no instances of Canada's federal (national) government censoring at pre-publication stage any corruption-related media stories.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found no instances of the government censoring at pre-publication stage any corruption-related media stories.

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

75:

50: 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.

25:

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 publicly disclose their ownership.

Yes | No

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>

– 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. The registrant has to be disclosed under the CIRA system.

– However, it is possible to register a web site domain outside Canada without disclosing the full identity of the owner of the domain, and therefore it is possible to be a print media company in Canada through the Internet and not disclose your ownership (although it is unlikely that such a web site would have many viewers, and no such anonymous sites exist currently with many readers in Canada).

Yes: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

Yes | No

References:

– There is a fairly involved application process that anyone wanting to broadcast must go through in order to receive a license to broadcast from the Canadian Radio-television and Telecommunications Commission (CRTC), including broad policy frameworks in section 3 of the Broadcasting Act (1991, c. 11) — <http://lois.justice.gc.ca/en/showtdm/cs/B-9.01> — and section 7 of the Telecommunications Act (1993, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/T-3.4> — and in various sections of the Radiocommunication Act (R.S., 1985, c. R-2) — <http://lois.justice.gc.ca/en/showtdm/cs/R-2>.

– 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).

– 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. The registrant has to be disclosed under the CIRA system.

– However, it is possible to register a web site domain outside Canada without disclosing the full identity of the owner of the domain, and therefore it is possible to be a print media company in Canada through the Internet and not disclose your ownership (although it is unlikely that such a web site would have many viewers, and no such anonymous sites exist currently with many readers in Canada).

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

References:

– Report Card on Canadian News Media by the Canadian Media Research Consortium (based on 2003 survey) <http://www.cmrcrcrm.ca/OLDSITE/english/reportcard2004/01.html>

– 2008 Survey by the Canadian Media Research Consortium <http://www.cmrcrcrm.ca/en/projects/TheCredibilityGapCanadiansandTheirNewsMedia.htm>

– 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.

– 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 by the Canadian Broadcast Standards Council (CBSC), which was created by the Canadian Association of Broadcasters (CAB)

<http://www.cbcs.ca/english>

– As a result, as the two surveys by the Canadian Media Research Consortium show, Canadians are very concerned about the 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.

75:

50: 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.

25:

0: 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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

– The only extensive study of media coverage (newspaper only) during the 2008 federal election campaign concluded that media coverage overall was fair — although the ruling Conservative Party received much more media coverage than the other parties, it did not receive better coverage.

See 2008 Canadian Federal Election Newspaper Analysis by the Media Observatory of the McGill Institute for the Study of Canada

<http://www.mcgill.ca/misc/research/media-observatory/research/>

– Also, unlike in the 2005-2006 federal election, 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 allowed by the consortium of broadcast companies that control the televised and radio debates between party leaders 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, and this problem has continued through 2010.

See for details:

http://www.thehilltimes.ca/page/view/2008_september.22_pollsters <http://www2.macleans.ca/2011/02/14/everything-you-know-is-of-questionable-accuracy/>

100: 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.

75:

50: 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.

25:

0: 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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

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

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/index.shtml>), 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 (2000, c. 9 — <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>), Part 16, 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.aspx?section=abo&dir=bra&document=index_<=e

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?

67

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

Yes | No

References:

While an Internet search and government of Canada web site search produced no direct examples of anti-corruption activists being imprisoned in the past year (or any recent years), hundreds of protesters (and innocent bystanders, including some journalists) at the G20 meeting in Toronto in June 2010 were imprisoned for protesting what was deemed by the Ombudsman of Ontario to be abuses of police power, and several court cases and inquiries continue concerning the detentions. See for details:

<http://www.cbc.ca/canada/toronto/story/2010/12/07/ombudsman-g20-security-rule-report856.html>

<http://www.cbc.ca/canada/toronto/story/2010/12/23/toronto-siu-charges.html>

<http://www.cbc.ca/canada/toronto/story/2010/07/01/toronto-g20-protest.html>

– and see also the Canadian Civil Liberties Association report on the arrests at the June 20 G20 conference in Toronto <http://www.ccla.org/index.html>

– CTV.ca story on Canadian Civil Liberties Association report <http://ottawa.ctv.ca/servlet/an/local/CTVNews/20110228/mcquinty-g20-summit-110228/20110228/?hub=OttawaHome>

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:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found 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:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no documented cases of journalists being killed during the specific study period for their work covering corruption issues.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found no documented cases of journalists being killed 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 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.

88
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

References:

– Access to Information Act (R.S., 1985, c. A-1)
<http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Office of the Information Commissioner of Canada
<http://www.oic-ci.gc.ca>

– However, the ATI Act has the following key loopholes: – 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 commissioners in the Canadian provinces of Ontario, Alberta and B.C. have), to order changes to government institutions' information systems, or 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, Officers 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.)

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

References:

– Access to Information Act (R.S., 1985, c. A-1)
<http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Office of the Information Commissioner of Canada
<http://www.oic-ci.gc.ca>

– However, the federal Information Commissioner is the first entity to which an appeal must be filed, even though the Commissioner does not have the power to order the release of documents (as the commissioners in the Canadian provinces of Ontario, Alberta and B.C. have), to order changes to government institutions' information systems, or to penalize violators of access laws, regulations, policies and rules.

– As a result, if the Information Commissioner has a backlog of complaints/appeals that delays rulings (as is currently the case, causing delays of a few years in some cases), every complainant/appellant must wait until the Commissioner rules on their complaint/appeal before they can proceed to file an appeal in court that has the possibility of leading to a binding order that the document(s)/record(s) be made public.

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, but the institutions which are covered by the Act must designate a person as the ATI contact person for the institution.

References:

– Access to Information Act (R.S., 1985, c. A-1)
<http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Office of the Information Commissioner of Canada
<http://www.oic-ci.gc.ca>

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 to information requests effective?

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

100 | 75 | 50 | 25 | 0

References:

– The federal Access to Information Act (ATI Act) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — 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.

– According to the Information Commissioner's 2009-2010 report, 45 percent of complaints received during the year were about delays in receiving requested information. Only 56 percent of requests are being fulfilled within the 30 day legal deadline, and it takes two months or more on average to obtain information.

– If the Information Commissioner has a backlog of complaints/appeals that delays rulings (as is currently the case, causing delays of a few years in some cases), every complainant/appellant must wait until the Commissioner rules on their complaint/appeal before they can proceed to file an appeal in court that has the possibility of leading to a binding order that the document(s)/record(s) be made public.

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010 and details the many delay problems in the access-to-information system.
http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Also, information and privacy commissioners from across Canada issued a call for greater transparency in government in September 2010.
http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx

– A study by two British professors found Canada ranked last in access to government information when compared to Australia, New Zealand, Ireland, the United Kingdom.
<http://www.cbc.ca/news/story/2011/01/09/foi-canada-ranking.html>

– An ongoing national security case concerns documents about the detainment of people in Afghanistan by Canada's armed forces, and instead of the documents coming out through the access-to-information system, a special committee of politicians, and a government-appointed task force, are examining the documents behind closed doors and negotiating the release of various documents or parts of documents, a process that has been ongoing since September 2009.
<http://www.cbc.ca/news/canada/story/2010/03/16/f-afghan-detainees-key-developments.html>

– As well, three staff of a Cabinet minister interfered with access requests to block the release of records — one resigned and the whole situation is under investigation by the Information Commissioner and Royal Canadian Mounted Police (RCMP — the national police force):
<http://www.cbc.ca/news/canada/story/2010/12/15/tory-staff-ried-to-block-access-to-information.html>
<http://www.cbc.ca/news/politics/story/2011/03/14/pol-rmp-togneri.html>

– See also for details about flaws the the law and enforcement system that cause delays in accessing federal government information
<http://www.dwatch.ca/camp/OpEdOct1110.html>

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 information request mechanism at a reasonable cost.

References:

– The fee for filing a request is reasonable — CA\$5 (US\$5.2), but the search fees can be very high, and can be charged at arbitrary rates, mainly because the Information Commissioner lacks enforcement powers to ensure that government institutions and agencies are not overcharging requesters.

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010) http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

References:

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010) and details the many problems of censorship and only partial information release in the access-to-information system.

http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Also, information and privacy commissioners from across Canada issued a call for greater transparency in government in September 2010

http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx

– A study by two British professors found Canada ranked last in access to government information when compared to Australia, New Zealand, Ireland, the United Kingdom.

<http://www.cbc.ca/news/story/2011/01/09/foi-canada-ranking.html>

– An ongoing national security case concerns documents about the detainment of people in Afghanistan by Canada's armed forces, and instead of the documents coming out through the access-to-information system, a special committee of politicians, and a government-appointed task force, are examining the documents behind closed doors and negotiating the release of various documents or parts of documents, a process that has been ongoing since September 2009.

<http://www.cbc.ca/news/canada/story/2010/03/16/f-afghan-detainees-key-developments.html>

– As well, three staff of a Cabinet minister interfered with access requests to block the release of records — one resigned and the whole situation is under investigation by the Information Commissioner and Royal Canadian Mounted Police (RCMP – the national police force)

<http://www.cbc.ca/news/canada/story/2010/12/15/tory-staff-ried-to-block-access-to-information.html>

<http://www.cbc.ca/news/politics/story/2011/03/14/pol-rcmp-togneri.html>

– See also for details about flaws the the law and enforcement system that cause delays in accessing federal government information <http://www.dwatch.ca/camp/OpEdOct1110.html>

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– 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

– According to the Information Commissioner's 2009-2010 report, 45 percent of complaints received during the year were about delays in receiving requested information. It takes two months or more on average to obtain information.

– If the Information Commissioner has a backlog of complaints/appeals that delays rulings (as is currently the case, causing delays of a few years in some cases), every complainant/appellant must wait until the Commissioner rules on their complaint/appeal before they can proceed to file an appeal in court that has the possibility of leading to a binding order that the document(s)/record(s) be made public.

– An appeal to court can further delay access for a couple of years depending on motions and appeals by the government institution.

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010 and details the many delay problems in the access-to-information system)
http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Also, information and privacy commissioners from across Canada issued a call for greater transparency in government in September 2010
http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx

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<http://www.cbc.ca/news/canada/story/2010/03/16/f-afghan-detainees-key-developments.html>

– As well, three staff of a Cabinet minister interfered with access requests to block the release of records – one resigned and the whole situation is under investigation by the Information Commissioner and Royal Canadian Mounted Police (RCMP – the national police force)
<http://www.cbc.ca/news/canada/story/2010/12/15/tory-staff-tried-to-block-access-to-information.html>
<http://www.cbc.ca/news/politics/story/2011/03/14/pol-rcmp-togneri.html>

– See also for details about flaws the the law and enforcement system that cause delays in accessing federal government information <http://www.dwatch.ca/camp/OpEdOct1110.html>

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.

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

References:

– The federal Information Commissioner’s complaint process takes time, but there is no filing or other fees for the service. 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.

– According to the Information Commissioner’s 2009-2010 report, 45 percent of complaints received during the year were about delays in receiving requested information. It takes two months or more on average to obtain information.

– If the Information Commissioner has a backlog of complaints/appeals that delays rulings (as is currently the case, causing delays of a few years in some cases), every complainant/appellant must wait until the Commissioner rules on their complaint/appeal before they can proceed to file an appeal in court that has the possibility of leading to a binding order that the document(s)/record(s) be made public.

– An appeal to court can further delay access for a couple of years depending on motions and appeals by the government institution, and some cases have to be appealed to court, and the cost is prohibitive to middle-class citizens as a lawyer is usually needed.

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010 and details the many delay problems in the access-to-information system)
http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Also, information and privacy commissioners from across Canada issued a call for greater transparency in government in September 2010
http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx

– A study by two British professors found Canada ranked last in access to government information when compared to Australia, New Zealand, Ireland, the United Kingdom.
<http://www.cbc.ca/news/story/2011/01/09/foi-canada-ranking.html>

– See also for details about flaws the the law and enforcement system that cause delays in accessing federal government information
<http://www.dwatch.ca/camp/OpEdOct1110.html>

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.

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

Comments:

– The grade of 75 is given because while reasons are given for denying information requests, the reasons are vague in many cases, citing very general exemptions without giving details as to why the exemption applies to the specific documents requested. As the Information Commissioner’s annual report for 2009-2010 details, 55 percent of complaints were about such refusals, and about 25 percent of those complaints were substantiated and resolved by the Information Commissioner.

References:

– Office of the Information Commissioner of Canada Annual Report for Fiscal Year 2009-2010 (covers the period from April 1, 2009 to March 31, 2010 and details the many delay problems in the access-to-information system)
http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Also, information and privacy commissioners from across Canada issued a call for greater transparency in government in September 2010.
http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx

– A study by two British professors found Canada ranked last in access to government information when compared to Australia, New Zealand, Ireland, the United Kingdom.

<http://www.cbc.ca/news/story/2011/01/09/foi-canada-ranking.html>

– An ongoing national security case concerns documents about the detainment of people in Afghanistan by Canada's armed forces, and instead of the documents coming out through the access-to-information system, a special committee of politicians, and a government-appointed task force, are examining the documents behind closed doors and negotiating the release of various documents or parts of documents, a process that has been ongoing since September 2009.

<http://www.cbc.ca/news/canada/story/2010/03/16/f-afghan-detainees-key-developments.html>

– As well, three staff of a Cabinet minister interfered with access requests to block the release of records — one resigned and the whole situation is under investigation by the Information Commissioner and Royal Canadian Mounted Police (RCMP – the national police force)

<http://www.cbc.ca/news/canada/story/2010/12/15/tory-staff-ried-to-block-access-to-information.html>

<http://www.cbc.ca/news/politics/story/2011/03/14/pol-rcmp-togneri.html>]

– See also for details about flaws the the law and enforcement system that cause delays in accessing federal government information <http://www.dwatch.ca/camp/OpEdOct1110.html>

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 2. Elections

2.1. Voting and Party Formation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

Yes | No

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 3 "right to vote"
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Sections 3 to 12 (Part 1) of the Canada Elections Act (2000, c. 9) http://lois.justice.gc.ca/en/showtdm/cs/E-2_01

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, 1867, section 50 (at least every five years) <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– 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/eng/Const/ConstDoc.html>

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?

58

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

The grade of 75 is given because there is an ongoing problem with people who do not have a residence identifying themselves for the purpose of voter registration and voting, so while registration processes are open, adequate identification is not always available for some voters. 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.

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 3 “right to vote” <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Sections 3 to 12 (Part 1) of the Canada Elections Act (2000, c. 9) <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– 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 increased barriers to voting in the 2008 federal election, especially to aboriginal peoples and students, not only because it was a new requirement, but also mainly because the list of acceptable identification was not broad enough to allow people to vote unless they could produce photo ID or two utility bills. See following article for some details: <http://www.canada.com/topics/news/national/story.html?id=bd516fc0-07fd-442b-a9f8-91f43ef86d3b>

– A court challenge of the voter identification requirements was filed that claims the requirements violate the right to vote in the Canadian Charter of Rights and Freedoms.

See details at:

<http://bcpiac.com/news/vancouver-groups-launch-charter-challenge-to-federal-voter-id-laws>:

and the initial trial court ruling was that the ID limitation was a reasonable limit in a free and democratic society

See ruling at:

<http://www.canlii.org/en/bc/bcsc/doc/2010/2010bcsc610/2010bcsc610.html>

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.

100 | 75 | 50 | 25 | 0

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 October 2008 federal general election.
<http://www.elections.ca/content.asp?section=pas&document=index&dir=39ge>

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.

100 | 75 | 50 | 25 | 0

References:

– Constitution Act, 1867, section 50 (at least every five years) <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– 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/eng/Const/ConstDoc.html>

– 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.)

– however, the Prime Minister of Canada had the right under an unwritten “convention” of the Constitution of Canada to request that the Governor General of Canada (the appointed representative in Canada of the Queen of England) exercise his/her powers under section 50 of the Constitution of Canada to end the session of Parliament (“dissolve” Parliament is the technical constitutional term) and order that an election be held.

– an election has also been called in all but one case in Canadian history when the ruling party lost a vote on a significant matter (such as a budget, known as a vote of non-confidence in the government), as again according to an unwritten “convention” of the Constitution of Canada a vote of non-confidence in the ruling party means that an election must be called unless (as happened in 1925) the leading opposition party is given the opportunity by the Governor General to attempt to pass measures through Parliament (thereby forming the government and winning the confidence of Parliament).

– while on average elections have been called every four years through Canadian history, many Prime Ministers have abused the right to request that the Governor General dissolve Parliament and call an election, usually making the request at a time that the Prime Minister believes gives his/her party the best chance to win an election.

– in May 2007, Bill C-16 became law and added new section 56.1 to the Canada Elections Act (See text of bill at: <http://www.parl.gc.ca/LEGISLATION/index.asp?Language=E&Session=14&query=4544&List=toc>). According to all statements made by ruling party representatives, the new law fixed election dates on the third Monday in October every four years (unless the ruling party lost a vote of confidence during the four-year period.)

– however, in September 2008, the Prime Minister requested that the Governor General dissolve Parliament and call an election even though a vote of non-confidence in the Prime Minister's party had not occurred in Parliament.

– Democracy Watch has filed an application in court challenging the Prime Minister's action, but on January 20, 2011 the Supreme Court of Canada rejected Democracy Watch's appeal of a Federal Court of Appeal ruling that ruled that the law was not

specific enough to restrict the Prime Minister from calling an election anytime s/he wants, nor (by implication) specific enough to require the Prime Minister to call an election every four years.

See details at:

http://www.dwatch.ca/camp/Fixed_Election_Court_Case.html

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.

Yes | No

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, section 2(d) “freedom of association”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– 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>

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:

– Clause 67(4)(b) of the Canada Elections Act which requires a CA\$1,000 (US\$1,040) 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.

– In October 2007, an Ontario provincial court ruled on a case that challenged the Ontario provincial election law requirement that candidates pay a deposit of CA\$200 (US\$202) — refunded only if the candidate wins at least 10 percent of the vote in his/her district), and rejected the requirement as a violation of the Charter of Rights and Freedoms right to run for political office (NOTE: the court said the deposit would be constitutional if it was refunded to all candidates after the election).
See case ruling at: <http://www.canlii.org/en/on/onsc/doc/2007/2007canlii44348/2007canlii44348.html>

– Given the Ontario court ruling, and that the average annual salary in Canada is approximately CA\$35,000 (US\$36,000), it is possible that the CA\$1,000 (US\$1,040) deposit requirement for federal election candidates could face a court challenge for being too high to be constitutional, but that a lower required amount (e.g. CA\$200 – US\$202) would be constitutional — the basis of the case would be 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/eng/Const/ConstDoc.html> — 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.

– However, given that the CA\$1,000 (US\$1,040) federal election deposit is refunded to every candidate after the election, the courts may simply rule that it is not too high an amount.

References:

– 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/eng/Const/ConstDoc.html>

– Part 6 of the Canada Elections Act (2000, c. 9)
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– It should be noted, however, that nomination races for federal election candidates are controlled by the political parties, with only the donations and expenses regulated under the Canada Elections Act, and that every party’s rules gives the party leader the power to appoint candidates in every district. As a result, it is not unusual for a local district association to hold a nomination race and vote, but afterward the candidate elected through this process is rejected by the party leader, and the party leader appoints his/her own hand-picked candidate.

– This undemocratic flaw in Canada’s candidate nomination and selection process significantly undermines the independence of federal members of the House of Commons, as they all are very well aware that their party leader could end their political career for a completely arbitrary and undemocratic reason (such as if they do not applaud the leader’s every decision and action) by refusing to confirm their nomination as their district’s candidate in the next election, and instead appointing someone else as the candidate.

– 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/eng/Const/ConstDoc.html> — only Canadians or United Kingdom citizens who are 30 years old or older who own land worth CA\$4,000 (US\$4,160) or more and who have assets in total worth CA\$4,000 or more than their debts and liabilities are eligible to be appointed to the Senate.

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.

100 | 75 | 50 | 25 | 0

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 Supreme Court of Canada (and subsequently the Canada Elections Act was amended to remove this requirement).

Figueroa v. Canada (Attorney General), [2003] 1 S.C.R. 912, 2003 SCC 37
<http://www.canlii.org/en/ca/scc/doc/2003/2003scc37/2003scc37.html>]

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 CA\$1,000 (US\$1,010) 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/eng/Const/ConstDoc.html> — 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.

– In October 2007, an Ontario provincial court ruled on a case that challenged the Ontario provincial election law requirement that candidates pay a deposit of \$200 (US\$202) — refunded only if the candidate wins at least 10% of the vote in his/her district), and rejected the requirement as a violation of the Charter of Rights and Freedoms right to run for political office (NOTE: the court said the deposit would be constitutional if it was refunded to all candidates after the election). See case ruling at: <http://www.canlii.org/en/on/onsc/doc/2007/2007canlii44348/2007canlii44348.html>

– Given this court ruling, and that the average annual salary in Canada is approximately \$35,000 (US \$36,000), I predict that the courts will rule that the CA\$1,000 (US\$1,010) deposit requirement for federal election candidates is too high, but that a lower required amount (e.g. CA\$200 (US\$202) 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/eng/Const/ConstDoc.html> — only Canadians or United Kingdom citizens who are 30 years old or older who own land worth CA\$4,000 (US\$4,040) 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. A system of party lists may discourage or prevent independent 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 the Parliament of Canada “History of Federal Ridings” search page at <http://www.parl.gc.ca/information/about/process/house/hfer/hfer.asp?Language=E>

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no instances in the past in which there was not an opposition party represented in the federal legislature.

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.

2.2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17a. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

Yes | No

References:

– Canada Elections Act (2000, c. 9)
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– 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 ensure the integrity of the election process.

No: A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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?

75

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

Yes | No

References:

– Canada Elections Act (2000, c. 9)
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada
<http://www.elections.ca/home.asp>

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.

100 | 75 | 50 | 25 | 0

References:

– The Chief Electoral Officer is appointed under section 13 of the Canada Elections Act (2000, c. 9)
– <http://ois.justice.gc.ca/en/showtdm/cs/E-2.01> – as the head of Elections Canada – <http://www.elections.ca/home.asp> – by the federal Cabinet after a resolution is passed in the federal House of Commons, and serves until mandatory retirement age of 65.

– 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.

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no instances during the study period in which an election agency appointment was made of a person with conflicts of interest or partisan ties.

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.

100 | 75 | 50 | 25 | 0

References:

– The Chief Electoral Officer is appointed under section 13 of the Canada Elections Act (2000, c. 9)

— <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01> — as the head of Elections Canada — <http://www.elections.ca/home.asp> — by the federal Cabinet after a resolution is passed in the federal House of Commons, and serves until mandatory retirement age of 65.

– 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.

– There is evidence that Elections Canada does not have staff sufficient to fulfill its basic mandate. According to an analysis by Democracy Watch — <http://www.dwatch.ca> —, 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 its Compliance Agreement and Sentencing Digest web pages set out contain details about only a dozen or so cases from 2004.
<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– Also according to an analysis by Democracy Watch, in section 4.2.4 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 its Compliance Agreement and Sentencing Digest Web pages contain details about only a dozen or so cases from 2006.
<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– And also according to an analysis by Democracy Watch, in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest web pages contain details about only a few cases from 2008.
<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

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

100 | 75 | 50 | 25 | 0

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.aspx?section=ele&dir=pas&document=index> <=e

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.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because of the large number of complaints filed with Elections Canada during the 2004, 2006 and 2008 federal elections (hundreds of complaints in total), for which Elections Canada has not disclosed details of whether, and how, the complaints were investigated and/or resolved (and what evidence there is shows that very few complaints resulted in prosecutions).

References:

– Elections Canada

<http://www.elections.ca/home.asp>

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Commissioner of Canada Elections "Compliance Agreements" archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– Commissioner of Canada Elections "Sentencing Digest" archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada's national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada (PPSC).

<http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index>

– Also, according to an analysis by Democracy Watch — <http://www.dwatch.ca> –, 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.aspx?section=abo&dir=com&document=index>

– 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.

– Also according to an analysis by Democracy Watch — <http://www.dwatch.ca> –, 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.aspx?section=abo&dir=com&document=index>

– When several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Election Act deadline of 18 months, Elections Canada extended the deadline for them.

http://www.cbc.ca/news/canada/politics/bytes/2008/09/loan_sharks.html

– And also according to an analysis by Democracy Watch — <http://www.dwatch.ca> –, in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest Web pages contain details about only a few cases from 2008. <http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– The Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011

<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

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.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. 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.

19. Are elections systems transparent and effective?

92

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

100 | 75 | 50 | 25 | 0

References:

– Under Part 4 (sections 44 to 56) of the Canada Elections Act (2000, c. 9) — <http://lois.justice.gc.ca/eng/E-2.01/index.html> — 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).

– 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.

– 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 increased barriers to voting in the 2008 federal election, especially to aboriginal peoples and students, not only because it was a new requirement, but also mainly because the list of acceptable identification was not broad enough to allow people to vote unless they could produce photo ID or two utility bills.

See following article for some details:

<http://www.canada.com/topics/news/national/story.html?id=bd516fc0-07fd-442b-a9f8-91f43ef86d3b>

– A court challenge of the voter identification requirements was filed by the BC Public Interest Advocacy Centre (BCPIAC) that claims the requirements violate the right to vote in the Canadian Charter of Rights and Freedoms — See details at:

<http://bcpiac.com/news/vancouver-groups-launch-charter-challenge-to-federal-voter-id-laws>:

and the initial trial court ruling was that the ID limitation was a reasonable limit in a free and democratic society.

See ruling at:

<http://www.canlii.org/en/bc/bcsc/doc/2010/2010bcsc610/2010bcsc610.html>

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.

75:

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:

– Sections 299 to 312 (Part 14) of the Canada Elections Act (2000, c. 9) <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

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:

– Elections Canada

<http://www.elections.ca/home.asp>

– 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."

<http://lois.justice.gc.ca/eng/E-2.01/index.html>

– 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.

– Elections Canada's "Manual on Judicial Recounts"

<http://www.elections.ca/content.aspx?section=res&dir=loi/jud&document=index>

– An Internet search for media articles

(using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found no 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. There were six judicial recounts following the October 2008 federal election. See section 2.8 in the report on the election at:

http://www.elections.ca/content.aspx?section=res&dir=rep/off/sta_2008&document=index

– However, there is evidence that complaints about election matters other than recounts are not handled promptly by Elections Canada, as follows:

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page:

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Commissioner of Canada Elections "Compliance Agreements" archive on following Elections Canada web page:

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– Commissioner of Canada Elections "Sentencing Digest" archive on following Elections Canada web page:

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada's national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada

(PPSC).
<http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index> <=e

– Also, according to an analysis by Democracy Watch — <http://www.dwatch.ca> —, 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.aspx?section=abo&dir=com&document=index> <=e

– 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.

– Also according to an analysis by Democracy Watch — <http://www.dwatch.ca> —, 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.aspx?section=abo&dir=com&document=index> <=e]

– when several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Elections Act deadline of 18 months, Elections Canada extended the deadline for them
http://www.cbc.ca/news/canada/politicalbytes/2008/09/loan_sharks.html

– And also according to an analysis by Democracy Watch — <http://www.dwatch.ca> —, in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest web pages contain details about only a few cases from 2008.
<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– the Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011.
<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

100: 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.

75:

50: 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.

25:

0: 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.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

References:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found no instances of military or security forces actively supporting or opposing federal political candidates or commenting on federal elections in the past two decades.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found no instances of military or security forces actively supporting or opposing federal political candidates or commenting on federal elections in the past two decades.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

Yes | No

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(a) “freedom of conscience and religion”; subsection 2(b) “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”, and subsection 2(d) “freedom of association”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

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.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 2(a) “freedom of conscience and religion”; subsection 2(b) “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication”, and subsection 2(d) “freedom of association”
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found 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).

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found 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.

89 2.3. Political Financing Transparency

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are limits on individual donations to political parties.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– As of January 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited; – the annual limit on individual donations was decreased from CA\$5,000 (which it had been since Jan. 1, 2004, when the limits were first imposed) to CA\$1,100 (US\$5,050 to US\$1,010) total to each party; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 combined total to each party's nomination race candidates, election candidates, and riding associations; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 total to each election candidate who runs as an independent; – the limit on individual donations is decreased from CA\$5,000 to CA\$1,100 to each candidate during a campaign for the leadership of a party; – and cash donations of more than CA\$20 (US\$15) were 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, and in 2010 were up to \$1,100.

– However, loans by individuals to political parties are not limited — a bill has been under consideration since 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but has not yet become law.

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18, Divisions 2 and 3 — <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> ↵

– The limits only apply to spending by a candidate or party during the election campaign period — there are no limits on spending in between election campaign periods

– The limits are based on the number of voters in a constituency/district, and increase annually on April 1 by the rate of inflation, and are approximately CA\$1 (US\$1.01) per voter — so candidates can spend approximately CA\$1 per voter on their local district election campaign, and their party can spend an additional CA\$1 per voter on its national election campaign.

– However, under Part 18, Division 2, subsection 407 of the Canada Elections Act, some expenses for a fund-raising activity and expenses to directly promote the nomination of a person as a candidate or as leader of a registered party are not defined as "expenses" under the Act, and this loophole allows candidates and parties to exceed their spending limits to varying degrees.

– Given that Elections Canada does not regularly audit all candidates' expenses, and does not even have the power to audit party expenses, it is very likely that parties abuse this loophole to exceed their election spending limits

– Elections Canada has charged officials of the federal Conservative Party for flowing money into local electoral district associations that did not spend the maximum allowed on their campaign, and then back out to the national party to spend on TV advertising during the 2006 national election, a scheme aimed at increasing the spending allowed on the overall national campaign — in February 2011, the Federal Court of Appeal upheld Elections Canada's interpretation of the law in a preliminary step of the overall court case <http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

– As well, loans by individuals and corporations to political parties are not limited — a bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill has not become law. As a result, parties and their candidates can use loans to have access to more funding than they would if they relied only on donations made under the donation limits in the Canada Elections Act.

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | No

References:

– All donations from individuals over CA\$200 (US\$202 combined total annually must be disclosed under the Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– As of Jan. 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time are prohibited.

– Elections Canada (federal regulatory agency) web page re: law on political finances:
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> ↵

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

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

where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

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:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Parts 2 and 3
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– 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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> [↵](#)

– As of January 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited; – the annual limit on individual donations was decreased from CA\$5,000 (which it had been since January 1, 2004, when the limits were first imposed) to CA\$1,100 (US\$5,050 to US\$1,010) total to each party; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 combined total to each party's nomination race candidates, election candidates, and riding associations; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 total to each election candidate who runs as an independent; – the limit on individual donations is decreased from CA\$5,000 to CA\$1,100 to each candidate during a campaign for the leadership of a party; – and cash donations of more than CA\$20 (US\$15) were 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, and in 2010 were up to \$1,100.

– However, loans by individuals to political parties are not limited — a bill has been under consideration since 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but has not yet become law.

– As of June 12, 2007, under the Canada Elections Act, Part 6, sections 92.1 to 92.6, secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than Can\$500 (US\$505) 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.)

– Given that there is no tracking of federal Canadian candidates' assets and liabilities, or bank accounts for suspicious transactions, there is no way to determine whether a candidate has received a secret donation
See for details:

<http://dwatch.ca/camp/RelsDec0910.html>

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> [↵](#)

– As of January 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited.

– The limits increase annually on April 1 by the rate of inflation, and in 2010 were up to Can\$1,100 (US\$1.140).

– However, loans by individuals to political parties are not limited — a bill has been under consideration since 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but has not yet become law.

– As of June 12, 2007, under the Canada Elections Act, Part 6, sections 92.1 to 92.6, secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than Can\$500 (US\$505) 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.)

– Given that there is no tracking of federal Canadian candidates' assets and liabilities, or bank accounts for suspicious transactions, there is no way to determine whether a candidate has received a secret donation.
See for details:

<http://dwatch.ca/camp/RelsDec0910.html>

– As well, individual donors do not have to disclose the identity of their employer or organizations with which they are affiliated in a significant way (such as being a board member), and the identity of volunteers who work for candidates does not have to be tracked nor disclosed. These two loopholes mean that, even though it is illegal to do so, corporations, unions and other organizations can effectively funnel donations through individuals to candidates, or give employees paid time off to “volunteer” for candidates, with little chance of being caught or penalized.

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index>

– As of June 12, 2007, under the Canada Elections Act, Part 6, sections 92.1 to 92.6, secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than Can\$500 (US\$505) 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.)

– Given that there is no tracking of federal Canadian candidates’ assets and liabilities, or bank accounts for suspicious transactions, there is no way to determine whether a candidate has received a secret donation.
See for details:
<http://dwatch.ca/camp/RelsDec0910.html>

– As well, individual donors do not have to disclose the identity of their employer or organizations with which they are affiliated in a significant way (such as being a board member), and the identity of volunteers who work for candidates does not have to be tracked nor disclosed. These two loopholes mean that, even though it is illegal to do so, corporations, unions and other organizations can effectively funnel donations through individuals to candidates, or give employees paid time off to “volunteer” for candidates, with little chance of being caught or penalized.

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor’s name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

– Elections Canada has the power to audit candidates’ finances, but rarely does so, and given that candidates hire their own auditors, their actual, effective independence is open to question.

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | No

References:

– Canada Elections Act (2000, c. 9), Parts 2 and 3
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– 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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

50

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> <=

– As of January 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited; – the annual limit on individual donations was decreased from CA\$5,000 (which it had been since January 1, 2004, when the limits were first imposed) to CA\$1,100 (US\$5,050 to US\$1,010) total to each party; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 combined total to each party's nomination race candidates, election candidates, and riding associations; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 total to each election candidate who runs as an independent; – the limit on individual donations is decreased from CA\$5,000 to CA\$1,100 to each candidate during a campaign for the leadership of a party; – and cash donations of more than CA\$20 (US\$21) were 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.

– However, while spending by third party (non-political party) individuals and 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 approximately CA\$195,000 (US\$197,000) annually, and CA\$4,000 (US\$4,040) within the geographical bounds of any constituency association (the limits increase annually on April 1 by the inflation rate), Elections Canada did not successfully find, nor prosecute, someone or some organization that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details in TheTyee.ca March 19, 2009 article at:
<http://thetyee.ca/News/2009/03/19/LunnThirdParty>.

– In addition, loans by individuals to political parties are not limited. A bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill — it became Bill C-19 in 2010 — <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7001&List=toc> — has not become law.

– As well, 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/district associations, and the limits on third party advertising that apply during election campaign periods do not apply during political party leadership campaign periods — Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca>] and [<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> <=

– As of January 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited.

– As well, while spending by third party (non-political party) individuals and 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 approximately CA\$195,000 (US\$197,000) annually, and CA\$4,000 (US\$4,040) within the geographical bounds of any constituency association (the limits increase annually on April 1 by the inflation rate), Elections Canada did not successfully find, nor prosecute, someone or some organization that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details in TheTyee.ca March 19, 2009 article at:

<http://thetyee.ca/News/2009/03/19/LunnThirdParty>
<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> <=

<http://www.elections.ca>

– In addition, loans by individuals to political parties are not limited. A bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill — it became Bill C-19 in 2010 — <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7001&List=toc> — has not become law.

– In addition, 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 — Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Also, individual donors do not have to disclose the identity of their employer or organizations with which they are affiliated in a significant way (such as being a board member), and the identity of volunteers who work for parties does not have to be tracked nor disclosed. These two loopholes mean that, even though it is illegal to do so, corporations, unions and other organizations can effectively funnel donations through individuals to parties, or give employees paid time off to “volunteer” for political parties, with

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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

References:

– Canada Elections Act (2000, c. 9), Part 18, Divisions 2 and 3 <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> (=e

– The limits only apply to spending by a candidate or party during the election campaign period. There are no limits on spending in between election campaign periods.

– The limits are based on the number of voters in a constituency/district, and increase annually on April 1 by the rate of inflation, and are approximately CA\$1 (US \$1.01) per voter — so candidates can spend approximately CA\$1 per voter on their local district election campaign, and their party can spend an addition CA\$1 per voter on its national election campaign.

– However, under Part 18, Division 2, subsection 407 of the Canada Elections Act, some expenses for a fund-raising activity and expenses to directly promote the nomination of a person as a candidate or as leader of a registered party are not defined as “expenses” under the Act, and this loophole allows candidates and parties to exceed their spending limits to varying degrees.

– As well, while spending by third party (non-political party) individuals and 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 approximately CA\$195,000 (US\$197,000) annually, and CA\$4,000 (US\$4,040) within the geographical bounds of any constituency association (the limits increase annually on April 1 by the inflation rate), Elections Canada did not successfully find, nor prosecute, someone or some organization that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:

<http://thetyee.ca/News/2009/03/19/LunnThirdParty>

<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> (=e

<http://www.elections.ca>

– Given that Elections Canada does not regularly audit all candidates' expenses, and does not even have the power to audit party expenses, it is very likely that parties abuse this loophole to exceed their election spending limits.

– As well, loans by individuals and corporations to political parties are not limited. A bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill has not become law — as a result, parties and their candidates can use loans to have access to more funding than they would if they relied only on donations made under the donation limits in the Canada Elections Act.

– In addition, 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 of these weaknesses in the auditing system it is open to parties to hide excess spending.

– In 2007-2008, another issue arose that brings into question the party election spending limits through a prominent Elections Canada investigation concerning the federal Conservative Party of Canada's transfer of funds in the 2006 federal election from its national campaign to more than 60 of the parties' candidates for the candidates to use to buy TV advertising time to run the national campaign's TV ads.

– Elections Canada ruled that these transfers, while legal under the Act, resulted in candidates claiming local district election campaign expenditures which were not legal (and for which Elections Canada refused to reimburse the candidates under the

public financing reimbursement program that gives candidates who win more than 10 percent of the vote in their local district a reimbursement of 50 percent of their campaign expenses.)

– Elections Canada ruled that the Conservative Party should have claimed the TV advertising expenses as part of the Party's national campaign expenditures, and that therefore the Party's national campaign had spent CA\$1.2 million (US\$1.22 million) more than the legal spending limit for national party campaigns.

– In response, the Conservative Party of Canada filed a civil lawsuit against Elections Canada in an attempt to win a ruling that Elections Canada must reimburse 50 percent of the TV ad expenses for all of its candidates who won more than 10 percent of the vote in their local district. In March 2011, the Federal Court of Appeal ruled against the Conservative Party and upheld Elections Canada's interpretation of the law, but the Conservatives announced that they would apply for permission to appeal to the Supreme Court of Canada which could reverse the Court of Appeal ruling. <http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html> <http://www.cbc.ca/news/story/2008/09/16/tories-spending.html>

– Elections Canada also charged four officials of the Conservative Party in early March 2011 in an attempt to win a court ruling that the Party's TV advertising funds transfer essentially violated the national campaign spending limits under the Act. <http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | **50** | 25 | 0

References:

– Elections Canada

<http://www.elections.ca/home.asp>

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index> <=e

– Commissioner of Canada Elections "Compliance Agreements" archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– Commissioner of Canada Elections "Sentencing Digest" archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada's national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada (PPSC).

<http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index> <=e

– 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.aspx?section=abo&dir=com&document=index> <=e

– 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.aspx?section=abo&dir=com&document=index>

– when several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Elections Act deadline of 18 months, Elections Canada extended the deadline for them – http://www.cbc.ca/news/canada/politicalbytes/2008/09/loan_sharks.html

– and in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest web pages contain details about only a few cases from 2008 <http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– Elections Canada did not successfully find, nor prosecute, someone or some organization (a third party) that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:

<http://theyee.ca/News/2009/03/19/LunnThirdParty>

<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index>

<http://www.elections.ca>

– the Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011.

<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

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

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada

<http://www.elections.ca/home.asp>

– Chief Electoral Officer’s Statutory reports section on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Commissioner of Canada Elections “Compliance Agreements” archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– Commissioner of Canada Elections “Sentencing Digest” archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada’s national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada

(PPSC).
<http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index> <=e

– 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.aspx?section=abo&dir=com&document=index> <=e

– 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.aspx?section=abo&dir=com&document=index> <=e

– when several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Elections Act deadline of 18 months, Elections Canada extended the deadline for them –
http://www.cbc.ca/news/canada/politicalbytes/2008/09/loan_sharks.html

– and in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest web pages contain details about only a few cases from 2008
<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– Elections Canada did not successfully find, nor prosecute, someone or some organization (a third party) that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:
<http://theyee.ca/News/2009/03/19/LunnThirdParty>
<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> <=e
<http://www.elections.ca>

– the Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011.
<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

<http://www.elections.ca/home.asp>

– Elections Canada's political finance page
<http://www.elections.ca/content.aspx?section=fin>

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page
<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Political parties and constituency (district) associations and candidates are required by the Canada Elections Act to provide their audited annual (parties and riding associations) and election campaign period (parties and 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, especially given that they choose their own auditors – Canada Elections Act (2000, c. 9), Part 18 – <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

55

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | **50** | 25 | 0

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca>
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index>

– As of Jan. 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited; – the annual limit on individual donations was decreased from CA\$5,000 (which it had been since January 1, 2004, when the limits were first imposed) to CA\$1,100 (US\$5,050 to US\$1,010) total to each party; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 combined total to each party's nomination race candidates, election candidates, and riding associations; – the annual limit on individual donations was decreased from CA\$5,000 to CA\$1,100 total to each election candidate who runs as an independent; – the limit on individual donations is decreased from CA\$5,000 to CA\$1,100 to each candidate during a campaign for the leadership of a party; – and cash donations of more than CA\$20 (US\$15) were 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, Part 6, sections 92.1 to 92.6, secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than CA\$500 (US\$505) 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, while spending by third party (non-political party) individuals and 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 approximately CA\$195,000 (US\$197,000) annually, and CA\$4,000 (US\$4,040) within the geographical bounds of any constituency association (the limits increase annually on April 1 by the inflation rate), Elections Canada did not successfully find, nor prosecute, someone or some organization that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:

<http://theyee.ca/News/2009/03/19/LunnThirdParty>

<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> <=e
<http://www.elections.ca>

– However, loans by individuals to political parties are not limited. A bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill has not become law.

– As well, 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.)

– Given that there is no tracking of federal Canadian candidates’ assets and liabilities, or bank accounts for suspicious transactions, there is no way to determine whether a candidate has received a secret donation .
See for details:

<http://dwatch.ca/camp/RelsDec0910.html>

– As well, 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/district associations, and the limits on third party advertising that apply during election campaign periods do not apply during political party leadership campaign periods.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company’s ability to financially support a candidate.

100 | 75 | **50** | 25 | 0

References:

– Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca>
<http://www.elections.ca/content.aspx?section=fin&dir=faq&document=index> <=e

– As of Jan. 1, 2007, under the Canada Elections Act, Part 18, donations from corporations, unions or organizations of any kind to any party or any type of candidate at any time were prohibited.

– As of June 12, 2007, under the Canada Elections Act, Part 6, sections 92.1 to 92.6, secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than CA\$500 (US\$505) 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, while spending by third party (non-political party) individuals and 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 approximately CA\$195,000 (US\$197,000) annually, and CA\$4,000 (US\$4,040) within the geographical bounds of any constituency association (the limits increase annually on April 1 by the inflation rate), Elections Canada did not successfully find, nor prosecute, someone or some organization that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at: <http://theyyee.ca/News/2009/03/19/LunnThirdParty>, <http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> <=e
<http://www.elections.ca>

– However, loans by corporations to political parties are not limited — a bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill has not become law.

– As well, under Part 18 of the Canada Elections Act, subsection 404.2(5), the provision by an employer of paid leave to an employee during the election campaign period to allow the employee run as a candidate in a nomination race, or in the election, is not a donation (“contribution”) under the Act.

– Also, 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).

– Given that there is no tracking of federal Canadian candidates’ assets and liabilities, or bank accounts for suspicious transactions, there is no way to determine whether a candidate has received a secret donation.

See for details:

<http://dwatch.ca/camp/ReIsDec0910.html>

– In addition, 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.

– Also, individual donors do not have to disclose the identity of their employer or organizations with which they are affiliated in a significant way (such as being a board member), and the identity of volunteers who work for parties does not have to be tracked nor disclosed. These two loopholes mean that, even though it is illegal to do so, corporations, unions and other organizations can effectively funnel donations through individuals to parties, or give employees paid time off to “volunteer” for political parties, with little chance of being caught or penalized.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates’ campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada

<http://www.elections.ca/home.asp>

– Chief Electoral Officer’s Statutory reports section on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Commissioner of Canada Elections “Compliance Agreements” archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– Commissioner of Canada Elections “Sentencing Digest” archive on following Elections Canada Web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index>

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada’s national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada (PPSC).

<http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index>

– 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.aspx?section=abo&dir=com&document=index> <=e

– 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.aspx?section=abo&dir=com&document=index> <=e

– when several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Elections Act deadline of 18 months, Elections Canada extended the deadline for them http://www.cbc.ca/news/canada/politicalbytes/2008/09/loan_sharks.html

– and in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest Web pages contain details about only a few cases from 2008. <http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– Elections Canada did not successfully find, nor prosecute, someone or some organization (a third party) that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:

<http://theyee.ca/News/2009/03/19/LunnThirdParty>

<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> <=e

<http://www.elections.ca>

– the Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011.

<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada

<http://www.elections.ca/home.asp>

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index> <=e

– Commissioner of Canada Elections "Compliance Agreements" archive on following Elections Canada web page

<http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> <=e

– Commissioner of Canada Elections “Sentencing Digest” archive on following Elections Canada Web page <http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> [↵]

– As of Jan. 1, 2007, prosecutions under the Canada Elections Act were no longer handled by the Commissioner of Canada Elections, and since then while the Commissioner continues to investigate allegations of violations of the Act (in conjunction with police forces, especially the Royal Canadian Mounted Police (RCMP – Canada’s national police force), prosecutions under the Act are handled by the new office of the Director of Public Prosecutions and the Public Prosecutions Service of Canada (PPSC). <http://ppsc-sppc.gc.ca/eng/index.html>

– 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.aspx?section=abo&dir=com&document=index> [↵]

– 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.aspx?section=abo&dir=com&document=index> [↵]

– 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.aspx?section=abo&dir=com&document=index> [↵]

– when several Liberal Party of Canada leadership race candidates could not pay off loans from the 2006 campaign within the Elections Act deadline of 18 months, Elections Canada extended the deadline for them http://www.cbc.ca/news/canada/politicalbytes/2008/09/loan_sharks.html

– and in section 2.10 Electoral Law Enforcement of the February 2009 report on the process and results of the October 2008 federal election, the Chief Electoral Officer reported that 500 complaints had been filed, but details about the 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 its Compliance Agreement and Sentencing Digest Web pages contain details about only a few cases from 2008. <http://www.elections.ca/content.aspx?section=abo&dir=com&document=index> [↵]

– Elections Canada did not successfully find, nor prosecute, someone or some organization (a third party) that spent money on calling all voters in one electoral district during the 2008 federal election. In addition, a few people connected to the local Conservative Party candidate also set up local citizen groups without just themselves as members just before the election campaign and then spent money on advertising for the candidate, and Elections Canada failed to charge or prosecute anyone involved.

See details at:

<http://theyee.ca/News/2009/03/19/LunnThirdParty>

<http://www.elections.ca/content.aspx?section=pol&dir=thi&document=index> [↵]

<http://www.elections.ca>

– the Commissioner and Public Prosecutor have pursued one case fully, concerning a spending scheme by the federal Conservative Party to boost the amount they could spend on TV advertising during the 2006 election campaign, and that case was ruled on by the Federal Court of Appeal in March 2011.

<http://www.cbc.ca/news/politics/story/2011/03/01/tories-in-and-out.html>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates’ campaigns are audited.

References:

– Elections Canada
<http://www.elections.ca>

– Elections Canada's political finance page
<http://www.elections.ca/content.aspx?section=fin>

– Chief Electoral Officer's Statutory reports section on following Elections Canada web page
<http://www.elections.ca/content.aspx?section=res&dir=rep&document=index>

– Political parties and constituency (district) associations and candidates are required by the Canada Elections Act to provide their audited annual (parties and riding associations) and election campaign period (parties and 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, especially given that they choose their own auditors – Canada Elections Act (2000, c. 9), Part 18
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

88

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

References:

– Political parties are required by Part 18, Division 3 of the Canada Elections Act (2000, c. 9)
 – <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01> – to disclose their donations and outstanding loans quarterly, but their expenses only annually.

– Elections Canada's political finance page
<http://www.elections.ca/content.aspx?section=fin>

– Hill Times Feb. 7, 2011 article about 2010 federal party fund-raising
<http://www.thehilltimes.ca/page/view/tactics-02-07-2011>

– Parties are not required to disclose their donations and outstanding loans in the week or so before each voting day, and as a result voters are denied key information about who or what organizations are bankrolling the party Part 18, Division 3 of the Canada Elections Act (2000, c. 9)
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

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

75:

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

25:

0: Political parties 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 regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Political parties are required by Part 18, Division 3 of the Canada Elections Act (2000, c. 9)
– <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01> – to disclose their donations and outstanding loans quarterly, but their expenses only annually.

– Elections Canada's political finance page
<http://www.elections.ca/content.aspx?section=fin>

– Hill Times Feb. 7, 2011 article about 2010 federal party fund-raising
<http://www.thehilltimes.ca/page/view/tactics-02-07-2011>

– Parties are not required to disclose their donations and outstanding loans in the week or so before each voting day, and as a result voters are denied key information about who or what organizations are bankrolling the party Part 18, Division 3 of the Canada Elections Act (2000, c. 9)
<http://lois.justice.gc.ca/en/showtdm/cs/E-2.01>

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin> and [<http://www.elections.ca>

– 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.
<http://www.elections.ca/content.aspx?section=fin>

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) web page re: law on political finances

<http://www.elections.ca/content.aspx?section=fin>

<http://www.elections.ca>

– 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

<http://www.elections.ca/content.aspx?section=fin>

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

63

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) Web page re: law on political finances –

<http://www.elections.ca/content.aspx?section=fin>

<http://www.elections.ca>

– 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

– <http://www.elections.ca/content.aspx?section=fin>

– Constituency associations are required by Part 18 of the Canada Elections Act (2000, c. 9)

– <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01> – to disclose their donations and expenditures only annually.

– Nomination race and election candidates are required by Part 18 of 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 Part 18 of the Canada Elections Act to disclose their donations and loans 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, sections 92.1 to 92.6: – secret, unlimited donations of money, property or services made directly to candidates in federal elections are banned, and almost all donations of more than CA\$500 (US\$505) 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, the Canada Elections Act measures cited above do not prohibit 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 constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose regularly the amount and terms of loans (candidates are required to disclose the amount and terms of loans within four to six months after their election campaign). A bill was introduced in 2007 to allow only loans by financial institutions to political parties and candidates (but not limit the amount of such loans) but the bill — it became Bill C-19 in 2010 — <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7001&List=toc> — has not become law.

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

75:

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

25:

0: Individual 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 regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) Web page re: law on political finances — <http://www.elections.ca/content.aspx?section=fin> — <http://www.elections.ca>

– 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.

– Constituency associations are required by the Canada Elections Act Canada Elections Act (2000, c. 9) — <http://lois.justice.gc.ca/en/showtdm/cs/E-2.01> — 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 and loans 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 CA\$500 (US\$505) 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.)

– In addition, loans to constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose regularly the amount and terms of loans (candidates are required to disclose the amount and terms of loans within four to six months after their election campaign.)

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) Web page re: law on political finances
<http://www.elections.ca/content.aspx?section=fin> <=e
<http://www.elections.ca>

– 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
– <http://www.elections.ca/content.aspx?section=fin> <=e

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

– Elections Canada (federal regulatory agency) Web page re: law on political finances –
<http://www.elections.ca/content.aspx?section=fin> <=e
<http://www.elections.ca>

– 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.

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– 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 CA\$500 (US\$505) 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.)

– In addition, loans to constituency associations, and candidates are not limited, and only political parties are required under the Canada Elections Act to disclose regularly the amount and terms of loans (candidates are required to disclose the amount and terms of loans within four to six months after their election campaign.)

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

64
3.1. Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

References:

– Constitution Act, 1982, Schedule B, Part 1, Canadian Charter of Rights and Freedoms, subsection 24(1) — <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– Government of Canada's guide to the Charter <http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>

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.

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

81

27a. 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 Cabinet ministers including the Prime Minister (who, along with their appointees, make up the executive of the federal Canadian government.) However, ministers do not always answer the questions fully.

See Parliament of Canada website information page — <http://www2.parl.gc.ca/Sites/LOP/AboutParliament/Misc/DemocracyInAction/Democracy-e.asp>

– Questioning by media of ministers (though not necessarily the Prime Minister) also occurs daily, and corporations, citizen groups and other organizations regularly communicate with ministers in attempts to obtain explanations of policy decisions, but again ministers do not always answer the questions fully.

See Parliament of Canada publication “How Canadians Govern Themselves” at:

<http://www2.parl.gc.ca/Sites/LOP/AboutParliament/Forsey/preface-e.asp>

– As well, ministers sometimes give misleading answers, for example in the Minister Bev Oda situation concerning funding for development NGOs — <http://www.cbc.ca/news/story/2011/02/18/pol-oda-pmo.html> — or the Minister Tony Clement situation concerning the federal census — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/10/clement-for-the-record-on-the-census-and-the-power-of-one.html>, and <http://www.cbc.ca/news/canada/story/2010/07/27/pol-census-clement-sheikh-hearing.html>

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 censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

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/eng/Const/ConstDoc.html>

– 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/eng/Const/ConstDoc.html>

– Canadian federal government’s guide to the Charter
<http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>

– Canadian Bar Association (Province of British Columbia branch) overview of Charter court application process
http://www.cba.org/BC/public_media/rights/230.aspx

– 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/notice/index.html?redirect=%2Fen%2Fshowtdm%2Fcs%2FF-7>

– In addition, even if an application challenging the actions of the federal government executive cannot be filed in Federal Court, it can usually be filed in a provincial court, unless a specific statutory prohibition (such as a privative clause) prevents such an application.

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

Comments:

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

References:

– While extensive fully substantiated evidence does not exist that shows 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 unwilling to take on sensitive issues and/or 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/RelsAug1508.html>

NOTE: thankfully, this ruling was reversed at the appeal level <http://www.dwatch.ca/camp/RelsMar1709.html>

– the judicial review of the federal Ethics Commissioner’s ruling on a decision by the Prime Minister of Canada

<http://www.dwatch.ca/camp/RelsJun1209.html>

NOTE: as the court’s ruling shows, the Ethics Commissioner is protected fully from judicial review, which means that the Prime Minister’s actions are protected from judicial review (thankfully, most of Canada’s federal good government watchdog agencies are not protected from judicial review)

– the judicial review of the Prime Minister of Canada’s arbitrary election call in September 2008.

<http://www.dwatch.ca/camp/RelsSep2710.html>

NOTE: the Supreme Court of Canada refused leave to appeal the case to the Court

– the judicial review of the Government of Canada’s refusal to disclose documents concerning the detainment of people in Afghanistan by Canadian armed forces:

<http://www.cbc.ca/news/canada/story/2008/12/10/afghan-detainee.html> <http://www.cbc.ca/news/politics/story/2011/03/03/pol-afghan-docs-bloc.html>

– the judicial review of the Government of Canada’s actions concerning Omar Khadr:

<http://www.cbc.ca/news/canada/story/2008/05/23/khadr-court.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 very weak record between March 2004 and April 2007 at: <http://www.dwatch.ca/camp/RelsApr0507.html>

– and see also for example the very weak record of new (since July 2007) federal Ethics Commissioner Mary Dawson

<http://www.dwatch.ca/camp/RelsOct1510.html>

– and the very weak record also of the new (since July 2008) federal Commissioner of Lobbying

<http://www.dwatch.ca/camp/RelsFeb2311.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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

References:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> <http://www.ctv.ca>) found 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 of policy-making to avoid constitutionally or legally required legislative approval.

– An Internet search for academic, policy or professional studies (using <http://www.google.ca>) also found 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 of policy-making to avoid constitutionally or legally required legislative approval.

– However, the national government prorogued (shut down) the Parliament twice, once in December 2008, and once in December 2009, both times because of a conflict between the legislative agenda of the minority governing party vs. the agenda of the opposition political parties (who held a majority of seats in the House of Commons). These two prorogations were an unusual use of executive power that were widely questioned by many commentators, and tens of thousands of Canadians protested the December 2009 prorogation.

– See January 2010 CBC.ca article about protests against the December 2009 prorogation at: [<http://www.cbc.ca/news/canada/story/2010/01/23/prorogue-protests.html>]

– And see December 2008 Canada.com article about the December 2008 prorogation, at: [<http://www.canada.com/montrealgazette/features/viewpoints/story.html?id=68f8fa4c-7f7c-46a2-ab1e-5498bce6fd2b>]

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.

28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | No

References:

– Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>] — particularly Part IV re: corruption crimes

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | No

References:

– Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46> — particularly Part IV re: corruption crimes

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.

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

56

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

The CA\$10,000 (US\$10,100) threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between March 2004 and March 2011 did not audit even one of the statement of assets of any member of the executive.

References:

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

– The CA\$10,000 (US\$10,100) threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the Ethics Commissioner position was created (initially called Ethics Counselor) and March 2011 did not audit even one of the statement of assets of any member of the executive.

References:

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

References:

- Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46> — particularly Part IV re: corruption crimes
- Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>
- Office of the Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/>
- In an important step forward in fall 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at: <http://ciec-ccie.gc.ca/Default.aspx?pid=36> (=en)
- The CA\$10,000 (US\$10,100) threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the Ethics Commissioner position was created (initially called Ethics Counselor) and March 2011 did not audit even one of the statement of assets of any member of the executive.

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.

29d. 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

References:

- The new Conflict of Interest Act (2006, c. 9, s. 2 — 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 public audits. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>
- Office of the Conflict of Interest and Ethics Commissioner <http://ciec-ccie.gc.ca/>
- Under the Act, Most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public.
- However, there is no public evidence that the Commissioner has audited even one executive asset disclosure statement in the past year, and the past Commissioner (the position was called the Ethics Commissioner from March 2004 to July 2007) admitted that he did not audit any of the statements and instead used an “honor” system of enforcement, and there was no evidence that the former Ethics Counselor audited anyone from July 2004 (when the position was created) to March 2004.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

Yes | No

References:

– Part 3 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — which contains a two-year “cooling-off” period for Cabinet ministers, and one-year period for some ministerial staff and some senior government officials, on taking employment with, or lobbying for, some corporations and organizations (which replaced the measures in the Conflict of Interest and Post-Employment Code for Public Office Holders that existed from 1986 to 2006).

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– “Restriction on Lobbying Activity” part of Lobbying Act (1985, c. 44 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — which came into effect on July 2, 2008 (finally) and replaced the five-year cooling-off period measures in the Conflict of Interest and Post-Employment Code for Public Office Holders mentioned above.

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– however, it must be noted that the Conflict of Interest Act and Lobbying Act both contain huge loopholes that undermine all the regulations.

See for details: <http://www.dwatch.ca/camp/OpEdFeb1411.html>

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.

29f. 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:

– The grade of 25 is given because the measures in the Conflict of Interest Act and Lobbying Act are full of loopholes that allow any member of the executive, the day after they leave office:

(a) to be paid as an employee to lobby for a corporation they did not have significant dealings with during their last year of office, as long as they lobby less than 20 percent of their time on average over each six-month period (which allows for 25-35 days of full-time lobbying every six months);

(b) to be paid as an employee to lobby for anyone or any organization they did not have significant dealings with during their last year in office, as long as they are lobbying only about the enforcement or administration of a law, regulation, policy or program;

(c) to lobby for anyone or any organization as long as they are not paid for the lobbying, and;

(d) to be paid as an employee for a corporation or organization they did not have significant dealings with during their last year of office.

– As well, former senior civil servants are not even required, under the Conflict of Interest Act, to inform the Ethics Commissioner of their post-government employment position, and the Ethics Commissioner has done very little to enforce post-employment rules.

– In addition to these loopholes, the Commissioner of Lobbying is allowed to exempt, for a variety of reasons, ministerial staff and appointees from the five-year prohibition on becoming a registered lobbyist.

– Also, there is no track record of enforcement of these measures to determine whether the Commissioner of Lobbying will enforce them effectively, and some evidence that the Commissioner has a very weak enforcement attitude.
<http://www.dwatch.ca/camp/RelsFeb2311.html>

– There is also clear evidence that the Ethics Commissioner has a very weak enforcement attitude.
<http://www.dwatch.ca/camp/RelsOct1510.html>

– See overall for details about the loopholes and lack of enforcement
<http://www.dwatch.ca/camp/OpEdFeb1411.html>

References:

– Part 3 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — which contains a two-year “cooling-off” period for Cabinet ministers, and one-year period for some ministerial staff and some senior government officials, on taking employment with, or lobbying for, some corporations and organizations (which replaced the measures in the Conflict of Interest and Post-Employment Code for Public Office Holders that existed from 1986 to 2006).

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– “Restriction on Lobbying Activity” part of Lobbying Act (1985, c. 44 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — which came into effect on July 2, 2008 (finally) and replaced the five-year cooling-off period measures in the Conflict of Interest and Post-Employment Code for Public Office Holders mentioned above.

– Commissioner of Lobbying
<http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– however, it must be noted that the Conflict of Interest Act and Lobbying Act both contain huge loopholes that undermine all the regulations.
See for details:
<http://www.dwatch.ca/camp/OpEdFeb1411.html>

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 25 is given because the Guideline on Gifts has not been enforced by the Ethics Commissioner, there is no penalty for a lobbyist who violates the Lobbyists’ Code of Conduct Rule 8 that prohibits giving gifts, and an effective enforcement of the prohibition on gifts will never be possible as long as members of the executive are not required to disclose assets that are worth less than CA\$10,000 (US\$10,100) because as a result gifts of things worth up to \$10,000 are very easy to give in secret.

References:

– Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>] — particularly Part IV re: corruption crimes

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at:
<http://ciec-ccie.gc.ca/Default.aspx?pid=36>

– However, the Ethics Commissioner did not enforce the Guideline in rulings in 2010 on two public cases of lobbyists giving gifts of services or use of property to members of the executive they lobby.
<http://www.dwatch.ca/camp/ReisMay1710.html>
<http://toronto.ctv.ca/servlet/an/local/CTVNews/20100907/ethics-watchdog-clears-tory-mp-100907/20100907/?hub=TorontoNewHome>

– As a result, there is a conflict of laws currently, because the Commissioner of Lobbying ruled in March 2011 the first case cited above (the Minister Lisa Raitt case) that two lobbyists had violated the Lobbyists’ Code of Conduct by assisting the Minister with a

fund-raising event.

<http://www.cbc.ca/news/politics/inside-politics-blog/2011/02/lobbyists-linked-to-raitt-fundraiser-found-in-breach-of-code.html>

– In other words, the Ethics Commissioner believes (mainly because she made up loopholes in the Conflict of Interest Act that contradict her own Guideline) that it is legal for members of the executive to accept such gifts from lobbyists, while the Commissioner of Lobbying correctly (according to a Federal Court of Appeal ruling) ruled that it is illegal for a lobbyist to give such a gift.

– There is no penalty for a lobbyist who violates the Lobbyists' Code of Conduct.

– Also, the Ethics Commissioner has admitted that the gift disclosure requirement is essentially voluntary

<http://www.cbc.ca/news/story/2010/12/06/prime-minister-gifts-registry.html>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

– The new Conflict of Interest Act (2006, c. 9, s. 2 — 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 of public office holders.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– Under the Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public.

– An Internet search for media articles

(using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found no public evidence that the Commissioner has audited even one executive asset disclosure statement, nor is there any evidence in the Commissioner's annual reports.

<http://ciec-ccie.gc.ca/Default.aspx?pid=23> <=en

– The past Commissioner (the position was called the Ethics Commissioner from March 2004 to July 2007) admitted that he did not audit any of the statements and instead used an "honor" system of enforcement.

See his annual reports at:

<http://ciec-ccie.gc.ca/Default.aspx?pid=26> <=en

– There was also no evidence in annual reports that the former Ethics Counselor audited anyone from July 2004 (when the position was created) to March 2004.

<http://ciec-ccie.gc.ca/Default.aspx?pid=27> <=en

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.

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

75

30a. 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 (Cabinet ministers, some members of their staff, some appointees and senior government officials 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://ciec-ccie.gc.ca/PublicSearch.aspx>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

– Some members of Cabinet ministers' staff, and some appointees and senior government officials, 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 — subsection 25(2) of the Conflict of Interest Act

<http://lois.justice.gc.ca/eng/C-36.65/index.html>

– 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 CA\$10,000 (US\$10,100) or more to the Ethics Commissioner under subsection 25(3) of the Conflict of Interest Act — <http://lois.justice.gc.ca/eng/C-36.65/index.html> — The disclosure should be required for assets worth CA\$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 (Cabinet ministers, some members of their staff, some appointees and senior government officials are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 60 days (for Cabinet ministers the most senior policy-making staff and appointees) or 120 days of being appointed as a Public Office Holder.)

<http://ciec-ccie.gc.ca/PublicSearch.aspx>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Partial asset and liability information can be found by searching (for free) the online Public Registry for Public Office Holders (Cabinet ministers, some members of their staff, some appointees and senior government officials are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 60-120 days of being appointed as a Public Office Holder.)

<http://ciec-ccie.gc.ca/PublicSearch.aspx>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

– Partial asset and liability information can be found by searching (for free) the online Public Registry for Public Office Holders (Cabinet ministers, some members of their staff, some appointees and senior government officials are required to disclose their assets and liabilities to the Conflict of Interest and Ethics Commissioner within 60-120 days of being appointed as a Public Office Holder.)

<http://ciec-ccie.gc.ca/PublicSearch.aspx>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– updates to the Registry are only required once per year.

– 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 CA\$10,000 (US\$10,100) or more every four months to the Ethics Commissioner. The disclosure should be required for assets worth CA\$1,000 or more, with updates on changes required within 30 days.

– There is no public evidence that the Commissioner has audited even one executive asset disclosure statement in the past year, and the past Commissioner (the position was called the Ethics Commissioner from March 2004 to July 2007) admitted that he did not audit any of the statements and instead used an "honor" system of enforcement, and there was no evidence that the former Ethics Counselor audited anyone from July 2004 (when the position was created) to March 2004.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

50

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

References:

– Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) exempts political activities of public office holders from the Act's measures — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>
<http://ciec-ccie.gc.ca/Default.aspx?pid=20> <=en

– Office of the Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/>

– In a step forward, the federal Conflict of Interest and Ethics Commissioner issued an “Information Notice” concerning the political activities of public office holders in September 2008 — <http://ciec-ccie.gc.ca/Default.aspx?PID=45> <=en — which contained links to the policies on political activities that do exist for Cabinet ministers and ministerial staff.

– However, these policies are enforced by federal Cabinet ministers themselves, for themselves and their staff, and as a result are very likely never effectively enforced.

– To give one example, one of the guidelines is that Cabinet ministers shall act with honesty, but when Democracy Watch filed a complaint with Prime Minister Stephen Harper about blatantly dishonest statements which had been made by one of his Cabinet ministers about activities of the ruling political party, the Prime Minister did not even respond to the complaint, let alone rule on the complaint or penalize his minister.

See for details:

<http://www.dwatch.ca/camp/RelsJul1708.html>

– In a major situation in 2009, dozens of federal government Conservative Cabinet ministers and Members of Parliament were caught handing out government checks with the Conservative Party logo on them — <http://www.cbc.ca/news/canada/story/2009/12/10/canada-dawson-ceremonialcheques.html> — however, in a bizarre ruling, the federal Ethics Commissioner ruled on January 13, 2010 that no rules were broken.

See “Discontinuance Report” at:

<http://ciec-ccie.gc.ca/Default.aspx?pid=67> <=en

– In addition, there are questions raised regularly about whether Cabinet ministers and their staff are using government vehicles, and government funding, for trips that are mainly for ruling party purposes.

See the following articles for examples:

<http://www.cbc.ca/news/politics/story/2011/03/04/pol-kenney-letter-reax.html><http://www.cbc.ca/canada/story/2007/05/07/blackburn-expenses.html> <http://www.cbc.ca/canada/story/2007/05/09/travel-expenses.html>

100: 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.

75:

50: 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.

25:

0: 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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

92

32a. 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/eng/Const/ConstDoc.html>

– 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/eng/Const/ConstDoc.html>

– Canadian federal government's guide to the Charter
<http://www.pch.gc.ca/pgm/pdp-hrp/canada/frdm-eng.cfm>

– Canadian Bar Association (Province of British Columbia branch) overview of Charter court application process
http://www.cba.org/BC/public_media/rights/230.aspx

– 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/notice/index.html?redirect=%2Fen%2Fshowtdm%2Fcs%2FF-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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 is given because there is a split opinion in Canada concerning the aggressiveness, fairness, and non-partisanship of the federal Canadian judiciary; 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.)

References:

– Bibliography of academic articles about the Supreme Court of Canada and the Charter
<http://www.scc-csc.gc.ca/court-cour/biblio/index-eng.asp>

– Article "The Charter and the Supreme Court – A 25-Year Trial" <http://www.thecourt.ca/2007/02/21/the-charter-and-the-supreme-court-a-25-year-trial>

– Charter Committee on Poverty Issues litigation web page <http://www.equalityrights.org/ccpi/cases>

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

References:

– Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>] — particularly Part IV re: corruption crimes

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

50

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

– The CA\$10,000 (US\$10,100) threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes.)

– The gap in disclosure of assets worth less than CA\$10,000 is especially serious because there is no public evidence that the Conflict of Interest and Ethics Commissioner has audited any statement of assets of a member of the House of Commons (since the office was first created in July 2004), just like the Senate Ethics Officer (which has only existed since 2005) has not audited any statement of a senator.

References:

– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) — most assets worth more than CA\$10,000 (US\$10,100) 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>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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

<http://sen.parl.gc.ca/seocse/eng/Code-e.html>

– Senate Ethics Officer

<http://sen.parl.gc.ca/seocse/eng/Home-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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

Yes | No

References:

– Only since September 2010, a five-year cooling off period (which has many loopholes in it) was extended under the federal Lobbying Act (1985, c. 44 (4th Supp.)) – <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> – to cover Members of the House of Commons.

– However, there are no cooling off periods for members of the Senate (except for the Leader of the Opposition in the Senate), nor for the staff of members of the House of Commons or Senate (except senior staff in the Leader of the Opposition in the House and Senate).

– “Restriction on Lobbying Activity” part of Lobbying Act (1985, c. 44 (4th Supp.)) – <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> – which came into effect on July 2, 2008 (finally).

– Commissioner of Lobbying – <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– however, it must be noted that the Lobbying Act contains huge loopholes that undermine all the regulations.

For details see <http://www.dwatch.ca/camp/OpEdFeb1411.html>

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

References:

– Criminal Code (R.S., 1985, c. C-46) – <http://lois.justice.gc.ca/en/showtdm/cs/C-46> – particularly Part IV re: corruption crimes

– Conflict of Interest Code for Members of the House of Commons (MPs Code – first in force in October 2004) – most assets worth more than CA\$10,000 (US\$10,100) 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>

– in addition, subsections 2(e) and sections 14 and 15 of the Code contain specific rules re: gifts and hospitality (but huge loopholes exist in the definition of “benefit” that allow for volunteer services to be provided by lobbyists to members of the legislature, and another loophole allows anyone (including lobbyists) to “sponsor travel” of Members of the House).

For details, go to: <http://www.dwatch.ca/camp/OpEdJun2209.html>

– Office of the Conflict of Interest and Ethics Commissioner <http://ciec-ccie.gc.ca/>

– Conflict of Interest Code for Senators (Senators’ Code – first in force in March 2005) – most assets worth more than CA\$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>

– In addition, sections 17 to 19 of the Senators’ Code contain specific rules re: gifts and hospitality

– Senate Ethics Officer <http://sen.parl.gc.ca/seo-cse/eng/Home-e.html>

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

References:

– Conflict of Interest Code for Members of the House of Commons (MPs Code – first in force in October 2004) – most assets worth more than CA\$10,000 (US\$10,100) 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>

– in addition, subsections 2(e) and sections 14 and 15 of the Code contain specific rules re: gifts and hospitality (but huge loopholes exist in the definition of “benefit” that allow for volunteer services to be provided by lobbyists to members of the legislature).

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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

– In addition, sections 17 to 19 of the Senators’ Code contain specific rules re: gifts and hospitality

– Senate Ethics Officer

<http://sen.parl.gc.ca/seocse/eng/Home-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 CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes.)

– The gap in disclosure of assets worth less than CA\$10,000 is especially serious because there is no public evidence that the Conflict of Interest and Ethics Commissioner has audited any statement of assets of a member of the House of Commons since the office was first created in July 2004, and the Senate Ethics Officer has also not audited any statement of a senator since the office was first created in spring 2005.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | **25** | 0

Comments:

– The grade of 25 is given because the measures in the Lobbying Act are full of loopholes, and weakly enforced, and only in force for members of the House only (not the Senate) since September 2010

– The Lobbying Act loopholes that allow any member of the House of Commons, the day after they leave office:

(a) to be paid as an employee to lobby for a corporation, as long as they lobby less than 20 percent of their time on average over each six-month period (which allows for 25-35 days of full-time lobbying every six months);

(b) to be paid as an employee to lobby for anyone or any organization, as long as they are lobbying only about the enforcement or administration of a law, regulation, policy or program, and;

(c) to lobby for anyone or any organization as long as they are not paid for the lobbying.

See for details Democracy Watch’s op-ed from February 2011 <http://www.dwatch.ca/camp/OpEdFeb1411.html>

– In addition to these loopholes, the Commissioner of Lobbying is allowed to exempt, for a variety of reasons, members of the House from the five-year prohibition on becoming a registered lobbyist.
See for details Democracy Watch's op-ed from February 2011 <http://www.dwatch.ca/camp/OpEdFeb1411.html>

– Also, there is no track record of enforcement of these measures to determine whether the Commissioner of Lobbying will enforce them effectively, and some evidence that the Commissioner has a very weak enforcement attitude.
See Democracy Watch February 2011 report on the Commissioner at:
<http://www.dwatch.ca/camp/RelsFeb2311.html>

– See overall for details about the loopholes and lack of enforcement Democracy Watch's op-ed from February 2011:
<http://www.dwatch.ca/camp/OpEdFeb1411.html>

References:

– Only since September 2010, a five-year cooling off period (which has many loopholes in it) was extended under the federal Lobbying Act (1985, c. 44 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — to cover Members of the House of Commons.

– However, there are no cooling off periods for members of the Senate (except for the Leader of the Opposition in the Senate), nor for the staff of members of the House of Commons or Senate (except senior staff in the Leader of the Opposition in the House and Senate).

– Commissioner of Lobbying
<http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– However, it must be noted that the Lobbying Act contains huge loopholes that (a) allow any member of the legislature, the day after they leave office, to be paid as an employee to lobby for a corporation they did not have significant dealings with during their last year of office, as long as they lobby less than 20 percent of their time on average over each six-month period (which allows for 35 days of full-time lobbying every six months) or lobbying only about the enforcement of laws and regulations, and;

(b) allow the Commissioner of Lobbying to exempt, for a variety of reasons, members of the legislature from the five-year prohibition on becoming a registered lobbyist
See for details Democracy Watch's op-ed from February 2011
<http://www.dwatch.ca/camp/OpEdFeb1411.html>

– Also, there is no track record of enforcement of these measures to determine whether the Commissioner of Lobbying will enforce them effectively, and some evidence that the Commissioner has a very weak enforcement attitude.
See Democracy Watch's February 2001 report on the Commissioner for details:
<http://www.dwatch.ca/camp/RelsFeb2311.html>

– See Canada.com article about the loopholes in the rules: <http://www.canada.com/news/Tory+insiders+pursue+lobbying+jobs+despite+crackdown/2594459/story.html>

– See overall for details about the loopholes and lack of enforcement Democracy Watch's February 2011 op-ed
<http://www.dwatch.ca/camp/OpEdFeb1411.html>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

– Conflict of Interest Code for Members of the House of Commons (MPs Code – first in force in October 2004) — most assets worth more than CA\$10,000 (US\$10,100) 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>

– In addition, subsections 2(e) and sections 14 and 15 of the House Code contain specific rules re: gifts and hospitality (but huge loopholes exist in the definition of “benefit” that allow for volunteer services to be provided by lobbyists to members of the legislature, and the gift of “sponsored travel” is unlimited and allowed at any time, even if the gift comes from a lobbyist) — See for details Democracy Watch’s op-ed from June 2009 and news release from June 2010:

<http://www.dwatch.ca/camp/OpEdJun2209.html>
<http://www.dwatch.ca/camp/RelsJun1410.html>

– See also April 2, 2010, CTV media article about sponsored travel for members of the House:
http://www.ctv.ca/CTVNews/QPeriod/20100402/sponsored_trips_100402/

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

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

– In addition, sections 17 to 19 of the Senators’ Code contain specific rules re: gifts and hospitality

– Senate Ethics Officer
<http://sen.parl.gc.ca/seoc-se/eng/Home-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 CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, money or property from a lobbyist) is technically illegal under the codes.)

– The gap in disclosure of assets worth less than CA\$10,000 is especially serious because an Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no public evidence that the Conflict of Interest and Ethics Commissioner has audited any statement of assets of a member of the House of Commons since the office was first created in July 2004, nor is there any evidence in the Commissioner’s annual reports. <http://ciec-ccie.gc.ca/Default.aspx?pid=23> [←en](#)

– and the Senate Ethics Officer has also not audited any statement of a senator since the office was first created in spring 2005, as shown in the Officer’s annual reports.
<http://sen.parl.gc.ca/seoc-se/eng/Publications-e.html>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: 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.

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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

– Conflict of Interest Code for Members of the House of Commons (MPs Code – first in force in October 2004) — most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

See Code at:

<http://www.parl.gc.ca/information/about/process/house/standingorders/appa1-e.htm>

– In addition, subsections 2(e) and sections 14 and 15 of the Code contain specific rules re: gifts and hospitality (but huge loopholes exist in the definition of “benefit” that allow for volunteer services to be provided by lobbyists to members of the legislature).

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– Conflict of Interest Code for Senators (Senators’ Code – first in force in March 2005) – most assets worth more than CA\$10,000 must be disclosed to the Senate Ethics Officer, who keeps the contents of the form confidential.

See Code at:

<http://sen.parl.gc.ca/seocse/eng/Code-e.html>

– In addition, sections 17 to 19 of the Senators’ Code contain specific rules re: gifts and hospitality

– Senate Ethics Officer

<http://sen.parl.gc.ca/seocse/eng/Home-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 CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes.)

– The gap in disclosure of assets worth less than CA\$10,000 is especially serious because an Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, and <http://www.ctv.ca>) found no public evidence that the Conflict of Interest and Ethics Commissioner has audited any statement of assets of a member of the House of Commons since the office was first created in July 2004, nor is there any evidence in the Commissioner’s annual reports. <http://ciec-ccie.gc.ca/Default.aspx?pid=23> <=en

– and the Senate Ethics Officer has also not audited any statement of a senator since the office was first created in spring 2005, as shown in the Officer’s annual reports.

<http://sen.parl.gc.ca/seocse/eng/Publications-e.html>

– In 2010, the federal Ethics Commissioner admitted that the gift disclosure requirement is voluntary.

See CBC media article from Dec. 6, 2010 at:

<http://www.cbc.ca/news/story/2010/12/06/prime-minister-gifts-registry.html>

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

75:

50: 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.

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.

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

19

34a. 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 CA\$10,000 (US\$10,375) are not disclosed, the asset (and liability) disclosure statements of Members of the House of Commons are kept partially confidential (although the part of the statements that is publicly disclosed is available by either visiting the Commissioner’s office during regular business hours, or on request by fax or mail), and the asset (and liability) disclosure statements of Senators are kept fully confidential.

– Because they only have to disclose assets worth CA\$10,000 or more every four months to the Ethics Commissioner (or Senate Ethics Officer), Members of the House of Commons and the Senate can easily hide large gifts they receive from lobbyists or others trying to influence them.

References:

– Conflict of Interest Code for Members of the House of Commons (first in force in October 2004) – most assets worth more than CA\$10,000 (US\$10,100) 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>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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

– Senate Ethics Officer
<http://sen.parl.gc.ca/seoc-se/eng/Home-e.html>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide assets, including gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes.)

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, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 25 is given because 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.

– As well, the assets (and liabilities) of both Members of the House of Commons and Senators worth less than CA\$10,000 (US\$10,100) are not disclosed, the asset (and liability) disclosure statements of Members of the House of Commons are kept partially confidential (although the part of the statements that is publicly disclosed is available by either visiting the Commissioner's office during regular business hours, or on request by fax or mail), and the asset (and liability) disclosure statements of Senators are kept fully confidential.

– Because they only have to disclose assets worth CA\$10,000 or more every four months to the Ethics Commissioner (or Senate Ethics Officer), Members of the House of Commons and the Senate can easily hide large gifts they receive from lobbyists or others trying to influence them.

– Initial disclosure when a person is elected to the House of Commons or appointed to the Senate should be required within 30 days, and for assets worth CA\$1,000 (US\$1,010) or more, and updates on changes should also be required to be filed with the Commissioner 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 CA\$10,000 (US\$10,100) 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>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

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

– Senate Ethics Officer
<http://sen.parl.gc.ca/seoc-se/eng/Home-e.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 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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 25 is given because 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.

– As well, the assets (and liabilities) of both Members of the House of Commons and Senators worth less than CA\$10,000 (US\$10,100) are not disclosed, the asset (and liability) disclosure statements of Members of the House of Commons are kept partially confidential (although the part of the statements that is publicly disclosed is available by either visiting the Commissioner's office during regular business hours, or on request by fax or mail), and the asset (and liability) disclosure statements of Senators are kept fully confidential.

– Because they only have to disclose assets worth CA\$10,000 or more every four months to the Ethics Commissioner (or Senate Ethics Officer), Members of the House of Commons and the Senate can easily hide large gifts they receive from lobbyists or others trying to influence them.

– Initial disclosure when a person is elected to the House of Commons or appointed to the Senate should be required within 30 days, and for assets worth CA\$1,000 (US\$1,010) or more, and updates on changes should also be required to be filed with the Commissioner 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 CA\$10,000 (US\$10,100) 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>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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

<http://sen.parl.gc.ca/seoc-se/eng/Code-e.html>

– Senate Ethics Officer

<http://sen.parl.gc.ca/seoc-se/eng/Home-e.html>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide assets, including gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes).

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 25 is given because 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.

– As well, the assets (and liabilities) of both Members of the House of Commons and Senators worth less than CA\$10,000 (US\$10,100) are not disclosed, the asset (and liability) disclosure statements of Members of the House of Commons are kept partially confidential (although the part of the statements that is publicly disclosed is available by either visiting the Commissioner's office during regular business hours, or on request by fax or mail), and the asset (and liability) disclosure statements of Senators are kept fully confidential.

– Because they only have to disclose assets worth CA\$10,000 or more every four months to the Ethics Commissioner (or Senate Ethics Officer), Members of the House of Commons and the Senate can easily hide large gifts they receive from lobbyists or others trying to influence them.

– As well, the Ethics Commissioner and Senate Ethics Officer do not do any audits of any of the disclosure statements, trusting completely that the Members and Senators will disclose all information honestly and accurately.

– Initial disclosure when a person is elected to the House of Commons or appointed to the Senate should be required within 30 days, and for assets worth CA\$1,000 (US\$1,010) or more, and updates on changes should also be required to be filed with the Commissioner 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 CA\$10,000 (US\$10,100) 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>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

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

<http://sen.parl.gc.ca/seocse/eng/Code-e.html>

– Senate Ethics Officer

<http://sen.parl.gc.ca/seocse/eng/Home-e.html>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the legislature (House of Commons and Senate) to hide assets, including gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the codes.)

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

References:

– Part II of the Official Languages Act (1985, c. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>] — requires that all records and documents of the federal Parliament be made available in both of Canada's official languages (English and French.)

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

<http://lois.justice.gc.ca/en/showtdm/cs/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.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Part II of the Official Languages Act (1985, c. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>] — requires that all records and documents of the federal Parliament be made available in both of Canada's official languages (English and French.)

– Publication of Statutes Act (R.S., 1985, c. S-21) — <http://lois.justice.gc.ca/en/showtdm/cs/S-21>

– They are made public on the Parliament of Canada Web site within days of sessions taking place, bills being introduced, reports being tabled.
<http://www.parl.gc.ca/>

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Part II of the Official Languages Act (1985, c. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01> — requires that all records and documents of the federal Parliament be made available in both of Canada's official languages (English and French.)

– Publication of Statutes Act (R.S., 1985, c. S-21) — <http://lois.justice.gc.ca/en/showtdm/cs/S-21>

– They are made public on the Parliament of Canada web site within days of sessions taking place, bills being introduced, reports being tabled.
<http://www.parl.gc.ca/>

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 NGOs. 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 NGOs trying to access this information.

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

17

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

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 Part VII of the The Constitution Act, 1867 (section 101) — <http://lois.justice.gc.ca/eng/Const/ConstDoc.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) 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/eng/Const/ConstDoc.html>

– 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 March 10, 2011, the federal Cabinet had not created the Commission and the ruling Conservative Party of Canada had only promised yet again during the September-October 2008 federal election to create the Commission (the Conservatives made the same promise during the December 2005-January 2006 election through which they became the ruling party); the Commission (if it is ever established) has the legal mandate under the Act 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.”

– On March 1, 2006, a new Justice of the Supreme Court of Canada (Marshall Rothstein) was appointed, and subsequently 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.

– After this appointment, the new Conservative federal government changed the membership of the advisory committee on Supreme Court appointments (a committee that does not exist in law, but simply at the whim of the Prime Minister) by removing the member of the legal community from the committee (including a retired judge, representatives from the lawyers’ association, and representatives from the provincial government (all in the province from which the judge was selected) and two lay people selected by the Minister of Justice), leaving only members from all of the political parties with seats in the House of Commons (five members in total — two from the ruling party, and one each from the other three parties with seats) which makes the panel much more politically partisan than before.

– Controversially, the Conservatives then appointed as its members of the committee two Cabinet ministers (who are members of the executive of the government whose actions potentially could be ruled upon by the Supreme Court of Canada.)

– At the end of June, a Justice of the Supreme Court (Michel Bastarache) resigned and so the advisory committee began meeting to screen candidates for the position. However, on Sept. 5, 2008, just before he called a snap election, Prime Minister Harper appointed the new Justice (Thomas Cromwell) without notice to anyone, including the advisory committee. The appointment was confirmed only after a hearing of a committee in the House of Commons similar to the hearing held in spring 2006, but the committee has no power of any kind to resist let alone reject the Prime Minister’s appointment.

– See a summary of the Supreme Court appointment situation at: <http://www.cbc.ca/canada/story/2008/08/11/scoc-conservatives.html>

– In addition, the Conservatives changed the advisory committees for the other federal and provincial judicial appointments which are controlled by the federal Cabinet (Governor-in-Council) by appointing a police officer to each committee, who along with the three government-appointed people on the committee form a majority of the members of each committee. In effect, these changes reduce the independence of the committees from the Cabinet.

– See some examples of appointments being made at least in part because of ties to the ruling party, at: <http://www.canada.com/news/Harper+could+position+revamp+Supreme+Court/4237435/story.html>; <http://www.canada.com/news/Stephen+Harper+appoint> <http://www.canada.com/news/Tory+patronage+orgy+appointments+Grits+charge/2083077/story.html>; <http://www.cbc.ca/news/canada/toronto/story/2009/09/03/port-authority.html>

– Positions available for appointments are advertised publicly — <http://www.appointments-nominations.gc.ca> — but the processes for making appointments is not public.

– 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 Prime Minister and Cabinet ministers also 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 process for some of these tribunals is as follows: – Members of the board of the Assisted Human Reproduction Agency of Canada are appointed without any public process by the federal Cabinet under subsection 26(2) of the Assisted Human Reproduction Act (2004, c. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/A-13.4> — 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-10.1.1> — 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> — even though 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 Labeling 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 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.)) — <http://lois.justice.gc.ca/en/showtdm/cs/C-18.3>

– The members of the Canadian Nuclear Safety Commission are appointed without any public process 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 an independent confirmation process 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 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 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 Act, “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 newly created position (as of July 2, 2008) of Commissioner of Lobbying (replacing the position of Registrar of Lobbyists) under the amended and newly entitled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — is appointed under section 4.1 of the Act without a public process.

– The members of the newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistle-blowers” 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/eng/P-31.9/index.html>

– The new (as of July 2007) Public Sector Integrity Commissioner created under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is appointed without a public process or required professional criteria even though the Commissioner is the appeal body for enforcement of the Values and Ethics Code of the Public Service.

– 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 Labor Relations Board (which rules on various federal public service labor 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 Labor 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 labor 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> — Under subsection 3(1) of the Act, 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.

36b. In practice, professional criteria are followed in selecting 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.

– 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 March 10, 2011, the federal Cabinet had not created the Commission and the ruling Conservative Party of Canada had only promised yet again during the September–October 2008 federal election to create the Commission (the Conservatives made the same promise during the December 2005–January 2006 election through which they became the ruling party); the Commission (if it is ever established) has the legal mandate under the Act 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 section 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>

– See some examples of appointments being made at least in part because of ties to the ruling party, at:

<http://www.canada.com/news/Harper+could+position+revamp+Supreme+Court/4237435/story.html>; <http://www.canada.com/news/Stephen+Harper+appoint>
<http://www.canada.com/news/Tory+patronage+orgy+appointments+Grits+charge/2083077/story.html>;
<http://www.cbc.ca/news/canada/toronto/story/2009/09/03/port-authority.html>

– Military judges are appointed without any public process by the federal Cabinet under Part III, subsection 165.21(1) of the National Defense 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.”

– 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>

– 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:

– Members of the board of the Assisted Human Reproduction Agency of Canada are appointed without any public process or required professional criteria by the federal Cabinet under subsection 26(2) of the Assisted Human Reproduction Act (2004, c. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/A-13.4> — 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> — even though 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 Labeling 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 or required professional criteria 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 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-18.3>

- 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 an 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 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 Act, “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 newly created position (as of July 2, 2008) of Commissioner of Lobbying (replacing the position of Registrar of Lobbyists) under the amended and newly entitled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — is appointed under section 4.1 of the Act without a public process or required professional criteria.
- 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/eng/P-31.9/index.html>
- The new (as of July 2007) Public Sector Integrity Commissioner created under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is appointed without a public process or required professional criteria even though the Commissioner is the appeal body for enforcement of the Values and Ethics Code of the Public Service
- 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 Labor Relations Board (which rules on various federal public service labor 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 Labor 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 labor 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.)) — <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> — Under subsection 3(1) of the Act, 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>

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes

No

Comments:

– 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 March 10, 2011, the federal Cabinet had not created the Commission and the ruling Conservative Party of Canada had only promised yet again during the September-October 2008 federal election to create the Commission (the Conservatives made the same promise during the December 2005-January 2006 election through which they became the ruling party); the Commission (if it is ever established) has the legal mandate under the Act 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.”

– On March 1, 2006, a new Justice of the Supreme Court of Canada (Marshall Rothstein) was appointed, and subsequently 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.

– After this appointment, the new Conservative federal government changed the membership of the advisory committee on Supreme Court appointments (a committee that does not exist in law, but simply at the whim of the Prime Minister) by removing the member of the legal community from the committee (including a retired judge, representatives from the lawyers’ association, and representatives from the provincial government (all in the province from which the judge was selected) and two lay people selected by the Minister of Justice), leaving only members from all of the political parties with seats in the House of Commons (five members in total — two from the ruling party, and one each from the other three parties with seats) which makes the panel much more politically partisan than before.

– At the end of June, a Justice of the Supreme Court (Michel Bastarache) resigned and so the advisory committee began meeting to screen candidates for the position. However, on Sept. 5, 2008, just before he called a snap election, Prime Minister Harper appointed the new Justice (Thomas Cromwell) without notice to anyone, including the advisory committee. The appointment was confirmed only after a hearing of a committee in the House of Commons similar to the hearing held in spring 2006, but the committee has no power of any kind to resist let alone reject the Prime Minister’s appointment.

– In addition, the Conservatives changed the advisory committees for the other federal and provincial judicial appointments which are controlled by the federal Cabinet (Governor-in-Council) by appointing a police officer to each committee, who along with the three government-appointed people on the committee form a majority of the members of each committee. In effect, these changes reduce the independence of the committees from the Cabinet.

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.)

– 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 Part VII of the The Constitution Act, 1867 (section 101) — <http://lois.justice.gc.ca/eng/Const/ConstDoc.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) 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/eng/Const/ConstDoc.html>

– 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.

– See some examples of appointments being made at least in part because of ties to the ruling party, at:
<http://www.canada.com/news/Harper+could+position+revamp+Supreme+Court/4237435/story.html>;
<http://www.canada.com/news/Stephen+Harper+appoints+judges+with+Tory+links/2078830/story.html>;
<http://www.canada.com/news/Tory+patronage+orgy+appointments+Grits+charge/2083077/story.html>;
<http://www.cbc.ca/news/canada/toronto/story/2009/09/03/port-authority.html>

– The federal Prime Minister and Cabinet ministers also 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 process for some of these tribunals is as follows: – Members of the board of the Assisted Human Reproduction Agency of Canada are appointed without any public process by the federal Cabinet under subsection 26(2) of the Assisted Human Reproduction Act (2004, c. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/A-13.4> — 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> — even though 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 Labeling 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 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.)) <http://lois.justice.gc.ca/en/showtdm/cs/C-18.3>

– The members of the Canadian Nuclear Safety Commission are appointed without any public process 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 an independent confirmation process 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 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 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 Act, “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 newly created position (as of July 2, 2008) of Commissioner of Lobbying (replacing the position of Registrar of Lobbyists) under the amended and newly entitled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>]- is appointed under section 4.1 of the Act without a public process

– 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/eng/P-31.9/index.html>

– The new (as of July 2007) Public Sector Integrity Commissioner created under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is appointed without a public process or required professional criteria even though the Commissioner is the appeal body for enforcement of the Values and Ethics Code of the Public Service.

– 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 Labor Relations Board (which rules on various federal public service labor 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 Labor 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 labor 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> — Under subsection 3(1) of the Act, 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 or entity independent from the body appointing the judges.

No: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

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) — <http://lois.justice.gc.ca/en/showtdm/cs/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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

References:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found many, many examples of public reasons for court decisions.

– Federal Court of Appeal website – http://www.fca-caf.gc.ca/index_e.shtml

– 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) – <http://lois.justice.gc.ca/en/showtdm/cs/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) – SCC web site <http://www.scc-csc.gc.ca>

– 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/ReisSep2905.html>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: 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.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

References:

– Canadian Judicial Council (CJC) – <http://www.cjc-ccm.gc.ca/> – established under Part II of the Judges Act (R.S., 1985, c. J-1) – <http://lois.justice.gc.ca/en/showtdm/cs/J-1>

– The CJC's membership is established under section 59 of the Act and the members are the Chief Justice of Canada and the chief justices and senior judges from the 10 Canadian provinces and three Canadian territories.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

References:

– Canadian Judicial Council (CJC) — <http://www.cjc-ccm.gc.ca/>— established under Part II of the Judges Act (R.S., 1985, c. J-1)
— <http://lois.justice.gc.ca/en/showtdm/cs/J-1>

– The CJC’s membership is established under section 59 of the Act and the members are the Chief Justice of Canada and the chief justices and senior judges from the 10 Canadian provinces and three Canadian territories.

– 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.

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

– Canadian Judicial Council (CJC) — <http://www.cjc-ccm.gc.ca/>— established under Part II of the Judges Act (R.S., 1985, c. J-1)
— <http://lois.justice.gc.ca/en/showtdm/cs/J-1>

– The CJC’s membership is established under section 59 of the Act and the members are the Chief Justice of Canada and the chief justices and senior judges from the 10 Canadian provinces and three Canadian territories.

– 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 favor 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.

100: 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.

75:

50: 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.

25:

0: 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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 is given because the Canadian Judicial Council — CJC web site <http://www.cjc-ccm.gc.ca> is largely complaint-driven (and, therefore, not “aggressive”), has a membership that only includes justices (and, therefore, is structurally biased in favor 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:

– CJC’s news release web page — http://www.cjc-ccm.gc.ca/english/news_en.asp?selMenu=news_pastrelease_en.asp shows few cases, and far fewer rulings that actually penalize a judge.

– An Internet search for media articles

(using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found many cases of concern about judges.

See for example the following CBC.ca articles

<http://www.cbc.ca/news/canada/nova-scotia/story/2011/01/13/ns-scanlan-judges-decision.html>

<http://www.cbc.ca/news/canada/toronto/story/2008/12/04/matlow-council.html>

100: 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.

75:

50: 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.

25:

0: 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.

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

4

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | **No**

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)

– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so are not required to file an asset disclosure form, while some Cabinet appointees to administrative, quasi-judicial entities are covered and required to file an asset disclosure form.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not require filing of an asset (and liability) disclosure form.

http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statements of assets of any member of an administrative tribunal.

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

References:

– The Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46> — prohibits, under Part IV, section 119, the bribery of judicial officers (and the acceptance of bribes by judicial officers.)

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so are not covered by the Act’s measures concerning gifts and hospitality, while some Cabinet appointees to administrative, quasi-judicial entities are covered by the measures.

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at: <http://ciec-ccie.gc.ca/Default.aspx?pid=36> [↵en](#)

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain regulations governing gifts and hospitality offered to members of the national-level judiciary. http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public, and most gifts are also required to be disclosed to the Commissioner.

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of quasi-judicial administrative tribunals to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of any quasi-judicial administrative tribunal.

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so are not covered by the Act’s measures concerning gifts and hospitality, while some Cabinet appointees to administrative, quasi-judicial entities are covered by the measures.

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at: <http://ciec-ccie.gc.ca/Default.aspx?pid=36> [↵en](#)

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain regulations governing gifts and hospitality offered to members of the national-level judiciary. http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public, and most gifts are also required to be disclosed to the Commissioner.

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of quasi-judicial administrative tribunals to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statements of assets of any member of any quasi-judicial administrative tribunal.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | **No**

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 – which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> – subsection 2(1) definition of “public office holder” and so are not covered by the Act’s measures concerning post-employment (some Cabinet appointees to administrative, quasi-judicial entities are covered by the measures).

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain regulations governing gifts and hospitality offered to members of the national-level judiciary.
http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 – which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> – subsection 2(1) definition of “public office holder” and so face no restrictions on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office.
http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– The mark of 25 is given because of the lack of cooling-off periods, not because of many cases of judges taking jobs in the private sector after they leave office (although some judges return to law practice, most retire after serving as a judge or serve on temporary panels such as public inquiries etc.)

See CBC.ca media articles for examples:

<http://www.cbc.ca/news/canada/ottawa/story/2011/03/21/man-retired-judges-bails.html>;

<http://www.cbc.ca/news/canada/saskatchewan/story/2010/01/28/sk-court-of-appeal-moves.html>

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

– The Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46> — prohibits, under Part IV, section 119, the bribery of judicial officers (and the acceptance of bribes by judicial officers.)

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so are not covered by the Act’s measures concerning gifts and hospitality, while some Cabinet appointees to administrative, quasi-judicial entities are covered by the measures.

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at: <http://ciec-ccie.gc.ca/Default.aspx?pid=36> (=en

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain regulations governing gifts and hospitality offered to members of the national-level judiciary http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public, and most gifts are also required to be disclosed to the Commissioner.

– Office of the Conflict of Interest and Ethics Commissioner <http://ciec-ccie.gc.ca>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of quasi-judicial administrative tribunals to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of any quasi-judicial administrative tribunal.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)

– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so face no restrictions

on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office.

http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of an administrative tribunal.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: 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.

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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

19

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)

– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so face no restrictions on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office.

http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of an administrative tribunal.

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so face no restrictions on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office.
http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner Public Registry web page:
<http://ciec-ccie.gc.ca/PublicSearch.aspx>

– According to Democracy Watch, the CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of an administrative tribunal.
See Democracy Watch op-ed about loopholes in ethics rules for judges at: <http://www.dwatch.ca/camp/ReIsOct1510.html>

– The grade of 25 is given because of the lack of requirement that many judges disclose assets, the partial disclosure requirement for other quasi-judicial positions, and the overall lack of enforcement by the federal Ethics Commissioner that means it is very likely judges could get away with hiding assets.

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so face no restrictions on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office.
http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner Public Registry web page
<http://ciec-ccie.gc.ca/PublicSearch.aspx>

– According to Democracy Watch, the CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of an administrative tribunal — See Democracy Watch op-ed about loopholes in ethics rules for judges at: <http://www.dwatch.ca/camp/RelsOct1510.html>

– The grade of 25 is given because of the lack of requirement that many judges disclose assets, the partial disclosure requirement for other quasi-judicial positions, and the overall lack of enforcement by the federal Ethics Commissioner that means it is very likely judges could get away with hiding assets.

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | **25** | 0

References:

– Judges are exempt under the new Conflict of Interest Act (2006, c. 9, s. 2 — which became law July 9, 2007)
– <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — subsection 2(1) definition of “public office holder” and so face no restrictions on entering the private sector after leaving office, and while some Cabinet appointees to administrative, quasi-judicial entities are covered by the Act, they are exempted from the restrictions on entering the private sector in the Act.

– Judges are instead covered by the Canadian Judicial Council’s “Ethical Principles for Judges” which does not contain any restrictions on entering the private sector after they leave office
http://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_main_en.asp

– For those members of the quasi-judicial administrative tribunals covered by the Conflict of Interest Act, most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

– Office of the Conflict of Interest and Ethics Commissioner

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of an administrative tribunal.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals’ sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes | No

References:

– The Constitution Act, 1867, sections 90 and 91
http://laws-lois.justice.gc.ca/eng/Const/Const_index.html

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.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 is given because the Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

and on the PBO's website at

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

References:

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law December 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> — to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance’s projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.

PBO office web site:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The so-called “Federal Accountability Act” (2006, c. 9) also changed the Financial Administration Act — <http://laws-lois.justice.gc.ca/eng/F-11/index.html> — 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.

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 50 is given because of the lack of resources for parliamentary committees that review government budget and spending estimates, and because the Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

References:

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006
<http://www2.parl.gc.ca/content/lop/researchpublications/prb0550-e.html>

– 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.” This promise was broken by the Conservative government which was elected into power through that election, and in any case, 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).

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law December 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance’s projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.
PBO office web site:
<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– in several cases, the PBO has not been provided with the information needed (that the PBO has a legal right to under the Act) to estimate the costs of budget items.
See details at:
<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;
<http://www.cbc.ca/news/canada/story/2009/12/11/stimulus-funding-watchdog011.html>

and on the PBO’s web site at:
<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

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.

41. Can citizens access the national budgetary process?

83

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:

– The score of 75 is given because the federal government has for more than a decade greatly underestimated the federal government's budget surplus and other expenditures, and this lack of accuracy means that the budget debate, while public, is based upon false or at least questionable budget numbers, which of course fundamentally undermines the meaningfulness of the debate.

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

– As well, the score of 75 is given because in a minority government situation (such as has existed in Canada's federal government since June 2004), the opposition parties hold a majority of seats in the House of Commons and, therefore, can stop the passage of the government (ruling party's) budget. The Canadian constitutional tradition is that if a government loses a budget vote, then an election occurs (because the government has "lost the confidence" of the House of Commons and cannot remain the government without that confidence). As a result, in a minority government situation, the Prime Minister negotiates with the leaders of the opposition political parties in advance of the introduction of the budget bill in the House, and these negotiations take place behind closed doors.

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://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=FINA&Language=E&Mode=1&Parl=40&Ses=3>

– 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 debate in 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.

– See "Ottawa's Annual Fiscal Follies" Michael Mendelson, Caledon Institute, 2004:

<http://www.caledoninst.org/Publications/PDF/454ENG%2Epdf>

– Bill C-2, the so-called "Federal Accountability Act" (2006, c. 9 (passed into law December 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html>] — to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance's projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.

PBO office website:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– In several cases, the PBO has not been provided with the information needed (that the PBO has a legal right to under the Act) to estimate the costs of budget items.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

<http://www.cbc.ca/news/canada/story/2009/12/11/stimulus-funding-watchdog011.html>;

and on the PBO's web site at

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

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.

41b. 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 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://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=FINA&Language=E&Mode=1&Parl=40&Ses=3>;

and see CBC.ca media article from Sept. 2009 about the hearings at: <http://www.cbc.ca/news/pointofview/2010/03/budget-2010-how-does-this-budget-affect-your-family.html>

– 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).

See CBC.ca March 2010 media article about this at:

<http://www.cbc.ca/news/pointofview/2010/03/budget-2010-how-does-this-budget-affect-your-family.html>;

and see CBC.ca March 2011 media article about this at:

<http://www.cbc.ca/news/canada/british-columbia/story/2011/03/22/pol-budget-main.html>

– 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).

See CBC.ca media articles linked above, and also House Public Accounts Committee web site at:

<http://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=PACP&Language=E&Mode=1&Parl=40&Ses=3>

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 is given because the federal government has for more than a decade greatly underestimated the federal government’s budget surplus and other expenditures, and this lack of accuracy means that the budget debate, while public, is based upon false or at least questionable budget numbers, which of course fundamentally undermines the right to access itemized budget numbers.

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) and the public and media have not had in many cases the information needed to consider fully whether to approve significant public expenditures.

References:

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006

<http://www2.parl.gc.ca/content/lop/researchpublications/prb0550-e.html>

– 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.

– See “Ottawa’s Annual Fiscal Follies” Michael Mendelson, Caledon Institute, 2004

<http://www.caledoninst.org/Publications/PDF/454ENG%2Epdf>

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law December 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> — to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance’s projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.

PBO office web site:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– In several cases, the PBO has not been provided with the information needed (that the PBO has a legal right to under the Act) to estimate the costs of budget items.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

<http://www.cbc.ca/news/canada/story/2009/12/11/stimulus-funding-watchdog011.html>;

and on the PBO’s web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

References:

– Under a constitutional convention the Public Accounts Committee oversees the spending of public funds directly, and several other committees do so indirectly (as they sometimes hold hearings about spending by government departments they monitor). The constitutional convention is unwritten, but still has the force of law because conventions, under Canada’s parliamentary democracy system, are traditions of practice by parliamentarians (members of the House of Commons and Senate and/or provincial legislatures) which are enforced by Parliament itself, and sometimes also by the courts.

See Wikipedia page on conventions at:

http://en.wikipedia.org/wiki/Constitutional_convention_%28political_custom%29

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006

<http://www2.parl.gc.ca/content/lqp/researchpublications/prb0550-e.html>

– 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.

See House Public Accounts Committee web site at:

<http://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmte=PACP&Language=E&Mode=1&Parl=40&Ses=3>

– As well, a House Committee exists that matches each government department / ministry, and these committees review the budget proposals and estimates for that department and all government institutions that fall under that department / Minister’s responsibility.

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law Dec. 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1). — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> — to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance’s projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.

PBO office web site:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– 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).

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 50 is given because the federal government has for more than a decade greatly underestimated the federal government's budget surplus and other expenditures, and this lack of accuracy means that the budget debate, while public, is based upon false or at least questionable budget numbers, which of course fundamentally undermines the right to access itemized budget numbers.

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) and the public and media have not had in many cases the information needed to consider fully whether to approve significant public expenditures.

References:

– "Federal Government Spending" Odette Madore: Library of Parliament, February 2006
<http://www2.parl.gc.ca/content/lop/researchpublications/prb0550-e.html>

– 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

– As well, a House Committee exists that matches each government department / ministry, and these committees review the budget proposals and estimates for that department and all government institutions that fall under that department / Minister's responsibility.

– 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://www2.parl.gc.ca/CommitteeBusiness/CommitteeHome.aspx?Cmie=PACP&Language=E&Mode=1&Parl=40&Ses=>

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)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> to create the Parliamentary Budget Officer (PBO) position.

– The PBO reviews the Department of Finance's projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.
PBO office web site:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– 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).

– In several cases, the PBO has not been provided with the information needed (that the PBO has a legal right to under the Act) to estimate the costs of budget items.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

<http://www.cbc.ca/news/canada/story/2009/12/11/stimulus-funding-watchdog011.html>;

and on the PBO's web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

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.

43b. 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 75 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 four years House committees have been much more effective at holding the government accountable.

References:

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006

<http://www2.parl.gc.ca/content/lop/researchpublications/prb0550-e.html>

– 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.

– See “Parliamentary Oversight: Committees and Relationships” CCAF-FCVI, April 2006:

http://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=260%3Aparliamentary-oversight-committees-and-relationships-a-guide-to-strengthening-public-accounts-committees&catid=93%3Alegislative-oversight-and-accountability=en

or if link fails search for this publication at:

<http://www.ccaf-fcvi.com>

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 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 four years House committees have been much more effective at holding the government accountable.

– Also, the Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

References:

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006:
<http://www2.parl.gc.ca/content/lop/researchpublications/prb0550-e.html>

– Bill C-2, the so-called “Federal Accountability Act” (2006, c. 9 (passed into law Dec. 12, 2006)) changed the Parliament of Canada Act (R.S., 1985, c. P-1) — <http://laws-lois.justice.gc.ca/eng/P-1/index.html> — to create the Parliamentary Budget Officer (PBO) position.

– On the PBO’s own initiative or when the PBO receives a request from a member of the House of Commons or Senate or from a committee, the PBO reviews the Department of Finance’s projected or ongoing costs of proposed and ongoing budget items, and the implications of changes to laws and enforcement systems, and produces public reports.
PBO office web site:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– In several cases, the PBO has not been provided with the information needed (that the PBO has a legal right to under the Act) to estimate the costs of budget items.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

<http://www.cbc.ca/news/canada/story/2009/12/11/stimulus-funding-watchdog011.html>;

and on the PBO’s web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– “Federal Government Spending” Odette Madore: Library of Parliament, February 2006

– 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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– 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.

– 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://www2.parl.gc.ca/CommitteeBusiness/CommitteeList.aspx?Language=E&Mode=1&Parl=40&Ses=3>

– See “Parliamentary Oversight: Committees and Relationships” CCAF-FCVI, April 2006

http://www.ccaf-fcvi.com/index.php?option=com_content&view=article&id=260%3Aparliamentary-oversight-committees-and-relationships-a-guide-to-strengthening-public-accounts-committees&catid=93%3Alegislative-oversight-and-accountability=en

or if link fails search for this publication at:

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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 4. Public Administration and Professionalism

4.1. ⁷¹Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

– Public Sector Integrity Commissioner
<http://www.psic-isp.gc.ca/>

– While the redress mechanisms and protection processes exist, they have been proven to be very ineffective.
See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers all covered by the Act, not even all public servants;
- whistle-blowers 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;
- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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”;
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– Civil servants are legally required to be impartial and independent under the Public Service Employment Act (2003, c. 22, ss. 12, 13) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.01> — and under 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

– Civil servants are legally required to be fairly managed under the Public Service Labor Relations Act (2003, c. 22, s. 2) <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3>

– Whistle-blower protection under the Public Servants Disclosure Protection Act (2005, c. 46) <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

Yes: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

No: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

– Public Sector Integrity Commissioner <http://www.psic-isp.gc.ca/>

– While the redress mechanisms and protection processes exist, they have been proven to be very ineffective. See details at: <http://www.dwatch.ca/camp/RelsFeb2411.html>

- Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers all covered by the Act, not even all public servants;
 - whistle-blowers 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;
 - whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
 - whistle-blowers 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);
 - whistle-blowers 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”;
 - whistle-blowers 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 whistle-blowers will suffer;
 - the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
 - if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

- Legal requirements prohibiting nepotism, cronyism and patronage 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 Labor Relations Act (2003, c. 22, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3> — and under 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

- 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 for these positions

- 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.

- Whistle-blower protection under the Public Servants Disclosure Protection Act (2005, c. 46) <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | No

Comments:

- With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

- Public Sector Integrity Commissioner <http://www.psic-isp.gc.ca/>

- While the redress mechanisms and protection processes exist, they have been proven to be very ineffective. See details at: <http://www.dwatch.ca/camp/RelsFeb2411.html>

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 - it is not clear that protection covers the full scope of reprisals (whistle-blowers 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;
- whistle-blowers 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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- if a whistle-blowers 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);
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- the Commissioner can only provide up to C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$10,000 fine and maximum two years imprisonment). Wrongdoing must be made public, but not necessarily identity of wrongdoer, and;
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References:

- Legal requirements prohibiting nepotism, cronyism and patronage 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 Labor Relations Act (2003, c. 22, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3> — and under 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

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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.

- Whistle-blower protection under the Public Servants Disclosure Protection Act (2005, c. 46) <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. 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://laws-lois.justice.gc.ca/eng/C-46/index.html> — Part IV, sections 118 to 125 are the

anti-corruption sections (for example, under subsection 121 (3) "Every one who commits an offense under this section is guilty of an indictable offense 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://laws-lois.justice.gc.ca/eng/C-46/index.html> — 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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

69

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

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– While the redress mechanisms and protection processes exist, they have been proven to be very ineffective.
See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled "Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned" by Tom Devine in the book "Whistle-blowing 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 whistle-blowers all covered by the Act, not even all public servants;
- whistle-blowers 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;
- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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";
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to C\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional

cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– 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 Labor Relations Act (2003, c. 22, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3> — and under 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

– 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> — As a result, political interference with the civil/public service is effectively legal.

– The Gomery Commission Inquiry into the so-called “Adscam sponsorship scandal” recommended in its second report that at least Deputy Ministers be selected on the basis of merit through an open, publicly advertised nomination process and that they be given a fixed term in office (3-4 years) so that they will be loyal to the law and the public interest, not loyal to their Cabinet minister. See following news article summarizing the recommendations of the Gomery Commission Inquiry: http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060201/gomery_secondreport_060201?s_name=&no_ads=

– An elite group of 65 Canadians argued in an open letter against these recommendations (arguing the Ministers must be able to trust Deputy Ministers (confusing the definition of “trustworthy” with the definition of “blindly loyal”), and largely as a result of this letter the Gomery Commission recommendations have not been implemented. See news article about the letter at: <http://www.cbc.ca/canada/story/2006/12/22/gomery-harper.html>

– The 2009-2010 Fiscal Year annual report (the most recent available annual report) of the federal Public Service Commission — <http://www.psc-cfp.gc.ca/arp-rpa/2010/index-eng.htm> — includes in Chapter 4 “A non-partisan public service”, sections 4.2 to 4.7 that there are still challenges to ensure a non-political public service and that the Commission still needs to do more to protect the public service from political influence.

– By the current Prime Minister’s own admission, federal civil servants were not protected from political interference in March 2006 (See text of speech at: <http://pm.gc.ca/eng/media.asp?category=2&id=1073>) and, given that the current Prime Minister has not implemented all of the promised changes he mentioned in his March 2006 speech (for example, the Public Appointments Commission has not been established, and not all civil servants are protected from retaliation if they “blow the whistle” on government wrongdoing and the whistle-blower protection system has several other significant flaws), by his own admission federal civil servants are still not, in practice, effectively protected from political interference.

– 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 the November 2004 report “Profile of Deputy Ministers in the Government of Canada” and other reports on similar topics, at: <http://www.cspc-efpc.gc.ca/pbp/pub/lte-eng.asp>

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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 — Public Sector Integrity Commissioner, <http://www.psic-ispcc.gc.ca/>

– See examples of political interference with the federal civil service: <http://www.cbc.ca/news/canada/story/2010/08/17/douglas-tipple-labour-relations.html>; <http://www.cbc.ca/news/technology/story/2010/09/20/federal-scientists-rules-media.html>

– To see a civil servant’s perspective of how the Canadian federal government works, or doesn’t work, go to the Ottawa Citizen newspaper’s archive of a column by a federal civil service executive at: <http://www.canada.com/ottawacitizen/features/exfiles/index.html>

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

– Public Sector Integrity Commissioner
<http://www.psic-isp.gc.ca/>

– While the redress mechanisms and protection processes exist, they have been proven to be very ineffective.
See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United States: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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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– in a 2010 report, the Auditor General of Canada examined conflict of interest issues and found that “Two areas that have suffered are policy guidance and training with content”
http://www.oag-bvg.gc.ca/internet/English/parl_oag_201010_04_e_34287.html

– To see a civil servant’s perspective of how the Canadian federal government works, or doesn’t work, go to the Ottawa Citizen newspaper’s archive of a column by a federal civil service executive at:
<http://www.canada.com/ottawacitizen/features/exfiles/index.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.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments 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.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | **75** | 50 | 25 | 0

References:

– 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 Labor Relations Act (2003, c. 22, s. 2)
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– To see a civil servant’s perspective of how the Canadian federal government works, or doesn’t work, go to the Ottawa Citizen newspaper’s archive of a column by a federal civil service executive at: <http://www.canada.com/ottawacitizen/features/exfiles/index.html>

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.

45d. 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, a 2010 audit of three federal government departments by the Auditor General of Canada found that Citizenship and Immigration Canada did not have any service standards for employees — http://www.oag-bvg.gc.ca/internet/English/parl_oag_201010_03_e_34286.html — and a more general audit of human resources management in the federal government found that there are still areas of difficulty with clarity of roles and responsibilities — http://www.oag-bvg.gc.ca/internet/English/parl_oag_201004_02_e_33715.html

– To see a civil servant’s perspective of how the Canadian federal government works, or doesn’t work, go to the Ottawa Citizen newspaper’s archive of a column by a federal civil service executive at: <http://www.canada.com/ottawacitizen/features/exfiles/index.html>

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility 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.

25:

0: 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

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, represent 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/r_ca_rp-rt_cc_tr/index-eng.asp

– Also, in June 2010 the federal government began offering small bonuses to public servants who identify cost savings. See CTV.ca media article at: <http://www.ctv.ca/CTVNews/Canada/20100614/public-servants-savings-100614/>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: 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.

25:

0: 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.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

– Civil service positions that are not filled can be found by going to each government institution website and clicking on the “Employment Opportunities” link at: <http://www.canada.gc.ca/depts/major/depind-eng.html>

– While the government does not regularly publish a list of authorized civil service positions, the federal government agency Statistics Canada does do regular analysis.

See most recent at:

<http://www.statcan.gc.ca/pub/11-621-m/11-621-m2008068-eng.htm>

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

– The score of 50 is given because while the grievance process for the civil service exists under the Public Service Labor Relations Act and is generally regarded as effective, the Public Service Commission continues 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. As well, the whistle-blower protection system has many flaws and a very poor record.

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

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See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers all covered by the Act, not even all public servants;
- whistle-blowers 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;
- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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”;
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– 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 Labor Relations Act (2003, c. 22, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3> — and under 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

– 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> — As a result, political interference with the civil/public service is effectively legal.

– The Gomery Commission Inquiry into the so-called “Adscam sponsorship scandal” recommended in its second report that at least Deputy Ministers be selected on the basis of merit through an open, publicly advertised nomination process and that they be given a fixed term in office (3-4 years) so that they will be loyal to the law and the public interest, not loyal to their Cabinet minister. See following news article summarizing the recommendations of the Gomery Commission Inquiry: http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20060201/gomery_secondreport_060201?s_name=&no_ads=

– An elite group of 65 Canadians argued in an open letter against these recommendations (arguing the Ministers must be able to trust Deputy Ministers (confusing the definition of “trustworthy” with the definition of “blindly loyal”), and largely as a result of this letter the Gomery Commission recommendations have not been implemented. See news article about the letter at: <http://www.cbc.ca/canada/story/2006/12/22/gomery-harper.html>

– The 2009-2010 Fiscal Year annual report (the most recent available annual report) of the federal Public Service Commission — <http://www.psc-cfp.gc.ca/arp-rpa/2010/index-eng.htm> — includes in Chapter 4 “A non-partisan public service”, sections 4.2 to 4.7 that there are still challenges to ensure a non-political public service and that the Commission still needs to do more to protect the public service from political influence.

– By the current Prime Minister’s own admission, federal civil servants were not protected from political interference in March 2006 (See text of speech at: <http://pm.gc.ca/eng/media.asp?category=2&id=1073>) and, given that the current Prime Minister has not implemented all of the promised changes he mentioned in his March 2006 speech (for example, the Public Appointments Commission has not been established, and not all civil servants are protected from retaliation if they “blow the whistle” on government wrongdoing and the whistle-blower protection system has several other significant flaws), by his own admission federal civil servants are still not, in practice, effectively protected from political interference.

– 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 the November 2004 report “Profile of Deputy Ministers in the Government of Canada” and other reports on similar topics, at: <http://www.cspc-efpc.gc.ca/pbp/pub/lte-eng.asp>

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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 — Public Sector Integrity Commissioner — <http://www.psic-isp.gc.ca/>

– in a 2010 report, the Auditor General of Canada examined conflict of interest issues and found that “Two areas that have suffered are policy guidance and training with content” http://www.oag-bvg.gc.ca/internet/English/parl_oag_201010_04_e_34287.html

– To see a civil servant’s perspective of how the Canadian federal government works, or doesn’t work, go to the Ottawa Citizen newspaper’s archive of a column by a federal civil service executive at: <http://www.canada.com/ottawacitizen/features/exfiles/index.html>

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no references to problems with timely payment of federal civil/public servants between July 2009 and June 2010.

– 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.psc.com/issues/campaigns/pensions/info-e.shtml>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 50 is given because while the Public Service Commission and federal government institutions likely track some cases of convicted employees, and conduct security clearances for many positions.

See information under 1.4 at:

<http://www.psc-cfp.gc.ca/centres/faq-eng.htm>

– the Commission has no public, clearly effective system of ensuring that civil/public servants who are convicted of corruption are not employed again by the federal government.

– In contrast, there is evidence that the federal government deals with corruption situations simply by firing employees, without disclosing publicly that they have been fired or without disclosing their identities, and this system allows these people to apply for other federal government jobs and/or to work for companies that are working on contract for the federal government.

See following CBC.ca media article about an employee fraud situation that was revealed by a reporter (not because of news releases or public statements by the government agency) and in which the identities of the fired employees have been kept secret by the agency:

<http://www.cbc.ca/news/canada/story/2011/03/09/montreal-cra.html>

References:

– The Treasury Board Secretariat's Office of the Chief Human Resources Officer — <http://www.psc-agencefp.gc.ca/index-eng.asp> is responsible for Public Service Values and Ethics — <http://www.tbs-sct.gc.ca/chro-dprh/ve-eng.asp> — and makes available many resources in the category of Human Resources and Accountability — <http://www.tbs-sct.gc.ca/chro-dprh/index-eng.asp>

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — also has a Human Resources Toolbox — <http://www.psc-cfp.gc.ca/centres/serv-hr-rh-eng.htm>

– Democracy Watch requested in November 2007 that the Public Service Commission provide evidence that the Public Service Commission have some system (such as a formal list of civil/public servants convicted of corruption) that ensures that neither contracts nor employment are offered or given to those who have been convicted. As of March 2011, the Commission had responded in any way.

100: 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.

75:

50: 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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

58

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was first created) and March 2011 did not audit even one of the statement of assets of any senior member of the civil service.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

References:

– 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 Labor Relations Act (2003, c. 22, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/P-33.3> — and under 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

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– In addition, the Act requires these senior members to recuse themselves from policy decisions where their personal interests may be affected ONLY if they are making a decision that is very specific and would affect them, their relatives or their friends directly (for example, the awarding of a contract to a friend or family member).

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$10,000 (although receiving some of these gifts (for example, from a lobbyist) is technically illegal under the Act), and allows them to hide private interests that may affect their decisions. The gap in disclosure of assets worth less than CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was first created) and March 2011 did not audit even one of the statement of assets of any senior member of the civil service.

– As well, the Ethics Commissioner ruled in three cases in 2010 that recusal is only required if a senior member of the civil service is involved in a decision that affects a specific, personal financial interest.
See for details:

<http://ciec-ccie.gc.ca/Default.aspx?pid=66> (=en;
<http://www.dwatc.ca/camp/RelsDec0310.html>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– Because junior civil servants are required to avoid apparent or potential conflicts of interest, while senior civil servants are only required to avoid real, specific, personal financial conflicts, the recusal requirements for junior civil servants are stronger than the requirements for senior civil servants (of course, it should be the opposite because senior civil servants have more decision-making power than junior civil servants.)

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by Part 3 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — which contains a two-year “cooling-off” period for Cabinet ministers, and one-year period for some ministerial staff and some senior government officials, on taking employment with, or lobbying for, some corporations and organizations (and which replaced the measures in a Code that existed from 1986 to 2006).

– Senior members of the civil service are also covered by the “Restriction on Lobbying Activity” part of Lobbying Act (1985, c. 44 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — which came into effect on July 2, 2008 (finally) and established a five-year cooling-off period for some lobbying activities (there are many loopholes in the ban — unpaid lobbying, lobbying about the enforcement or administration of laws, and lobbying less than 20% of work time for a for-profit corporation are not covered by the five-year ban).

– Commissioner of Lobbying
<http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– Legal requirements for all other members of the civil service under Chapter 3 of the 2003 Values and Ethics Code for the Public Service (one-year cooling-off period with some exemptions and limitations).
http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

References:

– Part IV (bribery and corruption provisions) of the Criminal Code (R.S., 1985, c. C-46) covers all members of the civil service
<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at:
<http://ciec-ccie.gc.ca/Default.aspx?pid=36> (=en

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between March 2004 and April 2007 did not audit even one of the statement of assets of any member of the executive.

– Legal requirements for all other civil servants under the Treasury Board of Canada “Hospitality Policy”
<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12190>

– And under 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

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– The Act 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.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between March 2004 and April 2007 did not audit even one of the statement of assets of any member of the executive.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_po/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises.)

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 25 is given because the measures in the Conflict of Interest Act and Lobbying Act are full of loopholes that allow any senior member of the civil service, the day after they leave office:

(a) to be paid as an employee to lobby for a corporation they did not have significant dealings with during their last year of office, as long as they lobby less than 20 percent of their time on average over each six-month period (which allows for 25-35 days of full-time lobbying every six months);

(b) to be paid as an employee to lobby for anyone or any organization they did not have significant dealings with during their last year in office, as long as they are lobbying only about the enforcement or administration of a law, regulation, policy or program;

(c) to lobby for anyone or any organization as long as they are not paid for the lobbying, and;

(d) to be paid as an employee for a corporation or organization they did not have significant dealings with during their last year of office.

– As well, former senior civil servants are not even required, under the Conflict of Interest Act, to inform the Ethics Commissioner of their post-government employment position, and the Ethics Commissioner has done very little to enforce post-employment rules.

– In addition to these loopholes, the Commissioner of Lobbying is allowed to exempt, for a variety of reasons, ministerial staff and appointees from the five-year prohibition on becoming a registered lobbyist.

– Also, for junior civil servants, 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 restrictions are being complied with, and they only have power over people still employed by the civil/public service and so even if they caught someone violating the rules they could not penalize them in any way.

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by Part 3 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — which contains a two-year “cooling-off” period for Cabinet ministers, and one-year period for some ministerial staff and some senior government officials, on taking employment with, or lobbying for, some corporations and organizations (and which replaced the measures in a Code that existed from 1986 to 2006).

– The Act also contains general rules against “taking improper advantage” of their former public office and “providing advice” using information that they learned while in the civil service that is not information available to the public (but the Ethics

Commissioner has not defined what these rules mean, nor conducted any audits or inspections of the activities of former civil servants to determine whether they are complying with the rules.

– Senior members of the civil service are also covered by the “Restriction on Lobbying Activity” part of Lobbying Act (1985, c. 44 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — which came into effect on July 2, 2008 (finally) and established a five-year cooling-off period for some lobbying activities (there are many loopholes in the ban — unpaid lobbying, lobbying about the enforcement or administration of laws, and lobbying less than 20% of work time for a for-profit corporation are not covered by the five-year ban).

– Commissioner of Lobbying

<http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro>

– Legal requirements for all other members of the civil service under Chapter 3 of the 2003 Values and Ethics Code for the Public Service (one-year cooling-off period with some exemptions and limitations)

http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | **50** | 25 | 0

Comments:

– The score of 50 is given because the reporting of gifts and hospitality by most members of the civil service (except the most senior members) is not automatically required but instead is based upon a civil servant’s own decision as to whether the gift or hospitality creates a conflict of interest for him/her.

– Also, the Ethics Commissioner between July 2004 (when the position was created) and March 2011 did not audit even one of the statement of assets of any senior member of the civil service, and so there is almost no chance that a civil servant hiding a gift would be caught.

– Also, the front-line enforcers of the Values and Ethics Code are senior civil/public servants, who have no clear mandate, powers, resources (or incentive) to ensure that the restrictions are being complied with (and they only have power over people still employed by the civil/public service).

References:

– Part IV (bribery and corruption provisions) of the Criminal Code (R.S., 1985, c. C-46) covers all members of the civil service
<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– In an important step forward during the study period of July 2007 to June 2008, the federal Canadian Conflict of Interest and Ethics Commissioner released the first interpretation bulletin concerning the measures that govern gifts and hospitality offered to members of the executive branch (even though the measures have existed since 1986 in some form or another). See the link to the “Guideline on Gifts (including Invitations, Fund Raisers and Business Lunches)” at:
<http://ciec-ccie.gc.ca/Default.aspx?pid=36> ↵en

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between March 2004 and April 2007 did not audit even one of the statement of assets of any senior member of the civil service.

– Legal requirements for all other civil servants under the Treasury Board of Canada “Hospitality Policy”
<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12190>

– And under 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

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

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.

47. Can citizens access the asset disclosure records of senior civil servants?

19

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

– While overall I answered “No” to Indicator 47a, the grade of 25 for this Indicator gives some credit for the disclosure of assets required by the most senior members of the civil service.

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.ibs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

– While overall I answered “No” to Indicator 47a, the grade of 25 for this Indicator gives some credit for the disclosure of assets required by the most senior members of the civil service.

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of

Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed.)

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

56

48a. 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:

– While whistle-blower protection processes exist, they have been proven to be very ineffective.

See details at:

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers are covered by the Act, not even all public servants;
- whistle-blowers 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;
- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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”;
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blower 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– 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://laws.justice.gc.ca/eng/Const/ConstDoc.html>

– Court cases in the past resulted in rulings that the Charter of Rights and Freedoms “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 “whistle-blowers” 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.) <http://www.canlii.org/en/ca/fct/doc/2000/2000canlii16081/2000canlii16081.html>;

Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749

(CanLII) <http://www.canlii.org/en/ca/fct/doc/2004/2004fc749/2004fc749.html>;

Chopra v. Canada (Treasury Board), 2006 FCA 295

(CanLII) <http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>

– The Public Sector Integrity Commissioner position 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 — 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-isp.gc.ca/>

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.

48b. 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.

100 | 75 | 50 | 25 | 0

Comments:

– With regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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.

– Public Sector Integrity Commissioner

<http://www.psic-isp.gc.ca/>

– While whistle-blower protection processes exist, they have been proven to be very ineffective.

See details at:

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers are covered by the Act, not even all public servants;

– whistle-blowers 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;

– whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;

– whistle-blowers 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);

– whistle-blowers 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”;

– whistle-blowers 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 whistle-blowers will suffer;

– the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);

– if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

- 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://laws.justice.gc.ca/eng/Const/ConstDoc.html>

– Court cases in the past resulted in rulings that the Charter of Rights and Freedoms “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 “whistle-blowers” 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.) <http://www.canlii.org/en/ca/fct/doc/2000/2000canlii16081/2000canlii16081.html>;
Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749 (CanLII) <http://www.canlii.org/en/ca/fct/doc/2004/2004fc749/2004fc749.html>;
Chopra v. Canada (Treasury Board), 2006 FCA 295 (CanLII) <http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>

2006 FCA 295 (CanLII)
<http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>

- The Public Sector Integrity Commissioner position 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 — 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/>

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.

48c. 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

References:

- Section 425.1 (in Part X) of the Criminal Code (R.S., 1985, c. C-46) <http://lois.justice.gc.ca/en/showtdm/cs/C-46>
- Sections 147, 147.1 and 148 (in Part II re: occupational health and safety) of the Canada Labor Code (R.S., 1985, c. L-2) <http://lois.justice.gc.ca/en/showtdm/cs/L-2>
- Section 16 (in Part 2) of the Canadian Environmental Protection Act, 1999 (1999, c. 33) <http://lois.justice.gc.ca/en/showtdm/cs/C-15.31>
- Section 59 (in Part III) of the Canadian Human Rights Act (R.S., 1985, c. H-6) <http://lois.justice.gc.ca/en/showtdm/cs/H-6>
- Section 66.1 and 66.2 (in Part VII) of the Competition Act (R.S., 1985, c. C-34) <http://lois.justice.gc.ca/en/showtdm/cs/C-34>

– Sections 27, 27.1 and 28 (in Part 1, Division 4) of the Personal Information Protection and Electronic Documents Act (2000, c. 5)

<http://lois.justice.gc.ca/en/showtdm/cs/P-8.6>

– 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.

– The Public Sector Integrity Commissioner position 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> — although the Act does not specifically protect people in the private sector who report wrongdoing in government from retaliation, the Commissioner has stated that the office will take complaints from people in the private sector which can be filed anonymously.

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.

48d. 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:

– The score of 25 is given because the following report by the Competition Bureau of Canada shows in the section on “Canada” an overall weak system with no real evidence of an effective track record — <http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/01373.html> — and also because of the following media articles which reveal loopholes in private sector whistle-blower protection in Canada — <http://www.canada.com/vancouver/news/business/story.html?id=7acd6177-a3b6-4c73-abab-d93acb4926d5>] and [<http://www.canada.com/edmontonjournal/news/story.html?id=41a87f85-3a99-470f-a7de-349aa1437009> — and <http://www.canada.com/edmontonjournal/news/opinion/story.html?id=e0bbb61f-30ef-4ed1-83fb-f469cec7e401>

See leading cases Haydon v. Canada (T.D.), 2000 CanLII 16081 (F.C.)
<http://www.canlii.org/en/ca/fct/doc/2000/2000canlii16081/2000canlii16081.html>;
Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749 (CanLII)
<http://www.canlii.org/en/ca/fct/doc/2004/2004fc749/2004fc749.html>;
Chopra v. Canada (Treasury Board), 2006 FCA 295 (CanLII)
<http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>

References:

– Section 425.1 (in Part X) of the Criminal Code (R.S., 1985, c. C-46) <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Sections 147, 147.1 and 148 (in Part II re: occupational health and safety) of the Canada Labor Code (R.S., 1985, c. L-2) <http://lois.justice.gc.ca/en/showtdm/cs/L-2>

– Section 16 (in Part 2) of the Canadian Environmental Protection Act, 1999 (1999, c. 33) <http://lois.justice.gc.ca/en/showtdm/cs/C-15.31>

– Section 59 (in Part III) of the Canadian Human Rights Act (R.S., 1985, c. H-6) <http://lois.justice.gc.ca/en/showtdm/cs/H-6>

– Section 66.1 and 66.2 (in Part VII) of the Competition Act (R.S., 1985, c. C-34) <http://lois.justice.gc.ca/en/showtdm/cs/C-34>

– Sections 27, 27.1 and 28 (in Part 1, Division 4) of the Personal Information Protection and Electronic Documents Act (2000, c. 5) <http://lois.justice.gc.ca/en/showtdm/cs/P-8.6>

– 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.

– The Public Sector Integrity Commissioner position 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> — although the Act does not specifically protect people in the private sector who report wrongdoing in government from retaliation, the Commissioner has stated that the office will take complaints from people in the private sector which can be filed anonymously.

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:

O: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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

References:

– 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://laws.justice.gc.ca/eng/Const/ConstDoc.html>

– Court cases in the past resulted in rulings that the Charter of Rights and Freedoms “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 “whistle-blowers” 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.) <http://www.canlii.org/en/ca/fct/doc/2000/2000canlii16081/2000canlii16081.html>;

Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749

(CanLII) <http://www.canlii.org/en/ca/fct/doc/2004/2004fc749/2004fc749.html>;

Chopra v. Canada (Treasury Board), 2006 FCA 295

(CanLII) <http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>

– The Public Sector Integrity Commissioner position 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 — 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/>

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

31

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers are covered by the Act, not even all public servants;

– whistle-blowers 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;

– whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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";
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– While whistle-blower protection processes exist, they have been proven to be very ineffective. See details at: <http://www.dwatch.ca/camp/ReIsFeb2411.html>

<p>100: The agency/entity has staff sufficient to fulfill its basic mandate.</p> <p>75:</p> <p>50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.</p> <p>25:</p> <p>0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.</p>
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50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

– The Public Sector Integrity Commissioner position 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 — 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/>

– The Commissioner's office has received an annual budget of about CA\$11 million (US\$11.3 million) since it was created.

– While whistle-blower protection processes exist, they have been proven to be very ineffective, with only 15 investigations out of more than 220 complaints filed in three years, and none of the investigations completed. See details at: <http://www.dwatch.ca/camp/ReIsFeb2411.html>

<p>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.</p> <p>75:</p>
--

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

– While whistleblower protection processes exist, they have been proven to be very ineffective, with no complaints resolved over the first three years.

See details at:

<http://www.dwatch.ca/camp/RelsFeb2411.html>

- Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers are covered by the Act, not even all public servants;
- whistle-blowers 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;
- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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”;
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

– The Public Sector Integrity Commissioner position 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 — between November 2001 and spring 2007, there was a Public Sector Integrity Officer with limited independence and power.

Public Sector Integrity Commissioner

<http://www.psic-ispic.gc.ca/>

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

– The Integrity Commissioner’s office is only one of many offices in the system, as the Act requires every federal government system to designate an internal person to whom civil servants can file complaints, and there is evidence that those systems have worked in some cases (mainly on less important problems). As a result, the score of 25 is given, although if only the Integrity Commissioner’s office was scored, the score of 0 would be warranted.

– Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United State: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers are covered by the Act, not even all public servants;
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- whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
- whistle-blowers 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);
- whistle-blowers 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”;
- whistle-blowers 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 whistle-blowers will suffer;
- the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
- if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

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– 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.

Public Sector Integrity Commissioner
<http://www.psic-ispic.gc.ca/>

– While whistle-blower protection processes exist, they have been proven to be very ineffective, with only 15 investigations out of more than 220 complaints filed in three years, and none of the investigations completed.

See details at:

<http://www.dwatc.ca/camp/RelsFeb2411.html>

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.

63

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

50

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

References:

– 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> OR – 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> OR – Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators – <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 – first in force July 9, 2007) – and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner <http://ciec-ccie.gc.ca/>

– The Act 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. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) – <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations – <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service – http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp – to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed

senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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 — 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008). <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46) <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

References:

– 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> OR – 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> OR – Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators — <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner <http://ciec-ccie.gc.ca/>

– The Act 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. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations

– <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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 — 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 50 is given for the study period of July 2009 to June 2010 for the 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 the office only began functioning in May 2008, and so has no long-term track record that can be judged in detail — however, the Ombudsman does not have full independence (can be dismissed from the position at any time for any reason by a politician (the responsible Cabinet minister)) nor full powers (can issue reports on the fairness of contracting processes, but cannot order that a process be started over)

– As well, the Code of Conduct for Procurement does not apply to procurement by state-owned companies (legally known in Canada as “Crown corporations”)

– As well, with regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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 to enforce a government policy)

– Public Sector Integrity Commissioner — <http://www.psic-isp.gc.ca/> — the Commissioner has been very ineffective at protecting whistle-blowers.

See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

– See also article about one contracting scandal
<http://montreal.ctv.ca/servlet/an/local/CTVNews/20101123/parliament-hill-renovation-contract-101123/20101123/?hub=MontrealHome>

References:

– 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> OR — 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> OR — Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators — <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

– The Act 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.
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– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

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<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations
– <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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 — 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwpsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008)
– <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

Yes | No

References:

– 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> OR – 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> OR – Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators – <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– Members of Cabinet and the appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 – first in force July 9, 2007) – and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

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– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service – http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp – to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

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– However, the Ombudsman does not have the legal mandate, nor the power, to monitor the assets, incomes and spending habits of procurement officials.

– As for the monitoring of the incomes and spending habits of public procurement officials, there is no legal mechanism for doing so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

– The sole source contract to buy 65 F-35 jets for CA\$29 billion (US\$30.3 billion) (total estimated cost of contract) has shown that competitive bidding is not required for major procurements.

See details at:

<http://www.cbc.ca/news/canada/story/2010/07/15/liberals-fighter-jets.html> <http://www.cbc.ca/news/politics/story/2011/03/10/pol-pbo-page-fighterjet.html>

References:

– Under section 6 of the Government Contracts Regulations — [<http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402//?showtoc=&instrumentnumber=SOR-87-402>] — which are under the Financial Administration Act (R.S., 1985, c. F-11) — <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/pol/doc-eng.aspx?id=12027>
There are exceptions that allow for major procurements to be awarded without competitive bidding.

– 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".

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

– See articles about loopholes in procurement rules:

http://www.ctv.ca/CTVNews/Canada/20091013/federal_contracts_091013/ <http://www.winnipegfreepress.com/canada/privy-council-office-broke-rules-audit-96746649.html>

– The sole source contract to buy 65 F-35 jets for CA\$29 billion (US\$30.3 billion) (total estimated cost of contract) has shown that competitive bidding is not required for major procurements.

See details at:

<http://www.cbc.ca/news/canada/story/2010/07/15/liberals-fighter-jets.html> <http://www.cbc.ca/news/politics/story/2011/03/10/pol-pbo-page-fighterjet.html>

References:

– Under section 6 of the Government Contracts Regulations — <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402//?showtoc=&instrumentnumber=SOR-87-402> — which are under the Financial Administration Act (R.S., 1985, c. F-11) — <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/pol/doc-eng.aspx?id=12027>
There are exceptions that allow for major procurements to be awarded without competitive bidding.

– 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".

– 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) CA\$25,000 (US\$26,253), (ii) CA\$100,000 (US\$105,014), 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) CA\$100,000, where the contract is to be entered into by the member of the Queen's 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”.

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

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.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– The Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

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.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– The Code includes the process for “Vendor Complaints and Procedural Safeguards” that allows for applications to the “Canadian International Trade Tribunal,” which is a specialized court that handles disputes over procurement that is covered by trade agreements; applications can also be filed in the Federal Court of Canada for disputes over procurement not covered by a trade agreement.

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

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.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– Included in the Code, 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 offense 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.

– 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.

Yes: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. 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.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

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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.

52. Can citizens access the public procurement process?

92

52a. In law, citizens can access public procurement regulations.

Yes | No

References:

- 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>;
 - OR
 - 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>;
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 - Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/seo-cse/eng/Code-e.html>

- In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

- These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

- Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-ccie.gc.ca/>

- The Act 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.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

- As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

- also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46)
<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

- Section 42 (contained 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 the Government Contracts Regulations
 - <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

- Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

- If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

- 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 — 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.

- However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

- A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008)
 - <http://opo-boa.gc.ca/index-eng.html>

- However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

- Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

References:

– Disclosure of contracts for goods or services \$10,000 (US\$10,100) or more in value are required to be disclosed publicly on each federal government department's web site 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/dc/index-eng.asp>

– A government-wide Web site for disclosure of contracts worth more than CA\$10,000 (US\$10,100) is at: <http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index-eng.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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– 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>;

OR

– 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>;

OR

– Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/seo-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– The Act 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.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46)

<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations

– <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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 — 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwpsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– The following government sources set out procurement regulations, all of which are available online for free:

– 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>;

OR

– 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>;

OR

– Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/seo-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

- The Act 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.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>
- As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.
- also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46)
<http://lois.justice.gc.ca/en/showtdm/cs/C-46>
- Section 42 (contained 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 the Government Contracts Regulations
– <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402//?showtoc=&instrumentnumber=SOR-87-402>
- Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).
- If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.
- 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 — 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.
- However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).
- A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008)
– <http://qpo-boa.gc.ca/index-eng.html>
- However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.
- Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

- The following government sources provide the details of how procurement is advertised:
 - 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/pol/doc-eng.aspx?id=12027>
 - The Government Electronic Tendering Service website for the federal government of Canada is at:
<https://buyandsell.gc.ca/welcome>

– However, clauses 10.7.13 to 10.7.17 of the Policy 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 of the Policy. Overall, these loopholes allow for ineffective advertising of major (and, of course, minor) public procurements.

– Under section 6 of the Government Contracts Regulations — <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402> — which are under the Financial Administration Act (R.S., 1985, c. F-11) — <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/pol/doc-eng.aspx?id=12027> — There are exceptions that allow for major procurements to be awarded without competitive bidding.

– 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.”

100: 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.

75:

50: 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.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

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), and there is no independent enforcement of the disclosure regulations.

References:

– The following government sources provide the details of how the results of major procurement processes are made public:

– Disclosure of contracts for goods or services \$10,000 (US\$10,100) or more in value are required to be disclosed publicly on each federal government department's web site 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/dc/index-eng.asp>

– A government-wide Web site for disclosure of contracts worth more than CA\$10,000 (US\$10,100) is at: <http://www.tbs-sct.gc.ca/pd-dp/gr-rg/index-eng.asp>

100: Records of public procurement results are publicly available through a formal process.

75:

50: 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.

25:

0: This information is not available to the public through an official process.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | No

References:

– All businesses are 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/pol/doc-eng.aspx?id=12043>

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:

<http://gcsurplus.ca/mn-eng.cfm>

– Government real estate for sale can be found at:

http://id-reo.tpsgc-pwgscc.gc.ca/public/ffchrdspj.do?page=acclhm_<=en

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes | No

References:

– 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>;

OR

– 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>;

OR

– Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/seo-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner

<http://ciec-ccie.gc.ca/>

– The Act 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.

<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations — <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402//?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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 — 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46) <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

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 servants, including privatization officials.

No: A NO score is earned if there are no such formal regulations.

53c. 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 July 2009 to June 2010 essentially, because of the lack of clear, specific rules that apply to privatizations, and independent, front-line, effective enforcement of the rules (including whistle-blower protection), for privatization officials.

References:

– 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>;
OR
– 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>;
OR
– Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/seo-cse/eng/Code-e.html>

– In Canada, senior members of the civil service are appointed by senior politicians (the Cabinet, made up of the Prime Minister and his Cabinet ministers, known formally as the Governor-in-Council), and are members of the executive of the government, not the civil service.

– These appointed senior members of the civil service are covered by the Conflict of Interest Act (2006, c. 9, s. 2 — first in force July 9, 2007) — and under the Act they must disclose most assets worth more than CA\$10,000 (US\$10,100) to the Conflict of Interest and Ethics Commissioner, with a partial list of assets made public. <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– Office of the Conflict of Interest and Ethics Commissioner
<http://ciec-cie.gc.ca/>

– The Act 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.
<http://lois.justice.gc.ca/en/showtdm/cs/C-36.65>

– As mentioned above, under the Act most assets worth more than CA\$10,000 (US\$10,100) must be disclosed to the Commissioner, with a partial list of assets made public. The CA\$10,000 threshold for the disclosure of assets is much too high, as it effectively allows members of the executive to hide gifts they receive that are worth less than CA\$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 CA\$10,000 is especially serious because the Ethics Commissioner between July 1994 (when the position was created) and March 2011 did not audit even one of the statement of assets of any member of the executive.

– also, sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46)
<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 42 (contained 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 the Government Contracts Regulations
– <http://lois.justice.gc.ca/en/showtdm/cr/SOR-87-402/?showtoc=&instrumentnumber=SOR-87-402>

– Other members of the civil service, including the members who rank just below the appointed senior members of the civil service, are required by Chapter 2 and Appendix A of the Values and Ethics Code of the Public Service — http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TB_851/vec-cve_e.asp — to disclose their assets and liabilities, as well as gifts, hospitality or benefits received or outside employment activities (all of which could cause conflicts of interest) in a Confidential Report to the appointed senior member of their department (ministry), agency or other government institution ONLY if there is a real, apparent or potential conflict between the carrying out of their official duties and their assets and liabilities etc. (and, if so, only the assets and liabilities etc. that create the conflict are required to be disclosed).

– If a member of the civil service is in such a conflict of interest situation because of an asset, the Values and Ethics Code requires divestment of the asset within 120 days.

– 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]— 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.

– However, the most senior members of the civil service have no legal power to audit any of the asset statements disclosed by other members of the civil service at any time (even if a conflict of interest situation arises).

– A combined statement of all the legal requirements concerning procurement is set out in the September 2007 Code of Conduct for Procurement — <http://www.tpsgc-pwgsc.gc.ca/app-acq/cndt-cndct/index-eng.html> — enforced by the Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008)
– <http://opo-boa.gc.ca/index-eng.html>

– However, the Ombudsman does not have the legal mandate, nor the power, to train procurement officials, nor does any other government institution have the legal mandate to do so.

– Whistle-blower protection under Public Servants Disclosure Protection Act (2005, c. 46)
<http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

– As well, with regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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 to enforce a government policy).

– Public Sector Integrity Commissioner — <http://www.psic-ispic.gc.ca/> — the Commissioner has been very ineffective at protecting whistle-blowers.
See details in Democracy Watch February 2011 news release at: <http://www.dwatch.ca/camp/RelsFeb2411.html>

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.

54. Can citizens access the terms and conditions of privatization bids?

95

54a. In law, citizens can access privatization regulations.

Yes | No

References:

– All businesses are 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/pol/doc-eng.aspx?id=12043>

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:
<http://gcsurplus.ca/mn-eng.cfm>

– Government real estate for sale can be found at:
<http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm> <=en

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 75 is given for the study period of July 2009 to June 2010 essentially because of the lack of clear, specific rules that apply to privatizations, and independent, front-line and effective enforcement of the rules, for privatization officials.

References:

– All businesses are 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/pol/doc-eng.aspx?id=12043>

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:
<http://gcsurplus.ca/mn-eng.cfm>

– Government real estate for sale can be found at:
<http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm> <=en

– There is no independent enforcement of the Treasury Board of Canada Secretariat's "Directive on the Sale or Transfer of Surplus Real Property", 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).

– As well, with regard to whistle-blower protection, the Public Sector Integrity Commissioner position was created in spring 2007 under the Public Servants Disclosure Protection Act, 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 to enforce a government policy).

– Public Sector Integrity Commissioner — <http://www.psic-ispic.gc.ca/> — the Commissioner has been very ineffective at protecting whistle-blowers.
see details at:
<http://www.dwatch.ca/camp/ReisFeb2411.html>

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

– The requirements are set out under the Treasury Board of Canada Secretariat’s “Directive on the Sale or Transfer of Surplus Real Property”

<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12043>

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– The following government websites list privatization processes for bidding:

– All businesses are 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/pol/doc-eng.aspx?id=12043>

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:

<http://gcsurplus.ca/mn-eng.cfm>

– Government real estate for sale can be found at:

[http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm_\(&en](http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm_(&en)

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

References:

– All businesses are 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/pol/doc-eng.aspx?id=12043>

– Government assets (known in Canada as Crown assets), other than real estate, for sale can be found at:

<http://gcsurplus.ca/mn-eng.cfm>

– Government real estate for sale can be found at:

[http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm_\(=en](http://id-reo.tpsgc-pwgsc.gc.ca/public/ffchrdspl.do?page=acclhm_(=en)

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. ⁸²National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

- Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>
 - Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations
 - Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>
 - 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>
 - 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
 - Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.
 - 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 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 whistle-blower) 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.)
- The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”
 - 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>

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.

56. Is the national ombudsman effective?

52

56a. In law, the ombudsman is protected from political interference.

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — http://lois.justice.gc.ca/en/showtdm/cs/P-31_9 — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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>

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

– The grade of 50 is also given because while the heads of the various agencies (other than the three noted above) have fixed terms of office and control over their office staff and at least partial control over their office budget, they all are picked without any public process or (in almost all cases) professional criteria, and several have renewable terms, and all of these factors make them susceptible to undue influence from the government.

– As well, the grade of 50 is given because of the following cases during the study period of July 2009 to June 2010: the Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>;

and on the PBO's web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– the Public Sector Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, and the following agencies are protected from political interference:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons.

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — [<http://lois.justice.gc.ca/en/showtdm/cs/A-1>]

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

– The grade of 50 is given because the three following agencies are not protected from political interference as of July 2010:

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9>

– The Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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/seocse/default.htm>

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because while the heads of the various agencies (other than the three noted above) have fixed terms of office and control over their office staff and at least partial control over their office budget, they all are picked without any public process or (in almost all cases) professional criteria, and several have renewable terms, and all of these factors make them susceptible to undue influence from the government.

– As well, the grade of 75 is given because of the following cases during the study period of July 2009 to June 2010:
– the Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO’s web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– the Public Sector Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence, and was removed from office by the Cabinet with a non-negotiable offer of a severance payoff (although there was an Auditor General report soon to be released that would have given the Cabinet, through Parliament, justification for removing the Integrity Commissioner from office.

See for details:

<http://www.canada.com/Disgraced+integrity+commissioner+didn+depart+voluntarily/4417858/story.html>

<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelFeb2411.html>

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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>

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The grade of 50 is given because a backlog of dealing with complaints/cases/investigations at several of the agencies (see details in their annual reports on their websites set out above in the Sources section) shows that the agencies do not have adequate staff to fulfill their basic mandates.

– The Conflict of Interest and Ethics Commissioner, Elections Canada, Information Commissioner, Commissioner of Lobbying, Privacy Commissioner and Public Sector Integrity Commissioner all have a significant backlogs of complaints.

– See details about the Ethics Commissioner in the following Democracy Watch news release from October 2010: [<http://www.dwatc.ca/camp/RelsOct1510.html>]

– See details about the Lobbying Commissioner in the following Democracy Watch news release from February 2011: [<http://www.dwatc.ca/camp/RelsFeb2311.html>]

– See details about the Integrity Commissioner in the following Democracy Watch news release from April 2011: [<http://www.dwatc.ca/camp/RelsApr1811.html>]

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, and all of the following agencies have a full-time staff with a proven track record that demonstrates professionalism:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

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– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-isp.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | **75** | 50 | 25 | 0

Comments:

– The score of 75 is given because not all appointments to ombudsman agencies are made following professional criteria (for example, the Commissioner of Lobbying and the Public Sector Integrity Commissioner are quasi-judicial positions but the commissioners in 2009-2010 were not legally trained (and are not required to be legally trained)).

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

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– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

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– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

– 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>

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

Comments:

– The score of 50 is given because a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not have adequate funding to fulfill their basic mandates (and while the agencies receive regular funding, all are subject to political considerations having an affect on their funding, and generally many of the agencies have not been provided with adequate funding which ensures that they cannot rule on complaints in a timely manner, thereby protecting the government from effectively, timely accountability).

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons.

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — [<http://lois.justice.gc.ca/en/showtdm/cs/A-1>]

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Sector Integrity Commissioner position — <http://www.psic-isp.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– The grade of 50 is given because the three following agencies are not protected from political interference as of July 2010:

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) <http://www2.parl.gc.ca/Sites/IBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — http://lois.justice.gc.ca/en/showtdm/cs/P-31_9

– The Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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>

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: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because the Conflict of Interest and Ethics Commissioner, and the Senate Ethics Officer, are both allowed to give secret advice to the public office holders under their mandate, and a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not issue public reports on a timely basis — as shown in their annual reports and in other articles linked below, the Conflict of Interest and Ethics Commissioner, Elections Canada, Information Commissioner, Commissioner of Lobbying, Privacy Commissioner and Public Sector Integrity Commissioner all have a significant backlogs of complaints):

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all produce timely, publicly available reports:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for

Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-isp.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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/seocse/default.htm>

100: 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.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: 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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because the Conflict of Interest and Ethics Commissioner and Senate Ethics Officer are allowed to give secret advice to the public office holders under their mandate; the Senate Ethics Officer cannot initiate an investigation unless a committee of senators approves it, and; a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not always initiate investigations when necessary (on a timely basis, because of lack of resources in some cases, weak enforcement attitude in other cases).

– Also, as shown in their annual reports on their websites linked above in the Sources section, and in the news releases linked below, the Conflict of Interest and Ethics Commissioner, Elections Canada, Information Commissioner, Commissioner of Lobbying, Privacy Commissioner and Public Sector Integrity Commissioner all have a significant backlog of complaints.

– See details about the Ethics Commissioner in the following Democracy Watch news release from October 2010: [<http://www.dwatch.ca/camp/RelsOct1510.html>]

– See details about the Lobbying Commissioner in the following Democracy Watch news release from February 2011: [<http://www.dwatch.ca/camp/RelsFeb2311.html>]

– See details about the Integrity Commissioner in the following Democracy Watch news release from April 2011: [<http://www.dwatch.ca/camp/RelsApr1811.html>]

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies have the power to initiate investigations.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

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– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

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– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-bpa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

– 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>

100: 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.

75:

50: 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.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because while many of the agencies do not have the power to impose penalties directly on offenders, they have the legal power to cooperate with the Royal Canadian Mounted Police (RCMP – Canada's national police force – [<http://www.rcmp-grc.gc.ca>]) in investigations that can lead to prosecutions (and, therefore, penalties for offenders) by the Public Prosecution Service of Canada – <http://www.ppsc-sppc.gc.ca/eng>

– However, all of the agencies have no or a weak track record of such cooperation with the RCMP and Public Prosecution Service leading to penalties.

– Also, as shown in their annual reports on their websites linked above in the Sources section, and in the news releases linked below, the Conflict of Interest and Ethics Commissioner, Elections Canada, Information Commissioner, Commissioner of Lobbying, Privacy Commissioner and Public Sector Integrity Commissioner all have a significant backlog of complaints.

– See details about the Ethics Commissioner in the following Democracy Watch news release from October 2010: [<http://www.dwatch.ca/camp/RelsOct1510.html>]

– See details about the Lobbying Commissioner in the following Democracy Watch news release from February 2011: [<http://www.dwatch.ca/camp/RelsFeb2311.html>]

– See details about the Integrity Commissioner in the following Democracy Watch news release from April 2011: [<http://www.dwatch.ca/camp/RelsApr1811.html>]

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies have the power to at least initiate a penalty process.

– Auditor General of Canada – <http://www.oag-bvg.gc.ca/internet/index.htm> – 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 – (Auditor General Act R.S., 1985, c. A-17) – <http://lois.justice.gc.ca/eng/A-17/index.html> – Financial Administration Act (R.S., 1985, c. F-11) – <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner – <http://ciec-ccie.gc.ca/> – who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

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– Canadian Human Rights Commission – <http://www.chrc-ccdp.ca/> – which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) – <http://lois.justice.gc.ca/en/showtdm/cs/H-6> – and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

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– 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 – 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.) – The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) – <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner – <http://www.privcom.gc.ca/> – 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) – <http://opo-boa.gc.ca/index-eng.html> – enforces the September 2007 Code of Conduct for Procurement – http://lois.justice.gc.ca/en/showtdm/cs/P-31_9 – the Ombudsman has the power to review of procurement

decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispic.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

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– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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>

– Only the following agency both has the power to impose penalties on offenders, and a track record of doing so:

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: 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.

25:

0: 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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because the government often ignores their reports.
– Finally, the grade of 50 is also given because 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> and see Democracy Watch's letter-to-the-editor about the Senate Ethics Officer at: <http://www.dwatch.ca/camp/OpEdJun0109.html>

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

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– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

Comments:

- The grade of 0 is given because the Conflict of Interest and Ethics Commissioner is not explicitly required to initiate an investigation when a complaint is received from the public. See details about Democracy Watch's court case challenging this lack of requirement to investigate, and also challenging a ruling by the Commissioner, at: <http://www.dwatch.ca/camp/RelsJun1209.html>
- The Ethics Commissioner also has a very weak enforcement record, and has ignored complaints filed by members of the public involving serious matters. See Democracy Watch's October 2010 news release at: <http://www.dwatch.ca/camp/RelsOct1510.html>
- The grade of 0 is also given because of the following agencies, a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not always initiate investigations when necessary (on a timely basis, because of lack of resources in some cases, weak enforcement attitude in other cases — as shown in their annual reports and in other articles linked below, the Conflict of Interest and Ethics Commissioner, Elections Canada, Information Commissioner, Commissioner of Lobbying, Privacy Commissioner and Public Sector Integrity Commissioner all have a significant backlogs of complaints).
- Finally, the grade of 0 is given because 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> and see Democracy Watch's letter-to-the-editor about the Senate Ethics Officer at: <http://www.dwatch.ca/camp/OpEdJun0109.html>

References:

- There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies have the power to initiate investigations.
- Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>
- 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) — Elections Canada's annual reports from the 2006, 2008 and 2010 elections show that they had hundreds of complaints that were not resolved — [http://www.elections.ca/content.aspx?section=ele&dir=pas&document=index_\(=e](http://www.elections.ca/content.aspx?section=ele&dir=pas&document=index_(=e) — and subsequent annual reports have given no details that show the complaints have been resolved in any way — [http://www.elections.ca/content.aspx?section=res&dir=rep/off&document=index_\(=e](http://www.elections.ca/content.aspx?section=res&dir=rep/off&document=index_(=e) — the CEO and Commissioner usually only require offenders to correct their actions (return illegal donations, correct incorrect financial statements, etc.) through compliance agreements, instead of penalizing offenders.
- Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx
- Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>
 - The Commissioner has a very weak enforcement attitude. See details in Democracy Watch's February 2011 news release at: <http://www.dwatch.ca/camp/RelsFeb2311.html>
- 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>
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- Privacy Commissioner — <http://www.privcom.gc.ca/> — 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> — Section 4.2 of the Commissioner's 2009-2010 Annual Report shows a backlog of 12 months for complaint resolutions — http://www.priv.gc.ca/information/ar/200910/200910_pa_e.cfm
- The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.
- The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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).

– The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details: CTV.ca media article at:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

and Democracy Watch February 2011 news release at:

<http://www.dwatch.ca/camp/ReIsFeb2411.html>

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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)

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– The members of the Public Service Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

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.

57. Can citizens access the reports of the ombudsman?

58

57a. In law, citizens can access reports of the ombudsman(s).

Yes | **No**

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies make publicly available reports (mainly investigation and annual reports) by filing them with Parliament (and, usually at the same time, posting them on their web sites).

– However, the Conflict of Interest and Ethics Commissioner, and the Senate Ethics Officer, are both allowed to give secret advice to the public office holders under her mandate, and the Commissioner of Lobbying and Public Sector Integrity Commissioner have also made secret rulings (which are likely not legal).

– As well, the annual reports of the Conflict of Interest and Ethics Commissioner, Elections Canada, Commissioner of Lobbying and Public Sector Integrity Commissioner all contain such vague information that it is difficult to determine whether they are enforcing their respective laws properly (and all available evidence shows that they all have weak enforcement records):

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

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– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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>

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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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies make publicly available reports (mainly investigation and annual reports) by filing them with Parliament (and, usually at the same time, posting them on their web sites).

– However, the Conflict of Interest and Ethics Commissioner, and the Senate Ethics Officer, are both allowed to give secret advice to the public office holders under her mandate, and the Commissioner of Lobbying and Public Sector Integrity

Commissioner have also made secret rulings (which are likely not legal).

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– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

– 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>

100: 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.

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 records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

– Despite the fact that some reports are kept secret by some of the ombudsman agencies, and some agencies have very weak enforcement records, the score of 100 is given for this indicator because when reports are made public by the agencies, they are available for free online.

References:

– There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies make publicly available reports (mainly investigation and annual reports) by filing them with Parliament (and, usually at the same time, posting them on their web sites where they are available for free).

– However, the Conflict of Interest and Ethics Commissioner, and the Senate Ethics Officer, are both allowed to give secret advice to the public office holders under her mandate, and the Commissioner of Lobbying and Public Sector Integrity Commissioner have also made secret rulings (which are likely not legal).

– As well, the annual reports of the Conflict of Interest and Ethics Commissioner, Elections Canada, Commissioner of Lobbying and Public Sector Integrity Commissioner all contain such vague information that it is difficult to determine whether they are enforcing their respective laws properly (and all available evidence shows that they all have weak enforcement records).

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

– 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>

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

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.

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and can only be removed for cause under section 3(1.1) of the Act.

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found no instances of the Auditor General being removed without relevant justification.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

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.

75:

50: The director of the agency 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 agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because, by the Auditor’s own admission in quarterly reports, and based on the list of reports available on the Auditor General’s web site, lack of resources means 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).

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3(1.1) is protected from removal without relevant justification.

– Internet search produced no reports, articles or media stories about the lack of professionalism by Auditor General staff.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

– See Auditor General reports at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html — which show that government institutions are not audited more than once every five years.

– See also following CBC.ca media article which shows that the House of Commons had not been audited by the Auditor General for almost 20 years — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years (with the approval of opposition political party leaders and a majority of politicians in the House of Commons and Senate), and under section 3(1.1) of the Act is protected from removal without relevant justification.

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com> and <http://www.ctv.ca>) found no instances of the Auditor General being criticized for lack of independence or for partisanship.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

– Internet search produced no reports, articles or media stories about the lack of professionalism by Auditor General staff.

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because, by the Auditor’s own admission in quarterly reports, and from a review of the content of reports on the Auditor’s website, lack of resources means 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).

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– See Auditor General reports at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html — which show that government institutions are not audited more than once every five years.

– See also following CBC.ca media article which shows that the House of Commons had not been audited by the Auditor General for almost 20 years — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because, by the Auditor’s own admission in quarterly reports, and from a review of the content of reports on the Auditor’s website, lack of resources means 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).

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– See Auditor General reports at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html — which show that government institutions are not audited more than once every five years.

– See also following CBC.ca media article which shows that the House of Commons had not been audited by the Auditor General for almost 20 years — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

Comments:

– The grade of 50 is given because the Auditor General does not have the power to order corrective action or penalize those who have violated codes, policies or guidelines (although the Auditor does have the power and mandate to refer violations of laws or regulations to the police), and because by the Auditor’s own admission in quarterly reports, lack of resources means 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.) As a result, a government institution can easily ignore an Auditor General report as it will not face scrutiny again for five years, and as noted in the sources section, some institutions do ignore the Auditor’s recommendations.

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

– The Auditor General only has the power to audit and make recommendations (which are not binding) under sections 5 to 10 of the Act.

– See CBC.ca media articles about the Integrity Commissioner failing to correct her performance while being audited by the Auditor — <http://www.cbc.ca/news/story/2010/12/09/auditor-general-integrity-commissioner.html> — and about the federal electronic health records program failing to correct flaws after audits — <http://www.cbc.ca/news/health/story/2009/11/04/auditor-general-canada-health-infoway-ehealth.html> and about a federal construction project not correcting flaws after audits — <http://www.cbc.ca/news/canada/ottawa/story/2010/04/21/ott-parliament-repairs.html>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

Comments:

– The grade of 75 is given because while the Auditor General does have full power to determine the timing and pace of its investigations, the Auditor 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, although the Auditor does have the power and mandate to refer violations of laws or regulations to the police).

– The grade of 75 is also given because, by the Auditor's own admission in quarterly reports, and based on a review of reports on the Auditor's web site, lack of resources means 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). As a result, the Auditor is somewhat limited in terms of its ability to initiate investigations.

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– See Auditor General reports at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html — which show that government institutions are not audited more than once every five years.

– See also following CBC.ca media article which shows that the House of Commons had not been audited by the Auditor General for almost 20 years — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

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.

60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

Yes | No

References:

Auditor General Act R.S., 1985, c. A-17 — <http://lois.justice.gc.ca/eng/A-17/index.html> — under which the Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– Final audit reports must be made public and are regularly made public in quarterly reports filed in Parliament and made available on the Auditor's web site, under the Auditor General Act R.S., 1985, c. A-17, sections 5 to 10 — <http://lois.justice.gc.ca/eng/A-17/index.html>

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– Final audit reports must be made public and are regularly made public in quarterly reports filed in Parliament and made available on the Auditor's web site the same time they are released for free at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html

– See CBC.ca media articles written the same day about the release of the Auditor's report Integrity Commissioner — <http://www.cbc.ca/news/story/2010/12/09/auditor-general-integrity-commissioner.html> — and about the audit of the federal electronic health records program failing — <http://www.cbc.ca/news/health/story/2009/11/04/auditor-general-canada-health-infoway-ehealth.html> and about the audit of a federal construction project — <http://www.cbc.ca/news/canada/ottawa/story/2010/04/21/ott-parliament-repairs.htm>

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– Final audit reports must be made public and are regularly made public in quarterly reports filed in Parliament and made available on the Auditor's web site for free at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html

– See also CBC.ca media articles written the same day about the release of the Auditor's report Integrity Commissioner — <http://www.cbc.ca/news/story/2010/12/09/auditor-general-integrity-commissioner.html> — and about the audit of the federal electronic health records program failing — <http://www.cbc.ca/news/health/story/2009/11/04/auditor-general-canada-health-infoway-ehealth.html> and about the audit of a federal construction project — <http://www.cbc.ca/news/canada/ottawa/story/2010/04/21/ott-parliament-repairs.html>

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 NGOs. 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 NGOs trying to access this information.

94
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

References:

– Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

Yes: A YES score is earned if there is a national agency formally mandated to collect taxes.

No: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

62. Is the tax collection agency effective?

50

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

– The score of 50 is given because, as noted above in the sources section, there are several areas of tax-gathering for which the Canada Revenue Agency does not have adequate resources.

References:

– Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

– 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/internet/English/mr_20060516_e_15385.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/internet/English/parl_oag_200702_07_e_17473.html — made public in February 2007

– In the budget for fiscal year 2007-2008 the government admitted that the Agency needed more resources in the enforcement area of offshore tax avoidance, 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/plan/bptoc-eng.html>

– Given that this funding was provided only for offshore enforcement actions, not domestic, the gap in domestic enforcement that the Auditor General identified in 2006 still exists.

– As well, 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> — and 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>

– As well, a 2009 audit by the Auditor General of Canada found that the CRA is still having difficulties auditing small- and medium-sized businesses — http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_03_e_32290.html

– In addition, another 2009 audit by the Auditor General found that the CRA “does not have a comprehensive system to track, record, and prioritize legislative issues and “is not meeting its own time targets for advance income tax rulings for taxpayers” — http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_03_e_33204.html

– Finally, several CRA employees in the Montreal office are under investigation by the RCMP (Canada’s national police force) — <http://www.cbc.ca/news/canada/story/2011/03/09/montreal-cra.html>

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 tax agency receives regular funding.

100 | 75 | **50** | 25 | 0

Comments:

– The score of 50 is given because, as noted above in the sources section, there are several areas of tax-gathering for which the Canada Revenue Agency does not have adequate resources.

References:

– Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

– An extensive Internet search found no examples of discrimination in the 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/internet/English/mr_20060516_e_15385.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/internet/English/parl_oag_200702_07_e_17473.html — made public in February 2007.

See also CBC.ca media articles about offshore tax evasion scandal that was revealed only because of a whistle-blower

<http://www.cbc.ca/news/canada/story/2010/11/21/credit-suisse-bank-probe.html>;

<http://www.cbc.ca/news/canada/story/2009/12/13/cra-probe-rbc.html>

– In the budget for fiscal year 2007-2008 the government admitted that the Agency needed more resources in the enforcement area of offshore tax avoidance, 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/plan/bptoc-eng.html>

– Given that this funding was provided only for offshore enforcement actions, not domestic, the gap in domestic enforcement that the Auditor General identified in 2006 still exists.

– As well, 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 media article — <http://www.thestar.com/comment/article/269298> — and 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 Canada.com article on this issue at:

<http://www.canada.com/topics/news/world/story.html?id=316ef6b2-01c5-4bf5-9a5e-d331c3140754&k=52246>

– As well, a 2009 audit by the Auditor General of Canada found that the CRA is still having difficulties auditing small- and medium-sized businesses — http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_03_e_32290.html

See, for example, CBC.ca media articles about the restaurant industry

— <http://www.cbc.ca/news/business/moneytalks/2009/11/michael-hlinka-tax-evasion-by-restaurants-a-sign-of-deeper-problems-in-system.html>;

and about online retailers

<http://www.cbc.ca/news/canada/story/2009/10/21/ebay-tax-dodge.html>

— In addition, another 2009 audit by the Auditor General found that the CRA “does not have a comprehensive system to track, record, and prioritize legislative issues and “is not meeting its own time targets for advance income tax rulings for taxpayers” — http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_03_e_33204.html

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

— The score of 50 is given because, as noted above in the sources section, there are several areas of tax-gathering for which the Canada Revenue Agency does not have adequate resources, and therefore there are some groups that are more likely to evade tax laws and/or occasionally evade tax law.

References:

— Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

— An extensive Internet search found no examples of discrimination in the 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/internet/English/mr_20060516_e_15385.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/internet/English/parl_oag_200702_07_e_17473.html — made public in February 2007.

See also CBC.ca media articles about offshore tax evasion scandal that was revealed only because of a whistle-blower:

<http://www.cbc.ca/news/canada/story/2010/11/21/credit-suisse-bank-probe.html>,

<http://www.cbc.ca/news/canada/story/2009/12/13/cra-probe-rbc.html>

— In the budget for fiscal year 2007-2008 the government admitted that the Agency needed more resources in the enforcement area of offshore tax avoidance, 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/plan/bptoc-eng.html>

— Given that this funding was provided only for offshore enforcement actions, not domestic, the gap in domestic enforcement that the Auditor General identified in 2006 still exists.

— As well, 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 media article — <http://www.thestar.com/comment/article/269298> — and 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 Canada.com article on this issue at:

<http://www.canada.com/topics/news/world/story.html?id=316ef6b2-01c5-4bf5-9a5e-d331c3140754&k=52246>

— As well, a 2009 audit by the Auditor General of Canada found that the CRA is still having difficulties auditing small- and medium-sized businesses — http://www.oag-bvg.gc.ca/internet/English/parl_oag_200903_03_e_32290.html —

See, for example, CBC.ca media articles about the restaurant

industry <http://www.cbc.ca/news/business/moneytalks/2009/11/michael-hlinka-tax-evasion-by-restaurants-a-sign-of-deeper->

[problems-in-system.html](#)
and about online retailers
<http://www.cbc.ca/news/canada/story/2009/10/21/ebay-tax-dodge.html>

– In addition, another 2009 audit by the Auditor General found that the CRA “does not have a comprehensive system to track, record, and prioritize legislative issues and “is not meeting its own time targets for advance income tax rulings for taxpayers” – http://www.oag-bvg.gc.ca/internet/English/parl_oag_200911_03_e_33204.html

– Finally, several CRA employees in the Montreal office are under investigation by the RCMP (Canada’s national police force). See CBC.ca media article at: <http://www.cbc.ca/news/canada/story/2011/03/09/montreal-cra.html>

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

References:

– Responsibility for customs and excise is shared between:
– Canada Revenue Agency – <http://www.cra-arc.gc.ca/> – established and operating under the Canada Revenue Agency Act (1999, c. 17) – <http://lois.justice.gc.ca/eng/C-10.11/index.html>
and –
Canada Border Services Agency – <http://www.cbsa-asfc.gc.ca/> – established and operating under the Canada Border Services Agency Act (2005, c. 38) – <http://lois.justice.gc.ca/en/showtdm/cs/C-1.4>

Yes: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

No: A NO score is earned if that function is spread over several agencies, or does not exist.

65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

– Responsibility for customs and excise is shared between:
– Canada Revenue Agency – <http://www.cra-arc.gc.ca/> – established and operating under the Canada Revenue Agency Act (1999, c. 17) – <http://lois.justice.gc.ca/eng/C-10.11/index.html>
and

– Canada Border Services Agency — <http://www.cbsa-asfc.gc.ca/> — established and operating under the Canada Border Services Agency Act (2005, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/C-1.4>

– While 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, the grade of 75 is given because at the same time serious questions have been raised about whether the Border Agency in particular has enough professional, full-time staff to fulfill its basic mandate, as follows:

– The federal government is increasing spending through 2010-2011 for the Canada Border Services Agency because of insufficient resources.

See CBC.ca media article from March 2011 at:

<http://www.cbc.ca/news/politics/story/2011/03/02/pol-spending-estimates.html>

– An audit in 2008 found that thousands of forms used for work permits and other permits for entering Canada were missing from Border Services Agency offices because of a disregard for security.

See Globe and Mail media article at:

<http://www.theglobeandmail.com/servlet/story/RTGAM.20080601.wborderbungle0601/BNSStory/National>

– 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.ca at:

<http://www.cbc.ca/canada/montreal/story/2007/10/01/bc-borderguards.html>

– 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

– http://www.oag-bvg.gc.ca/internet/English/mr_20061128_e_15389.html

– In January 2007, Canadian airports also raised concerns about the consistency of Agency staffing levels across the province of Ontario.

See news release at:

<http://www.marketwire.com/press-release/Airport-Management-Conference-Of-Ontario-Amco-630119.html>

– Finally, one border guard was recently convicted of sexual assaulting three women

See CBC.ca media article at:

<http://www.cbc.ca/news/canada/story/2011/03/04/bc-border-guard-sex-assault.html>

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

– Responsibility for customs and excise is shared between:

– Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

and

– Canada Border Services Agency — <http://www.cbsa-asfc.gc.ca/> — established and operating under the Canada Border Services Agency Act (2005, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/C-1.4>

– While 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, the grade of 75 is given because at the same time serious questions have been raised about whether the Border Agency in particular has enough professional, full-time staff to fulfill its basic mandate.

– The federal government is increasing spending through 2010-2011 for the Canada Border Services Agency because of insufficient resources — <http://www.cbc.ca/news/politics/story/2011/03/02/pol-spending-estimates.html>

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

– Responsibility for customs and excise is shared between:

– Canada Revenue Agency — <http://www.cra-arc.gc.ca/> — established and operating under the Canada Revenue Agency Act (1999, c. 17) — <http://lois.justice.gc.ca/eng/C-10.11/index.html>

and
– Canada Border Services Agency — <http://www.cbsa-asfc.gc.ca/> — established and operating under the Canada Border Services Agency Act (2005, c. 38) — <http://lois.justice.gc.ca/en/showtdm/cs/C-1.4>

– While 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, the grade of 75 is given because at the same time serious questions have been raised about whether the Border Agency is fulfilling its basic mandate uniformly.

– A new program that gives travelers who frequently cross the Canada-U.S. border has been found by a Border Agency internal probe to have several problems.

See Toronto Star media article at:

<http://www.thestar.com/News/Canada/article/529276>

– The Canadian Human Rights Commission — <http://www.chrc-ccdp.ca> — signed a Memorandum of Understanding with the Agency in December 2005 to attempt to prevent discrimination and resolve complaints quickly — http://www.chrc-ccdp.ca/preventing_discrimination/cbsa_asfc-en.asp?highlight=1

– 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.ca media article

— <http://www.cbc.ca/canada/montreal/story/2007/10/01/bc-borderguards.html>

– 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

— http://www.oag-bvg.gc.ca/internet/English/mr_20061128_e_15389.html

– In January 2007, Canadian airports also raised concerns about the consistency of Agency staffing levels across the province of Ontario.

See news release at:

<http://www.marketwire.com/press-release/Airport-Management-Conference-Of-Ontario-Amco-630119.html>

– 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 travelers — http://www.privcom.gc.ca/information/pub/ar-vr/cbsa_060620_e.asp

– A Federal Court judge in 2010 found that the Agency, at the direction of the responsible Cabinet minister, had discriminated against a British MP in barring him from entering Canada.

See CBC.ca media article at:

<http://www.cbc.ca/news/canada/story/2010/10/02/galloway-canada.html>

– Finally, one border guard was recently convicted of sexual assaulting three women.

See CBC.ca media article at:

<http://www.cbc.ca/news/canada/story/2011/03/04/bc-border-guard-sex-assault.html>

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:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: 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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

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:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor is appointed to a fixed term of 10 years and under section 3 is protected from removal without relevant justification.

– There are some federal government institutions (mainly quasi-governmental institutions such as funding bodies) that are not subject to auditing by the Auditor General.

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons.

See details about weak enforcement record at:
<http://www.dwatch.ca/camp/RelsOct1510.html>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner’s annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner has a very weak enforcement attitude — <http://www.dwatch.ca/camp/RelsFeb2311.html>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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> — Section 4.2 of the Commissioner’s 2009-2010 Annual Report shows a backlog of 12 months for complaint resolutions — http://www.priv.gc.ca/information/ar/200910/200910_pa_e.cfm

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispq.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 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 whistle-blower) 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) — The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>]

– The Public Service Commission —

<http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

65

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

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:

– The following agencies are protected from political interference:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

– 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).

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

– 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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 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 whistle-blower) 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.)

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

Yes: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 75 is given because the following agencies either do not have a track record that demonstrates professionalism:

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record in Democracy Watch's report's news release from October 2010: <http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency). See details about the Commissioner's very weak enforcement record in Democracy Watch's report's news release from February 2011 at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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).

–The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details CTV.ca media article at:

<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>

and in Democracy Watch report news release at:

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– The grade of 75 is also given because a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not have adequate staff to fulfill their basic mandates.

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:

– All of the following agencies have a full-time staff with a proven track record that demonstrates professionalism:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, as shown on its audit reports page at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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> — Section 4.2 of the Commissioner's 2009-2010 Annual Report shows a backlog of 12 months for complaint resolutions — http://www.priv.gc.ca/information/ar/200910/200910_pa_e_fcm

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

— The grade of 75 is given because a backlog of dealing with complaints/cases/investigations at several of the agencies shows that the agencies do not have adequate ongoing funding to fulfill their basic mandates.

References:

— There is not one agency for the Canadian federal government, but instead a set of agencies, and all of the following agencies have a full-time staff with a proven track record that demonstrates professionalism:

— Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, as shown on its audit reports page at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html

— Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

— Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

— 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

— Privacy Commissioner — <http://www.privcom.gc.ca/> — 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> — Section 4.2 of the Commissioner's 2009-2010 Annual Report shows a backlog of 12 months for complaint resolutions — http://www.priv.gc.ca/information/ar/200910/200910_pa_e.cfm

— The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

100: The agency, series of agencies, 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, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because the Conflict of Interest and Ethics Commissioner is allowed to give secret advice to the public office holders under the Commissioner's mandate.

– As well, as detailed above in the sources section, the Ethics Commissioner, Commissioner of Lobbying, and Public Sector Integrity Commissioner have all been reluctant to investigate cases and have very weak enforcement record. The Auditor General has also failed to conduct an audit in one situation.

– In addition, as detailed above in the sources section, several of the agencies have multi-year backlogs in investigating complaints.

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:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate as shown on its reports web page at: http://www.oag-bvg.gc.ca/internet/English/rp_fs_e_25898.html — and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction — as well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses. See details in CBC.ca May 2010 media article at: <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html> and in Democracy Watch June 2010 op-ed at: <http://www.dwatch.ca/camp/OpEdJun2110.html>]

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act (S.C. 2006, c. 9, s. 2) — <http://laws.justice.gc.ca/eng/acts/C-36.65/index.html> — and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency, and the Commissioner is allowed under sections 29 and 43 of the Act to give secret advice to public office holders. See for details the following summary of the Ethics Commissioner's very weak enforcement record in Democracy Watch October 2010 report news release at: <http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency). See details about the Commissioner's very weak enforcement record in Democracy Watch February 2011 report news release at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory treatment by the federal government and federally regulated corporations.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details in CBC.ca media article from November 2009 at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO's web-site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– Privacy Commissioner — <http://www.privcom.gc.ca/> — 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> — Section 4.2 of the Commissioner's 2009-2010 Annual Report shows a backlog of 12 months for complaint resolutions — http://www.priv.gc.ca/information/ar/200910/200910_pa_e.cfm

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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) — The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details CTV.ca March 2011 media article at:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

and Democracy Watch February 2011 news release at:

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations."

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

– The grade of 50 is given because while the following agencies do not have the power to impose penalties directly on offenders, they have the legal power to cooperate with the Royal Canadian Mounted Police (RCMP – Canada's national police force — <http://www.rcmp-grc.gc.ca>) in investigations that can lead to prosecutions (and, therefore, penalties for offenders) by the Public Prosecution Service of Canada — <http://www.ppsc-sppc.gc.ca/eng>]

– However, all of the agencies have no or a weak track record of such cooperation with the RCMP and Public Prosecution Service leading to penalties.

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:

- There is not one agency for the Canadian federal government, but instead a set of agencies, as follows, and all of the agencies have the power to at least initiate a penalty process.

- Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

- Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons

- 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).

- Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>

- Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4>

- 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. 31 (4th Supp.)) — <http://lois.justice.gc.ca/en/showtdm/cs/O-3.01>

- 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 — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

- Privacy Commissioner — <http://www.privcom.gc.ca/> — 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 Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

- 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 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 whistle-blower) 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.)

- The Public Service Commission — <http://www.psc-cfp.gc.ca/index-eng.htm> — (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 Labor Relations Board — http://www.pslrb-crtfp.gc.ca/intro_e.asp — (which rules on various federal public service labor 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 Labor 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 labor relations.”

- 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>

- *****
- Only the following agency both has the power to impose penalties on offenders, and a track record of doing so:

- Canadian Human Rights Commission — <http://www.chrc-ccdp.ca/> — which enforces the Canadian Human Rights Act (R.S., 1985, c. H-6) — <http://lois.justice.gc.ca/en/showtdm/cs/H-6> — and reviews and rules on complaints about discriminatory

treatment by the federal government and federally regulated corporations.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

95

69a. 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.

69b. 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 for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found 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 whom the corporation may select), and as a result there is usually not an issue of timeliness of audits.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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>

– The independent government agency Auditor General of Canada conducts audits of Crown corporations (although the Auditor has the discretion to delegate auditing to auditors whom the corporation may select), and as a result there is usually not an issue of timeliness of audits.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– An Internet search for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found no examples of Crown corporations not producing an annual report that did not use international accounting standards.

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

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 for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found 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 whom the corporation may select), and as a result there is usually not an issue of timeliness of audits.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– These financial records of state-owned enterprises are generally available for free on the website of each enterprise.

– However, Crown corporations are not required under the Financial Administration Act 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 access to up-to-date financial records, and this is why the score of 75 is given.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

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 for media articles (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.canada.com>, <http://www.ctv.ca>) found many examples of articles about Crown corporations annual reports and financial statements available online for free.

– The independent government agency Auditor General of Canada conducts audits of Crown corporations (although the Auditor has the discretion to delegate auditing to auditors whom the corporation may select), and as a result there is usually not an issue of timeliness of audits.

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– These financial records of state-owned enterprises are generally available for free on the website of each enterprise.

– 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 access to up-to-date financial records.

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 NGOs. 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 NGOs trying to access this information.

5.5. Business Licensing and Regulation

87

70. Are business licenses available to all citizens?

81

70a. 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 by clicking on the “Starting a Business” link at: <http://www.canadabusiness.ca/gol/cbec/site.nsf>

– 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 by under the “Regulations, Licenses and Permits” information page:

<http://www.canadabusiness.ca/eng/126>

– Municipalities also may have license requirements or regulations for some businesses. See details by clicking on the “Regulations, Licenses and Permits” link on the following web page:

<http://www.canadabusiness.ca/eng>

– 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 by clicking on the “Export, Import and Foreign Investment” link on the following web page:

<http://www.canadabusiness.ca/eng>

– The federal government also regulates intellectual property (patents, trademarks and copyright).

See details through the “Copyright and Intellectual Property” link on the following web page:

<http://www.canadabusiness.ca/eng>

– The federal government does regulate several business sectors that it does not license (mainly in terms of food and product safety).

See details by clicking on the “Regulations, Licenses and Permits” link on the following web page:

<http://www.canadabusiness.ca/eng>

– 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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

References:

– Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields for which only a license is needed to operate, or can incorporate as a company which can be done on-line or in writing under the Canada Business Corporations Act (R.S.C., 1985, c. C-44) — <http://laws.justice.gc.ca/eng/acts/C-44/index.html> —

See details about starting a business through incorporation or by license by clicking on the “Starting a Business” link at: <http://www.canadabusiness.ca/gol/cbec/site.nsf>

– If a business license requests was denied, anyone could appeal that denial within the agency initially, and then in court under the general right to challenge administrative law agencies in the Federal Court of Canada under sections 18 and 18.1 of the Federal Courts Act (R.S.C., 1985, c. F-7) — <http://laws.justice.gc.ca/eng/acts/F-7/index.html>

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.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields for which only a license is needed to operate, or can incorporate as a company which can be done on-line or in writing under the Canada Business Corporations Act (R.S.C., 1985, c. C-44) — <http://laws.justice.gc.ca/eng/acts/C-44/index.html>
See details about starting a business through incorporation or by license by clicking on the “Starting a Business” link on the Government of Canada website at:
<http://www.canadabusiness.ca/gol/cbec/site.nsf>

– 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.)

– 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 under the “Regulations, Licenses and Permits” information page on the Government of Canada web site at:
<http://www.canadabusiness.ca/eng/126>

– Municipalities also may have license requirements or regulations for some businesses. See details by clicking on the “Regulations, Licenses and Permits” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– 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.)
See these statutes under the alphabetical list on the Government of Canada web site at:
<http://laws.justice.gc.ca/eng/acts/A.html>

– Also, the federal government licenses importing and exporting.
See details by clicking on the “Export, Import and Foreign Investment” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– The federal government also regulates intellectual property (patents, trademarks and copyright).
See details through the “Copyright and Intellectual Property” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– The federal government does regulate several business sectors that it does not license (mainly in terms of food and product safety).
See details by clicking on the “Regulations, Licenses and Permits” link on the following Government of Canada website web page: <http://www.canadabusiness.ca/eng>

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 a 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.

70d. 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 the 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 Canadian Federation of Business report news release:
http://www.cfb-fcei.ca/english/media_centre/manitoba/222-regulation_paperburden/2391-red_tape_frustration_brought_to_life_in_new_collection_of_small_business_stories.html

– Anyone can set up a business as an unincorporated self-employed person or sole proprietorship in many fields for which only a license is needed to operate, or can incorporate as a company which can be done on-line or in writing under the Canada Business Corporations Act (R.S.C., 1985, c. C-44) — <http://laws.justice.gc.ca/eng/acts/C-44/index.html>
 See details about starting a business through incorporation or by license by clicking on the “Starting a Business” link on the Government of Canada web site at:
<http://www.canadabusiness.ca/gol/cbec/site.nsf>

– 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 by under the “Regulations, Licenses and Permits” Government of Canada information page:
<http://www.canadabusiness.ca/eng/126>

– Municipalities also may have license requirements or regulations for some businesses. See details by clicking on the “Regulations, Licenses and Permits” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– 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).
 See these statutes under the alphabetical list on the Government of Canada web site at:
<http://laws.justice.gc.ca/eng/acts/A.html>

– Also, the federal government licenses importing and exporting.
 See details by clicking on the “Export, Import and Foreign Investment” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– The federal government also regulates intellectual property (patents, trademarks and copyright).
 See details through the “Copyright and Intellectual Property” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

– The federal government does regulate several business sectors that it does not license (mainly in terms of food and product safety).
 See details by clicking on the “Regulations, Licenses and Permits” link on the following Government of Canada web page: <http://www.canadabusiness.ca/eng>

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

References:

See details under the “Regulations, Licenses and Permits” information page: <http://www.canadabusiness.ca/eng/126>

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

References:

See details under the “Regulations, Licenses and Permits” information page: <http://www.canadabusiness.ca/eng/126>

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

References:

See details under the “Regulations, Licenses and Permits” information page: <http://www.canadabusiness.ca/eng/126>

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

75

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

– Health Canada summary web page of regulations it enforces — <http://www.hc-sc.gc.ca/ahc-asc/legislation/reg/index-eng.php> — and of guidelines for its enforcement practices — <http://www.hc-sc.gc.ca/ahc-asc/legislation/guide-ld/index-eng.php>

– Overall national Canadian government directive on streamlining regulation — <http://www.tbs-sct.gc.ca/ri-qr/directive/directive00-eng.asp>

– As set out in the Health Canada publication Regulatory Modernization from — March 2010 — <http://www.hc-sc.gc.ca/sr-sr/pubs/hpr-rpms/bull/2010-reg-mod/index-eng.php> — due to limited resources in every inspection department, of course choices are made such as to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choice that is regularly made 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 also CBC.ca media article from March 2011 about secrecy in the Health Canada drug regulation system — <http://www.cbc.ca/news/canada/story/2011/03/22/health-canada-open-government.html> and March 2011 Canada.com (Vancouver Sun) article about Health Canada being given CA\$100 million (US\$105 million) to correct flaws in food inspection system — <http://www.vancouversun.com/health/Canadian+inspection+agency+gets+additional+million/4488321/story.html>

– As the above publications show, there is an ongoing debate concerning not only how to have the most effective government inspections of businesses to ensure public health standards are being met, but also about the uniformity and even-handedness of such inspections.

– The score of 75 is given because of this debate, and the admission by Health Canada in the above publication that they are still working on ensuring comprehensive inspection practices.

– This debate has been highlighted by more than 500 product safety recalls in the past year/
See for details the Government of Canada recall web site:
<http://www.hc-sc.gc.ca/ahc-asc/media/advisories-avis/index-eng.php>

100: 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.

75:

50: 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.

25:

0: 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.

72b. 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.

100 | 75 | 50 | 25 | 0

References:

– Overall national Canadian government directive on streamlining regulation — <http://www.tbs-sct.gc.ca/ri-qr/directive/directive00-eng.asp>

– Due to limited resources in every inspection department, of course choices are made such as to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choice that is regularly made 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 Montreal Environment media article about changes made in 2010 to federal environmental regulation processes that mean they will not apply to some areas anymore at:
<http://www.montrealenvironment.ca/bye-bye-environmental-regulation-we-will-miss-you-dearly/>

– See also Fall 2009 academic paper by Bill Lahey about flaws in Canada's environmental protection system, at:
<http://www.energyframework.ca/papers/pillar-two-upmidstream/>

– The score of 75 is given because of the ongoing debate concerning not only how to have the most effective government inspections of businesses to ensure environmental standards are being met, but also about the uniformity and even-handedness of such inspections.

– See, for examples of concerns about this type of uneven enforcement of public environmental standards, the web sites of each of the "Caucuses" of the Canadian Environmental Network at:
<http://www.cen-rce.org/eng/caucuses/index.html>

– For example, there is ongoing concern about the regulation of the oil industry in the province of Alberta (the regulation of which is shared between the federal government and the province, as is the case with most environmental regulation in Canada). See CBC.ca media articles from November and December 2009, and July 2010, at:
<http://www.cbc.ca/news/canada/north/story/2009/11/24/north-alta-oilsands-report.html>;
<http://www.cbc.ca/canada/edmonton/story/2009/12/07/edmonton-schindler-oil-sands-toxin.html>;
<http://www.cbc.ca/news/canada/edmonton/story/2010/10/07/edmonton-alberta-oilsands-water-panel.html>

100: Business inspections by the government to ensure that public environmental 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.

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50: Business inspections by the government to ensure public environmental 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.

25:

0: Business inspections to ensure that public environmental 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.

72c. 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.

100 | 75 | 50 | 25 | 0

References:

– Health Canada summary web page of regulations it enforces — <http://www.hc-sc.gc.ca/ahc-asc/legislation/reg/index-eng.php> — and of guidelines for its enforcement practices — <http://www.hc-sc.gc.ca/ahc-asc/legislation/guide-ld/index-eng.php>

– Overall national Canadian government directive on streamlining regulation — <http://www.tbs-sct.gc.ca/ri-qr/directive/directive00-eng.asp>

– As set out in the Health Canada publication Regulatory Modernization from — March 2010 — <http://www.hc-sc.gc.ca/sr-sr/pubs/hpr-rpms/bull/2010-reg-mod/index-eng.php> — due to limited resources in every inspection department, of course choices are made such as to inspect larger businesses more because of the greater potential for those businesses to create large problems through non-compliance. Another choice that is regularly made 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 also CBC.ca media article from March 2011 about secrecy in the Health Canada drug regulation system — <http://www.cbc.ca/news/canada/story/2011/03/22/health-canada-open-government.html> and March 2011 Canada.com (Vancouver Sun) article about Health Canada being given \$100 million (US\$105 million) to correct flaws in food inspection system <http://www.vancouversun.com/health/Canadian+inspection+agency+gets+additional+million/4488321/story.html>

– As the above publications show, there is an ongoing debate concerning not only how to have the most effective government inspections of businesses to ensure public health standards are being met, but also about the uniformity and even-handedness of such inspections.

– The score of 75 is given because of this debate, and the admission by Health Canada in the above publication that they are still working on ensuring comprehensive inspection practices.

– This debate has been highlighted by more than 500 product safety recalls in the past year — See for details the Government of Canada recall web site: <http://www.hc-sc.gc.ca/ahc-asc/media/advisories-avis/index-eng.php>

100: 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.

75:

50: 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.

25:

0: 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.

6.1. Anti-Corruption Law

76

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

References:

– Sections 118 to 125 (contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Subsection 80(f) (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 corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

References:

– Section 346 (in Part IX) of the Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 120 (contained in Part III “Code for Service Discipline”) of the National Defense Act (R.S., 1985, c. N-5) — <http://lois.justice.gc.ca/en/showtdm/cs/N-5>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

– Sections 118 to 125 (contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Subsection 80(f) (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>

– The bribery law prohibits “corruptly” offering money or anything of value to a Member of the House of Commons (or other public official) in return for an action or decision by the Member, however, it should be noted that because of lack of enforcement, there

is effectively an exemption from the bribery law when the Prime Minister of Canada or his or her representatives offer a reward to a Member if the Member switches parties and joins the ruling party in between elections, or resigns from his/her seat in the House in order to allow another person the Prime Minister wants to have as a candidate to win that seat.

See details at:

<http://www.dwatch.ca/camp/RelsApr0507.html>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

– Sections 118 to 125 (contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) –

<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– 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>

– The bribery law prohibits “corruptly” offering money or anything of value to a Member of the House of Commons (or other public official) in return for an action or decision by the Member, however, it should be noted that because of lack of enforcement, there is effectively an exemption from the bribery law when the Prime Minister of Canada or his or her representatives offer a reward to a Member if the Member switches parties and joins the ruling party in between elections, or resigns from his/her seat in the House in order to allow another person the Prime Minister wants to have as a candidate to win that seat.

See details at:

<http://www.dwatch.ca/camp/RelsApr0507.html>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

– Corruption of Foreign Public Officials Act (1998, c. 34) –

<http://lois.justice.gc.ca/en/showtdm/cs/C-45.2>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

– Sections 118 to 125, especially section 121 (contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) –

<http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Sections 2, 4 and 14 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/eng/C-36.65/index.html>

– 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

– Sections 2, 10, 11, 13 and 18 of the Conflict of Interest Code for Senators — <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

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.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

– Sections 118 to 125 (especially section 121) contained in Part IV) of the Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Section 4 of the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/eng/C-36.65/index.html>

– Section 2, subsection 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>

– Sections 2, 10, 11, 12, 13 and 18 of the Conflict of Interest Code for Senators <http://sen.parl.gc.ca/se0-cse/eng/Code-e.html>

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.

73h. In law, money laundering is illegal.

Yes | No

References:

– Section 462.31 (in Part XII of the Criminal Code (R.S., 1985, c. C-46) — <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

– Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

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.

73i. 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) – <http://lois.justice.gc.ca/en/showtdm/cs/C-46>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

References:

– There is a group of anti-corruption agencies in Canada, as follows:

– Royal Canadian Mounted Police (RCMP), Canada's national police force – <http://www.rcmp-grc.gc.ca/> – with its mandate under the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) – <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– Auditor General of Canada – <http://www.oag-bvg.gc.ca/internet/index.htm> – 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 – (Auditor General Act R.S., 1985, c. A-17) – <http://lois.justice.gc.ca/eng/A-17/index.html> – Financial Administration Act (R.S., 1985, c. F-11) – <http://lois.justice.gc.ca/en/showtdm/cs/F-11> – the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction. As well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses – <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>
<http://www.dwatch.ca/camp/OpEdJun2110.html>

– Conflict of Interest and Ethics Commissioner – <http://ciec-ccie.gc.ca/> – who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record:

<http://www.dwatch.ca/camp/RelsOct1510.html>

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) – <http://www.fintrac-canafe.gc.ca/intro-eng.asp> – which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)

– http://lois.justice.gc.ca/en/showtdm/cs/P-24_501

– Office of the Information Commissioner of Canada – <http://www.oic-ci.gc.ca> – who enforces the Access to Information Act (R.S., 1985, c. A-1) – <http://lois.justice.gc.ca/en/showtdm/cs/A-1> – The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints – http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Commissioner of Lobbying – <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> – is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

– http://lois.justice.gc.ca/en/showtdm/cs/L-12_4 – The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government – 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.) – The Parliamentary Budget Officer was finally appointed in March 2008

(one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO's web site at

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– 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 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– 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>

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.

75. Is the anti-corruption agency effective?

53

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

References:

– There is a group of anti-corruption agencies in Canada, as follows:

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its mandate under the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

- The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction. As well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>
<http://www.dwatch.ca/camp/OpEdJun2110.html>
- Conflict of Interest and Ethics Commissioner — <http://cieec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.
See for details the following summary of the Ethics Commissioner's very weak enforcement record: <http://www.dwatch.ca/camp/RelsOct1510.html>
- Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)
— <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>
- Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx
- Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act
— <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).
See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>
- 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.
See details at:
<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>
and on the PBO's web site at
<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
- The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.
- 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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.
See for details:
<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>
<http://www.dwatch.ca/camp/RelsFeb2411.html>
- 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 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>
- 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>

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

– There is a group of anti-corruption agencies in Canada, and all of them have a flaw affecting their independence that the head of each agency is selected by the federal Cabinet of politicians without any full public review.

– At the same time, an Internet search of media articles (using <http://news.google.ca>, <http://www.cbc.ca>, <http://www.ctv.ca>, <http://www.canada.com>) found that there is no evidence that the following agencies have been interfered with by federal politicians or their staff:

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its mandate under the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction. As well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html> <http://www.dwatch.ca/camp/OpEdJun2110.html>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency. See for details the following summary of the Ethics Commissioner's very weak enforcement record: <http://www.dwatch.ca/camp/RelsOct1510.html>

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — http://lois.justice.gc.ca/en/showtdm/cs/P-24_501

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4 — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency). See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at: <http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html> and on the PBO's web site at <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — http://lois.justice.gc.ca/en/showtdm/cs/P-31_9 — the Ombudsman has the power to review of procurement

decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/ReisFeb2411.html>

– 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 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) whose members 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

– 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/sec-cse/default.htm>

-See also Democracy Watch’s June 2009 op-ed about the Officer’s lack of independence at:

<http://www.dwatch.ca/camp/OpEdJun0109.html>

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

– There is a group of anti-corruption agencies in Canada, and all of them have a flaw affecting their independence that the head of each agency is selected by the federal Cabinet of politicians without any full public review.

– The heads of the following agencies cannot be dismissed without cause:

– Royal Canadian Mounted Police (RCMP), Canada’s national police force — <http://www.rcmp-grc.gc.ca/> — with its mandate under the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG’s jurisdiction. As

well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html>
<http://www.dwatch.ca/camp/OpEdJun2110.html>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record:
<http://www.dwatch.ca/camp/RelsOct1510.html>

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)
— <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

— <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO's web site at

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-isp.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– 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 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– 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>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

– Appointments to the following anti-corruption agencies are based on professional criteria:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons — the Ethics Commissioner serves a fixed term of five years, and 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."

– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant "whistle-blowers" 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>

– Appointments to the following anti-corruption agencies are not based on professional criteria:

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/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.

– Office of the Information Commissioner of Canada — [<http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx — the Information Commissioner serves a fixed term of seven years.

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency). See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/ReisFeb2311.html> The Commissioner of Lobbying serves a fixed term of seven years.

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

The Integrity Commissioner serves a fixed term of seven years.

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– 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/seocse/default.htm>

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

– The following anti-corruption agencies have a full-time, professional staff (however, they also have large backlogs of complaints that show that they have inadequate staff to fulfill their basic mandate):

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)

– <http://lois.justice.gc.ca/en/showtdm/cs/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.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/tp-pr_ar-ra.aspx
The Information Commissioner serves a fixed term of seven years.

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PRO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result,

the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO's web site at:

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant "whistle-blowers" 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>

– There is evidence that the following anti-corruption agencies do not have professional, full-time staff:

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record:

<http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

— <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

The Commissioner of Lobbying serves a fixed term of seven years.

– 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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

The Integrity Commissioner serves a fixed term of seven years.

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers. The RCMP 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 also information about FINTRAC) — See also articles about the reports of the Public Complaints Commissioner for the RCMP pointing out problems with the police force — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html>

<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html> <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html> <http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.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/seoc-se/default.htm>

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

References:

- The following anti-corruption agencies have regular funding (however, they also have large backlogs of complaints that show that they have inadequate funding to fulfill their basic mandate):
 - Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

- The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction.

- Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.
See for details the following summary of the Ethics Commissioner's very weak enforcement record: <http://www.dwatch.ca/camp/RelsOct1510.html>

- Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).
See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>
The Commissioner of Lobbying serves a fixed term of seven years.

- Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/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.

- Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx
The Information Commissioner serves a fixed term of seven years.

- 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
- The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.
See details at: <http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>
and on the PBO's web site at: <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

- The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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) — The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.
See for details: <http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>
<http://www.dwatch.ca/camp/RelsFeb2411.html>
The Integrity Commissioner serves a fixed term of seven years.

- The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant "whistle-blowers" 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>

- Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers. The RCMP 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 also information about FINTRAC) — See also articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html> <http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html> <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html> <http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

— There following agencies also receive regular funding, but do not have large backlogs of complaints, and so seem to have adequate funding:

— The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

— 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

— 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/sec-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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

— The following anti-corruption agencies have a track record of producing annual reports and other investigative reports in a timely manner (however, all have a large backlog of complaints or investigations, and the Conflict of Interest Commissioner, the Commissioner of Lobbying and the Public Sector Integrity Commissioner all produce very vague reports that make it difficult to determine the effectiveness of their enforcement activities)

— As well, the Conflict of Interest and Ethics Commissioner (under section 28 and 43 of the Conflict of Interest Act (S.C. 2006, c. 9, s. 2) — <http://laws.justice.gc.ca/eng/acts/C-36.65/index.html> — and the Senate Ethics Officer under the Senate Ethics Code, are both allowed to give secret advice to the public office holders under their mandate.

— The Commissioner of Lobbying and Public Sector Integrity Commissioner have also made secret rulings (which are likely not legal under their respective laws):

— Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

— The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction. As well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html> <http://www.dwatch.ca/camp/OpEdJun2110.html>

— Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past,

the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record:
<http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency). See details about the Commissioner's very weak enforcement record in Democracy Watch's February 2011 report news release at: <http://www.dwatch.ca/camp/RelsFeb2311.html>
The Commissioner of Lobbying serves a fixed term of seven years.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/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.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1>
The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx The Information Commissioner serves a fixed term of seven years.

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.
See details in CBC.ca media article from November 2009 at: <http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>
and on the PBO's web site at:
<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.
See for details the March 2011 CTV.ca media article at:
<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>
and Democracy Watch's February 2011 report news release at: <http://www.dwatch.ca/camp/RelsFeb2411.html>
The Integrity Commissioner serves a fixed term of seven years.

– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant "whistle-blowers" 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>

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers — the RCMP 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 also information about FINTRAC) — See also CBC.ca media articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force at from December 2009 — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html> and December 2010
<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html>
January 2009
<http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html>
June 2010
<http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

– There following agencies also produce regular annual reports, but do not have large backlogs of complaints and so the reports seem to provide complete information about their enforcement activities:

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> whose

members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

— 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> —

See also Democracy Watch's June 2009 op-ed about the Officer's lack of independence and effectiveness — <http://www.dwatch.ca/camp/OpEdJun0109.html>

100: 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.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: 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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

— The grade of 25 is given because almost all the following agencies do not have the power to impose penalties directly on offenders, and so they are more like ombudsman offices than effective law enforcement agencies

References:

— There is not one anti-corruption agency for the Canadian federal government, but instead a set of agencies.

— Some of the agencies have the legal power to cooperate with the Royal Canadian Mounted Police (RCMP — Canada's national police force — <http://www.rcmp-grc.gc.ca> — in investigations that can lead to prosecutions (and, therefore, penalties for offenders) by the Public Prosecution Service of Canada — <http://www.ppsc-sppc.gc.ca/eng> — However, all of the agencies (except FINTRAC) have a very short or a weak track record of such cooperation with the RCMP and Public Prosecution Service leading to penalties:

— Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — the Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate.

— The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction. As well, after facing resistance from Members of the House of Commons, the AG declined to audit their expenses — <http://www.cbc.ca/news/politics/inside-politics-blog/2010/05/behind-the-numbers-why-wont-they-open-their-books.html> <http://www.dwatch.ca/camp/OpEdJun2110.html>

— Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and so does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record:

<http://www.dwatch.ca/camp/RelsOct1510.html>

— Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)

— <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

— Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca/> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx

— Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

— <http://lois.justice.gc.ca/en/showtdm/cs/L-12.4> — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

and on the PBO’s web site at

<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

<http://www.dwatch.ca/camp/RelsFeb2411.html>

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) whose members 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>

– 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/seocse/default.htm>

See also Democracy Watch’s June 2009 op-ed about the Officer’s lack of independence and effectiveness —

<http://www.dwatch.ca/camp/OpEdJun0109.html>

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

– The following anti-corruption agencies have large backlogs of complaints, and/or a weak enforcement records (sometimes because of lack of funding and resources), which show that they do not initiate investigations when necessary:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

– The Auditor General only audits each main government institution every five years, showing a systemic lack of resources to fulfill its basic mandate, and also some government institutions (mainly funding bodies) are not within the AG's jurisdiction.

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) and does not have a track record that clearly demonstrates professionalism (and, in the past, the Ethics Commissioner's staff demonstrated both bias and incompetency); as well, questions have been raised about the Commissioner's impartiality and competency.

See for details the following summary of the Ethics Commissioner's very weak enforcement record: <http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1_nsf/Intro — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

— http://lois.justice.gc.ca/en/showtdm/cs/L-12_4 — The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

See details about the Commissioner's very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

The Commissioner of Lobbying serves a fixed term of seven years.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)

— http://lois.justice.gc.ca/en/showtdm/cs/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.

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– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information). As a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.

See details at:

<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>

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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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.

See for details:

<http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/>

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– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant "whistle-blowers" 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

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers. The RCMP 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 also information about FINTRAC) — See also articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html>

<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html>] <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html> <http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

– The following anti-corruption agencies do not have a large backlog of complaints, nor a record of failing to investigate when necessary:

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

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.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

– The following anti-corruption agencies have large backlogs of complaints, and/or a weak enforcement records (sometimes because of lack of funding and resources), which show that they do not initiate investigations when necessary:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — 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 — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the (Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/eng/A-17/index.html> — Financial Administration Act (R.S., 1985, c. F-11) — <http://lois.justice.gc.ca/en/showtdm/cs/F-11>

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– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act

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The Commissioner does not have a track record that clearly demonstrates professionalism (and, in the past, the Registrar's staff demonstrated both bias and incompetency).

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The Commissioner of Lobbying serves a fixed term of seven years.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)

— <http://lois.justice.gc.ca/en/showtdm/cs/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.

– Office of the Information Commissioner of Canada — <http://www.oic-ci.gc.ca> — who enforces the Access to Information Act (R.S., 1985, c. A-1) — <http://lois.justice.gc.ca/en/showtdm/cs/A-1> — The Information Commissioner's annual reports show an

ongoing backlog of more than 2,000 complaints — http://www.oic-ci.gc.ca/eng/rp-pr_ar-ra.aspx
The Information Commissioner serves a fixed term of seven years.

– 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 who serves at the pleasure of Cabinet for a five-year term (and so can be dismissed at any time for any reason), and whose mandate is to issue public reports on the economic and financial position of the federal government — 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.) — The Parliamentary Budget Officer was finally appointed in March 2008 (one year and three months after the Federal Accountability Act became law.) — <http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>
– The Parliamentary Budget Officer (PBO) has not received the funding the office was promised and is not fully independent from Cabinet as was promised, and also in several cases (including overall budget projections, and proposals to change criminal laws, to buy fighter jets, to continue the war in Afghanistan) PBO has not received key information needed to estimate the cost of government budget items (even though the PBO has the right under the Parliament of Canada Act to the information) — as a result, the legislature (House of Commons) has not had in many cases the information needed to consider fully whether to approve significant public expenditures.
See details at:
<http://www.cbc.ca/news/canada/story/2009/11/03/parliamentary-budget-officer-kevin-page-funding.html>
and on the PBO’s web site at:
<http://www2.parl.gc.ca/Sites/PBO-DPB/default.aspx>

– The Public Sector Integrity Commissioner position — <http://www.psic-ispcc.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 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 whistle-blower) 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). The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints.
See for details:
<http://www.ctv.ca/CTVNews/Canada/20110302/intergrity-watchdog-documents-110302/>
<http://www.dwatch.ca/camp/RelsFeb2411.html>
The Integrity Commissioner serves a fixed term of seven years.

– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistle-blowers” 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>

– Royal Canadian Mounted Police (RCMP), Canada’s national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers — the RCMP 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 also information about FINTRAC) — See also articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html>
<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html> <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html> <http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

– The following anti-corruption agencies do not have a large backlog of complaints, nor a record of failing to investigate when necessary:

– The Procurement Ombudsman (the first of which was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html> — enforces the September 2007 Code of Conduct for Procurement — <http://lois.justice.gc.ca/en/showtdm/cs/P-31.9> — the Ombudsman has the power to review of procurement decisions following a complaint by a bidder, but no power to overturn a decision, and the Ombudsman also serves at the pleasure of the Prime Minister and Cabinet and can be dismissed at any time for any reason, and therefore lacks the independence needed to fulfill the mandate of the office.

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) whose members 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>

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.

Comments:

- Based upon the U.S. 20-year experience with a legislated whistle-blower protection system (as documented in chapter entitled “Whistle-blowing in the United States: The Gap Between Vision and Lessons Learned” by Tom Devine in the book “Whistle-blowing 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 whistle-blowers all covered by the Act, not even all public servants;
 - whistle-blowers 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;
 - whistle-blowers 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 (whistle-blowers 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 (whistle-blowers 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;
 - whistle-blowers 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);
 - whistle-blowers 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”;
 - whistle-blowers 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 whistle-blowers will suffer;
 - the full scope of compensation is not available (pain and suffering is limited to CA\$10,000 (US\$10,100), and Tribunal rulings may limit compensation even further (as occurred in the U.S.);
 - if a whistle-blowers 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 C\$1,500 (US\$1,1515) in funding for legal advice for a whistle-blower (in exceptional cases, up to CA\$3,000 -US\$3,030) which will likely not be adequate, although it seems possible that the Tribunal could award full costs if a whistle-blower 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 whistle-blowers, but what will actually happen is unknown (NOTE: the penalties for retaliators are limited to CA\$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 (and has not been occurring).

References:

- 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://laws.justice.gc.ca/eng/Const/ConstDoc.html>
 - Court cases in the past resulted in rulings that the Charter of Rights and Freedoms “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 “whistle-blowers” 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.) — <http://www.canlii.org/en/ca/fct/doc/2000/2000canlii16081/2000canlii16081.html> — Haydon v. Canada (Treasury Board) (F.C.), 2004 FC 749 (CanLII) — <http://www.canlii.org/en/ca/fct/doc/2004/2004fc749/2004fc749.html> — and Chopra v. Canada (Treasury Board), 2006 FCA 295 (CanLII) — <http://www.canlii.org/en/ca/fca/doc/2006/2006fca295/2006fca295.html>
 - The Public Sector Integrity Commissioner position 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 — 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-ispic.gc.ca/>
 - The Public Sector Integrity Commissioner position 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 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 whistle-blower) 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) — The Integrity Commissioner also communicated with the federal Cabinet office frequently, showing a lack of independence and professionalism, and also has a very weak enforcement record with a backlog of more than 200 complaints. See for details: <http://www.ctv.ca/CTVNews/Canada/20110302/integrity-watchdog-documents-110302/> <http://www.dwatch.ca/camp/RelsFeb2411.html>
- The Integrity Commissioner serves a fixed term of seven years.

– The newly created Public Servants Disclosure Protection Tribunal (which rules on complaints about retaliation taken against public servant “whistle-blowers” 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 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 civil 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 (i.e. free from potential harm) to complain to federal agencies about federal government wrongdoing is not clear in either law or in practice.

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, has only been in existence since July 2007 (replacing the Ethics Commissioner position) — the Ethics Commissioner is not required by law, and usually refuses, to investigate complaints filed by citizens — See for details the following summary of the Ethics Commissioner’s very weak enforcement record: <http://www.dwatch.ca/camp/RelsOct1510.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — is a new independent Officer of Parliament position created July 2, 2008 under an amended and re-titled Lobbying Act — http://lois.justice.gc.ca/en/showtdm/cs/L-12_4
The Commissioner is not clearly required by law to investigate complaints filed by citizens.
See details about the Commissioner’s very weak enforcement record at: <http://www.dwatch.ca/camp/RelsFeb2311.html>
The Commissioner of Lobbying serves a fixed term of seven years.

– Royal Canadian Mounted Police (RCMP), Canada’s national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers. The RCMP 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 also information about FINTRAC) — See also articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force (including more than 3,000 complaints from citizens across Canada:
<http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html>
<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html> <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html> <http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.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>

– So overall, while whistle-blower protection processes exist, they have been proven to be very ineffective.
See details at:
<http://www.dwatch.ca/camp/RelsFeb2411.html>

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.

59
6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

Yes | No

References:

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — <http://lois.justice.gc.ca/eng/Const/ConstDoc.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.”

– Parliament 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 — <http://lois.justice.gc.ca/eng/S-26/index.html>–, 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 — <http://lois.justice.gc.ca/eng/F-7/index.html>, and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — <http://lois.justice.gc.ca/eng/T-2/index.html>)

– 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.

– However, 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. 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. 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, which some groups believe is still unconstitutional.

See details at:

<http://www.cbc.ca/news/canada/story/2009/08/21/f-security-certificates.html>

Yes: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

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

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

– The Parliament of Canada has the power under The Constitution Act, 1867 (section 101 — <http://lois.justice.gc.ca/eng/Const/ConstDoc.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.”

– Parliament 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 — <http://lois.justice.gc.ca/eng/S-26/index.html>–, 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 — <http://lois.justice.gc.ca/eng/F-7/index.html>–, and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — <http://lois.justice.gc.ca/eng/T-2/index.html>)

– 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.

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See details in the CBC.ca media article from August 2009 at: <http://www.cbc.ca/news/canada/story/2009/08/21/f-security-certificates.html>

– No information is available on the web site 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 percent of leave applications are processed within six months of filing.” — <http://www.scc-csc.gc.ca/>

– According to the Canadian Human Rights Commission’s own report, in 2009 “The average age of the Commission’s active caseload decreased to 7.8 months in 2009 from 8.9 months in 2008—against the defined target of nine months.” —

– According to the Immigration Appeal Division appeal processes last on average 11-12 months —
<http://www.irb-cisr.gc.ca/Eng/tribunal/stat/Pages/ia.aspx>

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

– The score of 50 is given because several associations have identified the cost of court cases as a barrier to access to justice, as follows:

– Canadian Bar Association — <http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>

– Papers presented to the Canadian Forum on Civil Justice 2006 national conference “Into the Future: The Agenda for Civil Justice Reform” —
<http://cfcj-fcjc.org/publications/itf-en.php>

– The Canadian Forum on Civil Justice’s Self-Represented Litigants projects — <http://cfcj-fcjc.org/research/sri-en.php>

– “Self-Representation Creating Chaos in Courts: Chief Justice” CBC News, Aug. 12, 2006 —
<http://www.cbc.ca/news/canada/story/2006/08/12/court-representation.html>

– And see also articles from early 2011 on the same, ongoing problem of legal costs at:
http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/04/17499901.html
<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

100

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

– An Internet search of various mainstream media websites (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.ctv.ca>, <http://www.canada.com>) resulted in no public evidence or media articles of exceptional cases where legal codes were ignored or political interference, bribery, cronyism or other flaws affected judgments in the criminal system between July 2009 and June 2010.

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.

79. In practice, are judicial decisions enforced by the state?

75

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

– The grade of 75 is given because generally judicial decisions are enforced by the government, however there are ongoing, systemic problems with enforcement by Canadian governments of the treaty rights of aboriginals even when judicial decisions have stated clearly what the rights are.

See for some details Wikipedia article on the issue:

http://en.wikipedia.org/wiki/Aboriginal_title

and the Government of Canada web sites concerning the

issue <http://www.aboriginalcanada.gc.ca/acp/site.nsf/eng/ao20009.html><http://www.ainc-inac.gc.ca/al/dcc/ccl/pubs/sg/sg-eng.asp>

– In addition, there are ongoing problems with enforcement of judicial decisions in the areas of access to information (the government regularly ignores judicial precedents that make it clear what information must be made public under the federal Access to Information Act), and in the area of enforcement of lobbying ethics rules.

See details about a March 2009 Federal Court of Appeal ruling concerning a complaint filed by Democracy Watch about a relationship alleged to be unethical between Cabinet ministers and lobbyists in the following Democracy Watch report news release from February 2011 <http://www.dwatch.ca/camp/BelsFeb2311.html>] and op-ed from February 2011

<http://www.dwatch.ca/camp/OpEdFeb1411.html>

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.

80. Is the judiciary able to act independently?

69

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

References:

– Under The Constitution Act, 1867 (subsection 99(1) — <http://lois.justice.gc.ca/eng/Const/ConstDoc.html> — “the Judges of the Superior Courts shall hold office during good behavior, 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/eng/Const/ConstDoc.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.”

– Parliament 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 — <http://lois.justice.gc.ca/eng/S-26/index.html>, 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 — <http://lois.justice.gc.ca/eng/F-7/index.html>, and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — <http://lois.justice.gc.ca/eng/T-2/index.html>)

– 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 behavior standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is set out in the acts mentioned above.

– Also, see section 3 of Part V, and Annex E of “Accountable Government: A Guide for Ministers and Ministers of State – 2008” sets out rules for the federal Cabinet’s “Relations with the Judiciary and Other Government Agencies” — http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information_c=publications&doc=ag-gr/2008/ag-gr_e.htm — However, it should be noted that these rules are enforced by the Prime Minister, who is in a conflict of interest in this enforcement role, and has no incentive to enforce the rules given that they apply to himself and his Cabinet ministers and Ministers of State (known colloquially as “junior Cabinet ministers”).

– It should also be noted that with the courts, and also with several “specialized courts” or administrative tribunals with quasi-judicial powers that also exist at the federal government level in Canada, there are ongoing problems with the transparency and credibility of the appointment processes. Many commentators conclude that they are not actually independent tribunals, but instead arms of the executive (and, therefore, unlikely to uphold the rule of law in situations where the executive’s actions are in question).

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 includes 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.

80b. 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/eng/Const/ConstDoc.html> — “the Judges of the Superior Courts shall hold office during good behavior, 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/eng/Const/ConstDoc.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.”

– Parliament 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 — <http://lois.justice.gc.ca/eng/S-26/index.html>, 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 — <http://lois.justice.gc.ca/eng/F-7/index.html>, and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — <http://lois.justice.gc.ca/eng/T-2/index.html>)

– 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 behavior standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is set out in the acts mentioned above.

– Also, see section 3 of Part V, and Annex E of “Accountable Government: A Guide for Ministers and Ministers of State – 2008” sets out rules for the federal Cabinet’s “Relations with the Judiciary and Other Government Agencies” — http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information_c=publications&doc=ag-gr/2008/ag-gr_e.htm

However, it should be noted that these rules are enforced by the Prime Minister, who is in a conflict of interest in this enforcement role, and has no incentive to enforce the rules given that they apply to himself and his Cabinet ministers and Ministers of State (known colloquially as “junior Cabinet ministers”.)

– The grade of 75 is given because of the above noted weakness in the enforcement of rules prohibiting political interference, and also given that with the courts, and also with several “specialized courts” or administrative tribunals with quasi-judicial powers that also exist at the federal government level in Canada, there are ongoing problems with the transparency and credibility of the appointment processes. Some commentators conclude that they are not actually independent tribunals, but instead arms of the executive (and, therefore, unlikely to uphold the rule of law in situations where the executive’s actions are in question.) See for example Democracy Watch’s May 2009 op-ed about the case of alleged arrangement to reward a person with an appointment to the National Parole Board (which is a tribunal with quasi-judicial powers) at: <http://www.dwatch.ca/camp/OpEdMay2509.html> and related Democracy Watch August 2009 news release at: <http://www.dwatch.ca/camp/RelsAug0609.html>

Also see for example February 2011 op-ed about appointments to the same Board by James Morton and Mark Persaud at: <http://www.ottawacitizen.com/news/Justice+shouldn+political/4329747/story.html>

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, pay cuts, relocation, threats or harassment.

80c. 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.

– For example, under section 6 of the Federal Courts Act (R.S., 1985, c. F-7) — <http://lois.justice.gc.ca/en/ShowTdm/cs/F-7//en> — 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>

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.

80d. 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/eng/Const/ConstDoc.html> — “the Judges of the

Superior Courts shall hold office during good behavior, 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/eng/Const/ConstDoc.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.”

– Parliament 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 — <http://lois.justice.gc.ca/eng/S-26/index.html> 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 — <http://lois.justice.gc.ca/eng/F-7/index.html>, and the Tax Court of Canada (established in 1983 under the Tax Court of Canada Act, R.S.C. 1985, c. T-2 — <http://lois.justice.gc.ca/eng/T-2/index.html>)

– 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 behavior standard not fulfilled, and the judiciary having responsibility for the administration of the courts) is set out in the acts mentioned above.

– Also, see section 3 of Part V, and Annex E of “Accountable Government: A Guide for Ministers and Ministers of State – 2008” sets out rules for the federal Cabinet’s “Relations with the Judiciary and Other Government Agencies” — http://www.pcc-bcp.gc.ca/index.asp?lang=eng&page=information_c=publications&doc=ag-gr/2008/ag-gr_e.htm However, it should be noted that these rules are enforced by the Prime Minister, who is in a conflict of interest in this enforcement role, and has no incentive to enforce the rules given that they apply to himself and his Cabinet ministers and Ministers of State (known colloquially as “junior Cabinet ministers”).

– It should also be noted that with the courts, and also with several “specialized courts” or administrative tribunals with quasi-judicial powers that also exist at the federal government level in Canada, there are ongoing problems with the transparency and credibility of the appointment processes. Many commentators conclude that they are not actually independent tribunals, but instead arms of the executive (and, therefore, unlikely to uphold the rule of law in situations where the executive’s actions are in question.)

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

References:

An Internet search of various mainstream media websites (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.ctv.ca>, <http://www.canada.com>) produced no documented cases of judges being physically harmed because of their involvement in a corruption case during the study period of July 2009 and June 2010.

Yes: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

No: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

References:

– An Internet search of various mainstream media websites (using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.ctv.ca>, <http://www.canada.com>) produced no documented cases of judges being killed because of their involvement in a corruption case during the study period of July 2009 and June 2010.

Yes: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

No: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge 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.

82. Do citizens have equal access to the justice system?

71

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

– The score of 75 is given because of documented problems with systemic racism (meaning a pervasive bias that many people in the system hold, for whatever reason) in the Canadian justice system, a problem which has not been fully resolved.

– Most particularly, 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.com/index.php?option=com_content&view=article&id=9:volume-4-issue-1-2005&catid=3:past-issues&Itemid=8

– There is also some evidence of bias in the selection of juries.
See article at:

<http://www.nizkor.org/hweb/orgs/canadian/canada/justice/ethnocultural-groups/ecg-005-01.html>

– See also Toronto Star media article from June 2009 about racism on juries at: <http://www.thestar.com/news/gta/article/650329> — and also Toronto Star/Canadian Press February 2008 media article about systemic bias in the investigation of the Air India bombing case — <http://www.thestar.com/News/Canada/article/303705>

– In addition, there is little data concerning public perceptions of the Canadian judiciary, including on the issue of racial or ethnic bias in judicial rulings.

See the 2005 research paper published by the Canadian Forum on Civil Justice at (PDF format):
<http://www.cfjc-fcjc.org/docs/2005/cjsp-perceptions-en.pdf>

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.

82b. 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>

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.

75:

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.

25:

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.

82c. 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 —
<http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– However, the defendant must have a relatively very low income in order to qualify, and as a result, several associations have identified the cost of court cases as a barrier to access to justice, as follows:

– Canadian Bar Association —
<http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>

– Papers presented to the Canadian Forum on Civil Justice 2006 national conference “Into the Future: The Agenda for Civil Justice Reform” —
<http://cfcj-fcjc.org/publications/itf-en.php>

– The Canadian Forum on Civil Justice’s Self-Represented Litigants projects — <http://cfcj-fcjc.org/research/sri-en.php>

– “Self-Representation Creating Chaos in Courts: Chief Justice” CBC News, Aug.12, 2006 —
<http://www.cbc.ca/news/canada/story/2006/08/12/court-representation.html>

– And see also articles from early 2011 on the same, ongoing problem of legal costs at:
http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/04/17499901.html
<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

– Sections 7 and 10 of the Constitution Act, 1982, Part I: Canadian Charter of Rights and Freedoms — <http://lois.justice.gc.ca/eng/Const/ConstDoc.html>

– 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 offense would likely result in jail time.” — <http://www.legalaid.on.ca/en/getting/default.asp>

– 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.” — http://www.criminallawyers.ca/resources/press/press_22march07.cfm

– However, the defendant must have a relatively very low income in order to qualify, and as a result, several associations have identified the cost of court cases as a barrier to access to justice, as follows:

– Canadian Bar Association — <http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>

– Papers presented to the Canadian Forum on Civil Justice 2006 national conference “Into the Future: The Agenda for Civil Justice Reform” — <http://cfjc-fcjc.org/publications/itf-en.php>

– The Canadian Forum on Civil Justice’s Self-Represented Litigants projects — <http://cfjc-fcjc.org/research/srl-en.php>

– “Self-Representation Creating Chaos in Courts: Chief Justice” CBC News, Aug.12, 2006 — <http://www.cbc.ca/news/canada/story/2006/08/12/court-representation.html>

– And see also articles from early 2011 on the same, ongoing problem of legal costs at: http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/04/17499901.html
<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

References:

– The score of 50 is given because several associations have identified the cost of court cases as a barrier to access to justice, as follows: – Canadian Bar Association — <http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>

– Papers presented to the Canadian Forum on Civil Justice 2006 national conference “Into the Future: The Agenda for Civil Justice Reform” — <http://cfjc-fcjc.org/publications/itf-en.php>

– The Canadian Forum on Civil Justice’s Self-Represented Litigants projects <http://cfjc-fcjc.org/research/srl-en.php>

– “Self-Representation Creating Chaos in Courts: Chief Justice” CBC News, Aug.12, 2006 <http://www.cbc.ca/news/canada/story/2006/08/12/court-representation.html>

– And see also articles from early 2011 on the same, ongoing problem of legal costs at: http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/04/17499901.html
<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

References:

– The score of 50 is given because several associations have identified the cost of court cases as a barrier to access to justice, as follows: – Canadian Bar Association

<http://www.cba.org/CBA/Advocacy/legalaid/default.aspx>

– Papers presented to the Canadian Forum on Civil Justice 2006 national conference “Into the Future: The Agenda for Civil Justice Reform” –

<http://cfjc-fcjc.org/publications/itf-en.php>

– The Canadian Forum on Civil Justice’s Self-Represented Litigants projects –

<http://cfjc-fcjc.org/research/srl-en.php>

– “Self-Representation Creating Chaos in Courts: Chief Justice” CBC News, Aug.12, 2006

<http://www.cbc.ca/news/canada/story/2006/08/12/court-representation.html>

– And see also articles from early 2011 on the same, ongoing problem of legal costs at:

http://www.torontosun.com/comment/columnists/alan_shanoff/2011/03/04/17499901.html

<http://www.lawtimesnews.com/201102218262/Headline-News/Lawyers-integral-in-making-justice-accessible-McLachlin>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | **75** | 50 | 25 | 0

References:

– While the Federal Court and Federal Court of Appeal hold hearings in various locations across Canada, they do not travel to all parts of Canada, and so some citizens face high costs traveling to court hearings (this is a result, in no small part, that Canada is one of the largest countries in the world in terms of geographical span).

See Federal Court office locations on the Federal Court website at:

<http://cas-ncr-nter03.cas-satj.gc.ca/CAS-SATJ>

and the Federal Court’s traveling hearings schedule on the Federal Court web site at:

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/Motions_Hearings

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

75

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

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/eng/R-10/index.html> — 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)

— <http://lois.justice.gc.ca/en/showtdm/cs/D-2.5> — first in force in December 2006; the Governor-in-Council (i.e. federal Cabinet) appoints director of Public Prosecutions who has the power to initiate prosecutions in “the general and public interest” (i.e. 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” (i.e. 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>

– 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.

See “RCMP Bristles at Pick for Top Boss: Choice of ‘Outsider’ for New Commissioner Praised by Bureaucrats, Criticized by Force” by Kathryn May, Ottawa Citizen, July 7, 2007, p. A1; AND “Mounties’ Policy Poobah: New Boss’ Role Has Mostly Been in Backrooms” by Canadian Press, Ottawa Sun, July 7, 2007, p. 21

– There are provincial and municipal police forces in Canada, but this grade is given based only on the RCMP, as it is the federal police force in Canada.

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

References:

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers.

– The RCMP 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 also information about FINTRAC)

– See articles about other inadequate funding problems with the RCMP

– <http://www.cbc.ca/news/canada/story/2011/02/15/criminal-screening.html>

and

<http://ipolitics.ca/2011/03/08/rcmp-fraud-head-suggests-private-sector-funding/>] and

[<http://www.globalwinnipeg.com/Western+justice+ministers+call+tougher+youth+crime+more+RCMP+funding/4212208/story.html>

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.

83c. In practice, the law enforcement agency is protected from political interference.

References:

– Royal Canadian Mounted Police (RCMP), Canada's national police force — <http://www.rcmp-grc.gc.ca/> — with its 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 score of 75 is given because the RCMP Commissioner is selected by the federal Cabinet without any public review or check by anyone else or any other organization, and so to that extent the RCMP is under the direction of politicians — 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, and so the appointment has created significant public controversy and concern also amongst RCMP officers

– However, an Internet search of various mainstream media websites

(using <http://www.news.google.ca>, <http://www.cbc.ca>, <http://www.ctv.ca>, <http://www.canada.com>) found no instances of direct political interference in the operations of the RCMP.

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.

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

References:

– Commission for Public Complaints Against the RCMP — <http://www.cpc-cpp.gc.ca> — established under sections 45.29 to 45.34 of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– In a speech on June 24, 2007, Paul E. Kennedy, the then-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/nrm/spe/arc/2007/20070624-eng.aspx>

– Another speech by Mr. Kennedy, on May 9, 2007 summarized the situation in a similar way <http://www.cpc-cpp.gc.ca/nrm/spe/arc/2007/20070509-eng.aspx>

– See also more recent articles about changes to the complaint-handling system for the RCMP <http://www.cbc.ca/news/canada/story/2010/02/04/william-elliott-rcmp.html> <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html>

– See also 2009 articles about cuts to funding of the Commission — <http://www.cbc.ca/news/canada/story/2009/03/17/rcmp-watchdog-funding-ability.html> <http://www.thestar.com/article/603923>

– In June 2010, the federal government introduced into the House of Commons Bill C-38 which proposes to create a new watchdog agency to replace the Public Complaints Commission — however as of March 2011 the review of the bill had not moved even one step further forward toward passage: <http://www.cbc.ca/news/canada/story/2010/06/14/rcmp-oversight.html> <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7046&List=toc>

– The Royal Canadian Mounted Police (RCMP), as with almost all federal government institutions, the RCMP is covered by the following government “watchdog” agencies which help ensure corruption does not occur:

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the Auditor General Act R.S., 1985, c. A-17) — <http://lois.justice.gc.ca/en/showtdm/cs/A-17> — and is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — and its own spending codes, policies and guidelines, and receives value for money spent.

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — that applies to the Commissioner of the RCMP

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– Procurement Ombudsman (the first Ombudsman was appointed in September 2007, but whose office did not begin full operations until May 2008) — <http://opo-boa.gc.ca/index-eng.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/Intro> — who as of July 2, 2008 is the front-line enforcer (in cooperation with the RCMP) of the newly entitled Lobbying Act (replacing the Registrar of Lobbyists who was the front-line enforcer of the Lobbyists Registration Act (the old name of the Lobbying Act) and the Commissioner is the sole enforcer of the Lobbyists' Code of Conduct — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — which contains rules concerning the relationship between lobbyists and federal politicians and government officials.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

– NOTE: The RCMP is exempt from protection by the whistle-blower protection system for civil servants under the Public Sector Integrity Commissioner office — <http://www.psic-ispc.gc.ca/> — under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is newly created (first Commissioner was appointed on July 9, 2007) with the mandate to investigate complaints from “whistle-blowers” and resolve violations of the Values and Ethics Code for the Public Service — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — the Commissioner also acts as a liaison to refer whistle-blowers to the appropriate agency that enforces other federal government laws, regulations, codes, policies and guidelines.

– See also more recent articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser->

[report.html](#)
<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html>
<http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

– And also documentary about problems within the RCMP –
<http://www.cbc.ca/documentaries/doczone/2010/mountiesunderfire/index.html>
<http://www.cbc.ca/documentaries/discussion/2010/01/mounties-under-fire-1.html>

– “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

– “Force Needs Ombudsman: Top Mountie — Commissioner Seeks Reform: Expert Warns Change Will Take Time” 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

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

84b. 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:

– Commission for Public Complaints Against the RCMP — <http://www.cpc-cpp.gc.ca> — established under sections 45.29 to 45.34 of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– According to the “Our Targets and Performance for 2009-2010” of the 2009-2010 fiscal year annual report of the Commission “Of the number of complaints subject to review requests, 61% met the one-year time frame—an improvement over previous years.” — <http://www.cpc-cpp.gc.ca/prr/anr/2009-2010-eng.aspx>

– In June 2010, the federal government introduced into the House of Commons Bill C-38 which proposes to create a new watchdog agency to replace the Public Complaints Commission — however as of March 2011 the review of the bill had not moved even one step further forward toward passage —
<http://www.cbc.ca/news/canada/story/2010/06/14/rcmp-oversight.html>
<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7046&List=toc>

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

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> — 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)
– <http://lois.justice.gc.ca/en/showtdm/cs/D-2.5> — first in force in December 2006, the Governor-in-Council (i.e. federal Cabinet) appoints the director of Public Prosecutions, who has the power to initiate prosecutions in “the general and public interest” (i.e. 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” (i.e. 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>

– 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 — <http://www.cpc-cpp.gc.ca> , and an External Review Committee under Part II of the RCMP Act

– Commission for Public Complaints Against the RCMP — <http://www.cpc-cpp.gc.ca> — established under sections 45.29 to 45.34 of the Royal Canadian Mounted Police Act (R.S., 1985, c. R-10) — <http://lois.justice.gc.ca/en/showtdm/cs/R-10>

– In a speech on June 24, 2007, Paul E. Kennedy, the then-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/nrm/spe/arc/2007/20070624-eng.aspx>

– Another speech by Mr. Kennedy, on May 9, 2007 summarized the situation in a similar way
<http://www.cpc-cpp.gc.ca/nrm/spe/arc/2007/20070509-eng.aspx>

– See also more recent articles about changes to the complaint-handling system for the RCMP —
<http://www.cbc.ca/news/canada/story/2010/02/04/william-elliott-rcmp.html><http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html>

– See also 2009 articles about cuts to funding of the Commission <http://www.cbc.ca/news/canada/story/2009/03/17/rcmp-watchdog-funding-ability.html>
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– In June 2010, the federal government introduced into the House of Commons Bill C-38 which proposes to create a new watchdog agency to replace the Public Complaints Commission. However as of March 2011 the review of the bill had not moved even one step further forward toward passage —
<http://www.cbc.ca/news/canada/story/2010/06/14/rcmp-oversight.html> <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7046&List=to>

– The Royal Canadian Mounted Police (RCMP), as with almost all federal government institutions, the RCMP is covered by the following government “watchdog” agencies which help ensure corruption does not occur:

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– <http://lois.justice.gc.ca/en/showtdm/cs/A-17> — and is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — and its own spending codes, policies and guidelines, and receives value for money spent.

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — that applies to the Commissioner of the RCMP

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) whose members 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>

– Procurement Ombudsman (the first Ombudsman was appointed in September 2007, but whose office did not begin full operations until May 2008) —
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– Commissioner of Lobbying <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/Intro> — who as of July 2, 2008 is the front-line enforcer (in cooperation with the RCMP) of the newly entitled Lobbying Act (replacing the Registrar of Lobbyists who was the front-line enforcer of the Lobbyists Registration Act (the old name of the Lobbying Act) and the Commissioner is the sole enforcer of the Lobbyists’ Code of Conduct — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — which contains rules concerning the relationship between lobbyists and federal politicians and government officials.

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)
– <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

– NOTE: The RCMP is exempt from protection by the whistle-blower protection system for civil servants under the Public Sector Integrity Commissioner office — <http://www.psic-isp.gc.ca/> — under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is newly created (first Commissioner was appointed on July 9, 2007) with the mandate to investigate complaints from “whistle-blowers” and resolve violations of the Values and Ethics Code for the Public Service — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — the Commissioner also acts as a liaison to refer whistle-blowers to the appropriate agency that enforces other federal government laws, regulations, codes, policies and guidelines.

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<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html><http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

- And also documentary about problems within the RCMP
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- “Force Needs Ombudsman: Top Mountie — Commissioner Seeks Reform: Expert Warns Change Will Take Time” 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

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

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> — it is required that another police force (municipal or provincial) investigate the RCMP officer.
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- The score of 75 is given because in a speech on June 24, 2007, Paul E. Kennedy, the then-chair of the Commission, set out several flaws and loopholes in the Commission’s powers and effectiveness in investigating members of the RCMP, and his proposals for correcting and closing them — <http://www.cpc-cpp.gc.ca/nrm/spe/arc/2007/20070624-eng.aspx>
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- See also more recent CBC.ca media articles about changes to the complaint-handling system for the RCMP, from February 2010 — <http://www.cbc.ca/news/canada/story/2010/02/04/william-elliott-rcmp.html> and from January 2009 <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html>
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- In June 2010, the federal government introduced into the House of Commons Bill C-38 which proposes to create a new watchdog agency to replace the Public Complaints Commission. However as of March 2011 the review of the bill had not moved even one step further forward toward passage. See June 2010 CBC.ca media article at: <http://www.cbc.ca/news/canada/story/2010/06/14/rcmp-oversight.html> and the House of Commons web site about government bills at: <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7046&List=toc>

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– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission's rulings) whose members 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>

– Procurement Ombudsman (the first Ombudsman was appointed in September 2007, but whose office did not begin full operations until May 2008):
<http://opo-boa.gc.ca/index-eng.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/Intro> — who as of July 2, 2008 is the front-line enforcer (in cooperation with the RCMP) of the newly entitled Lobbying Act (replacing the Registrar of Lobbyists who was the front-line enforcer of the Lobbyists Registration Act (the old name of the Lobbying Act) and the Commissioner is the sole enforcer of the Lobbyists' Code of Conduct — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — which contains rules concerning the relationship between lobbyists and federal politicians and government officials. See details about the Commissioner of Lobbying's very weak enforcement record in Democracy Watch's February 2011 report news release at: <http://www.dwatch.ca/camp/ReisFeb2311.html>

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17)
– <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

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– See also more recent articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — CBC.ca December 2009 media article at: <http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html> and CBC.ca December 2010 media article at: <http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html>
<http://www.cbc.ca/news/canada/north/story/2010/06/15/rcmp-oversight-yukon-reax.html>

– And also see web-pages about CBC.ca January 2010 documentary about problems within the RCMP — <http://www.cbc.ca/documentaries/doczone/2010/mountiesunderfire/index.html>
<http://www.cbc.ca/documentaries/discussion/2010/01/mounties-under-fire-1.html>

– Also see the following media articles:

– "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

– "Force Needs Ombudsman: Top Mountie — Commissioner Seeks Reform: Expert Warns Change Will Take Time" 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.

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/eng/C-46/index.html>) 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)
– <http://lois.justice.gc.ca/en/showtdm/cs/D-2.5> – first in force in December 2006, the Governor-in-Council (i.e. federal Cabinet) appoints the director of Public Prosecutions, who has the power to initiate prosecutions in “the general and public interest” (i.e. 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” (i.e. 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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

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/eng/C-46/index.html>) 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)
– <http://lois.justice.gc.ca/en/showtdm/cs/D-2.5> – first in force in December 2006, the Governor-in-Council (i.e. federal Cabinet) appoints the director of Public Prosecutions, who has the power to initiate prosecutions in “the general and public interest” (i.e. 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” (i.e. 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>

– The score of 50 is given because of the loopholes in the power to prosecute law enforcement officials in some cases (for offenses committed when enforcing the law (with some limits).

– Also, the score of 50 is given because in a speech on June 24, 2007, Paul E. Kennedy, the then-chair of the Commission, set out several flaws and loopholes in the Commission’s powers and effectiveness in investigating members of the RCMP, and his proposals for correcting and closing them, and given that the Commission is the front-line investigator of misconduct, its ineffectiveness greatly undermines the likelihood that an RCMP officer would be prosecuted for Criminal Code violations.
<http://www.cpc-cpp.gc.ca/nrm/spe/arc/2007/20070624-eng.aspx>

– The score of 50 is also given because in another speech by Mr. Kennedy, on May 9, 2007 summarized the situation and the flaws in a similar way. <http://www.cpc-cpp.gc.ca/nrm/spe/arc/2007/20070509-eng.aspx>

– See also more recent CBC.ca media articles about changes to the complaint-handling system for the RCMP, from February 2010 – <http://www.cbc.ca/news/canada/story/2010/02/04/william-elliott-rcmp.html> and from January 2009 – <http://www.cbc.ca/news/canada/story/2009/01/29/rcmp-commission.html>

– See also 2009 media articles about cuts to funding of the Commission, which undermine its effectiveness – CBC.ca March 2009 media article at: <http://www.cbc.ca/news/canada/story/2009/03/17/rcmp-watchdog-funding-ability.html> and March 2009 Toronto Star media article at: <http://www.thestar.com/article/603923>

– In June 2010, the federal government introduced into the House of Commons Bill C-38 which proposes to create a new watchdog agency to replace the Public Complaints Commission. However, as of March 2011, the review of the bill had not moved

even one step further forward toward passage.

See June 2010 CBC.ca media article at:

<http://www.cbc.ca/news/canada/story/2010/06/14/rcmp-oversight.html>

the House of Commons web site about government bills at: <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&Session=23&query=7046&List=loc>

– The Royal Canadian Mounted Police (RCMP), as with almost all federal government institutions, is covered by the following government “watchdog” agencies which help ensure corruption does not occur (however, as set out below, some of the agencies have very weak enforcement records, and this is also why the score of 50 is given):

– Auditor General of Canada — <http://www.oag-bvg.gc.ca/internet/index.htm> — serves a fixed term of 10 years and is always a fully qualified professional auditor appointed under the Auditor General Act R.S., 1985, c. A-17)

– <http://lois.justice.gc.ca/en/showtdm/cs/A-17> — and is the front-line investigator helping ensure that the federal government complies with the Financial Administration Act and regulations — <http://lois.justice.gc.ca/en/showtdm/cs/F-11> — and its own spending codes, policies and guidelines, and receives value for money spent

– Conflict of Interest and Ethics Commissioner — <http://ciec-ccie.gc.ca/> — who enforces the Conflict of Interest Act (2006, c. 9, s. 2) — <http://lois.justice.gc.ca/en/showtdm/cs/C-36.65> — that applies to the Commissioner of the RCMP. See details about the Ethics Commissioner’s very weak enforcement record in Democracy Watch’s October 2010 report news release at: <http://www.dwatch.ca/camp/RelsOct1510.html>

– 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) — <http://www.psc-cfp.gc.ca/index-eng.htm> — whose members are appointed without any public process or professional criteria by the federal Cabinet under subsection 4(5), as well as the Public Service Staffing Tribunal (which hears and rules on appeals of the Commission’s rulings) whose members 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>

– Procurement Ombudsman (the first Ombudsman was appointed in September 2007, but whose office did not begin full operations until May 2008): <http://opo-boa.gc.ca/index-eng.html>

– Commissioner of Lobbying — <http://www.ocl-cal.gc.ca/eic/site/lobbyist-lobbyiste1.nsf/Intro> — who as of July 2, 2008 is the front-line enforcer (in cooperation with the RCMP) of the newly entitled Lobbying Act (replacing the Registrar of Lobbyists who was the front-line enforcer of the Lobbyists Registration Act (the old name of the Lobbying Act) and the Commissioner is the sole enforcer of the Lobbyists’ Code of Conduct — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — which contains rules concerning the relationship between lobbyists and federal politicians and government officials. See details about the Commissioner of Lobbying’s very weak enforcement record in Democracy Watch’s February 2011 report news release at: <http://www.dwatch.ca/camp/RelsFeb2311.html>

– Financial Transactions Reports Analysis Center of Canada (FINTRAC) — <http://www.fintrac-canafe.gc.ca/intro-eng.asp> — which enforces the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2000, c. 17) — <http://lois.justice.gc.ca/en/showtdm/cs/P-24.501>

– NOTE: The RCMP is exempt from protection by the whistle-blower protection system for civil servants under the Public Sector Integrity Commissioner office — <http://www.psic-isp.gc.ca/> — under the Public Servants Disclosure Protection Act (2005, c. 46) — <http://lois.justice.gc.ca/eng/P-31.9/index.html> — is newly created (first Commissioner was appointed on July 9, 2007) with the mandate to investigate complaints from “whistle-blowers” and resolve violations of the Values and Ethics Code for the Public Service — <http://www.ocl-cal.gc.ca/epic/site/lobbyist-lobbyiste1.nsf/Intro> — the Commissioner also acts as a liaison to refer whistle-blowers to the appropriate agency that enforces other federal government laws, regulations, codes, policies and guidelines.

See details about the Commissioner’s very weak enforcement record in Democracy Watch’s March 2011 news release at: <http://www.dwatch.ca/camp/RelsMar0711.html>

– See also more recent articles about the reports of the Public Complaints Commissioner for the RCMP pointing about problems with the police force — CBC.ca December 2009 media article at:

<http://www.cbc.ca/news/canada/british-columbia/story/2009/12/08/bc-kennedy-vancouver-airport-taser-report.html>

and CBC.ca December 2010 media article at:

<http://www.cbc.ca/news/story/2010/12/20/bc-fraudinvestigation.html><http://www.cbc.ca/news/canada/north/story/2010/06/14/rcmp-oversight-yukon-reax.html>

– And also see web-pages about CBC.ca January 2010 documentary about problems within the RCMP:

<http://www.cbc.ca/documentaries/doczone/2010/mountiesunderfire/index.html>

<http://www.cbc.ca/documentaries/discussion/2010/01/mounties-under-fire-1.html>

– Also see the following media articles:

– “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

– “Force Needs Ombudsman: Top Mountie — Commissioner Seeks Reform: Expert Warns Change Will Take Time” 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: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: 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.

25:

0: 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.
