

Permanent Mission of Canada
to the United Nations



Mission permanente du Canada
auprès des Nations Unies

Note: PRMNY-2886

The Permanent Mission of Canada presents its compliments to the Office of Legal Affairs of the United Nations.

The Permanent Mission of Canada is writing in response to the letter of December 31, 2015 from the Office of Legal Affairs requesting excerpts of national provisions that Member States may wish to submit regarding the establishment of jurisdiction over their nationals whenever they serve as United Nations officials or experts on mission relating to crimes as known in their existing national criminal law, particularly those of a serious nature. Please find attached two documents; a Government of Canada Compilation of National Provisions on Criminal Accountability for UN Officials or Experts on Mission and Annex 1 - Relevant Statutory Provisions.

The Permanent Mission of Canada to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

New York, June 09, 2016



Enclosed:

- Government of Canada Compilation of National Provisions on Criminal Accountability for UN Officials or Experts on Mission
- Annex 1 - Relevant Statutory Provisions

GOVERNMENT OF CANADA COMPILATION OF NATIONAL PROVISIONS ON CRIMINAL ACCOUNTABILITY FOR UN OFFICIALS OR EXPERTS ON MISSION

Canada's capacity to hold to account its nationals, whenever they serve as United Nations officials or experts on mission, for criminal and other unacceptable conduct is embodied in several pieces of legislation. These include:

- a) The *Criminal Code of Canada (Criminal Code)*
- b) The *National Defence Act (NDA)*
- c) The *Royal Canadian Mounted Police Act (RCMP Act)*
- d) The *Crimes Against Humanity and War Crimes Act (CAHWCA)*
- e) The *Corruption of Foreign Public Officials Act (CFPOA)*

Canadian law also extends Canada's territorial jurisdiction to adjudicate criminal offences where there is a "real and substantial connection" to Canada and this may also apply in some scenarios, bearing in mind that the connection must be based on the offence (e.g., part of the offence or substantial effects in Canada) and not the nationalities of offenders, victims or other persons.

National Provisions

Canadians engaged as United Nations (UN) officials and experts on foreign missions broadly fall into two categories: military and non-military personnel. Generally speaking, the *Criminal Code* largely extends criminal law jurisdiction over civilian personnel, while the NDA and the RCMP Act have specific regimes that regulate the conduct of members of the Canadian Forces and members of the RCMP (inside and outside of Canada) respectively.

Provisions relating to jurisdiction, offences, and procedural matters thought most likely to apply in scenarios where Canadian nationals or other persons in Canada may have committed criminal offences outside of Canada in the course of service as UN as officials or experts on mission are referenced in the following text and have been included *verbatim* as an annex. All Canadian legislation is enacted in English and French and can be accessed online at:

<http://laws-lois.justice.gc.ca/eng/> (English texts)

<http://laws-lois.justice.gc.ca/fra/> (French texts)

Official versions in two-language format may also be downloaded in PDF format from either site. Other provisions mentioned but not included below may be found at those locations.

a) *Criminal Code*, R.S.C. 1985, c. C-46

The exercise of criminal law jurisdiction under the *Criminal Code* is primarily premised on the principle of territoriality. The *Criminal Code* applies to all persons in Canada and, in accordance with this principle, Canadian criminal law generally applies to offences committed within Canada. The Parliament of Canada may, however, expressly extend extraterritorial application of Canadian criminal offences under its prescriptive jurisdiction and has enacted several statutory exceptions to the territorial ambit of Canadian Criminal law jurisdiction. The statutory exceptions to the territorial ambit of Canadian criminal law jurisdiction are primarily contained in section 7 of the *Criminal Code*. The nature of the conduct covered by these extraterritorial provisions is described generally below:

- i. offences that occur on an aircraft (subsections 7(1) & 7(2))

- ii. offences in relation to cultural property (subsection 7(2.01))
- iii. offences against or on board fixed platforms or international maritime navigation (subsection 7(2.1))
- iv. offences against or on board fixed platforms or navigation in the internal waters or territorial sea of another state (subsection 7(2.2))
- v. nuclear terrorism offence committed outside Canada (subsection 7(2.21))
- vi. space station — Canadian crew members (subsection 7(2.3))
- vii. hostage taking (subsection 7(3.1))
- viii. certain offences against internationally protected persons (subsection 7(3))
- ix. certain offences against UN or associated personnel (subsection 7(3.71))
- x. offences involving nuclear material, explosives, or other lethal devices (subsections 7(3.2) and 7(3.72))
- xi. offences in relation to the financing of terrorism (subsection 7(3.73))
- xii. terrorism offence committed outside Canada (subsection 7(3.74))
- xiii. terrorist activity committed outside Canada (subsection 7(3.75))
- xiv. Offences committed by public servants (subsection 7(4))
- xv. Offences in relation to sexual offences against children (subsection 7(4.1))
- xvi. Certain offences related to trafficking in persons (subsection 7(4.11))

The structure of each section 7 provision is unique: some apply to specific listed offences, some apply to classes of offences and some extend jurisdiction to all offences “punishable on indictment,” which includes all serious offences in both the *Criminal Code* and every other federal statute. Where adjudicative jurisdiction is extended, each specific offence provision must usually be read in conjunction with section 7 to determine if the actual offence applies to specific extraterritorial fact scenarios.

The full texts of the section 7 offences described above, as well as other federal offences that are most likely to arise in scenarios where the accused is a Canadian national serving as a UN official or expert on mission have been attached as an Annex.

Whether adjudicative jurisdiction over criminal offences would apply to persons of Canadian nationality or residence serving with the UN would depend on the specific legislation and circumstances. For greater clarity, some offences are discussed in greater detail below.

Extraterritorial jurisdiction under subsection 7(4) – offences committed by public servants

Canadian courts are vested with criminal law jurisdiction over certain government officials deployed abroad under subsection 7(4) of the *Criminal Code*:

Everyone who, while employed as an employee within the meaning of the Public Service Employment Act in a place outside Canada, commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

This extraterritorial jurisdiction is intended to complement the immunities from which these employees generally benefit outside Canada. Persons asked by the Government of Canada to serve with the UN consistent with their official functions (e.g. an associate expert) may be covered by subsection 7(4).

The scope of this section does not cover *all* employees of the Government of Canada serving outside Canadian territory. For example, subsection 7(4) would not apply to members of the Royal Canadian Mounted Police or the Canadian Armed Forces, non-federal (e.g.

provincial or municipal) officials or ordinary Canadians who might be serving with the UN as they would not fall within the definition of "employee". However, the Royal Canadian Mounted Police and the Canadian Armed Forces are covered under their own respective legislation and codes of conduct, which will be discussed in more detail below.

Further, offences which apply to Canadian officials by virtue of their status (other than military personnel) would generally not extend to service with the UN as an appointed Special Representative, Secretariat official or expert on mission. Where a Canadian official takes up such a position, some form of leave will be granted consistent with the need to maintain the same degree of independence and neutrality of the international civil service as applies to the Federal Public Service in Canada.

Extraterritorial jurisdiction under subsection 7(4.1) – offences in relation to sexual offences against children

This provision authorizes Canadian courts to exercise jurisdiction over Canadian citizens or Canadian permanent residents with respect to a wide range of sexual exploitation and abuse offences against children and young adults even when committed outside Canada:

Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act.

This provision extends jurisdiction in respect of sexual offences in which the age of the victims is a factor, including the various forms of sexual exploitation or assault against minors and offense in relation to child prostitution and child pornography that implement the *Second Optional Protocol to the Convention on the Rights of the Child*.

Procedural provisions regarding the commencement of *Criminal Code* proceedings

Of note, the consent of the Attorney General of Canada is required to commence or continue proceedings when they are deemed to have been committed in Canada (see subsections 7(4.3) and 7(7)).

In respect of all offences listed under section 7 of the *Criminal Code*, subsection 7(5) addresses the place in which proceedings may be commenced and dealt with.

The requirement for the presence of the accused at trial and any exceptions are set out in subsection 7(5.1). Protections for an accused who has already been tried outside of Canada for the alleged conduct are set out in subsection 7(6).

Sections 481.1 to 481.3 of the *Criminal Code* incorporate similar procedural mechanisms regarding the commencement of proceedings and the appearance of the accused at trial, applicable to other extraterritorial *Criminal Code* offences.

b) *National Defence Act*, R.S.C. 1985, c. N-5

The *Code of Service Discipline (CSD)* is the legislative authority of the Canadian Armed Forces military justice system and establishes the following:

- who is subject to the military justice system;
- the service offences for which a person can be charged and the maximum punishment that may be imposed;
- who has the authority to arrest, hold and release CAF members from custody;
- service tribunals and their jurisdiction to conduct trials of persons charged with service offences; and
- establishes processes for the review and appeal of findings and sentence after trial

Specifically, section 60 of the NDA outlines who is subject to the CSD and extraterritorial jurisdiction is addressed in sections 67, 130(1)(b) and 132.

Pursuant to section 60 members of the Canadian Armed Forces ("CAF") are subject to the CSD when deployed on UN missions abroad. The NDA extends to civilians in certain circumstances, where civilians are "attached to" or "accompanying" Canadian Forces units. As a result, civilians who would not otherwise be subject to the *Code of Service Discipline* are subject to the CSD if they are:

- *a person serving in the position of an officer or non-commissioned member of any force raised and maintained outside Canada by Her Majesty in right of Canada (paragraph 60(1)(e))*
- *a person who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place (paragraph 60(1)(f))*
- *a person who, in respect of any service offence committed or alleged to have been committed by the person, is in civil custody or in service custody (paragraph 60(1)(i))*
- *a person who while serving with the Canadian Forces under an engagement with the Minister whereby the person agreed to be subject to [the Code of Service Discipline] (paragraph 60(1)(j))*

Service offences under the *CSD* include uniquely military offences ordinary Canadian criminal offences, other federal offences and in certain circumstances, offences under foreign laws.

c) *Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10*

The Royal Canadian Mounted Police ("RCMP") is Canada's federal and national police force primarily engaged with law enforcement at the federal level. Members of the RCMP may be deployed to serve in UN operations abroad in various capacities, as envisioned by section 4 of the *Royal Canadian Mounted Police Act* ("RCMP Act").

Part IV of the RCMP Act regulates the conduct of the members of the RCMP regardless of where they serve. The underlying purposes of Part IV include:

- *to ensure that members are responsible and accountable for the promotion and maintenance of good conduct in the Force (paragraph 36.2(c))*

- to provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members (paragraph 36.2(b))
- to respect the rights of all persons (paragraph 37(a))
- to maintain the integrity of the law, law enforcement and the administration of justice (paragraph 37(b))
- to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority (paragraph 37(c))
- to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue (paragraph 37(e))
- to maintain the honor of the Force and its principles and purposes (paragraph 37(h))

Members of the RCMP are subject to a code of conduct, the breach of which renders them liable to be tried by the Conduct Board and the criminal justice system. According to section 39 of the RCMP Act such members of the RCMP may be dealt with under the RCMP Act either in or outside Canada:

39(1) Every member who is alleged to have contravened a provision of the Code of Conduct may be dealt with under this Act either in or outside Canada,

(a) whether or not the alleged contravention took place in or outside Canada and

(b) whether or not the member has been charged with an offence constituted by, included in or otherwise related to the alleged contravention or has been tried, acquitted, discharged, convicted or sentenced by a court in respect of such an offence.

No interference with jurisdiction of courts

(2) Nothing in this Act affects the jurisdiction of any court to try a member for any offence triable by that court.

The *Code of Conduct of the Royal Canadian Mounted Police* also mentions that the *Code* applies to every member of the Force and establishes responsibilities and the standard of conduct for members, on and off duty, in and outside Canada.

d) Crimes Against Humanity and War Crimes Act, S.C. 2000, c.24

Canada became the first State to incorporate the obligations of the *Rome Statute of the International Criminal Court* ("Rome Statute") into its domestic laws, with the enactment of the *Crimes Against Humanity and War Crimes Act* ("CAHWCA") in June 2000. The CAHWCA criminalizes the most serious crimes of concern to the international community, as defined under Articles 5-8 of the Rome Statute. Under the CAHWCA, Canadian courts have jurisdiction to prosecute acts of genocide, crimes against humanity, and war crimes (section 6) and breaches of responsibility by military commanders or superiors (section 7), when alleged to have been committed abroad and when the jurisdictional requirements of section 8 of the CAHWCA are met.

Section 8 of the CAHWCA provides:

A person who is alleged to have committed an offence under section 6 or 7 may be prosecuted for that offence if

- (a) *at the time the offence is alleged to have been committed,*
 - (i) *the person was a Canadian citizen or was employed by Canada in a civilian or military capacity,*
 - (ii) *the person was a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state,*
 - (iii) *the victim of the alleged offence was a Canadian citizen, or*
 - (iv) *the victim of the alleged offence was a citizen of a state that was allied with Canada in an armed conflict; or*
- (b) *after the time the offence is alleged to have been committed, the person is present in Canada.*

Under section 9 of the CAHWCA, a person may be tried in any territorial division in Canada in respect of offences alleged to have been committed outside of Canada.

The *Criminal Code* provisions relating to the presence of an accused at trial, and any exceptions, also apply to these prosecutions (subsection 9(2) of the CAHWCA). Proceedings under sections 6 and 7 of the CAHWCA may be commenced only with the personal consent of the Attorney General of Canada.

e) *Corruption of Foreign Public Officials Act, S.C. 1998, c.34*

The *Corruption of Foreign Public Officials Act* ("CFPOA") is Canadian legislation that implements the Organisation for Economic Co-operation and Development *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Offences created by the CFPOA (bribing foreign public officials, falsifying accounts, etc.) apply to Canadian nationals and permanent residents deployed as UN officials and experts on mission. The CFPOA applies to natural persons – Canadian citizens and permanent residents – as well as legal persons, such as corporations organized under the federal or provincial/territorial laws of Canada.

Section 5 of the CFPOA extends jurisdiction to acts committed outside Canada:

5 (1) Every person who commits an act or omission outside Canada that, if committed in Canada, would constitute an offence under section 3 or 4 — or a conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under that section — is deemed to have committed that act or omission in Canada [].

The definition of "foreign public official" includes officials of international organisations such as the UN. This means that a Canadian who offered or paid a bribe to a UN official could be prosecuted regardless of where the offence took place.

The CFPOA does not address "passive corruption" scenarios where bribes are solicited or accepted by a person who is an international official of Canadian nationality or residence. This means that a Canadian who solicited or accepted a bribe in the course of working as a UN official or expert on mission could not be prosecuted.

Conclusion

The Government of Canada agrees with the Secretary General that criminal malfeasance by persons exploiting their status and positions as UN officials or experts on mission represents a serious threat to the credibility and work of the UN and the thousands of international civil servants who serve the public interest with honesty, integrity and professionalism. We also

agree that, as the UN has neither the jurisdiction nor the capacity to deal with serious criminal cases, this is primarily a matter for the Member States whose nationals serve with the UN in various capacities to address, bearing in mind that a balance must be struck in which criminality of any kind can be investigated, prosecuted and punished quickly and effectively, while at the same time protecting the human rights of accused persons and the functional independence and neutrality of the UN and its officials. Canada is committed to finding jurisdictional and practical responses to this problem and to the investigation and prosecution of any offences alleged to have been committed by Canadians to the full extent of our capacity and jurisdiction.

Annex 1

Relevant Statutory Provisions

The Criminal Code of Canada

Offences committed on aircraft

7 (1) Notwithstanding anything in this Act or any other Act, every one who

(a) on or in respect of an aircraft

(i) registered in Canada under regulations made under the *Aeronautics Act*, or

(ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft registered in Canada under those regulations,

while the aircraft is in flight, or

(b) on any aircraft, while the aircraft is in flight if the flight terminated in Canada,

commits an act or omission in or outside Canada that if committed in Canada would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

(2) Notwithstanding this Act or any other Act, every one who

(a) on an aircraft, while the aircraft is in flight, commits an act or omission outside Canada that if committed in Canada or on an aircraft registered in Canada under regulations made under the *Aeronautics Act* would be an offence against section 76 or paragraph 77(a),

(b) in relation to an aircraft in service, commits an act or omission outside Canada that if committed in Canada would be an offence against any of paragraphs 77(c), (d) or (g),

(c) in relation to an air navigation facility used in international air navigation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(e),

(d) at or in relation to an airport serving international civil aviation, commits an act or omission outside Canada that if committed in Canada would be an offence against paragraph 77(b) or (f), or

(e) commits an act or omission outside Canada that if committed in Canada would constitute a conspiracy or an attempt to commit an offence referred to in this subsection, or being an accessory after the fact or counselling in relation to such an offence,

shall be deemed to have committed that act or omission in Canada if the person is, after the commission thereof, present in Canada.

Offences in relation to cultural property

(2.01) Despite anything in this Act or any other Act, a person who commits an act or omission outside Canada that if committed in Canada would constitute an offence under section 322, 341, 344, 380, 430 or 434 in relation to cultural property as defined in Article 1 of the Convention, or a conspiracy or an attempt to commit such an offence, or being an accessory after the fact or counselling in relation to such an offence, is deemed to have committed that act or omission in Canada if the person

- (a) is a Canadian citizen;
- (b) is not a citizen of any state and ordinarily resides in Canada; or
- (c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and is, after the commission of the act or omission, present in Canada.

(2.02) For the purpose of subsection (2.01), Convention means the *Convention for the Protection of Cultural Property in the Event of Armed Conflict*, done at The Hague on May 14, 1954. Article 1 of the Convention is set out in the schedule to the *Cultural Property Export and Import Act*.

Offences against fixed platforms or international maritime navigation

(2.1) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada against or on board a fixed platform attached to the continental shelf of any state or against or on board a ship navigating or scheduled to navigate beyond the territorial sea of any state, that if committed in Canada would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 78.1, shall be deemed to commit that act or omission in Canada if it is committed

- (a) against or on board a fixed platform attached to the continental shelf of Canada;
- (b) against or on board a ship registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (c) by a Canadian citizen;
- (d) by a person who is not a citizen of any state and who ordinarily resides in Canada;
- (e) by a person who is, after the commission of the offence, present in Canada;
- (f) in such a way as to seize, injure or kill, or threaten to injure or kill, a Canadian citizen; or
- (g) in an attempt to compel the Government of Canada to do or refrain from doing any act.

Offences against fixed platforms or navigation in the internal waters or territorial sea of another state

(2.2) Notwithstanding anything in this Act or any other Act, every one who commits an act or omission outside Canada against or on board a fixed platform not attached to the continental shelf of any state or against or on board a ship not navigating or scheduled to navigate beyond the territorial sea of any state, that if committed in Canada would constitute an offence against, a conspiracy or an attempt to commit an offence against, or

being an accessory after the fact or counselling in relation to an offence against, section 78.1, shall be deemed to commit that act or omission in Canada

- (a) if it is committed as described in any of paragraphs (2.1)(b) to (g); and
- (b) if the offender is found in the territory of a state, other than the state in which the act or omission was committed, that is
 - (i) a party to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988, in respect of an offence committed against or on board a ship, or
 - (ii) a party to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10, 1988, in respect of an offence committed against or on board a fixed platform.

Nuclear terrorism offence committed outside Canada

(2.21) Despite anything in this Act or any other Act, everyone who commits an act or omission outside Canada that if committed in Canada would constitute an offence under any of sections 82.3 to 82.6, or a conspiracy or attempt to commit such an offence, or being an accessory after the fact or counselling in relation to such an offence, is deemed to have committed that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;
- (b) the act or omission is committed on an aircraft that
 - (i) is registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) is leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission is a Canadian citizen; or
- (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada.

Space Station — Canadian crew members

(2.3) Despite anything in this Act or any other Act, a Canadian crew member who, during a space flight, commits an act or omission outside Canada that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission is committed

- (a) on, or in relation to, a flight element of the Space Station; or
- (b) on any means of transportation to or from the Space Station

Space Station — crew members of Partner States

(2.31) Despite anything in this Act or any other Act, a crew member of a Partner State who commits an act or omission outside Canada during a space flight on, or in relation to, a flight element of the Space Station or on any means of transportation to and from the

Space Station that if committed in Canada would constitute an indictable offence is deemed to have committed that act or omission in Canada, if that act or omission

- (a) threatens the life or security of a Canadian crew member; or
- (b) is committed on or in relation to, or damages, a flight element provided by Canada.

Proceedings by Attorney General of Canada

(2.32) Despite the definition *Attorney General* in section 2, the Attorney General of Canada may conduct proceedings in relation to an offence referred to in subsection (2.3) or (2.31). For that purpose, the Attorney General of Canada may exercise all the powers and perform all the duties and functions assigned to the Attorney General by or under this Act.

Consent of Attorney General of Canada

(2.33) No proceedings in relation to an offence referred to in subsection (2.3) or (2.31) may be instituted without the consent of the Attorney General of Canada.

Definitions

(2.34) The definitions in this subsection apply in this subsection and in subsections (2.3) and (2.31).

Agreement has the same meaning as in section 2 of the *Civil International Space Station Agreement Implementation Act*. (*Accord*)

Canadian crew member means a crew member of the Space Station who is

- (a) a Canadian citizen; or
- (b) a citizen of a foreign state, other than a Partner State, who is authorized by Canada to act as a crew member for a space flight on, or in relation to, a flight element. (*membre d'équipage canadien*)

crew member of a Partner State means a crew member of the Space Station who is

- (a) a citizen of a Partner State; or
- (b) a citizen of a state, other than that Partner State, who is authorized by that Partner State to act as a crew member for a space flight on, or in relation to, a flight element. (*membre d'équipage d'un État partenaire*)

flight element means a Space Station element provided by Canada or by a Partner State under the Agreement and under any memorandum of understanding or other implementing arrangement entered into to carry out the Agreement. (*élément de vol*)

Partner State means a State, other than Canada, who contracted to enter into the Agreement and for which the Agreement has entered into force in accordance with article 25 of the Agreement. (*État partenaire*)

space flight means the period that begins with the launching of a crew member of the Space Station, continues during their stay in orbit and ends with their landing on earth. (*vol spatial*)

Space Station means the civil international Space Station that is a multi-use facility in low-earth orbit, with flight elements and dedicated ground elements provided by, or on behalf of, the Partner States. (*station spatiale*)

Offence against internationally protected person

(3) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against the person of an internationally protected person or against any property referred to in section 431 used by that person that, if committed in Canada, would be an offence against any of sections 235, 236, 266, 267, 268, 269, 269.1, 271, 272, 273, 279, 279.1, 280 to 283, 424 and 431 is deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission is a Canadian citizen or is, after the act or omission has been committed, present in Canada; or
- (d) the act or omission is against
 - (i) a person who enjoys the status of an internationally protected person by virtue of the functions that person performs on behalf of Canada, or
 - (ii) a member of the family of a person described in subparagraph (i) who qualifies under paragraph (b) or (d) of the definition *internationally protected person* in section 2.

Offence of hostage taking

(3.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.1 shall be deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under such regulations;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;

- (d) the act or omission is committed with intent to induce Her Majesty in right of Canada or of a province to commit or cause to be committed any act or omission;
- (e) a person taken hostage by the act or omission is a Canadian citizen; or
- (f) the person who commits the act or omission is, after the commission thereof, present in Canada.

(3.2) to (3.6) [Repealed, 2013, c. 13, s. 3]

Jurisdiction

(3.7) Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, being an accessory after the fact in relation to an offence against, or any counselling in relation to an offence against, section 269.1 shall be deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, pursuant to any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission is a Canadian citizen;
- (d) the complainant is a Canadian citizen; or
- (e) the person who commits the act or omission is, after the commission thereof, present in Canada.

Offence against United Nations or associated personnel

(3.71) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission against a member of United Nations personnel or associated personnel or against property referred to in section 431.1 that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 235, 236, 266, 267, 268, 269, 269.1, 271, 272, 273, 279, 279.1, 424.1 or 431.1 is deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under an Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations;

- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;
- (e) the act or omission is committed against a Canadian citizen; or
- (f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act.

Offence involving explosive or other lethal device

(3.72) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an accessory after the fact or counselling in relation to an offence against, section 431.2 is deemed to commit that act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under any Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*,
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as owner of an aircraft in Canada under those regulations, or
 - (iii) operated for or on behalf of the Government of Canada;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after the commission of the act or omission, present in Canada;
- (e) the act or omission is committed against a Canadian citizen;
- (f) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act; or
- (g) the act or omission is committed against a Canadian government or public facility located outside Canada.

Offence relating to financing of terrorism

(3.73) Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that, if committed in Canada, would constitute an offence against, a conspiracy or an attempt to commit an offence against, or being an

accessory after the fact or counselling in relation to an offence against, section 83.02 is deemed to commit the act or omission in Canada if

- (a) the act or omission is committed on a ship that is registered or licensed, or for which an identification number has been issued, under an Act of Parliament;
- (b) the act or omission is committed on an aircraft
 - (i) registered in Canada under regulations made under the *Aeronautics Act*, or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the *Aeronautics Act* to be registered as the owner of an aircraft in Canada under those regulations;
- (c) the person who commits the act or omission
 - (i) is a Canadian citizen, or
 - (ii) is not a citizen of any state and ordinarily resides in Canada;
- (d) the person who commits the act or omission is, after its commission, present in Canada;
- (e) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) in order to compel the Government of Canada or of a province to do or refrain from doing any act;
- (f) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) against a Canadian government or public facility located outside Canada; or
- (g) the act or omission is committed for the purpose of committing an act or omission referred to in paragraph 83.02(a) or (b) in Canada or against a Canadian citizen.

Terrorism offence committed outside Canada

(3.74) Notwithstanding anything in this Act or any other Act, everyone who commits an act or omission outside Canada that, if committed in Canada, would be a terrorism offence, other than an offence under section 83.02 or an offence referred to in paragraph (a) of the definition *terrorist activity* in subsection 83.01(1), is deemed to have committed that act or omission in Canada if the person

- (a) is a Canadian citizen;
- (b) is not a citizen of any state and ordinarily resides in Canada; or
- (c) is a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and is, after the commission of the act or omission, present in Canada.

Terrorist activity committed outside Canada

(3.75) Notwithstanding anything in this Act or any other Act, everyone who commits an act or omission outside Canada that, if committed in Canada, would be an indictable offence and would also constitute a terrorist activity referred to in paragraph (b) of the definition *terrorist activity* in subsection 83.01(1) is deemed to commit that act or omission in Canada if

- (a) the act or omission is committed against a Canadian citizen;
- (b) the act or omission is committed against a Canadian government or public facility located outside Canada; or
- (c) the act or omission is committed with intent to compel the Government of Canada or of a province to do or refrain from doing any act.

Offences by Public Service employees

(4) Everyone who, while employed as an employee within the meaning of the *Public Service Employment Act* in a place outside Canada, commits an act or omission in that place that is an offence under the laws of that place and that, if committed in Canada, would be an offence punishable by indictment shall be deemed to have committed that act or omission in Canada.

Offence in relation to sexual offences against children

(4.1) Notwithstanding anything in this Act or any other Act, everyone who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151, 152, 153, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171, 171.1, 172.1, 172.2 or 173 or subsection 286.1(2) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

Offence in relation to trafficking in persons

(4.11) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.01, 279.011, 279.02 or 279.03 shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*.

(4.2) [Repealed, 2002, c. 13, s. 3]

Consent of Attorney General

(4.3) Proceedings with respect to an act or omission deemed to have been committed in Canada under subsection (4.1) may only be instituted with the consent of the Attorney General.

Jurisdiction

(5) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section, proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

Appearance of accused at trial

(5.1) For greater certainty, the provisions of this Act relating to

- (a) requirements that an accused appear at and be present during proceedings, and

(b) the exceptions to those requirements,

apply to proceedings commenced in any territorial division pursuant to subsection (5).

Where previously tried outside Canada

(6) Where a person is alleged to have committed an act or omission that is an offence by virtue of this section and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if that person had been tried and dealt with in Canada, he would be able to plead autrefois acquit, autrefois convict or pardon, that person shall be deemed to have been so tried and dealt with in Canada.

If accused not Canadian citizen

(7) If the accused is not a Canadian citizen, no proceedings in respect of which courts have jurisdiction by virtue of this section shall be continued unless the consent of the Attorney General of Canada is obtained not later than eight days after the proceedings are commenced.

(8) For the purposes of this section, of the definition peace officer in section 2 and of sections 27.1, 76 and 77, flight means the act of flying or moving through the air and an aircraft is deemed to be in flight from the time when all external doors are closed following embarkation until the later of

(a) the time at which any such door is opened for the purpose of disembarkation, and

(b) where the aircraft makes a forced landing in circumstances in which the owner or operator thereof or a person acting on behalf of either of them is not in control of the aircraft, the time at which control of the aircraft is restored to the owner or operator thereof or a person acting on behalf of either of them.

(9) For the purposes of this section and section 77, an aircraft shall be deemed to be in service from the time when pre-flight preparation of the aircraft by ground personnel or the crew thereof begins for a specific flight until

(a) the flight is cancelled before the aircraft is in flight,

(b) twenty-four hours after the aircraft, having commenced the flight, lands, or

(c) the aircraft, having commenced the flight, ceases to be in flight,

whichever is the latest.

(11) A certificate purporting to have been issued by or under the authority of the Minister of Foreign Affairs stating

(a) that at a certain time any state was engaged in an armed conflict against Canada or was allied with Canada in an armed conflict,

(b) that at a certain time any convention, treaty or other international agreement was or was not in force and that Canada was or was not a party thereto, or

(c) that Canada agreed or did not agree to accept and apply the provisions of any convention, treaty or other international agreement in an armed conflict in which Canada was involved,

is admissible in evidence in any proceedings without proof of the signature or authority of the person appearing to have issued it, and is proof of the facts so stated.

Offence outside Canada

481.2 Subject to this or any other Act of Parliament, where an act or omission is committed outside Canada and the act or omission is an offence when committed outside Canada under this or any other Act of Parliament, proceedings in respect of the offence may, whether or not the accused is in Canada, be commenced, and an accused may be charged, tried and punished within any territorial division in Canada in the same manner as if the offence had been committed in that territorial division.

National Defence Act

Persons subject to Code of Service Discipline

60 (1) The following persons are subject to the Code of Service Discipline:

- (a) an officer or non-commissioned member of the regular force;
- (b) an officer or non-commissioned member of the special force;
- (c) an officer or non-commissioned member of the reserve force when the officer or non-commissioned member is
 - (i) undergoing drill or training, whether in uniform or not,
 - (ii) in uniform,
 - (iii) on duty,
 - (iv) [Repealed, 1998, c. 35, s. 19]
 - (v) called out under Part VI in aid of the civil power,
 - (vi) called out on service,
 - (vii) placed on active service,
 - (viii) in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
 - (ix) serving with any unit or other element of the regular force or the special force, or
 - (x) present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces;
- (d) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person who, pursuant to law or pursuant to an agreement between Canada and the state in whose armed forces the person is serving, is attached or seconded as an officer or non-commissioned member to the Canadian Forces;
- (e) a person, not otherwise subject to the Code of Service Discipline, who is serving in the position of an officer or non-commissioned member of any force raised and

maintained outside Canada by Her Majesty in right of Canada and commanded by an officer of the Canadian Forces;

(f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place;

(g) subject to such exceptions, adaptations and modifications as the Governor in Council may by regulations prescribe, a person attending an institution established under section 47;

(h) an alleged spy for the enemy;

(i) a person, not otherwise subject to the Code of Service Discipline, who, in respect of any service offence committed or alleged to have been committed by the person, is in civil custody or in service custody; and

(j) a person, not otherwise subject to the Code of Service Discipline, while serving with the Canadian Forces under an engagement with the Minister whereby the person agreed to be subject to that Code.

Service offence, wherever committed, is triable

67 Subject to section 70, every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, whether the alleged offence was committed in Canada or outside Canada.

No territorial limitation

68 Every person alleged to have committed a service offence may be charged, dealt with and tried under the Code of Service Discipline, either in Canada or outside Canada.

Service trial of civil offences

130 (1) An act or omission

(a) that takes place in Canada and is punishable under Part VII, the Criminal Code or any other Act of Parliament, or

(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the Criminal Code or any other Act of Parliament,

is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

Offences under law applicable outside Canada

132 (1) An act or omission that takes place outside Canada and would, under the law applicable in the place where the act or omission occurred, be an offence if committed by a person subject to that law is an offence under this Division, and every person who is found guilty thereof is liable to suffer punishment as provided in subsection (2).

Punishment for offence under law applicable outside Canada

(2) Subject to subsection (3), where a service tribunal finds a person guilty of an offence under subsection (1), the service tribunal shall impose the punishment in the scale of

punishments that it considers appropriate, having regard to the punishment prescribed by the law applicable in the place where the act or omission occurred and the punishment prescribed for the same or a similar offence in this Act, the *Criminal Code* or any other Act of Parliament.

Royal Canadian Mounted Police Act

Purposes

36.2 The purposes of this Part are

- (a) to establish the responsibilities of members;
- (b) to provide for the establishment of a Code of Conduct that emphasizes the importance of maintaining the public trust and reinforces the high standard of conduct expected of members;
- (c) to ensure that members are responsible and accountable for the promotion and maintenance of good conduct in the Force;
- (d) to establish a framework for dealing with contraventions of provisions of the Code of Conduct, in a fair and consistent manner, at the most appropriate level of the Force; and
- (e) to provide, in relation to the contravention of any provision of the Code of Conduct, for the imposition of conduct measures that are proportionate to the nature and circumstances of the contravention and, where appropriate, that are educative and remedial rather than punitive.

Responsibilities

37 It is the responsibility of every member

- (a) to respect the rights of all persons;
- (b) to maintain the integrity of the law, law enforcement and the administration of justice;
- (c) to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
- (d) to avoid any actual, apparent or potential conflict of interests;
- (e) to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;
- (f) to be incorruptible, never accepting or seeking special privilege in the performance of the member's duties or otherwise placing the member under any obligation that may prejudice the proper performance of the member's duties;
- (g) to act at all times in a courteous, respectful and honourable manner; and
- (h) to maintain the honour of the Force and its principles and purposes.

Code of Conduct

38 The Governor in Council may make regulations, to be known as the Code of Conduct, governing the conduct of members.

Contravention of Code of Conduct

39 (1) Every member who is alleged to have contravened a provision of the Code of Conduct may be dealt with under this Act either in or outside Canada,

- (a) whether or not the alleged contravention took place in or outside Canada; and
- (b) whether or not the member has been charged with an offence constituted by, included in or otherwise related to the alleged contravention or has been tried, acquitted, discharged, convicted or sentenced by a court in respect of such an offence.

No interference with jurisdiction of courts

(2) Nothing in this Act affects the jurisdiction of any court to try a member for any offence triable by that court.

Crimes Against Humanity and War Crimes Act

Genocide, etc., committed outside Canada

6 (1) Every person who, either before or after the coming into force of this section, commits outside Canada

- (a) genocide,
- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

Conspiracy, attempt, etc.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

Definitions

(3) The definitions in this subsection apply in this section.

crime against humanity means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime contre l'humanité*)

genocide means an act or omission committed with intent to destroy, in whole or in part, an identifiable group of persons, as such, that at the time and in the place of its commission, constitutes genocide according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*génocide*)

war crime means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission. (*crime de guerre*)

Interpretation — customary international law

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

Interpretation — crimes against humanity

(5) For greater certainty, the offence of crime against humanity was part of customary international law or was criminal according to the general principles of law recognized by the community of nations before the coming into force of either of the following:

(a) the Agreement for the prosecution and punishment of the major war criminals of the European Axis, signed at London on August 8, 1945; and

(b) the Proclamation by the Supreme Commander for the Allied Powers, dated January 19, 1946.

Breach of responsibility by military commander

7 (1) A military commander commits an indictable offence if

(a) the military commander, outside Canada,

(i) fails to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 6;

(b) the military commander knows, or is criminally negligent in failing to know, that the person is about to commit or is committing such an offence; and

(c) the military commander subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(2) A superior commits an indictable offence if

(a) the superior, outside Canada,

(i) fails to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 4, or

(ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 6;

(b) the superior knows that the person is about to commit or is committing such an offence, or consciously disregards information that clearly indicates that such an offence is about to be committed or is being committed by the person;

(c) the offence relates to activities for which the superior has effective authority and control; and

(d) the superior subsequently

(i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or

(ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

(2.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) or (2) is guilty of an indictable offence.

(3) A person who is alleged to have committed an offence under subsection (1), (2) or (2.1) may be prosecuted for that offence in accordance with section 8.

Punishment

(4) Every person who commits an offence under subsection (1), (2) or (2.1) is liable to imprisonment for life.

Application before coming into force

(5) Where an act or omission constituting an offence under this section occurred before the coming into force of this section, subparagraphs (1)(a)(ii) and (2)(a)(ii) apply to the extent that, at the time and in the place of the act or omission, the act or omission constituted a contravention of customary international law or conventional international law or was criminal according to the general principles of law recognized by the community of nations, whether or not it constituted a contravention of the law in force at the time and in the place of its commission.

[Note: Section 7 in force October 23, 2000, see SI/2000-95.]

Definitions

(6) The definitions in this subsection apply in this section.

military commander includes a person effectively acting as a military commander and a person who commands police with a degree of authority and control comparable to a military commander. (*chef militaire*)

superior means a person in authority, other than a military commander. (*supérieur*)

Jurisdiction

8 A person who is alleged to have committed an offence under section 6 or 7 may be prosecuted for that offence if

- (a) at the time the offence is alleged to have been committed,
 - (i) the person was a Canadian citizen or was employed by Canada in a civilian or military capacity,
 - (ii) the person was a citizen of a state that was engaged in an armed conflict against Canada, or was employed in a civilian or military capacity by such a state,
 - (iii) the victim of the alleged offence was a Canadian citizen, or
 - (iv) the victim of the alleged offence was a citizen of a state that was allied with Canada in an armed conflict; or
- (b) after the time the offence is alleged to have been committed, the person is present in Canada.

Place of trial

9 (1) Proceedings for an offence under this Act alleged to have been committed outside Canada for which a person may be prosecuted under this Act may, whether or not the person is in Canada, be commenced in any territorial division in Canada and the person may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

Presence of accused at trial

(2) For greater certainty, in a proceeding commenced in any territorial division under subsection (1), the provisions of the *Criminal Code* relating to requirements that an accused

appear at and be present during proceedings and any exceptions to those requirements apply.

Corruption of Foreign Public Officials Act

Bribing a foreign public official

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

(a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or

(b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.

Punishment

(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Saving provision

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

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

(b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public official that are directly related to

(i) the promotion, demonstration or explanation of the person's products and services, or

(ii) the execution or performance of a contract between the person and the foreign state for which the official performs duties or functions.

Facilitation payments

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

(a) the issuance of a permit, licence or other document to qualify a person to do business;

(b) the processing of official documents, such as visas and work permits;

(c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and

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

Greater certainty

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

Accounting

4 (1) Every person commits an offence who, for the purpose of bribing a foreign public official in order to obtain or retain an advantage in the course of business or for the purpose of hiding that bribery,

(a) establishes or maintains accounts which do not appear in any of the books and records that they are required to keep in accordance with applicable accounting and auditing standards;

(b) makes transactions that are not recorded in those books and records or that are inadequately identified in them;

(c) records non-existent expenditures in those books and records;

(d) enters liabilities with incorrect identification of their object in those books and records;

(e) knowingly uses false documents; or

(f) intentionally destroys accounting books and records earlier than permitted by law.

Punishment

(2) Every person who contravenes subsection (1) is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years.

Offence committed outside Canada

5 (1) Every person who commits an act or omission outside Canada that, if committed in Canada, would constitute an offence under section 3 or 4 — or a conspiracy to commit, an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence under that section — is deemed to have committed that act or omission in Canada if the person is

(a) a Canadian citizen;

(b) a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act* who, after the commission of the act or omission, is present in Canada; or

(c) a public body, corporation, society, company, firm or partnership that is incorporated, formed or otherwise organized under the laws of Canada or a province.

Jurisdiction

(2) If a person is alleged to have committed an act or omission that is deemed to have been committed in Canada under subsection (1), proceedings for an offence in respect of that act

or omission may, whether or not that person is in Canada, be commenced in any territorial division in Canada. The person may be tried and punished for that offence as if the offence had been committed in that territorial division.

Appearance of accused at trial

(3) For greater certainty, the provisions of the *Criminal Code* relating to the requirements that an accused appear at and be present during proceedings and the exceptions to those requirements apply to proceedings commenced in any territorial division under subsection (2).

Person previously tried outside Canada

(4) If a person is alleged to have committed an act or omission that is deemed to have been committed in Canada under subsection (1) and they have been tried and dealt with outside Canada for an offence in respect of the act or omission so that, if they had been tried and dealt with in Canada, they would be able to plead *autrefois acquit*, *autrefois convict* or pardon, they are deemed to have been so tried and dealt with in Canada.

Exception for foreign trials *in absentia*

(5) Despite subsection (4), a person may not plead *autrefois convict* to a count that charges an offence in respect of the act or omission if

(a) the person was not present and was not represented by counsel acting under the person's instructions at the trial outside Canada; and

(b) the person was not punished in accordance with the sentence imposed on conviction in respect of the act or omission