

NAME OF COURT

B E T W E E N :

HER MAJESTY THE QUEEN

- and -

[*NAME OF DEFENDANT*]

AFFIDAVIT
(sworn October 3, 2012)

VICTIM IMPACT STATEMENT

“Impacts of the Corruption of Foreign Public Officials”

A. Introduction

I, Bronwyn Best, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I have been the Executive Director of Transparency International Canada (TI-Canada) since October 1997;

2. Responsibilities of TI-Canada’s Executive Director

As the only paid staff, I perform a variety of functions for TI-Canada. Some of these are administrative but several require me to learn about, be involved with and stay apprised of efforts around the world to contain corruption. Since 1997, I have followed all significant developments in international anti-corruption efforts, including the negotiation of the United Nations

Convention against Corruption, which Canada ratified in 2007; I have been directly involved in monitoring some of that progress, for example, on the evolving anti-corruption commitments of the G8/G20; and I have been constantly updating my knowledge in a wide range of anti-corruption themes and bodies of knowledge. I am in regular communication with other Canadian organizations the mandates of which complement that of TI-Canada, such as Publish-What-You-Pay, the Canadian business community and the international NGO community, government, government agencies, and government officials, with a view to enhancing awareness of Transparency International, TI-Canada, and the anti-corruption policies and initiatives of Transparency International and TI-Canada. I also act as liaison for TI-Canada with the media to increase public awareness of the work of TI, TI-Canada and the international anti-corruption movement.

3. In the next sections, I describe the roles of Transparency International and its Canadian chapter, Transparency International Canada, in the fight against corruption. I then enumerate impacts of the corruption of foreign public officials on its victims. I conclude this affidavit by making a suggestion as to how companies convicted of offenses connected with the corruption of foreign public officials could contribute to efforts to educate Canadians on the harms of corruption, on the importance of compliance with laws aimed at corruption and on how that compliance can be achieved.

B. Transparency International

4. Transparency International (“TI”) is a non-governmental, global civil society organization with a mission to initiate and encourage change aimed at achieving a world free of corruption. The TI global network comprises representatives from government, civil society, business and academia. TI is credited with placing the fight against corruption on regional, national, and international agendas, including those of the World Bank and International Monetary Fund. TI played an active role in the drafting of the United Nations’ and the African Union’s Conventions against Corruption, and the OECD’s *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, ratified in Canada through adoption of the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34 (CFPOA).

5. TI leads the fight against corruption in a number of ways. It provides reliable quantitative diagnostic tools for the measurement of transparency and corruption, including the Corruption

Perceptions Index, a widely used tool that ranks more than 180 countries in terms of perceived levels of corruption. TI also publishes the Bribe Payers' Index, an assessment of the supply side of corruption and rankings by source country and industry sector, and the Global Corruption Barometer, a survey assessing the public's perception of and experiences with corruption in more than 60 countries.

6. TI works with businesses to promote revenue transparency and with governments to build National Integrity Systems with a view to developing effective safeguards against corruption. TI publishes the annual Global Corruption Report, a Policy Position and Working Paper series, and with the support of the Canadian government, developed the U4 Anti-Corruption Resource Centre, which promotes anti-corruption policy development through training, knowledge management and research.

C. Transparency International Canada

7. Launched in 1996, Transparency International Canada (TI-Canada) is one of over 90 (ninety) national chapters of TI. In 1998, TI-Canada's Board Members addressed the Senate of Canada to discuss and endorse Bill S-21, which was shortly thereafter given royal assent as the *Corruption of Foreign Public Officials Act*.

8. TI-Canada's board is comprised of academics, legal and accounting professionals, business executives, representatives of non-governmental organizations and former civil servants, with a wealth of expertise in the fight against corruption. Currently, Janet Keeping, lawyer, researcher and former president of the Sheldon Chumir Foundation for Ethics in Leadership, acts as TI-Canada's Chair and President; Julie M. Desjardins, chartered accountant and consultant as Treasurer; and I, Bronwyn Best, consultant, as Executive Director and Board Secretary. Along with Keeping and Desjardins, TI-Canada's board members include Milos Barutciski, Partner, international trade and investment lawyer, Bennett Jones LLP, and Chair of the Canadian Chamber of Commerce's International Affairs Committee; Susan Carter, Third Sector Consultant and Advisor, Peter Dent, Partner at Deloitte & Touche LLP; Bruce N. Futterer, Vice President & General Counsel at GE Canada; Thomas C. Marshall, consultant and former Counsel to the Attorney General for Ontario; Susan Reisler, Vice President, Media Profile; Joe Ringwald, Vice President, Mining, at Selwyn Resources Ltd.; John Ritchie, consultant, formerly

with Hatch; J. Michael Robinson, Counsel at Fasken Martineau DuMoulin LLP; and Kernaghan Webb, Associate Professor of Business Law at Ryerson University and former Senior Legal Policy Advisor and Chief of Research for the Government of Canada's Office of Consumer Affairs. The Past President is James Klotz, Partner, Co-Chair, International Business Transactions Group, Miller Thomson LLP.

All directors serve on the TI-Canada board as volunteers. They receive no remuneration for their board work. TI-Canada's resources are such that it can afford to pay for only 0.6 of one staff person, myself, who fulfills the role of Executive Director.

9. The Mission of Transparency International Canada (TI-Canada) is to be an informed voice that promotes anti-corruption practices and transparency in Canada's governments, businesses and society at large. TI-Canada educates Canadians through workshops and seminars for business, government and the public on the causes and damaging effects of corruption, promotes ethical business practices in Canadian business schools, helps the business community develop strategies to resist and combat corruption, advises government agencies, and works with international bodies in support of anti-corruption initiatives.

10. For example, over the last year (October 1, 2011, through September 30, 2012), some of the activities carried out by TI-Canada aimed at educating Canadians about the harms of the corruption of foreign public officials and encouraging compliance with the Corruption of Foreign Public Officials Act and related laws have included: TI-Canada Business Roundtable presentation by Steven Johnston, Crown Attorney, Alberta Justice Specialized Prosecutions Branch, "CFPOA – the view from the prosecutor's chair"; participated in the Asia Pacific Foundation of Canada's National Conversation on Asia, with a submission on "Corruption in Asia: What Should Canadian Companies Do?"; presented at the Institute for the Study of International Development of McGill University's "toward New Public-Private Sector partnerships for Sustainable Development in Resource Extraction"; produced a Second Edition of the TI-Canada Anti-Corruption Compliance Checklist – distributed at various events; co-sponsored "Senior Management and Board Level Oversight of Anti-Corruption Governance"; and co-sponsored "Anti-corruption Issues Facing the Oil and Gas Industry."

Educational activities for the public at large over the past year included: a session celebrating International Human Rights Day entitled “The international struggle against corruption – the human rights dimensions” (at the University of Calgary); and TI-Canada’s Second Annual “Spotlight on Anti-Corruption: Current Events *Day of Dialogue*.”

D. Obligations of the Canadian government to work with civil society in the struggle against corruption

11. TI-Canada is committed to working cooperatively with government and with government agencies involved in the struggle to contain corruption by Canadians abroad. In this vein, TI-Canada has on-going relationships, for example, with the Department of Foreign Affairs and International Trade (DFAIT), the Department of Justice, Export Development Corporation and the RCMP. TI-Canada is sometimes invited to join intergovernmental discussions of the need for law reform. For example, in January of this year (2012) DFAIT held a two-day roundtable to consider the need for amendments to the CFPOA. TI-Canada was heavily represented at the roundtable by a number of directors and myself, the Executive Director.

12. TI-Canada plays a role – almost exclusively through the volunteer efforts of members of our board of directors – in helping to monitor Canada’s progress under its international anti-corruption commitments, such as the OECD Anti-Corruption Convention and the United Nations Convention against Corruption (UNCAC).

13. Under UNCAC, which Canada ratified in 2007, Canada is required to work together with civil society organizations in its effort to fulfill its many obligations to combat corruption. Article 5, point 4, of UNCAC Chapter II, provides that " State Parties *shall...* collaborate with each other and with relevant international and regional organizations in promoting and developing measures [to combat corruption]. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption." (Emphasis added)

14. It is to the advantage of Canada in the interests of satisfying our international obligations that Canadian NGOs in the anti-corruption area are strong and effective organizations.

E. The Impacts of Corruption of Foreign Public Officials

15. Corruption is defined as the abuse of entrusted power for private gain, and includes, but is not limited to, the bribery of public officials. Corruption takes many forms and permeates many industries. According to the OECD Bribery Fact Sheet (online at <http://www.oecd.org/dataoecd/0/10/45790915.pdf>), industries where corruption is particularly prevalent include construction, property development, utilities, mining, oil, gas and energy, and pharmaceuticals.

16. Because of the variety of vulnerable industries and benefits that may be purchased with bribes, the harms that may be caused by corruption are many. Acts of corruption have direct, harmful social consequences, in addition to their tendency to increase the public's perception that corruption is prevalent. The perception of corruption generates harmful consequences both in its own right and by perpetuating further corruption.

Economic Growth

17. Where corruption is prevalent, businesses perceive that a bribe to a public official is necessary to secure the issuance or renewal of licenses and permits, or to start or continue operating a business. From the business perspective, the requisite bribe acts as a species of tax, increasing the cost of doing business, thereby discouraging investment and economic growth (A. Cuervo-Cazurra, "Who Cares About Corruption?" (2006) 37 *Journal of International Business Studies* 803, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1060221). The business person's incentive to invest is further undermined because the performance of the public official intended to be secured by the bribe cannot be legally enforced (P. Mauro, "Why Worry About Corruption?" (1997) *Economic Issues* 6 (IMF), online: <http://www.imf.org/external/pubs/ft/issues6/issue6.pdf>; A. Cuervo-Cazurra, "Who Cares About Corruption?" (2006) 37 *Journal of International Business Studies* 803, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1060221).

Quality of Goods and Services

18. Corruption lowers the quality of goods and services supplied by the private sector. In order to pay for bribes, businesses tend to divert funds away from using them to improve the quality of goods and services rather than from profits (Wesley Cragg, Transparency International

Canada, Debates of the Senate (Hansard), Dec. 3, 1998, online:

http://www.parl.gc.ca/Content/Sen/Chamber/361/Debates/100db_1998-12-03-e.htm).

Tax Avoidance

19. Bribing tax officials to reduce a taxpayer's liability is a common and harmful type of bribery. In this context, a bribe yields a net benefit to the tax payor if the value of the bribe is less than the corresponding reduction in the payor's tax liability. This net benefit to the payor represents the incentive to bribe. The resulting reduction in the payor's tax liability represents foregone tax revenue, reducing the government's budget and its ability to purchase fundamental social programs such as health care and education, redistribute income with a view to reducing income inequality, and to reduce overall public debt. (U4 Anti-Corruption Resource Centre, "Corruption in tax administration" (2010), online: <http://www.u4.no/publications/corruption-in-tax-administration> at 1)

Corruption Perpetuates Corruption

20. Acts of corruption reinforce the public's perception that officials are corrupt, which in turn worsens the consequences of corruption. As an example, the otherwise honest taxpayer or business person is likely to perceive a competitive disadvantage if they do not bribe public officials, thereby promoting further corruption and consequently, the public's perception of it.

21. Similarly, as corruption becomes more prevalent, it becomes more difficult to impose reforms targeted at reducing corruption. More corruption creates more stakeholders (i.e., government officials who benefit from acts of corruption) who are bound to oppose reform efforts (U4 Anti-Corruption Resource Centre, "Corruption in tax administration" (2010) at 1, online: <http://www.u4.no/publications/corruption-in-tax-administration>). Similarly, because government intervention and discretion enables corruption, corruptible government officials have an incentive to create additional regulations which not only afford them further opportunities to extort bribes, but create unreasonable obstacles to doing business (A. Cuervo-Cazurra, "Who Cares About Corruption?" (2006) 37 Journal of International Business Studies 803, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1060221).

22. Finally, the self-perpetuating nature of corruption does not operate in a vacuum. When the public's perception that one area of government, such as tax administration, is corrupt, the general legitimacy of government is undermined, thereby promoting corruption in other spheres of government (U4 Anti-Corruption Resource Centre, "Corruption in tax administration" (2010) at 1, online: <http://www.u4.no/publications/corruption-in-tax-administration>).

The Environment

23. The bribery of public officials can also harm a foreign country's natural environment. Through bribery, businesses can purchase a number of benefits that harm the environment, including the cover up of pollution, over-exploitation of non-renewable natural resources, and lax enforcement of environmental regulations (Transparency International, "Global Corruption Report, 2008: Corruption in the Water Sector", online: http://www.transparency.org/publications/gcr/gcr_2008).

Innovation

24. Corruption is especially harmful to innovation. Because innovation requires a significant amount of government intervention, such as the issuance and protection of intellectual property rights, permits and licenses, there are more opportunities for unscrupulous public officials to extort bribes from innovators than from those who operate established businesses. Less innovation undermines the development of new technologies and processes as well as an economy's overall ability to compete (K. Murphy, A. Schliefer, R. Vishny. "Why is rent-seeking so costly to growth?" (1993) 83:2 American Economic Review, 409, online: http://www.economics.harvard.edu/faculty/shleifer/files/rent_seeking.pdf).

Political Effects

25. Studies show that the erosion of confidence in public institutions that results from corruption tends to promote low levels of political participation, emigration, and an increased risk of civil unrest and violent means of achieving political ends (B. Clausen, A. Kraay and Z. Nyiri. "Corruption and Confidence in Public Institutions." (2009) World Bank Development Research Group, online: http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2010/01/27/000158349_2010

[0127134429/Rendered/PDF/WPS5157.pdf](http://www.transparency.org/publications/gcr/gcr_2008)). In 2007, for example, water shortages in Egypt triggered public protest and roadblocks, fuelled by the perception that corruption had caused the crisis (Transparency International, “Global Corruption Report, 2008: Corruption in the Water Sector”, online: http://www.transparency.org/publications/gcr/gcr_2008).

26. A risk or prevalence of civil unrest or political violence increases the risks of doing business, thereby discouraging foreign direct investment (Transparency International, “Global Corruption Report, 2008: Corruption in the Water Sector”, online: http://www.transparency.org/publications/gcr/gcr_2008). As these risks increase the prospect of interruptions in the production process, the incentive for businesses to invest will be undermined.

Health Care, Education, Poverty, Women and Cultural Minorities

27. In order to generate more opportunities for extortion, corruption induces government officials to skew the composition of expenditures away from health care, education and fundamental social programs that offer fewer opportunities for corruption than others (S. Wei, “Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?” (1998) World Bank Policy Research Group Working Paper, online: <http://aideffectiveness.zunia.org/uploads/media/knowledge/AidEffectiveness/wei.pdf>; Wesley Cragg, TIC, Debates of the Senate (Hansard), Dec. 3, 1998, online: http://www.parl.gc.ca/Content/Sen/Chamber/361/Debates/100db_1998-12-03-e.htm). Reduced spending on education undermines human capital development and the alleviation of income inequality and poverty (S. Gupta, H. Davoodi, R. Alonso-Terme. “Does Corruption Affect Income Inequality and Poverty?” (1998), IMF Working Paper, online: <http://www.imf.org/external/pubs/ft/wp/wp9876.pdf>). Reduced spending on health care undermines overall public health.

28. Because women rely more on the public system, including health care services, decreased expenditures on fundamental social programs like health care and education undermine efforts to alleviate gender inequities (U4 Anti-Corruption Resource Centre, “Gender and corruption in humanitarian assistance” (2009), online: <http://www.u4.no/publications/gender-and-corruption-in-humanitarian-assistance/>). Similarly, in countries where one cultural group holds a

disproportionate amount of political power, corruption is more likely to harm disenfranchised cultural groups and undermine efforts to alleviate inequities and oppression.

F. Harm to Source Countries

29. While the negative effects of the corruption of foreign officials on recipient countries are many, source countries like Canada are also harmed.

30. At the micro level, when civil society learns that a Canadian business has engaged in bribery, that business can suffer severe reputational and brand damage. Revelations of bribery can also damage employee morale and a firm's relations with other businesses and government (Transparency International, "Global Corruption Report, 2009: Corruption in the Private Sector", online: http://www.transparency.org/publications/gcr/gcr_2009).

31. At the macro level, the honest Canadian competitors of businesses that engage in bribery suffer competitive disadvantages. For example, where two Canadian businesses tender bids for the same government contract, and one tenders the lowest bid while the other bribes a foreign official to rig the bid in their favour, the former unfairly loses the contract to the latter. It is for this reason that the business community supports criminalizing the bribery of foreign officials (Michael Davies, Transparency International Canada and the Hon. Céline Hervieux-Payette, Debates of the Senate (Hansard), Dec. 3, 1998, online: http://www.parl.gc.ca/Content/Sen/Chamber/361/Debates/100db_1998-12-03-e.htm).

32. Corruption can also undermine the effectiveness of aid flows into a developing country by diverting funds toward unproductive or wasteful government expenditures (Mauro, P. "Corruption and Growth". *The Quarterly Journal of Economics*, Vol, 110, No. 3 (Aug 1995) p. 681), rather than toward social programs that alleviate poverty and other social inequities. Negative externalities arising from the environmental impact of corruption in foreign countries also have global ramifications.

G. Creative sentencing to support anti-corruption education and training in Canada

33. It was not long ago that corruption was accepted as an unavoidable evil. Fortunately, that attitude is fading. Over the last fifteen years great strides have been made to put in place laws, policies and programs aimed at curbing the corruption of foreign public officials by individuals

and companies from western countries, including from Canada. But much work remains to be done by all sectors of Canadian society to educate the public about these measures, to encourage compliance, to train on how to comply with anti-corruption measures and to work towards improvement of Canadians laws, policies and programs in this area.

34. TI-Canada submits it would further the public interest in this sphere if individuals and companies convicted of violating our laws against the corruption of foreign public officials were ordered to financially support Canadian civil society organizations dedicated to the struggle against that corruption.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, on
this day of , 2012.

Commissioner for Taking Oaths in and
for the province of Ontario

Bronwyn Best, Executive Director,
Transparency International Canada