



Government of Canada Reports on Public Consultations About the Integrity Regime and Deferred Prosecution Agreements

February 24, 2018

[Danielle K. Royal](#), [Marc B. Barbeau](#), [Katherine L. Kay](#)

- Two years after introducing the government-wide Integrity Regime as a further means to deter and address corporate wrongdoing, the Government of Canada sought public consultation to determine whether the Integrity Regime is achieving its objectives.
- The consultation also included a discussion about the introduction of deferred prosecution agreements (“DPAs”) which are commonly used in the United States and provide a means of resolving criminal proceedings without the necessity of entering a criminal conviction.
- The Government invited submissions from the public, and on February 22, 2018, the Government published a report summarizing the views of those who participated in the consultation.

Context

The Government of Canada has expressed an ongoing commitment to taking action against corporate wrongdoing, including improper, unethical and illegal business practices. In addition to an existing framework of laws, regulations, policies and programs, Canada took the step two years ago of introducing a government-wide Integrity Regime to detect, prevent and address corporate wrongdoing. The Integrity Regime aims to ensure that the Government does business only with ethical suppliers both in Canada and abroad. Under the Regime, a conviction for some offences leads to an automatic ineligibility, or a significant period of debarment, in respect of government contracts.

Between September 25 and December 5, 2017, the Government invited public consultation on the Regime, seeking feedback from Canadians and organizations on the Regime generally and on suggested enhancements, including the potential introduction in Canada of a DPA regime. During this period, the Government met with over 350 individuals and received 75 written submissions, including a submission from Stikeman Elliott LLP.

A DPA eliminates the binary nature of a prosecution, allowing criminal prosecution to be suspended in circumstances where the accused agrees to fulfil certain requirements including:

- admitting to certain facts
- cooperating with authorities throughout the duration of a DPA
- paying a financial penalty, or
- enhancing compliance measures.

DPA's are intended to ensure that corporate criminal conduct is subject to effective, proportionate and dissuasive penalties, to assist in improving compliance and corporate culture, and to avoid some of the unintended consequences associated with corporate criminal convictions.

The Report

The Government's report on the consultation was published on February 22, 2018 and can be found [here](#). The report indicates that most participants support the Integrity Regime and would build additional discretion and flexibility into the Regime to allow for a variety of aggravating and mitigating factors to be taken into account in the determination of an appropriate period of debarment. Factors that were identified include:

- the seriousness of the offence
- whether the wrongdoer was a repeat offender
- self-reporting
- cooperation with law enforcement
- taking corrective actions, and
- restitutionary efforts.

As well, a majority of participants supported the introduction of a DPA regime in Canada, as they were of the view that DPAs would be a useful additional tool for prosecutors to use in addressing corporate wrongdoing.

The Government of Canada indicated it will further review the feedback received and assess whether enhancements to the Integrity Regime are warranted and will use the feedback in considering the possibility of introducing a Canadian DPA regime as an additional tool for prosecutors to address corporate crime.

Implications

No changes have yet been made to the Integrity Regime. The consistency of the public feedback highlighted in the Report suggests that changes could be made in the future and that a DPA regime continues to receive serious consideration to allow the Government to more effectively combat corporate wrongdoing.

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