

GLOBAL CORRUPTION: LAW, THEORY AND PRACTICE

**An Open Access Coursebook on Legal Regulation of Global
Corruption under International Conventions and under US, UK
and Canadian Law
(Second edition, January 2017)**

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*To the women in my life
for all their love and support*

*Sharon, Debbie and Lori
and
Alexa, Jessica and Kailyn*

ABOUT THE AUTHOR

Gerry Ferguson is a University of Victoria Distinguished Professor of Law who specializes in criminal law. He is also a senior associate with the International Centre for Criminal Law Reform and Criminal Justice Policy in Vancouver. Professor Ferguson is a member of the United Nations Office on Drugs and Crime Anti-Corruption Academic Development Initiative (ACAD) devoted to the creation of anti-corruption academic materials and the teaching of university courses on global corruption. He is co-editor and co-author (with Douglas Johnston) of *Asia-Pacific Legal Development* (UBC Press, 1998), was a co-leader of the CIDA-funded Canada-Vietnamese Legislative Drafting and Management Program, 1994-95, and a team member of the CIDA-funded Canada-China Procuratoracy Project, 2003-2008, under the direction of the ICCLR. He is the co-author, with Justice Dambrot, of the annually updated two-volume book, *Canadian Criminal Jury Instructions* and co-author of the *Annual Review of Criminal Law*. Professor Ferguson has taught criminal law as a Visiting Professor at the University of Hong Kong, the University of Auckland, Monash University, the University of Malaya and the University of Airlangga in Indonesia. He has given guest lectures at various law schools in South Africa, China, Vietnam, Thailand, Singapore, Australia, New Zealand, Ireland and Europe. Professor Ferguson is a former member of the National Advisory Council of the Law Commission of Canada and an active participant in the Canadian Bar Association, Law Society, and Continuing Legal Education Society activities. His teaching and scholarly interests include transnational and comparative criminal law and procedure, sentencing and mental health law. Professor Ferguson may be contacted at gferguso@uvic.ca.

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The United Nations Office on Drugs and Crime (UNODC) is a global leader in the struggle against corruption and other international crimes. The UNODC is mandated to assist Member States in respect to the implementation of the United Nations Convention Against Corruption (UNCAC). UNODC has launched a web-based anti-corruption portal known as TRACK (Tools and Resources for Anti-Corruption Knowledge). The portal features the Legal library providing a unique gateway to an electronic database of legislation and jurisprudence relevant to UNCAC. The TRACK portal also includes the ACAD Initiative, which is a collective academic project led by UNODC to promote anti-corruption education in universities worldwide. To date, the Initiative has over 100 universities taking part and has produced a comprehensive anti-corruption educational tool. This book is part of the ACAD Initiative.

<https://track.unodc.org/Academia/Pages/TeachingMaterials/GlobalCorruptionBook.aspx>

The International Centre for Criminal Law Reform (ICCLR) is a non-profit organization whose mission is to improve the quality of justice through reform of criminal law, policy and practice. The Centre is a component of the UN Crime Prevention and Criminal Justice Programme. It promotes democratic principles, the rule of law and respect for human rights in criminal law and the administration of criminal justice, domestically, regionally and globally. The primary role of the Centre is to provide advice, information, research and proposals for policy development and legislation. The Centre is actively involved in education and training and provides technical assistance to governments and other agencies, on a range of issues including global corruption. <http://www.icclr.law.ubc.ca/publications>

Transparency International Canada is Canada's leading anti-corruption organization. We are the Canadian Chapter of Transparency International, the global coalition against corruption. Our mission is to be an informed voice that promotes anti-corruption practices and transparency in Canada's governments, businesses and society at large. Our objectives are to encourage compliance with Canadian laws and international conventions against bribery and corruption, develop and promote ethical standards of conduct for businesses, professional organizations, governments and the public at large, conduct or commission research on issues concerning the prevention and elimination of bribery and corruption, and assist the Government of Canada to fulfill its obligation under international conventions to which Canada is a signatory in the prevention and fight against bribery and corruption. <http://www.transparency.ca/what-we-do/publications/>

The Canadian Bar Association (CBA) is a professional, voluntary organization which acts as an advocate of all members of the legal profession. It also promotes fair justice systems, facilitates effective law reform, promotes equality in the legal profession and is devoted to the elimination of discrimination. The CBA's Anti-Corruption Team (CBA-ACT) is a joint committee comprised of various members of the CBA, including in-house counsel from the CCCA. The CBA-ACT was established to monitor and respond to all matters involving corrupt practices and to provide Canadian lawyers with a place to learn about anti-corruption legislation, case law, and compliance requirements. The CBA-ACT takes a proactive advocacy role and emphasizes the implementation and enforcement of corruption legislation, including the Canadian *CFPOA*, the U.K. *Bribery Act*, and the U.S. *FCPA*. <http://www.cba.org/cba/advocacy/anticorruption/resources.aspx>

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PREFACE AND ACKNOWLEDGEMENTS: SECOND EDITION

JANUARY 2017 EDITION

It has only been 18 months since the first edition of this book was published. But the frequency of corruption and the social, legal, economic and political responses to corruption continue to increase at a dizzying pace.

While organized on the same model as the first edition, the second edition includes references to up-to-date anti-corruption laws, policies, best practices and excellent research resources such as books, articles and reports by NGOs, government bodies, academics and practitioners. In addition, several topics have been either introduced or significantly expanded in each chapter. The detailed Table of Contents following the Preface to the first edition indicates the scope of the topics covered in this book.

Acknowledgements

As with the first edition, this book would not have seen the light of day without the contributions of a dedicated team of legal research assistants. This is especially true in the case of the chief editor, Mary Wallace, who painstakingly reviewed and edited the entire book. I am deeply indebted to the following students who researched and updated various chapters: Connor Bildfell, Sarah Chaster, Dmytro Galagan, David Gill, Laura Ashley MacDonald, Madeline Reid and Matthew Spencer. I am also very grateful to Dmytro Galagan and Jeremy Henderson who added new sections to Chapters 7 and 12 and to Victoria Luxford, Joseph Mooney and Jeremy Sapers who updated their Chapters (9, 10 and 12). Finally I am very grateful to the CBA Law for the Future Fund, the Law Foundation of British Columbia and the Foundation for Legal Research who generously funded my research assistants for this book.

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January 2017
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PREFACE AND ACKNOWLEDGEMENTS: FIRST EDITION

SEPTEMBER 2015 EDITION

In the beginning there was no corruption but Adam got greedy, abused his position of privilege by going for the apple and things have gone downhill ever since. Corruption is now an inescapable reality of modern life.

Purpose of this Book

No Canadian law school (prior to UVic Law in September, 2015) had a course on global corruption, and relatively few law schools around the world have such a course. This book has been specifically created to make it easier for professors to offer a law school course on global corruption. This book is issued under a creative commons license and can be used for free in whole or in part for non-commercial purposes. The first chapter sets out the general context of global corruption: its nature and extent, and some views on its historical, social, economic and political dimensions. Each subsequent chapter sets out international standards and requirements in respect to combating corruption – mainly in the UN Convention Against Corruption (UNCAC) and the OECD Bribery of Foreign Officials Convention (OECD Convention). The laws of the United States and United Kingdom are then set out as examples of how those Convention standards and requirements are met in two influential jurisdictions. Finally, the law of Canada is set out. Thus, a professor from Africa, Australia, New Zealand or English speaking countries in Asia and Europe has a nearly complete coursebook – for example, that professor can delete the Canadian sections of this book and insert the law and practices of his or her home country in their place.

While primarily directed to a law school course on global corruption, I expect that this coursebook, or parts of it, will be of interest and use to professors teaching courses on corruption from other academic disciplines and to lawyers and other anti-corruption practitioners.

Genesis of this Book

The United Nations Office on Drugs and Crime (UNODC) is responsible for promoting the adoption of and compliance with UNCAC. Chapter II of UNCAC is focused on Prevention of Corruption. Educating the lawyers, public officials and business persons of tomorrow on anti-corruption laws and strategies is one preventative strategy. Recognizing this, the UNODC set up an Anti-Corruption Academic Initiative (ACAD) to promote the teaching of corruption in academic institutions by collecting and distributing materials on corruption. As a member of the ACAD team, this coursebook is my contribution to that worthy goal.

Debts of Gratitude

This book would not have been completed without a host of angels and archangels and a few generous funders to keep them fed. All these angels provided excellent, high quality research and writing assistance and I am most grateful to all of them. Some of the angels became archangels due to the extent of their research and writing contributions to this book. The archangels include Katie Duke for her work on chapters 1 to 3, Ashley Caron and Martin Hoffman for their work on chapters 4 and 5, James Parker for his work on chapters 1 and 6 and Madeline Reid for her editing contributions to the whole book. Chapters 9 to 12 would not have been possible without the excellent research and writing of Joseph Mooney, Jeremy Sapers, Mollie Deyong, Erin Halma and Victoria Luxford. Other indispensable angels included Laura MacDonald, Courtney Barnes, Lauryn Kerr and Ryan Solcz. I would like to sincerely thank the following organizations for helping to fund the research students: Law Foundation of British Columbia, University of Victoria Learning and Teaching Centre, Canadian Bar Association Law for the Future Fund, the Foundation for Legal Research and Dentons LLP.

I am also grateful to the following lawyers, professors and anti-corruption practitioners who have made valuable comments on parts of this book: Noah Arshinoff, Sean Burke, Roy Cullen, Alan Franklin, Dr. Noemi Gal-Or, Professor Mark Gillen, Steven Johnston, Selvan Lehmann, Richard Lane, Professor Andrew Newcombe, John Ritchie, and Graham Steele.

Where to Next

As a first edition, there is room for improvement in this book. I hope to update and repost this book annually. In future editions, I would like, for example,

- to provide an index
- to expand chapter 8 on the “Role of Lawyers in Advising Business Clients on Corruption and Anti-Corruption Issues”
- to include a chapter on corruption and political parties and campaign financing
- and perhaps to add a few chapters on corruption in specific business sectors such as extractive industries, infra-structure projects etc.

I would be very pleased to hear from users of this book especially in regard to the inevitable errors and omissions that I have made in trying to describe and comment on the vast field of global corruption under UNCAC and the OECD Anti-Bribery Convention, and the laws of United States, United Kingdom and Canada.

Finally, I would like to thank the many NGOs and government agencies that have produced an incredible volume of excellent studies and reports on corruption/anti-corruption issues and for making those studies and reports, many of which are used in this book, publicly available.

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September 2015
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OVERVIEW TABLE OF CONTENTS

PART I	INTRODUCTION TO CORRUPTION
Ch. 1	Corruption in Context: Social, Economic and Political Dimensions
PART II	CRIMINAL LIABILITY FOR BRIBERY AND CORRUPTION OFFENCES
Ch. 2	Bribery and Other Corruption Offences
Ch. 3	General Principles Affecting the Scope of Corruption Offenses: Jurisdiction, Corporate Liability, Accomplices and Inchoate Offences
Ch. 4	Money Laundering
PART III	ASSET RECOVERY AND MUTUAL LEGAL ASSISTANCE
Ch. 5	Asset Recovery and Mutual Legal Assistance
PART IV	ENFORCEMENT OF CORRUPTION LAWS
Ch. 6	Investigation and Prosecution of Corruption
Ch. 7	Criminal Sentences and Civil Sanctions for Corruption
PART V	THE ROLE OF LAWYERS IN ADVISING BUSINESS CLIENTS IN RESPECT TO ANTI-CORRUPTION PRACTICES
Ch. 8	The Lawyer's Role in Advising Business Clients on Corruption and Anti-Corruption Issues
PART VI	PROMOTING INTEGRITY IN THE PUBLIC SERVICE SECTOR
Ch. 9	Public Officials and Conflicts of Interest
Ch. 10	Regulation of Lobbying
Ch. 11	Corruption and Public Procurement
Ch. 12	Whistleblower Protections

CHAPTER BY CHAPTER TABLE OF CONTENTS

CHAPTER 1: CORRUPTION IN CONTEXT: SOCIAL, ECONOMIC AND POLITICAL DIMENSIONS

1. WHY CORRUPTION MATTERS: THE ADVERSE EFFECTS OF CORRUPTION	2
1.1 A Case Illustration of the Impact of Corruption	2
1.2 Four Concerns About Corruption	5
1.3 Other Related Concerns About Corruption	7
1.3.1 Human Rights and Corruption	7
1.3.2 Gender Equality and Corruption	12
1.3.3 Global Security and Corruption	12
1.3.4 Climate Change, Environmental Degradation and Corruption	14
1.4 Empirical Evidence on the Relationship between Corruption, Reduced Economic Growth and Poverty	15
1.5 Poverty and Corruption: A Growing Concern.....	27
2. THE MANY FACES OF CORRUPTION	31
2.1 No Universal Definition of Corruption	31
2.2 Imposing Western Definitions of Corruption Globally	33
2.3 The Prevalence of Corruption.....	34
3. DRIVERS OF CORRUPTION	41
4. PERCEPTIONS AND MEASUREMENTS OF CORRUPTION	44
4.1 Commonly-Cited Indexes of Corruption	44
4.2 Some Limitations Associated with Corruption Indexes Based on Perceptions.....	47
5. MORE ISSUES ON MEASURING AND UNDERSTANDING CORRUPTION	49
5.1 What is Corruption?.....	49
5.2 Which Countries Are the Most Corrupt?.....	49
5.3 What are the Common Characteristics of Countries with High Corruption?.....	49
5.4 What is the Magnitude of Corruption?	50
5.5 Do Higher Wages for Bureaucrats Reduce Corruption?	50
5.6 Can Competition Reduce Corruption?	51
5.7 Why Have There Been So Few (Recent) Successful Attempts to Fight Corruption?.....	51
5.8 Does Corruption Adversely Affect Growth?.....	51
6. HISTORICAL DEVELOPMENT OF INTERNATIONAL CORRUPTION LAWS	52
6.1 Early History from Antiquity to the OECD Convention in 1997.....	52
6.2 International Corruption Instruments Culminating in UNCAC (2005).....	63
6.2.1 OAS.....	63
6.2.2 OECD.....	63
6.2.3 Council of Europe and GRECO.....	64
6.2.4 European Union	65
6.2.5 African Union.....	65
6.2.6 UNCAC.....	66
6.3 The Meaning and Effect of International Conventions	67
6.4 Development and Revision of National Laws against Corruption	71
6.4.1 US and UK Anti-Corruption Laws	71
6.4.2 Canada's Domestic Legislation.....	72
7. DIVERGENT POLITICAL AND ECONOMIC VIEWS ON CORRUPTION.....	73
7.1 Libertarians, Cultural Ethnographers and Liberal Democrats.....	73
7.2 Three Authority Systems: Traditional, Patrimonial, and Rational-Legal.....	77
8. A SOCIOLOGICAL PERSPECTIVE ON INSTITUTIONAL CORRUPTION (GARRY GRAY).....	81
9. CORPORATE SOCIAL RESPONSIBILITY AND CORRUPTION.....	85
9.1 What is Corporate Social Responsibility?.....	85
9.2 How Did CSR Develop?.....	86
9.3 Some Current CSR Policies and Initiatives	88
9.4 The Need for Increasing Trust in Businesses	90
9.5 Concluding Note.....	91
10. SUCCESSES AND FAILURES IN INTERNATIONAL CONTROL OF CORRUPTION: GOOD GOVERNANCE	92
10.1 Ten Lessons to Be Learned in Designing Anti-Corruption Initiatives	92
11. ANOTHER CASE STUDY: BAE ENGAGES IN LARGE-SCALE CORRUPTION IN SAUDI ARABIA	97

CHAPTER 2: BRIBERY AND OTHER CORRUPTION OFFENCES

1. INTRODUCTION AND OVERVIEW.....	3
2. DOMESTIC BRIBERY	6
2.1 UNCAC	6
2.1.1 Offence of Bribery of a National Public Official	6
2.1.2 Defences	8
2.1.3 Limitation Periods	8
2.1.4 Sanctions.....	9
2.2 OECD Convention.....	9
2.3 US Law	9
2.3.1 Offense of Bribery of a National Public Official	9
2.3.2 Defenses.....	10
2.3.3 Limitation Periods	11
2.3.4 Sanctions.....	11
2.4 UK Law	11
2.4.1 Introduction	11
2.4.2 Offences.....	12
2.4.3 Defences	16
2.4.4 Limitation Periods	19
2.4.5 Sanctions.....	19
2.5 Canadian Law	19
2.5.1 Offences	19
2.5.2 Defences	29
2.5.3 Limitation Periods	30
2.5.4 Sanctions.....	30
3. BRIBERY OF FOREIGN PUBLIC OFFICIALS	31
3.1 UNCAC	31
3.1.1 Offences.....	31
3.1.2 Defences	32
3.1.3 Limitation Periods	32
3.1.4 Sanctions.....	32
3.2 OECD Convention.....	33
3.2.1 Offences.....	33
3.2.2 Defences	34
3.2.3 Limitation Periods	35
3.2.4 Sanctions.....	36
3.3 US Law	36
3.3.1 Offense of Bribing a Foreign Official	37
3.3.2 Defenses.....	41
3.3.3 Limitation Periods for Bribery of a Foreign Official	42
3.3.4 Sanctions.....	42
3.3.5 Facilitation Payments	43
3.4 UK Law	43
3.4.1 Offences.....	43
3.4.2 Defences	44
3.4.3 Limitation Periods	44
3.4.4 Sanctions.....	45
3.4.5 Facilitation Payments	45
3.5 Canadian Law	45
3.5.1 Offences.....	45
3.5.2 Defences	46
3.5.3 Limitation Periods	47
3.5.4 Sanctions.....	47
3.5.5 Facilitation Payments	47
4. FACILITATION PAYMENTS AND THE OFFENCE OF BRIBERY	48
4.1 Arguments For and Against Facilitation Payments	49
4.2 Facilitation Payments and Culture.....	51
4.3 The Economic Utility of Facilitation Payments	52
4.4 UNCAC and OECD Convention.....	53
4.5 US Law	55

4.6 UK Law	58
4.7 Canadian Law	60
4.8 Eliminating Facilitation Payments.....	61
5. ACCOUNTING (BOOKS AND RECORDS) OFFENCES RELATED TO CORRUPTION.....	65
5.1 UNCAC	65
5.2 OECD Convention	66
5.3 US Law.....	67
5.3.1 Accounting Provisions Offences.....	67
5.3.2 Defences/Exceptions	70
5.3.3 Limitation Periods for Books and Records Offenses.....	70
5.3.4 Sanctions for Books and Records Offenses	70
5.4 UK Law	71
5.5 Canadian Law	71
APPENDIX I: TABLE COMPARING UNCAC AND OECD OFFENCES WITH US, UK AND CANADIAN OFFENCES.....	73

CHAPTER 3: GENERAL PRINCIPLES AFFECTING THE SCOPE OF CORRUPTION OFFENCES: JURISDICTION, CORPORATE LIABILITY, ACCOMPLICES AND INCHOATE OFFENCES

1. JURISDICTION	2
1.1 Overview	2
1.2 UNCAC	3
1.3 OECD Convention.....	5
1.4 Other International Anti-Corruption Instruments.....	5
1.5 Corporate Entities	6
1.6 Overview of OECD Countries Jurisdiction.....	7
1.7 US Law	9
1.7.1 The Expansive Extraterritorial Reach of the US FCPA.....	9
1.7.2 Questioning the DOJ and SEC’s Broad View of Territorial Jurisdiction Under the FCPA	12
1.8 UK Law	14
1.9 Canadian Law	17
1.10 Concerns with Expanded Jurisdiction	22
2. CRIMINAL LIABILITY OF CORPORATIONS AND OTHER COLLECTIVE ENTITIES	24
2.1 Introduction	24
2.2 UNCAC	26
2.3 OECD Convention.....	27
2.4 Overview of Corporate Liability in the 41 State Parties to the OECD Anti-Bribery Convention	28
2.4.1 Sources of Liability for Legal Persons.....	29
2.4.2 Three Standards for Imputing Legal Liability	30
2.4.3 Circumstances under Which a Natural Person’s Acts Will Be Attributed to a Legal Person.....	30
2.4.4 Liability of Legal Persons for Acts of Intermediaries.....	31
2.4.5 Successor Liability.....	32
2.4.6 Jurisdiction over Legal Persons and their Nationality	33
2.5 US Law	33
2.5.1 Corporate Criminal Liability under the FCPA Arising from the Acts of Foreign Subsidiaries	34
2.5.2 Successor Liability.....	35
2.6 UK Law	35
2.6.1 <i>Bribery Act</i> Section 7	36
2.7 Canadian Law	39
3. PARTY OR ACCOMPLICE LIABILITY	43
3.1 UNCAC	43
3.2 OECD Convention.....	43
3.3 US Law	43
3.4 UK Law	44
3.5 Canadian Law	45
4. INCHOATE OFFENCES	46
4.1 Attempts.....	46
4.1.1 UNCAC.....	47
4.1.2 OECD Convention	47
4.1.3 US Law.....	48
4.1.4 UK Law.....	48

4.1.5 Canadian Law	49
4.2 Conspiracy	49
4.2.1 UNCAC	50
4.2.2 OECD Convention	50
4.2.3 US Law	50
4.2.4 UK Law	51
4.2.5 Canadian Law	52
4.3 Incitement (or Solicitation)	52
4.3.1 UNCAC and OECD Convention	53
4.3.2 US Law	53
4.3.3 UK Law	53
4.3.4 Canadian Law	53

CHAPTER 4: MONEY LAUNDERING

1. INTRODUCTION TO MONEY LAUNDERING	2
2. THE ESSENTIAL ELEMENTS OF MONEY LAUNDERING	3
3. THE MOST COMMON METHODS OF MONEY LAUNDERING	4
3.1 Use of Corporate Vehicles and Trusts	6
3.2 Use of Gatekeepers	8
3.3 Use of Domestic Financial Institutions	9
3.4 Use of Nominees	11
3.5 Use of Cash	12
4. INTERNATIONAL STANDARDS FOR PREVENTION AND CRIMINALIZATION	14
4.1 UNCAC	14
4.1.1 Article 23 – Criminalization of Money Laundering	14
4.1.2 Article 14 – Measures to Prevent Money-Laundering	18
4.2 OECD Anti-Bribery Convention	25
4.3 FATF Recommendations	26
5. STATE-LEVEL AML REGIMES: USA, UK AND CANADA	29
5.1 Introduction to the Essential Elements of AML Regimes	29
5.2 Financial Intelligence Units	30
5.2.1 FATF Recommendations	30
5.2.2 US	31
5.2.3 UK	32
5.2.4 Canada	32
5.3. Regulation of Financial Institutions and Professionals	33
5.3.1 Customer Due Diligence	33
5.3.2 Transaction Reporting	35
5.3.3 Record-Keeping	36
5.4 Money Laundering Offences	37
5.4.1 FATF Recommendations and UNCAC	37
5.4.2 US	38
5.4.3 UK	42
5.4.4 Canada	44
5.5 The Role of Legal Professionals	47
5.5.1 FATF Recommendations	47
5.5.2 US	48
5.5.3 UK	49
5.5.4 Canada	50
6. EVALUATING THE EFFECTIVENESS OF AML REGIMES	52
6.1 Introduction	52
6.2 The Basel AML Index	52
6.3 FATF Mutual Evaluations	53
6.3.1 US	54
6.3.2 UK	56
6.3.3 Canada	56
6.4 Other Evaluations	58
6.5 Barriers to Creating Effective AML Measures	60

CHAPTER 5: ASSET RECOVERY AND MUTUAL LEGAL ASSISTANCE

PART A: ASSET RECOVERY

1. INTRODUCTION	2
2. ASSET RECOVERY CONCEPTS AND TOOLS	3
2.1 Asset Recovery Steps	3
2.1.1 The General Process for Asset Recovery	3
2.1.2 Management of Seized Assets	6
2.2 International Asset Recovery Agencies.....	7
2.3 State-Level Financial Intelligence Units (FIUs).....	8
2.4 Types of Tools for Asset Recovery	11
2.4.1 Criminal Forfeiture.....	11
2.4.2 Civil (Non-Criminal Based) Forfeiture.....	11
2.4.3 Administrative Freezing and Confiscation.....	13
2.4.4 Fines that Correspond to the Value of the Benefit.....	13
2.4.5 Civil Actions and Remedies.....	14
2.4.5.1 Introduction.....	14
2.4.5.2 Personal Claims and Remedies.....	17
2.4.5.3 Proprietary Claims and Remedies.....	19
2.4.5.4 Other Civil Claims, Remedies and Tools	21
2.4.6 Limitations and Advantages of Criminal and Civil Proceedings	22
2.4.7 Interaction between Remedies	23
3. INTERNATIONAL CONVENTION OBLIGATIONS	25
3.1 UNCAC	25
3.2 OECD Anti-Bribery Convention.....	27
3.3 Other Instruments	28
4. STATE-LEVEL ASSET RECOVERY REGIMES	30
4.1 US	30
4.2 UK	44
4.3 Canada	55
4.4 A Typical Example of the Asset Recovery Process	65
5. EFFECTIVENESS OF ASSET RECOVERY REGIMES	73
5.1 Overview of Existing Data	73
5.2 Continuing Challenges to Effective Asset Recovery	75
5.2.1 Transnational Communication and Cooperation	76
5.2.2 The Need for Mandatory Public Disclosure of Beneficial Ownership	78
5.2.2.1 UK.....	80
5.2.2.2 US	81
5.2.2.3 Canada	82
5.2.3 Other Challenges in Effective Asset Recovery	85
5.3 Emerging Tools in Asset Recovery	87
PART B: MUTUAL LEGAL ASSISTANCE	
6. INTERNATIONAL MUTUAL LEGAL ASSISTANCE AGREEMENTS	91
6.1 Introduction to Mutual Legal Assistance Agreements	91
6.2 Legal Basis for MLA	92
6.3 Mutual Legal Assistance Under UNCAC	92
6.4 Mutual Legal Assistance under OECD Anti-Bribery Convention	94
6.5 Request Processes and Procedures	94
6.6 Request Process in the United States.....	96
6.7 Request Process in the United Kingdom	101
6.8 Request Process in Canada.....	102
6.9 Request Process for Asia-Pacific Countries	106
6.10 Grounds for Refusal of Mutual Legal Assistance Request Under UNCAC and OECD Anti-Bribery Convention.....	107
6.11 Barriers to MLA.....	109

CHAPTER 6: INVESTIGATION AND PROSECUTION OF CORRUPTION

1. INTRODUCTION	3
2. INTERNATIONAL OBLIGATIONS TO INVESTIGATE AND PROSECUTE CORRUPTION	5
2.1 Overview	5

2.1.1 Peer Review Process.....	5
2.2 UNCAC and OECD Provisions and Their Implementation by the US, UK and Canada	6
2.2.1 Immunities and Pre-Trial Release of Accused Persons	6
2.2.2 Specialized Anti-Corruption Enforcement Bodies.....	8
2.2.3 Discretionary Power to Investigate and Prosecute Corruption Offences.....	10
2.2.4 Investigatory Power to Search Financial Records	11
2.2.5 Protection of Witnesses, Victims, Whistleblowers and Participants	12
2.2.6 International Cooperation in Investigation and Prosecution	15
2.2.7 Jurisdiction for Prosecution and Transfer of Criminal Proceedings	17
2.2.8 Extradition.....	18
2.2.9 Use of Special Investigative Techniques	21
3. ENFORCEMENT BODIES	22
3.1 UNCAC and OECD Provisions.....	22
3.1.1 Hong Kong’s Independent Anti-Corruption Commission	25
3.1.2 Quebec’s Anti-Corruption Unit.....	26
3.1.3 Guatemala’s Unique External Anti-Corruption Commission	27
3.2 Varying Levels of Independence in Anti-Corruption Enforcement	29
3.3 Investigative and Prosecutorial Bodies.....	30
3.3.1 US.....	30
3.3.2 UK	33
3.3.3 Canada.....	35
3.4 Cooperation Agreements between State Parties and between Enforcement Bodies	37
4. INVESTIGATING CORRUPTION: INTERNAL AND EXTERNAL INVESTIGATIONS	38
4.1 Sources of Internal Investigations	38
4.1.1 Anonymous Sources and Whistleblowers.....	38
4.1.2 Internal and External Accounting	39
4.1.3 Competitor Complaints	39
4.1.4 Reports of External Investigations	40
4.1.5 Other Sources	40
4.2 Internal Investigations by Corporations: Five Basic Steps.....	40
4.2.1 Determine the Scope of the Allegation	41
4.2.2 Develop the Facts through Interviews and Document Review	41
4.2.3 Assess Jurisdictional and Legal Issues.....	41
4.2.4 Report to the Company	41
4.2.5 Recommend and Implement Remedial Measures.....	42
4.3 Sources of External Investigations	42
4.3.1 Voluntary Disclosures	42
4.3.2 Whistleblowers.....	43
4.3.3 Competitor Complaints	44
4.3.4 Diplomatic Embassies and Trade Offices	44
4.3.5 Cooperative Foreign Enforcement Bodies	45
4.3.6 Non-Governmental Organizations	45
4.4 An Overview of the Essential Elements of an External Investigation	45
4.5 Investigation Strategy in Corruption Cases	50
4.6 Investigative Techniques	51
4.6.1 International Provisions for Special Investigative Techniques	52
4.6.1.1 UNCAC	52
4.6.1.2 OECD Convention.....	52
4.6.2 Controlled Deliveries: US, UK and Canadian Law	52
4.6.3 Integrity Testing versus Entrapment	53
4.6.3.1 US Law	53
4.6.3.2 UK Law	54
4.6.3.3 Canadian Law	55
4.6.4 Obtaining Financial Reports	56
4.6.4.1 US Law	56
4.6.4.2 UK Law	56
4.6.4.3 Canadian Law	56
4.6.5 Use of Forensic Accountants	57
5. OVERVIEW OF DISPOSITIONS RESULTING FROM CORRUPTION INVESTIGATIONS	58
5.1 Introduction	58
5.2 Criminal Options and Procedures.....	58

5.3 Civil Options and Procedures	58
5.4 Comparative Data on the Use of Different Remedies in Bribery of Foreign Officials	58
6. CHARGING POLICIES	61
6.1 US	61
6.1.1 Criminal Charges	62
6.1.1.1 Defense Counsel Submissions to the DOJ (“White Papers”)	62
6.1.2 Alternatives to Criminal Charges	63
6.1.2.1 NPAs	63
6.1.2.2 DPAs	63
6.1.2.3 Data on the Use of NPAs and DPAs	63
6.1.2.4 Criticism of NPAs and DPAs	64
6.1.3 SEC “Neither Admit Nor Deny” Settlements	65
6.1.4 Defense Counsel Submissions to the SEC (“Wells Submissions”)	65
6.1.5 SEC Charging Policies	66
6.1.6 No Charges	67
6.1.6.1 Immunity Requests	67
6.1.6.2 Declination	67
6.1.7 Patterns in FCPA Enforcement	67
6.2 UK	68
6.2.1 Criminal Charges	68
6.2.2 Plea Agreements	70
6.2.3 Alternatives to Criminal Charges: Civil Forfeiture and DPAs	71
6.3 Canada	73
6.3.1 Prosecution and Policies Guidelines	73
6.3.2 A Proposal for Deferred Prosecution Agreements in Canada	76
7. ISSUES OF CONCURRENT JURISDICTION	81
7.1 Parallel Proceedings	81
7.2 Risks of Parallel Proceedings	82
7.2.1 Double Jeopardy	82
7.2.2 Overdeterrence	83
7.2.3 Chilling Effect on Self-Reporting	84
7.3 Approaches to Multijurisdictional Enforcement	84
7.3.1 Offsetting Monetary Penalties	84
7.3.2 Coordinated Actions and Settlements	84
7.3.3 Enforcement Comity and Declinations	84

CHAPTER 7: CRIMINAL SENTENCES AND CIVIL SANCTIONS FOR CORRUPTION

PART A: CRIMINAL SENTENCES AND COLLATERAL CONSEQUENCES

1. INTRODUCTION	3
2. UNCAC	3
3. OECD CONVENTION	3
4. US SENTENCING LAW	4
4.1 Federal Sentencing Guidelines	4
4.1.1 Offense Seriousness	6
4.1.2 Criminal History of the Offender	6
4.1.3 Zones	6
4.2 Sentencing Procedure and Guiding Principles	6
4.3 Specific Corruption Related Guidelines	8
4.3.1 Seriousness of Offense	8
4.3.2 Positions of Elevated Trust	9
4.4 Imposition of Fines	11
4.5 Sentencing Corporations and Other Organizations	12
4.6 FCPA Sentencing	14
4.7 Other Financial Consequences	19
4.8 Comments on FCPA Enforcement	19
5. UK SENTENCING LAW	22
5.1 General Principles of Sentencing	22
5.2 Sentencing Cases before the <i>Bribery Act 2010</i>	22
5.3 Sentences under the <i>Bribery Act 2010</i> (Pre-Guidelines)	23
5.4 Sentencing Guidelines for Corruption Related Offences	27

5.5 Sentencing Guidelines for Corporate Offenders	32
5.6 Deferred Prosecution Agreements in the UK	39
6. CANADIAN SENTENCING LAW	40
6.1 Sentencing Principles in General	40
6.2 Sentencing Principles for Corporations and Other Organizations.....	41
6.3 Sentencing Cases for Domestic Corruption and Bribery.....	42
6.3.1 Bribery and Breach of Trust of Government Officials and Employees	44
6.3.2 Corruptly Defrauding the Government	46
6.4 Sentencing Cases for Corruption and Bribery of Foreign Public Officials.....	48
7. CRIMINAL FORFEITURE.....	55
8. DEBARMENT AS A COLLATERAL CONSEQUENCE OF A BRIBERY CONVICTION.....	56
8.1 UNCAC	56
8.2 OECD	56
8.3 The World Bank	57
8.4 US Law	59
8.5 UK Law	60
8.6 Canadian Law	61
8.7 Applicability of Integrity Provisions to Other Government Departments	68
9. DISQUALIFICATION AS COMPANY DIRECTOR.....	69
9.1 Introduction	69
9.2 US Law	69
9.3 UK Law	70
9.4 Canadian Law	74
10. MONITORSHIP ORDERS	75
10.1 UNCAC and OECD.....	75
10.2 US Law	75
10.3 UK Law	75
10.4 Canadian Law	76
PART B: CIVIL AND ADMINISTRATIVE ACTIONS AND REMEDIES.....	78
11. NON-CONVICTION BASED FORFEITURE	78
12. CIVIL ACTIONS AND REMEDIES.....	78
13. INTERNATIONAL INVESTMENT ARBITRATION	78
13.1 Introduction	78
13.2 International Arbitration Explained.....	79
13.2.1 Institutional and <i>ad hoc</i> Arbitration	79
13.2.2 Commercial and Investment Arbitration.....	80
13.3 Why Parties Agree to Arbitrate	82
13.3.1 Neutrality and Flexibility	82
13.3.2 Enforceability of Arbitration Agreements	82
13.3.3 Arbitral Awards Are Final and Binding.....	83
13.3.3.1 New York Convention.....	84
13.3.3.2 ICSID Convention	84
13.3.3.3 US	85
13.3.3.4 UK.....	85
13.3.3.5 Canada	87
13.4 Treatment of Allegations of Corruption in International Investment Arbitration.....	87
13.4.1 Cases where Claimants Made Allegations of Corruption	87
13.4.1.1 <i>Methanex v United States</i>	88
13.4.1.2 <i>EDF v Romania</i>	89
13.4.1.3 <i>Oostergetel v Slovakia</i>	90
13.4.1.4 <i>ECE and PANTA v Czech Republic</i>	91
13.4.2 Cases where Respondents Made Allegations of Corruption.....	92
13.4.2.1 <i>World Duty Free v Kenya</i>	92
13.4.2.2 <i>Metal-Tech v Uzbekistan</i>	93
13.4.2.3 <i>Niko Resources v Bangladesh</i>	94
13.4.2.4 <i>MOL v Croatia</i>	96
13.5 Conclusion: International Investment Arbitration and the Global Fight against Corruption	97

CHAPTER 8: THE LAWYER’S ROLE IN ADVISING BUSINESS CLIENTS ON CORRUPTION AND ANTI-CORRUPTION ISSUES

1. INTRODUCTION	3
2. ROLES OF LAWYERS IN BUSINESS	3
2.1 Multiple Roles	3
2.2 Who is Your Client?	3
2.3 In-House Counsel and External Counsel.....	4
2.4 The Lawyer as a Corporate Gatekeeper	6
3. LEGAL AND ETHICAL DUTIES OF LAWYERS	9
3.1 Conflicts of Interest	9
3.1.1 US Rules on Conflicts of Interest.....	11
3.1.2 UK Rules on Conflicts of Interest.....	12
3.1.3 Canadian Rules on Conflicts of Interest.....	12
3.2 Duty to Not Advise or Assist in a Violation of the Law	13
3.2.1 US Rules.....	13
3.2.2 UK Rules.....	14
3.2.3 Canadian Rules.....	14
3.3 The Duty of Confidentiality and Solicitor-Client Privilege	15
3.3.1 The Duty of Confidentiality under US Rules.....	17
3.3.2 The Duty of Confidentiality under UK Rules.....	18
3.3.3 The Duty of Confidentiality under Canadian Rules.....	18
3.3.4 Solicitor-Client Privilege: Legal Advice and Litigation Privilege.....	19
3.3.5 Solicitor-Client Privilege: Distinguishing Business and Legal Advice	20
3.4 Solicitor-Client Privilege, Confidentiality and Reporting Wrongdoing.....	21
3.4.1 US Rules on Internal and External Disclosure of Wrongdoing	22
3.4.2 UK Rules on Internal and External Disclosure of Wrongdoing	23
3.4.3 Canadian Rules on Internal and External Disclosure of Wrongdoing	24
3.5 Duty to Know Your Customer.....	25
4. WHERE LAWYERS MIGHT ENCOUNTER CORRUPTION	26
5. RELATIONSHIP BETWEEN DUE DILIGENCE, ANTI-CORRUPTION COMPLIANCE PROGRAMS, AND RISK ASSESSMENTS	27
6. ANTI-CORRUPTION COMPLIANCE PROGRAMS	29
6.1 Introduction	29
6.2 International Framework for Anti-Corruption Compliance Programs	29
6.2.1 UNCAC.....	29
6.2.2 OECD Anti-Bribery Convention.....	30
6.2.3 Key Elements of Compliance Guidelines Published by Various International Organizations	30
6.3 US Framework.....	37
6.3.1 <i>Foreign Corrupt Practices Act</i>	37
6.3.2 Guidelines and Interpretation	37
6.3.2.1 The DOJ and SEC: A Resource Guide.....	38
6.3.2.2 US DOJ Sentencing Guidelines.....	39
6.4 UK Framework.....	40
6.4.1 <i>Bribery Act 2010</i>	40
6.4.2 Guidelines and Interpretation	41
6.4.2.1 <i>Bribery Act 2010: Guidance</i>	41
6.4.2.2 <i>Bribery Act 2010: Joint Prosecution Guidance</i>	43
6.5 Canadian Framework.....	43
6.5.1 <i>Corruption of Foreign Public Officials Act</i>	43
6.5.2 Judicial Guidance	43
6.6 Critiques of Compliance Programs.....	45
7. RISK ASSESSMENT	46
7.1 What is a Risk Assessment?	46
7.2 What Risk Areas are Being Assessed?	47
7.3 Conducting an Effective Risk Assessment.....	48
7.4 US Law	49
7.5 UK Law	49
7.6 Canadian Law	50
8. DUE DILIGENCE REQUIREMENTS	51

8.1 Third Party Intermediaries	51
8.2 Transparency Reporting Requirements in Extractive Industries	52
8.2.1 Extractive Industries Transparency Initiative	52
8.2.2 US	54
8.2.3 UK	55
8.2.4 Canada	55
8.3 Mergers and Acquisitions	57
9. INTERNAL INVESTIGATION OF CORRUPTION.....	62
10. CORPORATE LAWYERS’ POTENTIAL LIABILITY FOR A CLIENT’S CORRUPTION.....	62
10.1 Introduction	62
10.2 Criminal Liability	62
10.3 Accessory Liability in Civil Actions.	63
10.3.1 US Law	63
10.3.2 UK Law	63
10.3.3 Canadian Law	64
10.4 Tort of Legal Malpractice	64
10.5 Shareholders’ or Beneficial Owners’ Actions Against the Corporation’s Lawyer	65
10.5.1 US Law	65
10.5.2 UK Law	65
10.5.3 Canadian Law	66
10.6 Lawyers’ Civil Liability under Securities Acts	67

CHAPTER 9: PUBLIC OFFICIALS AND CONFLICTS OF INTEREST

1. INTRODUCTION.....	2
2. AN OVERVIEW OF CONFLICTS OF INTEREST.....	3
2.1 Conceptualizing “Conflict of Interest”	3
2.2 Enforcement Mechanisms: Historical Foundations and Contemporary Tensions	7
2.3 Political Culture and Conflicts of Interest	9
3. A COMPARISON OF INTERNATIONAL STANDARDS AND REGIMES IN THE US, UK AND CANADA	10
3.1 International Law, Standards and Guidelines	10
3.1.1 UNCAC	10
3.1.2 OECD Conflict of Interest Guidelines	11
3.2 General Structure of Conflict of Interest Regimes: Statutes, Policies and Guidelines.....	12
3.2.1 US	12
3.2.2 UK	13
3.2.3 Canada	14
3.3 General Structure of Conflict of Interest Regimes: Bodies of Authority	14
3.3.1 US	15
3.3.2 UK	17
3.3.3 Canada	18
3.4 The Substance and Interpretation of National Conflict of Interest Rules.....	19
3.4.1 Description of Conflict of Interest: US	21
3.4.2 Description of Conflict of Interest: UK	22
3.4.3 Description of Conflict of Interest: Canada	23
3.4.4 Financial Disclosure and Restraint on Participation: US	24
3.4.5 Financial Disclosure and Restraint on Participation: UK	26
3.4.6 Financial Disclosure and Restraint on Participation: Canada	27
4. CONCLUSION	28

CHAPTER 10: REGULATION OF LOBBYING

1. INTRODUCTION.....	3
2. TERMINOLOGY	4
2.1 Defining Lobbying	4
2.2 Terminology in a Comparative Context	5
3. LOBBYING AND DEMOCRACY	7
3.1 Democracy as an Indicator of Transparency	7
4. REGULATORY SCHEMES	9

4.1 Lobbying and the Broader Regulatory Framework	9
4.2 Principles of Lobbying Regulation	9
4.2.1 Standards Consistent with Socio-Political, Legal and Administrative Context	10
4.2.2 Clearly Defined Scope of Policy on Lobbying	11
4.2.3 Robust Standards and Procedures for Information Collection and Disclosure	12
4.2.4 Standards of Conduct that Foster a Culture of Integrity	13
4.2.5 Mechanisms that Encourage Compliance	13
5. COMPARATIVE SUMMARY	14
6. REGULATORY FRAMEWORK AND CONTEXT FOR LOBBYING.....	16
6.1 US: Framework and Context	16
6.1.1 Governance Structure.....	16
6.1.2 Regulatory Framework	16
6.1.3 Overview.....	16
6.2 UK: Framework and Context.....	17
6.2.1 Governance Structure.....	17
6.2.2 Regulatory Framework	17
6.2.3 Overview.....	19
6.3 Canada: Framework and Context.....	19
6.3.1 Governance Structure.....	19
6.3.2 Regulatory Framework	19
6.3.3 Overview.....	20
7. MAIN ELEMENTS OF LOBBYING REGULATION.....	21
7.1 Definition of Government Officials	21
7.1.1 US.....	21
7.1.2 UK.....	21
7.1.3 Canada.....	21
7.2 Definition of Lobbyist	22
7.2.1 US.....	22
7.2.2 UK.....	22
7.2.3 Canada.....	22
7.3 Definition of Lobbying Activity	22
7.3.1 US.....	22
7.3.2 UK.....	23
7.3.3 Canada.....	24
7.4 Exclusions from the Definitions of Lobbyist and Lobbying Activities.....	24
7.4.1 US.....	24
7.4.2 UK.....	25
7.4.3 Canada.....	26
7.5 Disclosure Requirements	26
7.5.1 Content	27
7.5.1.1 US	27
7.5.1.2 UK.....	28
7.5.1.3 Canada	30
7.5.2 Timing.....	31
7.5.2.1 US	31
7.5.2.2 UK.....	31
7.5.2.3 Canada	31
7.5.3 Procedures for Collection and Disclosure.....	31
7.5.3.1 US	32
7.5.3.2 UK.....	32
7.5.3.3 Canada.....	32
7.6 Codes of Conduct	32
7.6.1 US.....	33
7.6.2 UK.....	33
7.6.3 Canada	33
7.7 Compliance and Enforcement	35
7.7.1 Sanctions	36
7.7.1.1 US	36
7.7.1.2 UK.....	36
7.7.1.3 Canada	37
7.7.2 Education Programs	38
7.7.2.1 US	38

7.7.2.2 UK.....	38
7.7.2.3 Canada	38
7.7.3 Revolving Door	38
7.7.3.1 US	39
7.7.3.2 UK	40
7.7.3.3 Canada	40
8. COMPARISON WITH LOBBYING REGULATION IN EUROPEAN UNION INSTITUTIONS	41
9. CONCLUSION	42

CHAPTER 11: CORRUPTION AND PUBLIC PROCUREMENT

1. INTRODUCTION.....	3
1.1 Adverse Consequences of Corruption in Public Procurement	3
1.2 How Much Money Is Spent on Public Procurement?	6
1.3 Public Procurement Corruption within Developed Countries.....	6
1.4 The Importance of Maintaining a Low-Risk Environment	7
2. RISKS AND STAGES OF CORRUPTION IN PUBLIC PROCUREMENT	8
2.1 Risk of Corruption by Industry and Sector.....	8
2.2 Stages and Opportunities for Procurement Corruption	9
2.3 Corrupt Procurement Offences	13
2.3.1 Bribery.....	13
2.3.2 Extortion.....	14
2.3.3 Bid-rigging, Kickbacks and Other Forms of Fraud.....	14
3. TYPES OF PUBLIC PROCUREMENT: P3S, SOLE SOURCING AND COMPETITIVE BIDDING	15
3.1 P3s	15
3.2 Sole Sourcing.....	18
3.3 Competitive Bidding.....	20
4. HALLMARKS OF A GOOD PROCUREMENT SYSTEM	22
4.1 Transparency	22
4.2 Competition	23
4.3 Integrity	23
5. PRIVATE LAW ENFORCEMENT OF TENDERING FOR PUBLIC CONTRACTS.....	25
5.1 US Private Law.....	25
5.2 UK Private Law	26
5.3 Canadian Private Law.....	26
6. PUBLIC LAW FRAMEWORK	29
6.1 International Legal Instruments.....	29
6.1.1 UNCAC.....	29
6.1.2 OECD Anti-Bribery Convention.....	29
6.1.3 The World Bank	30
6.1.4 WTO Agreement on Government Procurement (WTO-AGP)	31
6.1.5 NAFTA	32
6.1.6 Comprehensive Economic and Trade Agreement (CETA).....	32
6.1.7 African Union Convention on Preventing and Combating Corruption.....	33
6.1.8 UNCITRAL Model Law on Public Procurement	34
6.2 US Law and Procedures	35
6.2.1 <i>Competition in Contracting Act</i>	35
6.2.2 <i>Federal Acquisition Regulation</i>	36
6.3 UK Law and Procedures.....	37
6.3.1 EU Directive.....	39
6.3.2 <i>Public Contracts Regulations 2015</i>	39
6.3.3 <i>Public Services (Social Value) Act 2012</i>	40
6.4 Canadian Law and Procedures	40
6.4.1 Canada-US Agreement on Government Procurement (CUSAGP).....	41
6.4.2 Agreement on International Trade (AIT).....	41
6.4.3 <i>Criminal Code</i>	42
6.4.4 Overview of the Federal Policy Framework and Integrity Provisions.....	43
6.4.5 Quebec’s Solution to Public Procurement Corruption: Not Enough?.....	45
6.4.6 Office of the Procurement Ombudsman.....	47
7. EVALUATION OF PROCUREMENT LAWS AND PROCEDURES	48

7.1 OECD Review of Country Compliance	48
7.1.1 US Law and Procedure	48
7.1.2 UK Law and Procedure	48
7.1.3 Canadian Law and Procedure	49
7.2 Other Procurement Issues and Concerns	49

CHAPTER 12: WHISTLEBLOWER PROTECTIONS

1. INTRODUCTION	2
2. WHAT IS “WHISTLEBLOWING”?	3
3. INTERNATIONAL LEGAL FRAMEWORK	4
3.1 UNCAC	4
3.2 The OECD Convention	5
3.3 Other Regional Conventions and Agreements	6
4. “BEST PRACTICES” IN WHISTLEBLOWER PROTECTION LEGISLATION	10
4.1 Limitations of Best Practices	10
4.2 Sources for Best Practices	11
4.3 General Characteristics of Best Practices	13
4.3.1 The Scope and Clarity of Legislation	12
4.3.2 Mechanisms for Disclosure	14
4.3.3 Protection of Identity	16
4.3.4 Protection against Retaliation and Oversight of that Protection	17
4.3.5 Remedies	18
5. WHISTLEBLOWER PROTECTION IN THE US: A PLETHORA OF LEGISLATION	20
5.1 Whistleblower Protection in the Public Sector	20
5.2 Encouraging Whistleblowing through Rewards: The <i>False Claims Act</i>	23
5.3 A Brief Discussion of Federal Whistleblower Protection in the Private Sector	25
6. WHISTLEBLOWER PROTECTION IN THE UK: <i>PUBLIC INTEREST DISCLOSURE ACT 1998</i>	27
7. WHISTLEBLOWER PROTECTION IN CANADA	31
7.1 The Development of the Common Law Defence	31
7.2 Federal Legislation: The <i>Public Servants Disclosure Protection Act</i>	32
7.3 Securities Regulation in Canada: The Ontario Securities Commission Whistleblower Program	42
7.3.1 Confidentiality	42
7.3.2 Eligibility Criteria for Whistleblower Awards	43
7.3.3 Whistleblower Award Formula	45
7.3.4 Anti-Reprisal Provisions	46
7.3.5 Conclusion	47
8. CONCLUSION: WHERE DO WE GO FROM HERE?	48