



*Institute for
Research on
Public Policy*

*Institut de
recherche
en politiques
publiques*

Finding the Right Balance: Policies to Combat White-Collar Crime in Canada and Maintain the Integrity of Public Procurement

IRPP Round Table Report

March 2016

Round Table Report: Finding the Right Balance — Policies to Combat White-Collar Crime in Canada and Maintain the Integrity of Public Procurement

Introduction

In recent years, the Government of Canada has introduced policy changes to help fight corporate wrongdoing by Canadian firms, including using its procurement rules to punish criminal acts. Faced with the risk of conducting business with companies involved in fraudulent activities, the federal government enacted tougher rules as part of its integrity framework, which aims to ensure the integrity of government suppliers and deter corrupt practices. First unveiled in 2012, the integrity framework included stricter eligibility rules and an automatic 10-year disqualification period for doing business with governments for companies that are charged with fraud and other offences, either domestically or abroad.

Initially, some prominent international organizations showed signs of support for these changes (Transparency International 2012; OECD Working Group on Bribery 2013). However, as the effects of the changes came to light as a result of a few prominent cases, the rules became the subject of some criticism for potential overreach and unintended consequences. For instance, in April 2015, the Canadian Bar Association's Anti-Corruption Team (CBA-ACT 2015) wrote that these changes had been made without sufficient parliamentary debate and public consultation. They warned that the automatic 10-year debarment would potentially impose the same penalty on very different cases by failing to take into account factors such as: (a) the severity and frequency of offences, and (b) whether the company reported the incident, cooperated in the investigation or undertook remedial measures. The lack of appeal mechanism was also cited as a potential violation of due process, and inconsistencies were identified as the rules did not apply uniformly to all government suppliers. In July 2015, the rules were adjusted in response to criticism that the policies had perhaps become too punitive: from then on, the 10-year ineligibility period for government contracts could be reduced to five years through an administrative agreement involving company monitors to ensure that remedial actions and corporate compliance practices are followed (Silcoff 2015).

Canadians expect corporations located in Canada to behave ethically, both here and abroad. They expect their governments to reinforce the principles of accountability

and integrity, and to avoid using public funds to support firms that engage in questionable business practices. Furthermore, they expect that any restrictions placed on a company's ability to do business with governments will be measured responses that appropriately reflect the severity of the offence. It is through this lens that Canada's policy approach should be assessed.

In Canada, as in other countries, the adequacy of our policy approach is under constant review to ensure that it strikes an appropriate balance: Does the government have the right tool kit to respond to instances of corporate wrongdoing? Do punishments reflect the severity of the offences? Are the rules actually deterring such behaviour by being properly enforced? And does Canada's approach protect the integrity of public procurement?

Each country's rules must ultimately reflect its unique historical, legal and economic circumstances. However, one recurring theme of policy discussions in this area is the extent to which countries should not just be mindful of the legal regimes of key trading partners but avoid diverging too far from them. For a small, trade-dependent country such as Canada, monitoring developments in other jurisdictions and assessing whether our approach is consistent with best practices elsewhere is particularly important. This matters because the globalization of production and firms has accelerated in recent decades. Technological advances and lower trade costs are allowing businesses to separate their activities and perform them in different countries (Van Assche 2015). Firms that operate simultaneously under different legal jurisdictions can be highly mobile.

Thus, the proliferation of multinational firms and globally integrated supply chains raises complex jurisdictional issues and challenges for policy-makers trying to combat corporate criminal conduct. When jurisdictions' rules or enforcement practices diverge too much, this raises compliance costs for firms, and outlier countries might frustrate multilateral efforts to combat corporate wrongdoing.¹

One notable area in which Canada's approach differs from those of key trading partners — the US, and now the UK — is in the use of deferred prosecution agreements (DPAs). DPAs typically involve an agreement between the government and a company that may include significant fines, corporate reforms and an admission of guilt, without formal prosecution if certain conditions are met.² For two decades, US prosecutors have had the option of using DPAs in cases of corporate wrongdoing. The UK approach, adopted in 2014, is similar but has a narrower scope and more judicial oversight than in the US.

DPAs are not currently part of the formal legal tool kit in Canada, though prosecutors do appear to have some DPA-like powers. Thus, the issue of whether Canada should

follow the US and UK lead has been raised frequently in recent policy discussions: might a DPA regime strengthen Canada's ability to deal effectively with corporate wrongdoing?

About the project³

The aim of this report is to provide a general discussion framework to consider Canada's approach to dealing with corporate wrongdoing and assess potential improvements. It examines the specific question of whether Canada should adopt some form of DPA regime, but also attempts to situate that issue in the broader, longer-term policy context. The report is based on a round table discussion that was held in Toronto, Ontario, on November 12, 2015, and is supported by a review of recent academic literature on the matter. Held under the Chatham House rule, the round table brought together legal and academic experts and stakeholders for a frank exchange of how best to ensure accountability and integrity in government procurement processes while also allowing Canadian firms to conduct their business on a level playing field with international competitors.⁴

While this report is enriched tremendously by the participants' contributions, it does not attempt to reflect all of the points expressed by all participants. Rather, it aims to highlight the main issues that were raised in the course of the discussions, some areas of agreement and disagreement among participants, and the degree of consensus on certain policy recommendations. Responsibility for these observations and the conclusions drawn in this report rests with the IRPP.

Key concepts: Individual versus corporate action and legal responsibility

In order to better understand the issues at play and the state of the debate in Canada, it is useful to define some foundational concepts.

First, there is an important conceptual difference between *individual white-collar criminality* and broader *corporate criminality*. In the former case, isolated employees within a larger firm engage in unlawful activities on their own, whereas in the latter case fraudulent behaviour is ignored, tolerated or even encouraged by senior ranks of the corporation. The appropriate policy response likely differs in these situations between identifying and punishing the individuals responsible versus punishing the entire company. In general, if the overall punishments are too lax or cast too narrowly, they will likely not stamp out bad behaviour. Alternatively, if they are too aggressive or too broad, they risk unfairly punishing those who were not involved, such as other employees at the company or its shareholders.

The second fundamental issue is legal accountability: who is ultimately responsible for cases of criminal activity that occur in corporations? Two legal doctrines offer

differing views. *Vicarious liability*, which informs the approach in the US, holds the employer (i.e., the corporation) liable for reprehensible acts by its employees — even if the employer is not directly involved. Alternatively, *identification theory*, which informs the UK model, targets senior officers who acted as the “directing mind” in the criminal operation (Ferguson 1998). As Jull (2013) notes: “the directing mind doctrine...requires the prosecution to prove that the Board of Directors set policy that authorized the criminal conduct.” Once this has been established, the directing mind’s actions are considered to be the company’s actions and the corporation is considered to be directly liable, rather than vicariously liable.⁵

Canada’s legal practice contains elements of both of these doctrines. Canadian courts are more likely than their UK counterparts to look to the lower ranks of a corporation’s hierarchy to identify the “directing minds” of an operation, though senior officers — and the company — may be held accountable for their employees’ actions (Ferguson 1998). Consider the case of an Ontario corporation, Pétroles Global, in which three employees (the company’s managing director for Quebec and the Maritimes and two territorial managers) were charged for fixing gasoline prices in Quebec. In this case, the company was ultimately charged with a \$1-million fine because the senior officer responsible for daily operations “was aware of his territorial managers’ behavior [engaging in price fixing], but took no steps to stop them and the conspiracy benefitted Global, thereby triggering liability on the company’s part” (Akman, Jennings and Paliare 2013). This specific case, therefore, establishes that a senior officer, and in turn, the company in Canada may be held responsible — not necessarily for their subordinate’s actions but for a failure to exercise their duty if they turned a blind eye to evidence of potential misconduct by employees under their authority.

This discussion is not to suggest that the options available to prosecutors amount to an either/or proposition: that *either* the individual or the company is solely held responsible. Prosecutors may pursue and punish responsible individuals who engage in white-collar crimes under the criminal code *and* impose fines and compliance measures on the corporation to improve business-wide practices and help ensure that objectionable behaviour is not repeated. On this point, some round table participants questioned whether Canada’s current approach relies too heavily on prosecuting and fining corporations, rather than pursuing senior officers and directors under whose watch offences occurred.

The Canadian Policy Context: Tools to Fight Corporate Wrongdoing

The international context is relevant to recent developments of Canadian law in the area of corporate wrongdoing, particularly regarding foreign corrupt practices.

In response to the 1998 OECD Convention on *Combating Bribery of Foreign Officials in International Business Transactions*, Canada's Parliament passed the *Corruption of Foreign Public Officials Act* (CFPOA) in 1999 (OECD 2015).⁶ The CFPOA is important because it made specific unlawful acts undertaken abroad a crime in Canada — though notably in the case of bribery, a “real and substantial” link to Canadian territory was required for that act to be deemed a crime. In fact, the necessity of establishing a domestic link was one of the main criticisms cited in a 2011 OECD report, which concluded that, “despite...important positive developments, Canada's legislative and institutional framework remains problematic.” Other concerns included insufficient resources for enforcement and inadequate punishments (OECD Working Group on Bribery 2011, 5) These criticisms appear to have been warranted: at the time that report was published, the CFPOA had only concluded one relatively minor case where two employees of an Alberta company were fined \$25,000 for attempting to bribe a US immigration official — this after having been in force for over a decade.

In response to the identified deficiencies in Canada's implementation of the OECD convention, the *Fighting Foreign Corruption Act* was subsequently passed by Parliament in 2013, which extended the jurisdictional scope of the CFPOA so that Canada could prosecute foreign bribery committed by Canadians or Canadian companies, regardless of where the offence was committed (and thus without the need to demonstrate a real and substantial connection to Canada).

Enforcement was also strengthened, as noted by the OECD's 2013 follow-up report. Two additional convictions were identified, and in this subsequent report, 35 ongoing investigations were identified (OECD Working Group on Bribery 2013).

In light of various legislative changes and a more aggressive policy approach, Transparency International (2012) improved its assessment of Canada's actions in pursuit of the OECD convention to the “Moderate Enforcement” category, up from “Little or No Enforcement.” Moreover in 2015, Canada ranked ninth globally in Transparency International's *Corruption Perception Index* (Transparency International 2015). This ranking suggests a reasonable combination of good corporate practices, anticorruption laws and decent enforcement.

Relatedly, after July 2012, a conviction of a foreign bribery offence under the CFPOA would automatically lead to permanent debarment from contracting with Public Works and Government Services Canada (PWGSC, see the box on the next page). That said, several round table participants expressed the view that Canada's overall framework could be improved even further.

PWGSC's Ineligibility and Suspension Policy

This policy states that the federal government's suppliers are ineligible if they plead guilty or are convicted of certain crimes in Canada or abroad. These are the main features:

- > Permanent ineligibility for offences of fraud against the government.
- > Ineligible for 10 years for offences such as bribery, extortion, forgery, stock exchange manipulation or insider trading, criminal breach of contract, money laundering, membership in criminal organizations, or breaches of the Lobbying Act.
- > Ineligible for five years if a supplier knowingly subcontracts with an ineligible supplier; PWGSC can approve exceptions.
- > The Minister can suspend a contractor's eligibility for 18 months if it is charged with an offence, and "as long as necessary" up to the completion of a pending criminal proceeding. A contractor can once again become eligible if it is pardoned for the offence (or the foreign equivalent, if the case occurred outside Canada).
- > By making a bid, suppliers certify that they, their directors and affiliates have not been charged, convicted or conditionally discharged of one of the listed offences or a similar foreign offence in the last three years. Providing false or misleading information leads to a 10-year ineligibility period (PWGSC 2015a).

Exceptions are permitted if the department/agency issuing the contract determines that it is in the "public interest" to contract with an ineligible supplier. These potential exemptions include: no other supplier is capable of performing the contract; it is a time of emergency; national security or health and safety concerns apply; or the financial interests of the Government of Canada would be harmed. This requires that PWGSC monitor the supplier through an administrative agreement. Also, an advanced determination clause may be used to incent suppliers to proactively disclose wrongdoing, in which case a reduced period of ineligibility might be applied.

As of July 2015, the 10 years of ineligibility can be reduced to 5 years through an administrative agreement monitoring the company and ensuring that remedial actions and corporate compliance practices are followed (Silcoff 2015). In fact, one participant emphasized that the process of enacting recent changes illustrates just how complex and challenging the situation is; it required the cooperation of several federal departments, such as PWGSC, Treasury Board, and the various components of Global Affairs Canada (i.e., international trade, development and foreign affairs). However, some participants expressed concern that this new law will only apply to roughly half of federal government procurement, and PWGSC will need to sign memoranda of understanding in order to ensure compliance across departments, which will likely result in uneven treatment across departments for various government suppliers. Finally, as of 2015, even though there is only one company on the Canadian Ineligibility list (PWGSC 2015b), there are more than 50 Canadian corporations on the World Bank's Ineligible Firms and Individuals list (World Bank 2015).

Another important convention is the *United Nations Convention against Corruption* (UNCAC), signed in May 2004, which standardized a set of criminal offences related to corruption throughout UN members. UNCAC recommends that countries implement “preventive policies,” such as anticorruption bodies and stricter political party financing rules (UNODC 2015). Such guidelines are also becoming more common in modern free trade agreements. For example, chapter 26 of the Trans-Pacific Partnership requires countries to ratify the UNCAC and to implement anticorruption clauses as requested by the 1998 UN *Convention against Bribery of Foreign Officials*.

Among these “preventive policies,” Canada opted to include government procurement rules. At its core, the aim of procurement policy is to ensure that open, fair and transparent competition conditions apply to government purchasing. Such provisions ensure that public goods are purchased at fair market value and that the interests of taxpayers are protected. In addition to these objectives, however, successive governments have also attempted to use the procurement regime to meet other policy objectives related to corporate wrongdoing. Using their purchasing power, governments have tried to influence corporate behaviour by ensuring that companies that are found guilty of certain crimes are ineligible for public procurement projects.

Finally, participants stressed the importance of Canada’s “federal fact” in assessing its effectiveness at responding to corporate wrongdoing. Canada’s highly decentralized federation contributes to the difficulty of ensuring a coordinated and comparable approach to fighting white-collar crime. Ottawa’s scope is limited by the division of powers that complicate the integration of policy across different levels of government. Pulling together these disparate elements and challenges led several participants to the view that Canada’s heterogeneous mix of tools amounts to more of a patchwork than an integrated, cohesive policy framework to fight corporate wrongdoing. As one participant argued, improvements in the system are required at the federal level but also at the provincial level, where there are wide gaps in resources and approaches. Implementing a better system to share best practices was also identified as one way to improve Canada’s overall performance. In this regard, Quebec’s UPAC initiative (Unité permanente anticorruption) was cited as a prime example of a provincial innovation that might be useful in other jurisdictions, including at the federal level.

Alternative Policy Approaches in the US and the UK

The main tools used to address corporate wrongdoing are generally similar in Canada to those used in the US and the UK. They rely on prosecution, fines and imprisonment, as well as leniency up to and including immunity for cooperating parties.

However, many round table participants argued that the US and the UK are better equipped than Canada to deal effectively with corporate wrongdoing because they have added a DPA regime to their policy tool kit.

DPA settlements typically, but not necessarily, consist of monetary sanctions (usually large fines) and nonmonetary sanctions (governance reform, changes to the Board of Directors, termination of responsible employees), an admission of guilt, an agreement of cooperation and a determined probationary period. In return, charges against the corporation are waived as long as the corporation fulfills the agreement (Alexander and Cohen 2015).

Proponents of DPAs point to the fact that, in February 2014, the UK became the second jurisdiction after the US to adopt their use. The UK model differs from the US approach in that the judiciary system is intimately involved at the preliminary and approval stages of the process. DPAs in the UK also have a narrower scope because they can only be used in specific cases (mainly financial issues), whereas they can be used for practically any crime in the US (see appendix A for more details). A detailed comparison of the use of DPAs in practice, however, is difficult since they are just beginning to be used in the UK. It is important to note that both the US and the UK have similar debarment policies from public procurement for convicted companies.

In a recent study, Alexander and Cohen (2015) examine the settlement of corporate wrongdoing in the US since the introduction of DPAs in 1997. They note a significant increase in the total number of settlements by companies — up from 118 in the period 1997-2002 to 259 in the 2007-11 period. While plea agreements represented the vast majority (98 percent) of settlements before 2003, their share later fell to 56 percent of those decisions. And after a slow start when first introduced, DPAs now represent one fifth of all settlements. Related non-prosecution agreements (NPAs) represent one fourth.⁷ Thus far, a causal link in this research has not been established between the introduction of DPAs and the increase in cases. According to the authors of this study (one of whom presented to the round table), it is unclear whether the increased use of plea agreements and NPAs/DPAs was due to increased criminal behaviour, better enforcement or some other factors (e.g., perhaps companies have become more focused on rooting out and/or disclosing corruption). Nevertheless, the increase is significant, and its causes should be investigated further.

Advantages of DPAs

Round table participants noted several advantages to creating a DPA regime in Canada. First, by potentially avoiding the significant consequences of a corporate conviction (i.e., by not jeopardizing the viability of the firm), DPAs might sharpen the incentives for companies

to self-report wrongdoing and to cooperate with authorities during investigations (Manley 2015). This type of collaboration could expose more cases and help prosecutors gather evidence against the wrongdoer(s) with the aim of punishing only the guilty parties, rather than employees and shareholders who were not involved in the behaviour.

Advocates of DPAs also cite potential advantages for the government. For instance, DPAs are generally thought to increase the power of prosecutors. And by potentially avoiding trials, they may reduce prosecution costs. Additional resources may also be saved as internal investigations are funded more by the companies involved rather than entirely by the state. DPAs might also lower the risk to the government of losing a higher-profile case in court.

By giving more options to prosecutors, DPAs could result in higher fines that might broaden the social acceptability of their use. For example, in their study of the US experience, Cohen and Alexander (2015) find that the mean and median monetary sanctions with DPAs (\$29.8 million and \$101 million) have been higher than with plea agreements (\$8.7 million and \$69.4 million). This argument for DPAs is not uncontested, however, as the authors say that higher sanction likely reflect the fact that DPAs tend to be used for more severe offences.⁸ Furthermore, large firms are more likely to opt for DPAs, and they have tended to be charged with more costly and serious offences on average, which inflates the mean monetary penalty.

DPAs also seek to improve corporate governance via mandatory reforms. If successful, this can reduce the likelihood of future incidences of wrongdoing at the companies involved. Evidence of DPAs' positive governance impact are documented for the US by Kaal and Lacine (2014, 9). Their study shows that 97 percent of the 271 DPAs/NPAs examined triggered "relevant corporate governance changes" and "play[ed] a significant and increasing role in improving corporate governance in the United States." Almost 40 percent of the cases necessitated board changes; 30 percent included important provisions that changed the way business was conducted; for another 30 percent of cases, reporting obligations increased. Cohen and Alexander's (2015, 51) research confirms these results: "DPAs on average contain more governance terms" (3.2 versus 1.2 provisions for plea agreements). It is also noteworthy that DPAs are more likely to get corporate monitors for reforms (48 percent of DPA cases versus 26 percent for plea agreement), thereby raising the likelihood of implementing the compliance policies required by the agreement.

Criticism of DPAs

The use of DPAs also faces several criticisms. One is the concern that they may become an alternative to traditional prosecution, and thereby reduce corporate criminal

responsibility. If indeed the consequences are less serious for offenders with DPAs, then achieving broader social support or acceptance for these arrangements will be difficult. Some have argued that it is illegitimate to have the option to suspend criminal liabilities for corporations, while not affording citizens the same treatment.

People also worry that DPAs will give rise to strategic behaviour by actors on all sides. On the one hand, there is a risk of DPAs giving prosecutors too much power to sanction companies despite insufficient evidence simply because corporations may fear being officially charged or going to trial. One round table participant noted that the consequences of criminal prosecution can be so large that companies may feel they have little choice but to settle, and this could lead to prosecutorial overreach. On the other hand, corporations would likely push for the kind of agreement that suits them best. Specific to the US model, DPAs are also criticized because the process does not necessarily include court supervision. The settlement may be supervised by an external firm, which can lead to weaker compliance or favouritism, as seen in the Zimmer Holdings case.⁹ Efforts have been made in the UK to address these types of concerns, by involving the crown in every step of the procedure (Gibson Dunn 2015).

Detractors of DPAs argue that they are not necessary to achieve governance reforms, or that they are not sufficient — in that the reforms they have enacted have not been meaningful, or further that they fail to address the root cause of corrupt business cultures in some large corporations (Schneider 2015). According to a recent book on the US experience, DPAs fail to achieve meaningful structural or ethical reform within companies (Garrett 2015). The case of Pfizer is a cautionary (if extreme) example of what can go wrong when the prosecutor and the company ultimately fail to implement meaningful corporate reforms. After entering into a DPA in 2002 because one of its subsidiaries was charged for bribery, the company entered into three other DPAs for similar charges (in 2004, in 2007 and again in 2009). Thus, the governance reforms that were implemented in this period to prevent further illegal activities were evidently ineffective. Moreover, no employee was personally charged, which highlights the issue of who should ultimately be punished.¹⁰ Nonetheless, despite these criticisms Garrett does not urge the abandonment of DPAs. Instead, he recommends improving their effectiveness with greater judicial oversight, the use of court-appointed monitors, and more attention to agreement breaches (Rakoff 2015). In this light, the Pfizer experience is instructive on how to structure the monitoring and enforcement functions of DPA regimes, but not necessarily relevant to whether one should be implemented in the first place.

Weighing the pros and cons of DPAs, Jull and Burkett (2015) offered a nuanced view that DPAs “should not be viewed as a panacea, but rather as an available

prosecutorial tool to be employed in the right circumstances.” Several participants agreed and said that if they are adopted in Canada they should involve effective checks and balances, such as mandatory court-appointed monitors for cases above a specified threshold. This would be essential due to the potential for (or perceptions of) their misuse, including excessive prosecutor power and companies paying hefty fines and avoiding fundamental improvements to corporate practices.

Some Outstanding Issues and Potential Policy Directions

Central to these policy discussions is the question “Who should be prosecuted?” Many participants suggested that both companies and the individuals responsible for wrongdoing should be targeted, using a variety of methods. While it was widely acknowledged that promoting better corporate governance is an appropriate policy objective in its own right (regardless of our choices of policy instruments), it is important to not lose sight of the symbolic importance to the public of wrongdoers (individuals and companies alike) being brought to justice. Justice must not only be done but must also be seen to be done.

For some participants, this meant that boards of directors themselves must also be held responsible in cases in which it is established that they were directly involved in improper practices. (The related outstanding issue of whether directors should face some kind of liability when bad things happen under their watch because they did not exercise adequate oversight was less clear-cut.) Such prosecutions or other remedial processes could act as a significant deterrent and enhance the effectiveness of the overall enforcement strategy. Transparency, due process and reparation to victims should be key elements of the process.

The way forward: adopt a DPA regime

The consensus view of round table participants was that the federal government should seriously consider adopting a DPA regime. That said, any changes undertaken in the near term should form part of a broader longer-term strategy to make Canada’s policy approach more proactive and systematic, as opposed to making reactive or piecemeal changes. In this view, DPAs can be the first step but must be incorporated in a longer-term strategy that may involve other policy changes, a shift in approach and/or increased resources.

Design issues for a Canadian DPA

In June 2015, three international nongovernmental anticorruption organizations (Global Witness, Corruption Watch and Transparency International UK 2015) proposed eight

key guidelines related to implementing DPAs in the UK context. These principles are relevant to the policy discussion, if Canada were ultimately to adopt DPAs:

1. Prosecution should be the norm and DPAs should only be offered where there is a strong public interest argument in favour of their use.
2. There must be no immunity from prosecution for individuals included in a DPA or for the company from any undisclosed acts.
3. A full admission of wrongdoing should be made by the company as a prerequisite for a DPA.
4. Open justice principles must be followed (e.g., outcomes are public).
5. There must be transparency in the DPA process, including details of wrongdoing and a full statement of the public interest arguments in favour of a DPA.
6. Victim and/or community impact statements should be presented at all DPA approval hearings.
7. Affected foreign jurisdictions must be informed that an invitation to enter a DPA has been entered into and given advice on legal avenues for claiming damages and participating in the negotiations.
8. The sanctions imposed by a DPA must have significant deterrent value.

In comparing the relevance of the UK and US models, most participants leaned toward a regime structured more along the lines of the UK model. They seemed to focus on the importance of judicial oversight of the process, thereby enhancing legitimacy of the use of DPAs — though they acknowledged that their relatively recent adoption in the UK means it is too early to draw any strong conclusions from that experience. That said, a strong argument was made that federal officials and interested parties should seek a “made in Canada” solution — one that reflects our unique circumstances and the realities of Canadian firms operating on a global scale. Moreover, DPAs should be viewed as only one of many options in the prosecutor’s tool kit to combat corporate wrongdoing in Canada.

A few participants noted that Canada already appears to possess some DPA-like abilities under existing law, and an ongoing challenge has been that those abilities are not being widely used. Still, most agreed that by creating a DPA regime, the government would send a strong signal to prosecutors that such alternative means to dealing with corporate wrongdoing were appropriate and desirable, which would in itself be a good thing. As a final point, one participant reminded the group that language matters. Part of the problem with DPAs is that the term emphasizes the deferral of prosecution rather than the remedial steps that have been agreed to. It is too easy for the

public to see it as “the powerful avoiding prosecution or punishment.” As an alternative, it was suggested that a more appropriate term might be “Structured Remediation Agreement” to emphasize that a significant penalty has been imposed, reforms have been agreed to and a robust monitoring mechanism has been put in place.

Disentangling punishment of crime and public procurement

Participants agreed that one distinct overriding policy objective is the need to protect the integrity of the government procurement system. Governments must be able to purchase quality products at a fair price, and citizens should be reassured that tax dollars are being used judiciously and no one is cheating the public purse. Similarly, the policy framework should also focus on creating strong incentives so that companies will, in their own best interest, want to proactively adopt strong corporate codes of conduct (gold standards). This can be a win-win situation because better corporate practices can enhance a firm’s reputation and make it easier to attract and retain talented employees. Finally, the policy framework should ensure that those who break the rules are brought to justice and, as noted above, that justice is also seen to be served.

That said, we must be mindful that, in trying to achieve various policy goals, a variety of policy instruments should be considered. There is some risk of perverting the original intent of a specific policy instrument and reducing its effectiveness by trying to use it for other purposes. For instance, the focus of Canada’s procurement regime should be ensuring proper procurement in Canada, not punishing Canadian corporations for dubious actions abroad, which should be the aim of the judicial system.

While all agreed that complete disentanglement was not achievable in practice, clearly articulating the purpose of each policy instrument and the distinctions among those sometimes competing objectives was seen as a positive step forward.

The importance of enforcement

If Canada is serious about combating corporate wrongdoing, round table participants also agreed that more resources must be dedicated to investigation and enforcement as well as training for commercial crimes units. The RCMP, for instance, has a large and diverse mandate and limited resources. Compared with some of its other responsibilities, corporate wrongdoing has not always been viewed as a very high priority. A special body like the UPAC in Quebec might be a means to gather experts around a single goal and provide a forum to potentially develop specialized expertise on these issues over the long term. On a related matter, a few participants also noted that Canada needs better whistleblower protections, which could be a relatively inexpensive way to expose instances of corporate wrongdoing.

Raising public awareness of white-collar crime

Another broader issue identified at the round table was that white-collar crime has only a limited media profile in Canada, and many important cases remain under the media's radar. Similarly, several participants worried about a lack of public interest in these issues in many parts of the country. By contrast, in Quebec, corruption and political party fundraising have a major media profile, especially because of the recent Charbonneau Commission. This type of coverage can raise the pressure for public officials to enact reforms. Furthermore, some participants stated that the lack of public awareness in the rest of Canada may mitigate penalties against wrongdoers — particularly if white-collar crimes are seen as victimless, and therefore, less urgent than violent ones. Facing those public perceptions, and with limited resources available for enforcement, it is not surprising that prosecutors may be more likely to target violent criminals.

Some participants also stressed that more public dialogue is needed about how corporate misconduct can undermine Canada's economic performance. Better corporate standards can improve the economy by attracting and retaining highly productive employees and encouraging investment and growth. And the negative consequences may well go beyond economic considerations: "Corruption also contributes to the loss of public trust in government, higher levels of inequality in political influence, deterioration of public values and, ultimately, to the diminution of citizens' well-being or quality of life" (Gaspard and Hagan 2015).

Knowledge gaps in data and research

Finally, some of the policy issues identified above remain unresolved, in no small measure due to existing research and knowledge gaps. We simply do not know enough about the problems that we are seeking to address to deal with them effectively. The first knowledge gap relates to the limited availability of primary data (e.g., how many federal resources and full-time employees are dedicated to enforcement). Second, there is a general lack of research capacity and academic incentives for study in this area. Some participants expressed the view that there are insufficient university courses offered on corruption. As a result, too few business and law students receive a solid foundation on these important issues. Outside of law faculties, there is a limited amount of serious academic research being done. Moreover, there are not many public funding sources to study these topics. Private companies rarely demand or fund research in this area. Therefore, we need better incentives for objective, primary research. This would provide a better empirical grounding and public knowledge base regarding the existing judicial powers in Canada and whether they are being used effectively.

Conclusion

There is clearly a great deal of interest in how Canada deals with white-collar crime and corporate wrongdoing, and protects the integrity of the public procurement process. The consensus view of round table participants offers some general policy directions for the federal government to consider.

First, most participants supported adding to the prosecutors' tool kit by formally adopting a DPA regime in Canada. The critical issue is the manner in which such a regime will be structured. On that latter point, there was considerable interest in the newer elements of the UK's approach, which includes additional checks and balances over the US model, such as requiring judicially appointed monitors.

While no strong consensus emerged on the specific situations that should be eligible for the use of DPAs, or restrictions on their use, some general principles were highlighted: punishments must be adequate and fairly reflect the damages caused; proceedings must be transparent; and the corporate reforms required must effectively deter future wrongdoing. Moreover, the use of DPAs for corporations should not preclude appropriate punishments for implicated individuals. Several participants emphasized that justice should not only be served but also be seen to be served.

Secondly, participants cautioned that any changes under consideration should not aim to address or remedy individual cases in isolation. As noted above, policy adjustments made over the short term should be considered as part of a longer-term strategy to make the overall policy approach more systematic. There is plenty of work to be done to strengthen enforcement, encourage good corporate behaviour, punish the guilty and ensure the Canadian firms compete on a level playing field with foreign competitors. However, all of these individual policy challenges should be seen as elements of a whole. This approach would shield the government from charges that it is responding to one particular set of circumstances rather than taking a comprehensive approach that is in the public interest.

A third clear message that emerged from this event was that government resources in Canada for investigation and enforcement of corporate wrongdoing should be increased. This includes providing better training for employees in government commercial crimes units and facilitating information sharing among departments and across levels of government.

Fourth, there was a general acknowledgment that there are significant knowledge gaps that need to be addressed. These include the limited public availability of basic primary data and a general lack of research capacity and academic incentives to study this area, as well as little understanding of the long-run effectiveness of corporate compliance programs.

Finally, and related to these knowledge gaps, there needs to be greater awareness on the part of the media and the public of the importance of corporate wrongdoing. Round table participants suggested that policy debates on potential reforms must engage the broader public, with government officials, academics, nongovernmental organizations, citizens and corporations all playing a part. Only with a truly inclusive dialogue can we set high standards for a strong corporate culture in Canada and engender a broader social consensus to undertake proactive, rather than reactive, policy reforms on these important issues.

Appendix A: Overview of Deferred Prosecution Agreement Frameworks in the United States and United Kingdom

	United States	United Kingdom
<i>Agencies responsible</i>	U.S. Department of Justice (DOJ) Serious Fraud Office, Crown Prosecution Service, or other prosecutor designated by the Secretary of State for Justice	
<i>Legislation</i>	No specific legal framework, based on DOJ policies. First reported use was in a 1992 settlement with Salomon Brothers.	Schedule 17 of the Crime and Courts Act 2013 (applies in England and Wales only). DPAs became legal on February 24, 2014, and are just starting to be used.
<i>Policy guidance document(s)</i>	Guidelines were set in memos issued by the Deputy Attorney General, most importantly the “Holder Memo,” June 16, 1999, and the “Thompson Memo,” January 20, 2003 (Thompson 2003). Further revisions were made in 2006 and 2008 (Senko 2009)	Deferred Prosecution Agreements Code of Practice (Serious Fraud Office 2014)
<i>Oversight mechanisms</i>	Judges often rubber-stamp DPAs, but since 2013, some have been more active and demanding. The extent of judges’ authority to review or reject DPAs is unclear.	Courts must approve the DPA based on the criteria that it is “in the interests of justice” and is “fair, reasonable and proportionate.”
<i>Types of offences</i>	<p>DPAs are prohibited in cases of:</p> <ul style="list-style-type: none"> > National security > Foreign affairs > Individuals with two previous felony convictions > Cases normally deferred to state-level prosecution > Violation of public trust by a public official <p>In theory, DPAs may apply to any other offences and have been used more broadly than initially expected.</p>	<p>Legislation allows DPAs only for these cases:</p> <ul style="list-style-type: none"> > Theft, false accounting, suppression of documents, wrongful credit > Proceeds of crime offences, including money laundering > Fraud; obtaining services dishonestly > Bribery > Customs and taxation violations > Forgery and counterfeiting > Ancillary offences to any of the above
<i>Factors considered in using DPAs</i>	<p>General principle should be similar to bringing criminal charges against individuals, but additionally:</p> <ul style="list-style-type: none"> > Nature and seriousness of the offence > Pervasiveness of wrongdoing in the corporation > History of similar conduct > Timely and voluntary disclosure of wrongdoing > Existence and adequacy of compliance program 	<ul style="list-style-type: none"> > Sufficient admissible evidence that an offence was committed, or reasonable grounds that continued investigation would produce more evidence leading to conviction, and > Public interest factors against prosecution which “clearly outweigh” those in favour (Serious Fraud Office 2014, para. 2.5)

Appendix A: Overview of Deferred Prosecution Agreement Frameworks in the United States and United Kingdom (cont.)

	United States	United Kingdom
<i>Factors considered in using DPAs (cont.)</i>	<ul style="list-style-type: none"> > Remedial actions taken (or not) > Collateral harm to shareholders, employees, pensioners and the public > Whether prosecuting individuals for the offences would be adequate > Adequacy of civil or regulatory enforcement actions instead <p>These general purposes of criminal law must be adequately met:</p> <ul style="list-style-type: none"> > Assurance of warranted punishment > Deterrence of further criminality > Protection of the public > Rehabilitation of offenders > Restitution for victims and affected communities (Holder 1999) <p>A key consideration in offering a DPA rather than prosecution is how cooperative the company is.</p>	<p>Public interest factors against prosecution include:</p> <ul style="list-style-type: none"> > “Genuinely proactive approach” to cooperating with authorities > Lack of a history of similar conduct > An effective compliance program was in place but failed > Offence represents isolated actions by individuals > Conviction likely to have disproportionate consequences for offender > Conviction likely to have collateral effects on public, employees, and/or shareholders and pensioners <p>(Serious Fraud Office 2014)</p>
<i>Public access to DPA information</i>	DPAs are made public in the vast majority of cases, but not always.	All DPAs must be published along with the reasons for the court’s decision to accept them.
<i>Frequency and duration</i>	<p>There have been 308 DPAs or NPAs between 2000 and 2014, and there has been an upward trend over time (Gibson Dunn 2015).</p> <p>DPAs have become more common than corporate prosecutions. Most agreements are for two to three years.</p>	<p>DPA Code of Practice states that prosecution should be the default option unless there is a good reason not to do so.</p> <p>The first DPA could be made soon, involving the metals technology company Sarclad (Binham and Fortado 2015).</p>
<i>Handling DPA violations</i>	Prosecutors retain sole discretion to decide if a breach of the DPA occurs. Since DPAs include the company admitting to an incriminating statement of facts, escaping conviction would be difficult (Senko 2009).	Company must be given the opportunity to rectify an alleged breach. If not rectified, the prosecutor applies to the court to find the company in breach, which is judged based on a balance of probabilities. If found in breach, the prosecutor can seek a remedy, or reopen criminal proceedings.

Appendix B: Round Table Participants

Anita Anand	University of Toronto
Milos Barutciski	Bennett Jones LLP
David A. Brown	Davies Ward Phillips & Vineberg LLP
Christopher Burkett	Baker & McKenzie LLP
Mark A. Cohen	Vanderbilt Law School
Penny Collenette	University of Ottawa
Arthur Wesley Cragg	York University
Peter Dent	Deloitte LLP
John R. Dillon	Business Council of Canada
Graham Fox	Institute for Research on Public Policy
Ross Hornby	GE Canada
Susan Hutton	Stikeman Elliott
Kenneth Jull	Baker & McKenzie LLP
Jonathan Kates	University of Toronto
Paul Lalonde	Dentons Canada LLP
Eric Miller	Business Council of Canada
Jack Mintz	University of Calgary
Alesia Nahirny	Transparency International Canada
Jay Naster	Rosen Naster LLP
Amees Sandhu	SNC-Lavalin
Stephen Tapp	Institute for Research on Public Policy

Appendix C: Program

- 7:45 – 8:15 a.m.** **Continental breakfast**
- 8:15 – 8:30 a.m.** **Welcome and introduction**
- 8:30 – 9:30 a.m.** **Session 1 – Framing the issues**
Policy context, recent high-profile cases in Canada and abroad, and policy responses.
- What are the main policy instruments used in Canada to combat “white collar” crime?
 - How effective have these instruments been?
 - What recent policy changes have been made in Canada to strengthen the accountability and integrity of government procurement?
- Group discussion
- 9:30 – 10:30 a.m.** **Session 2 – What are other countries doing to address corporate wrongdoing?**
Overview of the policy approaches in the US and UK.
- Group discussion
- 10:30 – 10:45 a.m.** **Break**
- 10:45 a.m. – 12:00 p.m.** **Session 3 – Assessing Canada’s policy options**
- How should governments respond to corporate wrongdoing in order to preserve the integrity of their procurement process and public trust?
 - How do the existing rules affect the ability of Canadian firms to compete globally — are Canadian penalties for the same offences weaker or stiffer than or similar to those in other countries?
 - Is Canada’s current approach adequate to combat white collar crime or are changes needed?

- If changes are desirable, which policy adjustments would allow Canadian firms to compete on a level playing field with its foreign competitors without unduly compromising the government’s commitment to fair, open and transparent procurement processes?
- Should the federal government consider adopting deferred prosecution agreements? What are the pros and cons of this approach?

Group discussion

12:00 – 1:00 p.m.

Session 4 – Wrap-up and policy recommendations

Facilitated “tour de table” on the day’s discussion and policy recommendations going forward.

1:00 – 1:45 p.m.

Buffet lunch

Notes

1. For example, efforts to promote cooperation with law enforcement authorities might be more difficult to achieve if disclosure in one country could be used against the same company in another country.
2. Appendix A describes the use of DPAs in the UK and the US, and this issue is covered in more detail below.
3. The IRPP thanks Power Corporation, SNC-Lavalin and the Business Council of Canada, whose financial support covered some of the costs of this project.
4. Please see appendix B for the list of participants and appendix C for the event program.
5. Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)* passed in 2003, amended the *Criminal Code* to alter Canada's implementation of identification theory. Instead of being a "directing mind" (which was a common law concept), the amendments triggered liability on the *mens rea* (i.e., the mental state of intending to commit a crime) of a "senior officer" (defined as including directors, the Chief Executive Officer, Chief Financial Officer, etc. who also qualified as "directing minds" under the common law theory). Bill C-45 changed the definition of "senior officer" to require only that the individual be responsible for "*managing* an important part of the organization's activities," whereas the previous approach required a higher threshold — that the individual *establish* an organization's policies (emphasis added).
6. According to Hodgson and Leggett (2012), Canada's CFPOA applies to individuals and corporations, consistent with identification theory, as described earlier.
7. NPAs are similar to DPAs but no charges are filed in court (Alexander and Cohen 2015).
8. The US Department of Justice tends to use plea agreement when the offender's culpability is clearer because prosecutors are more likely to win the case.
9. Zimmer Holdings agreed to pay the firm of a former US Attorney General up to \$52 million to act as the monitor of its DPA and the Department of Justice prosecutor apparently favoured former colleagues, leading to an internal departmental inquiry (Shenon 2008).
10. Another issue to consider with DPAs is double jeopardy. Because they are public documents, they can effectively be used to carbon-copy a prosecution. For example, a corporation agreeing to a DPA in Canada could be prosecuted based on the same document, but in the US. However, the reverse situation cannot happen because of the rule against double jeopardy in Canadian law. Cooperation between the authorities is therefore needed to avoid situations where corporations could act strategically or where a US prosecution could pile on top of a Canadian case, therefore potentially lessening DPAs' ability to elicit corporate disclosure and cooperation.

References

- Akman, D., G. Jennings, and Z. Paliare. 2013. "The Usual Suspects? The Scope of Corporate Criminal Liability Under Canadian Antitrust Law." *International Antitrust Bulletin* 3: 9-10. Accessed October 8, 2015. <https://www.gowlings.com/KnowledgeCentre/article.asp?pubID=3048>
- Alexander, C., and M. Cohen. 2015. *Trends in the Use of Non-Prosecution, Deferred Prosecution and Plea Agreements in the Settlement of Alleged Corporate Wrongdoing*. Arlington, VA: Law & Economics Center, George Mason University School of Law. Accessed October 7, 2015. http://masonlec.org/site/rte_uploads/files/Full%20Report%20-%20SCJI%20NPA-DPA%2C%20April%202015%281%29.pdf
- Binham, C., and L. Fortado. 2015. "Two UK Groups in Talks with SFO over Bribery Plea Deals." *Financial Times*, July 23, 2015. Accessed August 11, 2015. <http://www.ft.com/intl/cms/s/0/c52d13ba-3159-11e5-91aca5e17d9b4cff.html#axzz3qilZEFLQ>
- Canadian Bar Association Anti-Corruption Team. 2015. "PWGSC Integrity Framework."
- CBA-ACT. See Canadian Bar Association Anti-Corruption Team.
- Ferguson, G. 1998. "Corruption and Corporate Criminal Liability." *Vancouver: International Centre for Criminal Law Reform and Criminal Justice Policy*. Accessed October 8, 2015. <http://www.icclr.law.ubc.ca/sites/icclr.law.ubc.ca/files/publications/pdfs/FergusonG.PDF>
- Garrett, B. 2015. *Too Big to Jail: How Prosecutors Compromise with Corporations*. Cambridge, MA: Belknap Press/Harvard University Press.
- Gaspard, V., and S. Hagan. 2015. "Corruption: The Hidden Tax on Global Growth." Geneva: World Economic Forum. Accessed December 1, 2015. https://agenda.weforum.org/2015/11/corruption-the-hidden-tax-on-global-growth/?utm_content=buffer74c5d&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer
- Gibson Dunn. (2015, January 6). "2014 Year-End Update on Corporate Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs)." Los Angeles, CA: Gibson, Dunn & Crutcher LLP. Accessed July 29, 2015. <http://www.gibsondunn.com/publications/Documents/2014-Year-End-Update-Corporate-Non-Prosecution-Agreements-and-Deferred-Prosecution-Agreements.pdf>
- Global Witness, Corruption Watch, and Transparency International UK. 2015. "Letter to David Green, Director, Serious Fraud Office." Accessed December 19, 2015. <http://www.cw-uk.org/wp-content/uploads/2015/06/DPA-letter-to-David-Green-19-June-2015.pdf>
- Hodgson, T., and C. Leggett. 2012. "Anti-Foreign Corruption Legislation Has More Bite: Are You Ready?" *White Collar Crime Bulletin*, December 2012. Toronto: Borden Ladner Gervais LLP. Accessed October 8, 2015. <http://www.mondaq.com/canada/x/212754/White+Collar+Crime+Fraud/AntiForeign+Corruption+Legislation+Has+More+Bite+Are+You+Ready>
- Holder, E. 1999. "Memorandum from Deputy Attorney General Eric H. Holder, Jr. to Heads of Department Components and U.S. Attorneys on Bringing Criminal Charges Against Corporations." Accessed August 11, 2015. http://federalevidence.com/pdf/Corp_Prosec/Holder_Memo_6_16_99.pdf
- Jull, K. 2013. "Corporate Criminal Liability: Canada Strikes the Right Balance." Toronto: University of Toronto Faculty of Law. Accessed October 8, 2015. <http://www.law.utoronto.ca/blog/faculty/corporate-criminal-liability-canada-strikes-right-balance>
- Jull, K., and C. Burkett. 2015. "Deferred Prosecution: Why Canada Should Adopt the UK Judicial Model." *Global Compliance News*. Accessed July 24, 2015. <http://globalcompliance.com/deferred-prosecution-why-canada-should-adopt-the-u-k-judicial-model-20150615/>
- Kaal, W., and T. Lacine. 2014. "The Effect of Deferred and Non-Prosecution Agreements on Corporate Governance: Evidence from 1993-2013." *The Business Lawyer* 70: 61-

119. Accessed October 8, 2015. <http://ssrn.com/abstract=2486570>
- Manley, J. 2015. "Canada needs new tools to fight corporate wrongdoing." *The Globe and Mail*, May 29, 2015. Accessed October 8, 2015. <http://www.theglobeandmail.com/report-on-business/rob-commentary/canada-needs-new-tools-to-fight-corporate-wrongdoing/article24675411/>
- OECD. See Organization for Economic Co-operation and Development.
- Organization for Economic Co-operation and Development. 2015. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Paris: Organization for Economic Co-operation and Development. Accessed November 23, 2015. <http://www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm>
- Organization for Economic Co-operation and Development Working Group on Bribery. 2011. "Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada." Paris: Organization for Economic Co-operation and Development. Accessed December 9, 2015. <http://www.oecd.org/canada/Canadaphase3reportEN.pdf>
- . 2013. "Canada: Follow-Up to the Phase 3 Report & Recommendations." Paris: Organization for Economic Co-operation and Development. Accessed December 9, 2015. <http://www.oecd.org/daf/anti-bribery/CanadaP3writtenfollowupreportEN.pdf>
- Public Works and Government Services Canada. 2015a. "Government of Canada's Integrity Regime: Ineligibility and Suspension Policy." Ottawa: Public Works and Government Services Canada. Accessed August 11, 2015. <http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>
- . 2015b. "Ineligibility List." Ottawa: Public Works and Government Services Canada. Accessed August 11, 2015. <http://www.tpsgc-pwgsc.gc.ca/ci-if/four-inel-eng.html>
- PWGSC. See Public Works and Government Services Canada.
- Rakoff, J. 2015. "Justice Deferred Is Justice Denied." *The New York Review of Books*, February 19, 2015. <http://www.nybooks.com/articles/2015/02/19/justice-deferred-justice-denied/>
- Schneider, S. 2015. "Deferred Prosecution Won't Put a Dent in Corporate Crime." *The Globe and Mail*, June 2, 2015. Accessed October 8, 2015. <http://www.theglobeandmail.com/report-on-business/rob-commentary/deferred-prosecution-wont-put-a-dent-in-corporate-crime/article24758293/>
- Senko, M. 2009. "Prosecutorial Overreaching in Deferred Prosecution Agreements," *Southern California Interdisciplinary Law Journal*, 19, 163-93.
- Serious Fraud Office. 2014. "Deferred Prosecution Agreements Code of Practice: Crime and Courts Act 2013." London, UK: Serious Fraud Office.
- Shenon, P. 2008. "Ashcroft Deal Brings Scrutiny in Justice Department." *New York Times*, January 10, 2008. Accessed August 11, 2015. <http://www.nytimes.com/2008/01/10/washington/10justice.html?pagewanted=all&r=0>
- Silcoff, J. 2015. "Ottawa Relaxes Integrity Rules for Firms Doing Business with Government." *The Globe and Mail*, July 6, 2015. Accessed October 8, 2015. <http://www.theglobeandmail.com/news/politics/ottawa-relaxes-integrity-rules-for-firms-doing-business-with-government/article25311595/>
- Thompson, L. 2003. "Memorandum from Deputy Attorney General Larry D. Thompson to Heads of Department Components and U.S. Attorneys on Principles of Federal Prosecution of Business Organizations." Washington, DC: Department of Justice.
- Transparency International. 2012. *Exporting Corruption? Country Enforcement of the OECD Anti-Bribery Convention Progress Report 2012*. Berlin: Transparency International. Accessed December 9, 2015. http://issuu.com/transparencyinternational/docs/2012_exportingcorruption_oecdprogress_en?e=2496456/2042485
- . 2015. "Corruption Perception Index 2015: Results." Accessed February 1, 2016. <https://www.transparency.org/cpi2015>
- United Nations Office on Drugs and Crime. 2015. "United Nations Convention against Corruption: Signature and Ratification Status as of 1 April 2015." Vienna: United Nations Office on Drugs and Crime. Accessed November 23,

2015. <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

UNODC. See United Nations Office on Drugs and Crime.

Van Assche, A. 2015. "Global Value Chains and the Rise of a Supply Chain Mindset." In *Re-designing Canadian Trade Policies for New Global Realities* edited by S. Tapp, R. Wolfe and A. van Assche. Montreal: Institute for Research on Public Policy. <http://irpp.org/wp-content/uploads/2015/04/AOTS6-van-assche.pdf>

World Bank. 2015. "World Bank Listing of Ineligible Firms & Individuals." Washington, DC: World Bank. Accessed October 16, 2015. http://web.worldbank.org/external/default/main?pagePK=64148989&piPK=64148984&theSitePK=84266&theSitePK=84266&contentMDK=64069844&querycontentMDK=64069700&sup_name=&supp_country=CA&sort_on=SUPP_NAME&sort_order=ascending&sort_data=text

World Trade Organization. 2015. *Agreement on Government Procurement*. Geneva: World Trade Organization. Accessed November 23, 2015. https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm



*Institute for
Research on
Public Policy*

*Institut de
recherche
en politiques
publiques*

Founded in 1972, the Institute for Research on Public Policy is an independent, national, bilingual, nonprofit organization. The IRPP seeks to improve public policy in Canada by generating research, providing insight and sparking debate on current and emerging policy issues facing Canadians and their governments. The Institute's independence is assured by an endowment fund, to which federal and provincial governments and the private sector contributed in the early 1970s.

Fondé en 1972, l'Institut de recherche en politiques publiques est un organisme canadien indépendant, bilingue et sans but lucratif. Sa mission consiste à améliorer les politiques publiques en produisant des recherches, en proposant de nouvelles idées et en suscitant des débats sur les grands enjeux publics auxquels font face les Canadiens et leurs gouvernements. L'indépendance de l'Institut est assurée par un fonds de dotation établi au début des années 1970 grâce aux contributions des gouvernements fédéral et provinciaux ainsi que du secteur privé.

Copyright belongs to the IRPP. To order or
request permission to reprint, contact:

IRPP
1470 Peel Street, Suite 200
Montreal, Quebec H3A 1T1
Telephone: 514-985-2461
Fax: 514-985-2559
E-mail: irpp@irpp.org