PRESENTATION TO THE LEGISLATIVE COMMITTEE ON BILL C-2

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May 30, 2006

A central element of the *Federal Accountability Act* should be to increase transparency and disclosure about the government's contracts with third parties. This was the essence of the sponsorship scandal: a political party's abuse of public funds, channelled through private contracts, often with crown agents of the government, for private partisan purposes.

One of the most straightforward ways to prevent this from happening in the future – and to increase transparency and accountability in a far-reaching manner – is to increase the disclosure required for government contracts with third parties and private companies. Surely citizens deserve to know how and where the federal government spends its money each year. Public accounts, budgets, estimates, departmental reports, and the Auditor General provide significant accountability and details on how funds are spent within governments.

The proposed *Federal Accountability Act* has major loopholes that would:

- Exclude contracts for goods and services from review by the Auditor General;
- Not allow individual citizens to lodge complaints with the proposed Procurement Auditor;
- Not enshrine the current practice of proactive disclosure in legislation; and
- Not address the recommendations of the Information Commissioner regarding disclosure of details of government contracts with third parties or even meet the principles established in courts over this information.

To correct these major problems, the *Federal Accountability Act* needs to be amended to include the following provisions:

Give the Auditor General the power to investigate all companies that receive government funds whether through a funding arrangement or through a contract.

The proposed changes in the *Federal Accountability Act* would extend the powers of the Auditor General to analyse the records of recipients of funds from the federal government – but it excludes funding provided through contracts for goods and services.[1]

[1] See clauses 307 and 315 of Bill C-2. While the definition of "recipient" would be broadened to include organizations that have received more than $1 million over five years rather than $100 million as is currently the case (and to include co-operatives which had previously been excluded), the powers of the Auditor General under clause 307 are limited to a review in relation to "funding agreements". Clause 315 of Bill C-2 includes the following proposed definition for funding agreement that would apply to both the *Financial*

This is a major loophole that would not allow the Auditor General to examine the record and accounts of companies that have a contract for a good or service for the government. The Auditor General would only be able to examine material from the government's side of the fence, while extending that fence to include many more groups and non-profit organizations.

- Add the words "or contract" (or "contracts" where plural) after all instances of the term "funding agreement" in the proposed in clause 304 and 315 of Bill C-2;
- Replace the words "but excludes contracts" with the words "and includes contracts" in the definition of "funding agreement" in clause 315;
- Add the words "or exclusive commercial rights" after the words "recipient receives funding" in clause 315;
- Delete section (d) under the definition of "recipient" in clause 315; and
- Add the words "or contract" after every instance of the word "funding agreement" in clause 307.

Allow all citizens to lodge complaints for the Procurement Auditor

Bill C-2 includes proposals in clause 309 that would allow complaints to be lodged with a Procurement Auditor, but it would only allow "Canadian suppliers" to lodge complaints. All Canadians, and not just corporations, should be able to lodge complaints.

- Delete the proposed section in clause of 309 of Bill C-2 that restricts who can lodge complaints (proposed section 22.2 (1) for the *Public Works and Government Services Act*), and replace it with the following:
    - *"Any Canadian citizen or resident may lodge a complaint referred to in section 22.2 (1)."*

Require public disclosure of basic information on government contracts

On March 23, 2004, the government implemented a "proactive disclosure" policy that mandated all government departments to publish basic details of all contracts over $10,000. This commendable policy was put in place partly to reduce the government's costs of complying with Access to Information Requests and it is not enshrined in any legislation or regulations. It could be reversed at any time without public debate or discussion. To prevent future fraud and abuse of government funds from taking place, this policy should be enshrined in

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Administration Act and the *Auditor General Act*: "funding agreement", in respect of a recipient, means an agreement in writing under which the recipient receives funding from Her Majesty in right of Canada or a Crown corporation, either directly or through an agent or mandatory of Her Majesty, including by way of loan, but excludes contracts for the performance of work, the supply of goods or the rendering of services."

legislation and more details should be provided for contracts in excess of $100,000.

It is not clear exactly what legislative vehicle would be appropriate for these conditions, but it could be either the *Financial Administration Act* or the *Public Works and Government Services Act*. The details of what should be included in contracts over $100,000 need to be worked out, but in many cases the government's tender documents and the signed contracts include appropriate summary information on deliverables and budget costs.

- Enshrine in legislation the government policy that was adopted March 23, 2004 that requires quarterly disclosure of all contracts over $10,000 by the federal government and all agents of the federal government.
- Publish more details on the requirements, deliverables and costs associated with contracts in excess of $100,000.

***Implement the proposals made by the Information Commissioner to ensure that details of contracts are not excluded from coverage under the* Access to Information Act.**

Section 20 of the existing *Access to Information Act* provides a mandatory exemption for third party information with conditions that can be applied fairly broadly. The Information Commissioner has recommended that this exemption should not be used to exempt details of contracts from coverage of the *Act*. The courts have also ruled that there should be no reasonable expectation of confidentiality once a contract has been awarded. The public has a right to know about the terms of contracts using public funds signed between the government and private companies.

- Add a clause to section 20 of the *Access to Information Act* that states that the head of a government or agent of the government shall not refuse to disclose a record or a part thereof if that record or part thereof contains details of a contract or a successful bid for a contract with a government institution.

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