Definitions of Corruption

There are many criminal and unethical acts that can constitute corruption. Canadian enforcement focuses on public and conventional corruption in the domestic environment.

The objective of this study was to outline how the concept of corruption is defined in Canada and to give an overview of enforcement responses, the results of which may serve to assist policy development regarding corruption and corruption-related crime. With this in mind, various types of corruption, definitions and related offences have been reviewed, including domestic, foreign and multilateral legislation, as well as civil society and international financial institution definitions.

Corruption can be defined and categorized in different ways. The most common types or categories of corruption are supply versus demand corruption, grand versus petty corruption, conventional versus unconventional corruption and public versus private corruption. There are other categories or ways of describing corruption, such as "systemic" versus "individual" or "isolated," corruption by "commission" versus by "omission," by the degree of coercion used to perform the illegal act, and the type of benefit provided.

"Supply-side corruption" is used to describe the act of offering an illicit payment or undue advantage, whereas "demand-side corruption" relates to the acceptance or solicitation of such a payment or advantage. "Active" and "passive" corruption are terms that have been used synonymously with supply and demand corruption.

"Conventional corruption" occurs when government officials, whether higher or lower ranking, illegitimately receive or accumulate an undue advantage for their own personal use, disregarding public interest. There is an element of reciprocity within conventional corruption: both the solicitation and the acceptance of bribes (supply and demand bribery) are therefore considered forms of conventional corruption. "Unconventional corruption" exists where a public or government official acts without consideration for the public's interest, the goal being to attain a specific and personal gain. However, a key element is that no relationship of reciprocity exists, as there is no clear-cut transaction between two parties. This type of corruption includes acts, such as misappropriation, theft, embezzlement, and breach of trust.

"Grand" and "petty" corruption are both sub-categories of conventional corruption. Petty corruption is sometimes equated with "bureaucratic corruption," which implies involvement of public administration officials and non-elected officials. Some examples of the use of petty corruption include bribes paid to enforcement officials, customs personnel, health service providers, and other government officials. Facilitation payments, also known as "grease" payments, fall under this category. Grand corruption involves higher ranking government officials and elected officials who exploit opportunities that are presented through government work. It is more often the result of bribes offered or paid in connection with larger scale government projects, such as infrastructure and construction projects.

"Political corruption" is considered a type of grand corruption due to its seriousness and the high-ranking level of public officials involved. It exists where politicians and government agents who are entrusted with enforcing laws are themselves corrupt: it occurs at the top levels of government. Another type of grand corruption is "State capture," which is defined as a company or organization that shapes and influences legislation or government policies in an entire sector (e.g., the extractive and

mining industry or taxation) through payments. The opposite effect can also occur, whereby public officials attempt to manipulate actors in the private sector for their own personal gain, also known as "reversed State capture." State capture has a not-so-distant equivalent known as "influence corruption," for which the actors and goals are identical. The difference is in the absence of any payment, advantage or transaction ever taking place. In this case, influence is exerted based on the organization's ability to impact policy as a result of its size, its ownership, or potential ties to, and interactions with, State officials.

Corruption can also be distinguished by its "public" or "private" nature. The difference lies in the sectors in which operate the participants of the illicit act. Public corruption involves a public official (whether domestic or foreign) as one party to the corrupt act, whereas private corruption involves only individuals in the private sector (which is why it is sometimes called "private-to-private corruption"). Amidst public corruption, legislation can be distinguished by the type of public official it targets, whether the official is a "domestic" public official or a "foreign" public official. When a particular private company demonstrates corrupt behavior, its clients and suppliers have the possibility to go to competitors if the corruption is noticed. But in the case of government, taxpayers and citizens cannot rely on other organizations to provide the same government services, such as healthcare or public safety. The level of monopoly of the good or service provided therefore affects the perceived threat. Definitions of public corruption often emphasize the notion of State versus society relationships. Corruption however exists within and between private businesses and individuals in various forms, without any involvement from government officials or agencies. Some examples of corrupt acts in the private sector include bribing, swindling, and mafia-methods. As the public and private sectors are more and more intertwined as a result of outsourcing, privatization, rapid growth in the private sector in some countries, and the growing influence of multinational corporations and State-owned enterprises, lines are blurred between public and private funds; and, hence, these types of corruption.

"Systemic corruption" exists where corruption is pervasive or entrenched in a society. In other words, it exists where it is routine in dealings between the government and private individuals or businesses. In such cases, tension exists between formal and informal

rules, as there are strong incentives for public officials, businesses, and individuals to comply with this illegitimate system. In contrast, isolated or individual corruption exists when corruption is rare or consists of a few individual acts.

Acts of corruption can be carried out by "commission," but also by "omission." A public official can either refrain to act or act in the performance of his or her duties, in exchange for a benefit from an individual or business. These factors as well as the "degree of coercion" applied by the public official and the type of benefit allotted (monetary, physical good, or creation of a social obligation) are of importance as they may affect decision-making and rationalization by corrupt actors. The same can be said in cases where the "form of benefit" received is not immediate but instead the result of the creation of a social obligation. Individuals might be less inclined to engage in corrupt behaviour in cases where the counterpart or offering is a financial benefit, compared to less obvious benefits such as future favors or services.

In Canada, as is the case in the United States, the United Kingdom, Australia, and other OECD member states, both domestic and foreign corruption are criminalized. In Canada, the *Corruption of Foreign Public Officials Act* (CFPOA) creates an offense for foreign corruption and also contains books and records provisions. The CFPOA's bribery offense only criminalizes the supply-side of the corrupt behaviors. Domestic corruption offenses, provided for in the *Criminal Code*, are broader in nature: both the supply and demand sides of bribery transactions are criminalized as well as acts of "unconventional" corruption, such as breach of trust by a public officer and misconduct of officers executing process.

The *Criminal Code* also contains a private corruption offense. This type of corruption (between private sector organizations) has received weaker responses and focus from the media in Canada in recent years. The media and enforcement authorities have instead placed most focus on public corruption. Furthermore, although foreign bribery has been the source of much discussion with the recent amendments to the *CFPOA* in 2013, there has been much more activity surrounding domestic

corruption by criminal enforcement bodies and in the media in the last few years, often in relation with organized crime charges and investigations.

The media has been active in reporting grand or political corruption involving elected or high ranking government officials, as well as systemic corruption, involving the infiltration of organized crime into the public sector. Canadian enforcement bodies however seem to equally investigate instances of grand and petty corruption.

Most prosecuted cases in Canada have included acts of conventional corruption, as opposed to unconventional corruption. The few cases of unconventional corruption were brought alongside other charges which included conventional corruption, as opposed to stand alone charges. This might be due to evidentiary issues, such as the lack of third parties or physical evidence in cases of unconventional corruption.

Further research might be necessary to address additional weaknesses and best practices, such as areas surrounding information sharing between enforcement authorities and admissibility before Canadian criminal courts, the domestic and international asset recovery and mutual legal assistance framework under the Canadian *Criminal Code* (under sections 354 and Part XII.2 relating to proceeds of crime), federal laws (such as the *Freezing Assets of Corrupt Foreign Officials Act*), the World Bank/UNODC joint Stolen Asset Recovery Initiative and other revenue transparency initiatives, as well as the impact on prosecutions following the use of proactive investigation tools in other jurisdictions.

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