



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Foreign Affairs and International Development

FAAE • NUMBER 086 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, June 11, 2013

—
Chair

Mr. Dean Allison

Standing Committee on Foreign Affairs and International Development

Tuesday, June 11, 2013

•(1105)

[English]

The Chair (Mr. Dean Allison (Niagara West—Glanbrook, CPC)): Pursuant to the order of reference of Tuesday, June 4, 2013, we are looking at Bill S-14, An Act to amend the Corruption of Foreign Public Officials Act.

I want to thank our witnesses from Foreign Affairs for being here on such short notice. I know, Mr. Kessel, you're going to be leading off, but I'll just introduce your team. Mr. Kessel is the legal adviser. From the criminal, security, and diplomatic law division, we have Roland Legault, the acting director; Marcus Davies, a legal officer; and Maria Mascaró, who is also a legal officer.

Welcome to the team. Thank you once again for being here.

Mr. Kessel, we're going to turn it over to you for your opening remarks, and then we'll have some time over the next 55 minutes to ask some questions and move forward.

In the second hour we'll be taking some additional witnesses from outside the Department of Foreign Affairs. We'll see if we can go to clause-by-clause.

Mr. Kessel, welcome, sir. We will turn the floor over to you right now.

Mr. Alan H. Kessel (Legal Adviser, Department of Foreign Affairs and International Trade): Thank you.

Honourable members, Mr. Chair, it's my pleasure to be here with you today to discuss legislative amendments to the Corruption of Foreign Public Officials Act, CFPOA.

Since its introduction on February 5, Bill S-14 has progressed quickly and has received widespread support from both parliamentarians and stakeholders. It's our hope that members of this committee, and indeed all parties, will recognize its importance and move expeditiously to ensure that Bill S-14 is enacted as soon as possible.

Canada has long played a prominent role on the international stage in combatting corruption, and it takes allegations of corruption involving Canadian companies seriously. We have seen an increasing amount of international attention being paid to global corruption, and indeed the Canadian media have taken note of a number of recent high-profile cases in our courts.

The global fight against foreign bribery is intended to create a level playing field for international business so that Canadian companies can compete and win fairly in the pursuit of freer markets

and expanded global trade. Canada has been an active partner and has played a prominent role in international efforts to combat corruption and bribery. The CFPOA was first introduced to implement our international obligations under the Organization for Economic Cooperation and Development anti-bribery convention, as well as two more anti-corruption conventions through the OAS and the UN.

Needless to say, Canada takes its international obligations extremely seriously, and we are pleased that at its meeting in March 2013, the OECD working group on bribery praised the government for its amendments as measures that will implement the working group's recommendations to a very high degree, if passed as tabled within one year of tabling.

Mr. Chair, Bill S-14 signals our government's continued commitments to further deter and prevent Canadian companies from bribing foreign public officials in international business transactions. These are important amendments that will strengthen our anti-corruption laws and place Canada at the leading edge of countries taking strong action against corruption, action that will benefit Canadian companies both at home and abroad. These amendments will help ensure that Canadian companies continue to act in good faith. With this bill, Canada is sending a loud and clear signal to the world that we will not tolerate corruption.

I'll now take a minute to briefly explain the six technical amendments that are being proposed in Bill S-14.

First is the introduction of nationality jurisdiction to allow Canada to prosecute Canadians or Canadian companies on the basis of their nationality. Currently we can only do so after proving a substantial link between the offence and Canada.

Second, provide the RCMP with exclusive authority to lay charges under the act.

Third, remove the for-profit requirement so that bribery applies to all bribes and not just those paid by businesses that make a profit.

Fourth, increase the maximum imprisonment from five years to 14 years.

Fifth, introduce a new books and records offence specific to foreign bribery. Although there are already offences under the Criminal Code that criminalize falsification of books and records, they are not specific to foreign bribery. The penalties for the new offence would mirror those for the foreign bribery offence, that is, a maximum of 14 years' imprisonment and unlimited fines.

Finally, eliminate the facilitation payments exception under the CFPOA. You will note that the bill provides for a delay for the coming into force of the elimination of the facilitation payment defense. This delay will provide Canadian companies time to adjust their own practices and internal policies, if they have not already done so, to ban the use of facilitation payments in their day-to-day operations.

Honourable members, Mr. Chair, as I previously stated, the proposed changes have given Canada tentatively good marks with domestic stakeholders and at the OECD working group on bribery. We are pleased with the OECD working group on bribery's strong, positive endorsement of the significant progress made on investigations and prosecutions of the foreign bribery offence, the awareness-raising efforts undertaken by numerous government departments, and the proposed amendments to the CFPOA included in Bill S-14. It's important to note that these positive comments from the OECD working group on bribery were given with the strong caveat that the proposed amendments be adopted. Canada has invested a lot of credibility in getting this bill tabled, and we must report back to the OECD in the near future regarding its adoption.

• (1110)

Honourable members, Mr. Chair, Canada is positioning itself as a reliable supplier of the resources that emerging markets need to grow. We must create the conditions for Canadian businesses to succeed in the pursuit of its pro-trade agenda. Corruption does the opposite. It hinders economic growth and long-term prosperity. It fosters only an environment conducive to allowing other crimes to flourish. We expect our companies to abide by the laws of the countries they operate in, as well as to act in accordance with applicable Canadian laws and ethical standards and practices. We believe they can compete with the best and win fairly.

As the Minister of Foreign Affairs stated on February 5, when announcing these new measures:

Canada is a trading nation. Our economy and future prosperity depend upon expanding our trade ties with the world. This, we hope, is a good faith sign that Canada's good name retains its currency.

With that, my colleagues and I would be happy to answer any questions you may have.

Thank you, Mr. Chairman.

The Chair: Thank you very much, Mr. Kessel.

We're going to start with Madame Péclet, for seven minutes.

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you, Mr. Chair.

Thank you to the witnesses for being with us today.

Before I ask my questions, I want to tell the government members that we are very disappointed to see that they have decided to ram this bill through, even though it is extremely important to Canadians. I think it is important to mention that we would have needed more time to study it. In particular, the minister should have appeared to give us some explanations.

He appeared before the Standing Senate Committee on Foreign Affairs and International Trade. I therefore do not see why he could

not have taken the time to explain to members of the Standing Committee on Foreign Affairs and International Development of the House the changes being made to the Corruption of Foreign Public Officials Act. Since this Parliament is subjected to the whims of the government, we do not really know if these people are going to table a time allocation motion for this bill at third reading.

In my opinion, it is important to mention that this process is completely anti-democratic in that it does not give members the opportunity to really study the bill, which is extremely important.

Thank you very much for having listened to my preamble. I will now move on to my questions.

Mr. Kessel, the facilitation payments exception will come into force later than the rest of the bill, at a date to be set by cabinet. Are you aware of any consultations on how and when these facilitation payments will come into force?

[*English*]

Mr. Alan H. Kessel: Part of the development of this legislation has required quite a considerable amount of consultation, not only with the private sector but with NGOs and others. That is an ongoing responsibility the government has and that we take seriously.

One of the things that came up in a two-day workshop we conducted in 2012 was an acknowledgement that while facilitation payments are permitted under the current treaty, most countries—with the exception of Canada, the U.S., Australia, and New Zealand—were really left out, and we should really be moving on that. The issue of facilitation payments is very much in the mind of not only companies, which find it confusing and want clarity, but the NGOs with which we're working.

In developing this legislation, the suggestion was to make it clear that facilitation payments were going to go, but we do need to educate our own people, and that may take just a wee bit of time. We don't know the exact time at the present, but we are in consultation with a lot of companies and we will be providing government with some advice. Our expectation is that it will be sooner rather than later, in terms of coming into force.

• (1115)

[*Translation*]

Ms. Ève Péclet: Why will it be cabinet and not Parliament that will set this date? Is there any reason in particular? Parliament should be the legislative authority here.

[*English*]

Mr. Alan H. Kessel: I can't speak for the political level. I believe the concern was in ensuring that the companies, the private sector, and NGOs have enough time to at least put in place provisions that will allow cabinet to be satisfied that entry into force is now due. That will be indicated to cabinet and cabinet will make that decision.

[*Translation*]

Ms. Ève Péclet: Maximum sentences will be increased from 5 to 14 years. However, a number of legal associations believe that mandatory sentences take away the discretion of judges.

Could you confirm that mandatory sentences would prevent judges from using their discretionary power in the form of absolute or conditional discharge?

[English]

Mr. Alan H. Kessel: What I can confirm to you is that the sentencing that will be applied now to foreign bribes—Canadians who are bribing foreigners—will be the same as Canadians bribing Canadians. So what we are doing with this legislation is ensuring that there isn't a double standard, that when Canadians go overseas and bribe others, they will be suffering the same penalty as Canadians bribing other Canadians.

[Translation]

Ms. Ève Pécelet: What impact would this have on conditional sentences?

[English]

Mr. Alan H. Kessel: I'm sorry, that's an issue you would have to put to the judiciary. I'm not able to answer that.

[Translation]

Ms. Ève Pécelet: Because it would be impossible to reduce sentences or make them more lenient, this offence would be one of the most serious in the Criminal Code. Do we not run the risk of having sentences that are too harsh in proportion to the seriousness of the crime?

Mandatory sentences would take away judges' ability to take certain circumstances into consideration. How will judges be able to ensure that there is a balance?

[English]

Mr. Alan H. Kessel: My colleague has just reminded me that in fact these aren't mandatory sentences up to 14 years. They're a maximum of 14 years. There's quite a bit of discretion within the judiciary and the judge, bearing in mind how the case comes before him or her, to determine the degree to which they would apply a sentence or a fine. You will have seen in a number of cases that have already gone through our courts that there has been a considerable degree of discretion on the part of the courts.

As the culture changes in Canada with respect to whether these are acceptable or not, if companies actually come forward on their own to prosecutors and say they've noticed that this is going on.... When they do that, the judge, of course, would have the discretion as to whether the maximum is applied or not.

The Chair: That's all the time we have.

Thank you very much, Madame Pécelet.

We're going to move to the Conservatives and Mr. Dechert, for seven minutes.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair, and thank you, Mr. Kessel and your colleagues, for being here this morning. This is very important legislation for Canada to pass. I appreciate your assistance in helping with the drafting of the bill, helping to appear before Senate and parliamentary committees, and helping to move it along.

I believe that all the political parties, at least at this stage, are in agreement that this is something that needs to be done soon.

Last week I had the opportunity to speak to the Transparency International Canada conference, and they expressed wide support for this legislation. There were people in the room representing stakeholders in government, academia, NGOs, businesses, law firms, accounting firms, and other kinds of consulting firms, and they all agreed that this was valuable legislation that should pass very quickly.

Mr. Kessel, in your opening remarks you mentioned the 2008 OECD working group on bribery report. It outlined some recommendations for Canada. Would it be fair to say that Bill S-14 is a response to the OECD report? Can you specifically tell us how the legislation addresses each of those recommendations? As a signatory to a number of anti-corruption conventions, including the OECD convention, does this help Canada live up to its commitment under those conventions?

Could you address those questions for us?

• (1120)

Mr. Alan H. Kessel: In my third hour of response to Mr. Dechert, I'll get to a number of these questions.

Voices: Oh, oh!

Mr. Alan H. Kessel: Maybe I can condense it, because it's starting to feel like a law school exam again.

The reality is, absolutely. Let me also put it in context. You're not dealing with just some amorphous working group on bribery sitting in the basement of a building in Paris. We're actually dealing with peer review by our colleagues.

In the review of Canada, we had the U.S., a very strong reviewer, I must say, which holds its own high standards, together with Austria. One of the things that was developed under this particular piece of international treaty work was to say it's all very well that treaties are created and are sent out there, and they expect countries to just say yes, we've lived up to our obligations, but what they did put in there was a review mechanism by peers. I have to say that some of us don't like it too much, being under scrutiny; it was extremely painful on occasion sitting there in those meetings and being told we didn't live up to the values and ethics that we thought we had. The Americans are extraordinarily tough.

The result of that review and examination and entrapment reading was to come up with a series of very specific items. I don't want to belabour all of them, but, for example, the not-for-profit issue was one that they found extraordinarily odd, as it doesn't appear in many other countries. In fact, no other country has it in their legislation. That came up as an issue. The question of prosecuting nationals hasn't been obligatory in the past, and we didn't think about it about 20 years ago when we brought this in. It appears that smart accountants and lawyers other than ourselves have suggested to their clients that they should just go overseas, do their corrupt practices from an office in another country, and therefore they wouldn't be prosecutable in Canada. This was seen as a massive, gaping hole. Canada could stand up and say they were applying all the language of the law, but the spirit of it was being abrogated. The issue of nationality jurisdiction now says that if you're a Canadian and you think you're going to go to Unga Bunga, and you're going to sit there and do some horrible thing to some other country, forget it, because we're now going to get you. We have now made it easier for prosecutors, who before had to show a substantial link to this country before they could prosecute. It has removed that.

One of the things that we got high marks on was that particular thing.

The other thing was companies were running two sets of books. They had one set of books that were reviewed by the auditors and looked perfectly good, and another set of books that were not. We do have falsification legislation, but this was specifically designed to ensure that when their companies were overseas and their chief of marketing and sales was giving a cool million dollars to whomever to ensure that there was a deal, that went into a different set of accounting. What we've now put in place is a very clear criminalization of that particular issue.

The other question....

Mr. Bob Dechert: If I may just interrupt for one second, Mr. Kessel—I know I'm running out of time—you mentioned that the Americans are tough reviewers, and they obviously have delivered some messages to Canada through that OECD report, which we're addressing.

I understand, though, that the United States does not prohibit facilitation payments. That's one of the issues here. We are doing that. The Americans are currently allowing their companies to do facilitation payments, and there may be other countries as well that allow facilitation payments.

Can you just address that issue for a moment?

• (1125)

Mr. Alan H. Kessel: Absolutely.

There are very few countries that allow facilitation payments. I mentioned the four of them. The reason the U.S. still has it on its books is because it gets around that in a very serious way.

I'm going to ask Marcus Davies to just give us a very brief analysis of why the Americans, regardless of whether they have it on their books, are still much stronger than we are.

Do you want to take it, Marcus?

Mr. Marcus Davies (Legal Officer, Criminal, Security and Diplomatic Law Division, Department of Foreign Affairs and International Trade): Sure. Thank you very much.

As mentioned, there are some countries that still do permit it. When you look at the U.S. system, because of a constitutional division of powers, the U.S. has two mechanisms under their Foreign Corrupt Practices Act, and this is a longstanding piece of legislation.

They can go through criminal measures under the DOJ, which we do. We have to go criminally under our constitutional division of powers, but they can also go through their Securities and Exchange Commission and do administrative sanctions.

Mr. Bob Dechert: Because they have a federal securities regulator and we don't.

Mr. Marcus Davies: Right. We work quite a lot with our U.S. counterparts on this. They don't recommend at all that you pay facilitation payments. The reason is that those payments are probably illegal in another country and are probably criminalized by other jurisdictions.

The U.K. would be an example where they don't have that exemption, but they will use administrative sanctions to address this, so the person doesn't get a criminal record.

Whereas you will see with the U.S. higher numbers, most of their cases are done on books and record-keeping offences, and we're introducing this in our legislation. We are on the same par, but we have to use different tools to address the same types of practice. That's what we're doing with this legislation.

Mr. Bob Dechert: Thanks for the explanation.

The Chair: Thank you very much.

Mr. McKay.

Hon. John McKay (Scarborough—Guildwood, Lib.): Welcome. Thank you, Chair, and thanks to you all.

My first question has to do with the threshold, if you will, to trigger interest on the part of a crown attorney in whatever payments are being made, because a lot of this stuff is pretty low-level—\$20, \$40, \$60 to get through a border and so on. At this point, we don't seem to have much of a definition as to what will create the interest of a crown attorney in these payments.

As I would understand the way you've framed it, everything is illegal until it's not, which leaves a pretty major area of uncertainty in the law.

Why take that approach? Why not establish, either by regulation or in legislation, a *de minimis* requirement and a specific exclusionary requirement of what does not constitute these kinds of offences?

Mr. Alan H. Kessel: What we are doing is joining the vast majority of other countries in basically ruling out facilitation payments, together with Australia, which is now looking at doing the same thing as Canada, and New Zealand, which is in a similar position and probably will be along the same track soon. The U.S., we know, are looking at it, but they have their own ways of dealing with things. We would be practically the only country left in the OECD grouping that has facilitation payments, so we've joined the other countries that have totally outlawed facilitation payments.

What we're trying to do is build a culture and a value system in how businesses deal with their issues. You've raised a question of the prosecutions. While I dare not tread on the toes of the Canadian prosecution service, I would suggest that their objective would be to look at companies trying to influence business deals, and that is where they would focus their intentions.

I don't think the objective of the legislation, either in the past or in the future, would be to stop people from giving a bottle for Christmas or a tip to a tour guide or something like that. Clearly, this

Hon. John McKay: It's because there is this kind of grey area. In theory, at least, you could slip \$20 to a border guard and that could attract the attention of a prosecutor. Is that correct or not correct?

• (1130)

Mr. Alan H. Kessel: Let me say this—and I think we have this in common with other countries. We're not going to put Canadians into risk situations, such that if they're sitting in a bus somewhere and an odd fellow comes along and says that if you don't give me \$20 you can't get out of here. I don't think the Government of Canada is interested in putting people's lives in danger for \$20.

We have to have an intention to bribe a foreign official for a business transaction. What prosecutors look for, in legal parlance, is *mens rea*, and together with *actus reus*, they would then have a possibility.... I don't think anybody is going to die for it.

Hon. John McKay: Well, you and I went to the same boring lectures in the first year of criminal law.

Mr. Alan H. Kessel: Exactly.

Hon. John McKay: I understand that, but because there is no minimal threshold, if you will, everything is illegal until it's not.

I'm just pointing it out. I'm not sure I would react any differently than you.

I am puzzled, frankly, by the government's attitude, its kind of resistance to going ahead with my bill, which creates in effect a database of information on what's actually happening out there in terms of payments to governments.

It seemed to me that, one way or another, Canada will be dragged into the Dodd-Frank regime, and in effect that will be a database for a prosecutor. With a database, you then have some basis for determining what catches a criminal prosecutor's attention and what doesn't catch a criminal prosecutor's attention.

Let's face it, when I pay a licensing fee to obtain a mining concession, I am trying to facilitate my business; there is another line where I am bribing someone to facilitate my business.

I'd be interested in your thoughts as to whether in fact, while you are postponing the implementation of the facilitation payments section, the buildup of their database would in fact be useful to a prosecutor.

Mr. Alan H. Kessel: Thank you for that.

I wouldn't mind getting Marcus, who has been immersed in some of these things, to just give us a few thoughts as well.

Mr. Marcus Davies: Thank you.

We appreciate that there are different tactics taken toward databases. Looking at the issues of a database to provide a source of information, you can have an administrative or regulatory regime. I think the message we're trying to clarify with the CFPOA, the Corruption of Foreign Public Officials Act, is that this legislation is designed to put in place the penalties for when there is actually a bribe, and not to be addressing the regulatory and administrative procedures that companies would have to do for reporting in terms of the parallel mechanisms with taxation or things like this.

You did mention a question, though, that I wanted to come back to with regard to paying \$20, or issues like that. Our legal adviser brought up the issue of *mens rea*.

What is happening now with our international treaties is that they've all put on states an obligation to criminalize the bribery of foreign public officials and other offences that are associated with that. So it's creating a norm, a practice, an enforcement.

But then the institutional civil society recognized that there are environments where you may be asked to do this, to pay a bribe. For Transparency International, when dealing with crisis situations, failed state situations, their approach is to have civil societies put in place mechanisms and risk assessments in monitoring and evaluation, and create transparency in their laws so that it's clear the company doesn't pay.

The reason, and we see this with companies, is that if you pay a little bit, you get targeted to pay more. Then you find yourself drawn in.

Hon. John McKay: What's interesting to me about taking out the profit part of the definition is that you actually increase the universe of people who will be exposed to this kind of criminalization of their activity. Without the actual definition, a lot of NGOs operate on very low levels of "facilitation", for want of a better term.

I want to leave that question, but I still.... The difference between regulatory and criminalization is sometimes a very fine line. I would have thought that building up a regulatory data bank of information is a prosecutor's dream. You'd be able to look back at five years of filings and say to yourself, "Well, this is what they disclosed, and this is what they didn't disclose."

• (1135)

The Chair: John, that's all the time. You're actually over your time, but I wanted you to finish that thought.

So that's it.

Hon. John McKay: You're a generous chair.

I do have another one, if....

The Chair: Here's what I'm going to propose. We have notice of votes, and the bells will start in 10 minutes.

My suggestion to the committee is that we have one more round of five minutes each, with two interventions to the Conservatives and one to the NDP, and that we bring back our witnesses for the second hour—because we would not get back here until almost quarter to—on Thursday for the first hour.

Is that okay with everybody?

Some hon. members: Agreed.

The Chair: All right.

So here's what we'll do. We'll finish off one final round, which will be three interventions of five minutes each.

We'll start with Ms. Brown, go to the NDP, and finish off with Mr. Van Kesteren.

Ms. Brown, five minutes, please.

Ms. Lois Brown (Newmarket—Aurora, CPC): Thank you very much, Mr. Chair, and my thanks to all the witnesses for being here and giving us this information.

This is a very important piece of legislation, and I was pleased to hear you talk, Mr. Kessel, about how Canada is viewed by the rest of the world in this regard. We've taken a strong stand, and we are recognized as a country that is intent on combatting this problem.

I happened to be in an African country where a police official came on the bus. There were several parliamentarians there and the police officer was demanding a bribe from us to leave the country. It was kind of backwards to all of this.

Canada has signed on to the EITI because we believe we need to be clear about how we do business overseas. We signed on to the Equator Principles, and we have a councillor in place to deal with our extractive industries and our other businesses overseas.

Given that so many other countries are signatories to this OECD treaty we're discussing, can you talk a little bit about where Canada stands? Are we close to the top? Are we doing well? Are there other suggestions we can look at from other countries?

Mr. Alan H. Kessel: You raised a number of very important questions, and I think one of the key things is to remember that we should stop beating ourselves up. We're a country with a great reputation. We have a population that believes in these things, for the most part. We are in the top percentage of those who adhere to these values. We are in a group of countries that has helped craft the international regime that builds the playing field we want to be on.

So let's not beat ourselves up, but let's not relax completely. We have to make sure that we remain vigilant and don't become complacent, and that when we see changes are needed, we actually make them. I think the responsibility to be alert is something we also have as a trait. The perception of how we do business is crucial to our economy, as a major exporting country. How we react in these various countries is critical to how those deals come about. These things don't just happen because we're nice guys; they happen because we have a reputation to live up to.

You mentioned a particular incident. We don't believe that's the kind of thing this act is going after. We keep forgetting the full title is An Act to amend the Corruption of Foreign Public Officials Act. So this has to be in a business transaction. This whole legislation is about business transactions. Be careful when you start dragging in everybody else and thinking they're going to be caught by this thing, because the prosecutors going to a court know they're using a very fine filter. They have to prove a whole bunch of things, so they're not going to be doing malicious prosecutions just to make people's lives a misery. They're going to go after the characters who are out there trying to make a better deal by bribing somebody. Those are the ones we're trying to get. That's what this legislation is trying to do. But we're trying to do it surgically and strategically, and to ensure that we are with the others we're competing with.

We don't want to put Canadian businesses at a disadvantage, and we're not. In some cases, we're catching up with others. In other cases, we want to be leading. This is the delicate balance of where Canada should be, and it is crucial to the role parliamentarians and others play. In fact, to a large degree, you're ambassadors for this kind of legislation and ethic. When you're going off to your meetings internationally, and when you're talking to visiting delegations, we expect you to be putting that message out there. When we go off as the voice of the Government of Canada, when we're giving lectures at industry seminars, or when we're talking to compliance officials in businesses, we're doing it as part of this scheme.

Thank you for opening....

Is the chair going to rule me out...?

The Chair: I'm not going to cut you off; I'm going to cut her off.

• (1140)

Ms. Lois Brown: I just want to say that it was really interesting last week to see the article in *The Economist* magazine talking about the role that private enterprise is playing globally now and how important it is in light of that to have these kinds of measures in place.

Thank you.

The Chair: Thank you.

Madame Pécelet.

[*Translation*]

Ms. Ève Pécelet: Thank you, Mr. Chair. I will be sharing my time with Ms. Laverdière.

Mr. Kessel, at the beginning of your presentation, you mentioned having held consultations with private corporations. There are some questions to be asked about this.

The RCMP will have exclusive authority for the enforcement of the bill. Have you consulted the RCMP to find out whether it has the necessary resources? Since there have been only three convictions over the course of about 10 years, do you know whether the RCMP will have the resources it needs to implement this bill?

[*English*]

Mr. Alan H. Kessel: Thank you. That's a very important question. It's one that did come up in the other place as well.

I'm going to ask Marcus if he would repeat that. We don't speak for the RCMP, but we certainly listen to them and we can repeat what they say.

Mr. Marcus Davies: I can assure the committee that we work very closely with the RCMP. We have a trilateral approach. We work with the Department of Justice, the RCMP, and Finance. We're consulting with Transparency International.

The RCMP has set up international anti-corruption units. They have one based in Calgary. They had one based here in Ottawa, but they've recently been changing that into more of a proceeds of crime.... The reason they've done that is to coordinate it with their drug enforcement and to identify other areas of transnational crimes, so they can pick up corruption in addition to other crimes. So they're very active in it.

They have expert people. I was on the phone talking with them yesterday. We serve as a focal point for enforcement under the CFPOA. They have the team behind it, but most importantly from our perspective, they have the expertise behind it, and they participate in our meetings before the OECD, but they also, as we table our annual report to Parliament.... Our 13th annual report to Parliament extensively lists what the RCMP is doing; they're doing events in education with enterprises, in particular the day of dialogue, which was mentioned by Member of Parliament Bob Dechert. They are there consistently; they have good resources. They have expert people behind it, and they're committed to doing that.

That's why we have the 35 investigations, and they're proceeding with their investigations. The resources are there, and they are supportive and behind us, and they were part of the stakeholder consultations and encouraged this to happen.

Thank you.

[Translation]

Ms. Hélène Laverdière (Laurier—Sainte-Marie, NDP): Thank you for your presentation. As always, it was very interesting.

In the U.S., facilitation payments are essentially managed through the U.S. Securities and Exchange Commission. Am I to understand that it does not cover not-for-profit organizations?

[English]

Mr. Marcus Davies: Within Canada we don't have a national securities exchange commission. The focus on this legislation is preventing bribery.

Ms. Hélène Laverdière: If I may, I'll repeat my question in English.

In the U.S. the process for dealing with facilitation payments essentially goes through the Securities and Exchange Commission. Does that mean that in the U.S. not-for-profit organizations are not covered?

• (1145)

Mr. Alan H. Kessel: I'm not an expert in U.S. law, so I can't speak for their situation. My understanding is that you'd have to be listed on the Securities and Exchange Commission to be caught by their situation. The international humanitarian organizations we have been dealing with do not find a problem with the 30 or 40 other countries that already have a prohibition on facilitation payments.

So if there was going to be an uproar, it should have happened already, and we would have heard about it and they would have said something to us, because we're in touch with them. If they didn't, then I'd be angry.

Ms. Hélène Laverdière: To clarify, it was not a hostile question; it was a matter of understanding the system.

Very briefly, also, Mr. Kessel, you mentioned that this bill will cover most of the recommendations of the OECD working group. What will be left? What is the next challenge on the OECD working group recommendations that we won't have fulfilled yet?

[Translation]

Mr. Roland Legault (Acting Director, Criminal, Security and Diplomatic Law Division, Department of Foreign Affairs and International Trade): Thank you for this question.

I will speak in French, since no one on this side of the table has done so for some time.

It seems to me that an important recommendation was not implemented. This recommendation relates to the sharing of personal tax and income tax information. Canada cannot go this route because, based on its tax system and, more specifically, its income tax system, taxpayers provide personal information and the government is obligated to not disclose it. Taxpayers provide reliable information as part of the income tax system specifically because the information is not disclosed or used for other purposes.

[English]

The Chair: Thank you. That's all the time we have.

We're going to finish up with Mr. Van Kesteren, please, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Chair.

Thank you, again, for appearing before us this morning.

Mr. Kessel, you were going in this direction when Ms. Brown's questions were finished. The Department of Foreign Affairs already engages in training and outreach, I understand. I understand that the information regarding Canada's international obligations to prevent and combat corruption is already administered and taught by heads of mission and state, and commissioners in political offices.

Can you maybe elaborate on how Canada is engaged in this and what is being done now in our missions for combatting corruption?

Mr. Alan H. Kessel: You raise a very important question, because changing culture means educating people, not only making them aware, but making it part of their daily DNA of functioning.

We're very concerned that this come from the top; therefore, we train from the top. We have just completed two weeks of head-of-mission training, which is what we call "ambassador school", where we send our future heads of mission off for two weeks of intensive torture. Part of that is to make them aware of the kinds of obligations they have outside the country.

One of the key issues they deal with—of course, they administer the Trade Commissioner Service as well, and we deal with Canadian businesses abroad—is to be aware of what the domestic law is that applies to foreign bribery. We have a number of extraterritorial laws that apply outside the country. One of the key ones is anti-bribery. Some of the others, of course, relate to child sex tourism, and we make sure that our people know about that too.

One of the key things is that when you are interacting with Canadian business, or if you are in a situation where you're aware that there is a potential for or an actual bribery situation, you are obliged to advise us in Ottawa, and we are obliged to advise the RCMP.

Our reach in terms of application of this law is not just a passive one; it's an active one. We take that seriously. So we are, in the field and domestically, ensuring that our people are aware.

• (1150)

Mr. Dave Van Kesteren: In layman's terms, let's just say that there is a mining company in Central America and there are charges laid that there is some awful stuff going on. Do you become actively involved and investigate that yourself?

Mr. Alan H. Kessel: No, in fact the law that we're speaking about.... If they're charged in that country, then by definition the law has caught up with them.

The real question is if we become aware that there is a Canadian in a foreign country who has used either money or goods or gifts or other ways to make a profit on a deal; if we become aware of that—

Mr. Dave Van Kesteren: I'm sorry to interrupt, but what I meant is, for instance, if you're hearing things, you would then go to the Canadian company and say, "Listen, we're hearing such and such. We just want to remind you about the laws and what your obligations are."

Is it a pre-emptive...?

Mr. Alan H. Kessel: If we do hear that there's something going on, we have an obligation, one, to inform the RCMP.... Any investigation is done by the RCMP. We are not investigators. We merely pass on that kind of information.

Clearly, if a company is under investigation in a foreign jurisdiction, we would pass that on to the RCMP. But usually they'll know about it and tell us. If we hear there is a possibility, even

within the company, we would.... We deal with companies on a daily basis. They know what our job is. Our job is to ensure that Canadian law is taken into account. For instance, any number of us at this table go off to conferences where private companies and other groups, Transparency or NGOs, are attending because they're talking about corruption. Our job at that point is to say to them, "These are the laws that Canada applies. This is how you should be aware. Govern yourself accordingly."

That's the degree to which we deal with it. We're on the policy level. The RCMP is on the investigation level and the prosecution service is on the prosecution level.

Mr. Dave Van Kesteren: The point is, though, that your officers are trained to make sure our companies know the laws and follow them. Otherwise the result would be that the RCMP—

Mr. Alan H. Kessel: One of our trained officers wants to put a word in here.

Mr. Roland Legault: The type of interaction you're talking about does occur, but it occurs through the Trade Commissioner Service, which is included in this training program. Trade commissioners, who go abroad to help Canadian companies establish themselves or otherwise find business in foreign countries, work frequently with the Trade Commissioner Service. We train the Trade Commissioner Service to be aware of this sort of thing.

When a company comes to the Trade Commissioner Service for assistance either in getting that first foothold or in understanding the bidding system, or any of those things, the Trade Commissioner Service will provide this kind of information to make sure the company is aware of the law. In the event that the Trade Commissioner Service becomes aware of information that might suggest something untoward is going on, it is obliged to report it to us, as Mr. Kessel said, and then we are obliged to report it to the RCMP.

The Chair: Thank you very much. To our witnesses, thank you very much for being here this morning.

As I mentioned, we're going to adjourn the meeting now. We will not have time for all of the full testimony when we get back, so we'll continue on Thursday.

The meeting is adjourned.

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the Parliament of Canada Web Site at the following address: <http://www.parl.gc.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : <http://www.parl.gc.ca>