

S-21

First Session, Thirty Sixth Parliament  
46-47 Elizabeth II, 1997-98

## The Senate of Canada

Bill S-21

### SUMMARY

This enactment relates to the implementation of Canada's obligations under the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, negotiated in the Organisation of Economic Co-operation and Development. In particular, the Convention binds the signing parties to establish a criminal offence of bribery of foreign public officials in business transactions.

## 46-47 ELIZABETH II

### CHAPTER 34

An Act respecting the corruption of foreign public officials and the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and to make related amendments to other Acts

[Assented to 10th December, 1998]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

#### **SHORT TITLE**

##### *Short title*

1. This Act may be cited as the *Corruption of Foreign Public Officials Act*.

#### **INTERPRETATION**

##### *Definitions*

2. The definitions in this section apply in this Act.

“business” means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere for profit.

“foreign public official” means

(a) a person who holds a legislative, administrative or judicial position of a foreign state;

(b) a person who performs public duties or functions for a foreign state, including a person

employed by a board, commission, corporation or other body or authority that is established to perform a duty or function on behalf of the foreign state, or is performing such a duty or

function; and

(c) an official or agent of a public international organization that is formed by two or more states or governments, or by two or more such public international organizations.

“foreign state” means a country other than Canada, and includes

- (a) any political subdivision of that country;
- (b) the government, and any department or branch, of that country or of a political subdivision of that country; and
- (c) any agency of that country or of a political subdivision of that country.

“peace officer” means a peace officer as defined in section 2 of the *Criminal Code*.

“person” means a person as defined in section 2 of the *Criminal Code*.

## **GENERAL**

### ***Bribing a foreign public official***

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

- (a) as consideration for an act or omission by the official in connection with the performance of the official’s duties or functions; or
- (b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.

### ***Punishment***

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

Saving provision

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

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

- (b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to
  - (i) the promotion, demonstration or explanation of the person’s products and services, or
  - (ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.

### ***Facilitation payments***

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

- (a) the issuance of a permit, licence or other document to qualify a person to do business;
- (b) the processing of official documents, such as visas and work permits;
- (c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and

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

### ***Greater certainty***

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

Possession of property

4. (1) Every person commits an offence who possesses any property or any proceeds of any property knowing that all or any part of the property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission of an offence under section 3 or 5; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence under section 3 or 5.

### ***Punishment***

(2) Every person who contravenes subsection (1)

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

(b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$50,000 or to imprisonment for a term not exceeding six months, or to both.

### ***Laundering proceeds of the offence***

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

(a) the commission of an offence under section 3; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence under section 3.

### ***Punishment***

(2) Every person who contravenes subsection (1)

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

(b) is guilty of an offence punishable on summary conviction and liable to a fine of not more than \$50,000 or to imprisonment for a term not exceeding six months, or to both.

### ***Exception***

6. A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under section 4 or 5 if the peace officer or person does any thing mentioned in either of those sections for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

*Part XII.2 of the Criminal Code applicable*

7. Sections 462.3 and 462.32 to 462.5 of the *Criminal Code* apply, with any modifications that the circumstances require, in respect of proceedings for an offence under any of sections 3 to 5.

**RELATED AMENDMENTS**

*R.S., c. C-46*

*Criminal Code*

8. The definition “offence” in section 183 of the *Criminal Code* is amended by adding, immediately after the reference to “section 198 (fraudulent bankruptcy) of the *Bankruptcy and Insolvency Act*,” a reference to “section 3 (bribing a foreign public official), section 4 (possession of property) or section 5 (laundering proceeds of the offence) of the *Corruption of Foreign Public Officials Act*,”.

9. (1) Paragraph (a) of the definition “enterprise crime offence” in section 462.3 of the Act is amended by adding the following after subparagraph (iv):

- (iv.1) section 123 (municipal corruption),
- (iv.2) section 124 (selling or purchasing office),
- (iv.3) section 125 (influencing or negotiating appointments or dealing in offices),

*1993, c. 37, par. 32(a)*

(2) Paragraph (b.1) of the definition “enterprise crime offence” in section 462.3 of the Act is replaced by the following:

- (b.1) an offence against section 126.1 or 126.2 or subsection 233(1) or 240(1) of the *Excise Act*, section 153, 159, 163.1 or 163.2 of the *Customs Act* or section 3, 4 or 5 of the *Corruption of Foreign Public Officials Act*, or

*R.S., c. 1 (5th Supp.)*

*Income Tax Act*

10. Subsection 67.5(1) of the *Income Tax Act* is replaced by the following:

*Non-deductibility of illegal payments*

**67.5** (1) In computing income, no deduction shall be made in respect of an outlay made or expense incurred for the purpose of doing anything that is an offence under section 3 of the *Corruption of Foreign Public Officials Act* or under any of sections 119 to 121, 123 to 125, 393 and 426 of the *Criminal Code*, or an offence under section 465 of the *Criminal Code* as it relates to an offence described in any of those sections.

## **CONDITIONAL AMENDMENT**

### ***Bills C-20 and C-51***

**11. If Bill C-20, entitled *An Act to amend the Competition Act and to make consequential and related amendments to other Acts*, and Bill C-51, entitled *An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional Release Act*, introduced during the first session of the thirty-sixth Parliament, are assented to, then, on the latest of the coming into force of**

- (a) subsection 9(2) of this Act,**
- (b) section 13 of Bill C-20, and**
- (c) section 53 of Bill C-51,**

**paragraph (b.1) of the definition “enterprise crime offence” in section 462.3 of the *Criminal Code* is replaced by the following:**

- (b.1) an offence against section 126.1 or 126.2 or subsection 233(1) or 240(1) of the *Excise Act*, section 153, 159, 163.1 or 163.2 of the *Customs Act*, subsection 52.1(9) of the *Competition Act* or section 3, 4 or 5 of the *Corruption of Foreign Public Officials Act*, or**

## **ANNUAL REPORT**

### ***Annual report***

**12. Within four months of the end of each fiscal year, the Minister of Foreign Affairs, the Minister for International Trade and the Minister of Justice and Attorney General of Canada shall jointly prepare a report on the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and on the enforcement of this Act, and the Minister of Foreign Affairs shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed.**

## **COMING INTO FORCE**

### ***Coming into force***

**13. This Act or any of its provisions comes into force on a day or days to be fixed by order of the Governor in Council.**