

# GLOBAL CORRUPTION

# GLOBAL CORRUPTION

ITS REGULATION UNDER INTERNATIONAL CONVENTIONS,  
US, UK, AND CANADIAN LAW AND PRACTICE

**Volume 1**

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Edited by

**GERRY FERGUSON**



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## TESTIMONIALS

*Global Corruption* is the Canadian (and arguably US and UK) definitive text on ABAC. Like Hogg on constitutional law, but for anticorruption. Throughout the day [of publication], my counterparts from the other banks emailed back their thanks and great surprise at the sheer wealth of the resource that Ferguson has provided.

**Daryl Davis** (H.B.A., B.C.L. & LLB.) – *Chief Advisor Sanction and Anti-Corruption Program Management National Bank of Canada*

In *Global Corruption*, Ferguson provides a rich analysis of the nature, scope and extent of global corruption by canvassing international requirements and UK, US and Canadian law on a vast array of topics from the investigation, prosecution and sanctioning of corruption, money laundering and the recovery of corruption proceeds to laws and policies on preventative mechanisms such as the regulation of public procurement, lobbying, campaign financing, whistleblowing and other corruption risks.

**Dr. Leonardo Borlini** – *Department of Law Bocconi University & Co-author of Corruption: Economic Analysis and Law*

This book by Ferguson is an invaluable resource for the international community as he provides an amazing wealth of information and analysis for students and practitioners on the scope and details of the international standards against corruption, including the UN and OECD conventions as well as the various ways in which the laws of US, UK and Canada attempt to combat corruption.

**Dr. Nikos Passas** – *Professor of Criminology & Criminal Justice, Northeastern University. Senior Fellow of the Financial Integrity Institute, Case Western Reserve School of Law*

The 2022 edition of *Global Corruption*, expanded and updated to include new content from a variety of subject matter experts, provides impressive coverage of a range of issues spanning the field of anti-corruption. It offers a comprehensive yet remarkably accessible set of resources for those interested and engaged in tackling corruption. Whether you are approaching the topic of corruption as an interested citizen, an affected businessperson, a seasoned advisor, or a government policy-maker, you will find this book to be full of valuable material.

**Anthony Cole**, *Partner, National Lead – White Collar Crime and Government Investigations, Dentons Canada LLP and Chair of Legal Committee, Transparency International Canada*

The 2022 edition of *Global Corruption* is a comprehensive view of the disastrous impact of corruption on the most marginalized globally, under a Canadian political, legal and regulatory lens. The practical comparisons between the applicable systems in Canada with other jurisdictions puts the Canadian response to corruption into a global context. A handy reference guide to anyone with an interest in how Canada's anticorruption framework stacks up globally.

**Peter Dent**, *Partner and President of Deloitte Forensic Inc and past Chair of Transparency International-Canada*

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

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

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## TABLE OF ACRONYMS

AAA	American Arbitration Association
ABA	American Bar Association
ABMS	ISO 37001 Anti-bribery Management System standard for organizations
ACA	Anti-corruption agency
ACC	Association of Corporate Counsel
ACC	Bangladesh, Anti-Corruption Commission
ACoBA	UK, Advisory Committee on Business Appointments
AECA	<i>Arms Export Control Act</i>
AFAR	Arab Forum on Asset Recovery
AFMLS	Asset Forfeiture and Money Laundering Section
AIT	Agreement on Internal Trade
ALACs	Transparency International, Advocacy and Legal Advice Centres
AMF	Quebec, Canada, Autorité des marchés financiers
AML	Anti-Money Laundering
APEC	Asia-Pacific Economic Cooperation
APPC	UK, Association of Professional Political Consultants
ASEM	Asia-Europe Meeting
ASMLS	Asset Forfeiture and Money Laundering Section
AU	African Union
AU Convention	African Union Convention on Preventing and Combating Corruption
BITs	bilateral investment treaties
BSA	US, <i>Bank Secrecy Act</i>
BOTA	BOTA Foundation
BOO	build-own-operate
BPI	Bribe Payers Index
CBA	Canadian Bar Association
CBA Code	Canadian Bar Association Code of Professional Conduct
CCIR	EC, Code of Conduct for Interest Representatives
CDA	US, <i>Contract Disputes Act of 1978</i>
CED	Committee for Economic Development
CETA	Canada-European Union, Comprehensive Economic and Trade Agreement
CFT	combating the financing of terrorism
CFPOA	Canada, <i>Corruption of Foreign Public Officials Act</i>
CICA	US, <i>Competition in Contracting Act</i>

CICIG	International Commission against Impunity in Guatemala
CIPR	UK, Chartered Institute of Public Relations
COC	UK, Code of Conduct (for Members of Parliament)
COE	Council of Europe
COIA	Canada, <i>Conflict of Interest Act</i>
COIC	Canada, Conflict of Interest Code (for Members of the House of Commons)
CPI	Corruption Perceptions Index
CPS	UK, Crown Prosecution Service
CSC	UK, Civil Service Commission
CSP	corporate social performance
CSPL	UK, Committee on Standards in Public Life
CSR	corporate social responsibility
CTRs	currency transaction reports
CUSAGP	Canada-US Agreement on Government Procurement
DAEO	US, designated agency ethics official
DFAIT	Canada, Department of Foreign Affairs and International Trade
DFID	UK, Department for International Development
DNA	Romanian Anti-Corruption Authority
Dodd-Frank Act	US, <i>Dodd-Frank Wall Street Reform and Consumer Protection Act</i>
DOJ	US, Department of Justice
DOJ-AFF	US, Department of Justice Asset Forfeiture Funds
DPAs	US, UK, Deferred Prosecution Agreements
DPOHs	Canada, designated public office holders
DPP	Canada, Director of Public Prosecutions
DTR5	UK, Transparency Directive Review
EA	Canada, <i>Evidence Act</i>
EBOs	US, Executive Branch Officials
EBRD	European Bank for Reconstruction and Development
EC	European Commission
ECHR	European Court of Human Rights
ECNEC	Bangladesh, Executive Committee of National Economic Council
ECT	Energy Charter Treaty
EFCC	Nigeria, Economic and Financial Crimes Commission
EGA	US, <i>Ethics in Government Act</i>
EITI	Extractive Industries Transparency Initiative
EP	European Parliament
ESTMA	Canada, <i>Extractive Sector Transparency Measures Act</i>
EU Convention	The Convention of the European Union on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States

EU Directive	EU Directive on Public Procurement
FACFOA	Canada, <i>Freezing Assets of Corrupt Foreign Officials Act</i>
FAIR	Canada, Federal Accountability Initiative for Reform
FAR	US, Federal Acquisition Regulation
FATF	US, Financial Action Task Force
FCA	US, <i>False Claims Act</i>
FCPA	US, <i>Foreign Corrupt Practices Act</i>
FDI	Foreign Direct Investment
FAA	Canada, <i>Federal Accountability Act</i>
FIFA	Fédération Internationale de Football Association
FinCEN	US, Financial Crimes Enforcement Network
FINTRAC	Financial Transactions and Reports Analysis Centre of Canada
FIU	Financial Intelligence Unit
FLSC	Federation of Law Societies of Canada
FLS Model Code	Canada, Federation of Law Society's Model Code of Professional Conduct
FIPPA	Ontario, Canada, <i>Freedom of Information and Protection of Privacy Act</i>
FRO	UK, Financial Reporting Order
FTC	US, Federal Trade Commission
GAO	US, Government Accountability Office
GCB	Global Corruption Barometer
GDP	Gross Domestic Product
GOPAC	Global Organization of Parliamentarians Against Corruption
GPSA	Gas Purchase and Sales Agreement
GRECO	Group of States against Corruption
HCE	US, House Committee on Ethics
HKIAC	Hong Kong International Arbitration Centre
HLOGA	US, <i>Honest Leadership and Open Government Act</i>
IACU	International Anti-Corruption Unit
IBRD	International Bank for Reconstruction and Development
ICAC	Hong Kong, Independent Commission Against Corruption
ICAR	International Centre for Asset Recovery
ICC	International Chamber of Commerce
ICDR	International Centre for Dispute Resolution
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFBTF	International Foreign Bribery Task Force
IFC	International Finance Corporation
IG	US, Inspector General
IIA	<i>Interinstitutional Agreement on the Transparency Register</i>

IIAs	international investment agreements
ISO	International Organization for Standardization
ITAR	<i>International Traffic in Arms Regulations</i>
ITO	Information to Obtain
ITT	Invitation to Tender
JITs	UK, Joint Investigation Teams
JVA	Joint venture agreement
KLRCA	Kuala Lumpur Regional Centre for Arbitration
LA	Canada, <i>Lobbying Act</i>
LBOs	US, Legislative Branch Officials
LCC	Canada, <i>Lobbyists' Code of Conduct</i>
LCIA	London Court of International Arbitration
LDA	US, <i>Lobbying Disclosure Act</i>
LRA	Canada, <i>Lobbyists Registration Act</i> (renamed the <i>Lobbying Act</i> )
M&A	Mergers and Acquisitions
MACCIH	Support Mission Against Corruption and Impunity in Honduras
MASH	Municipalities, Academic Institutions, Schools and Hospitals
MDBs	Multilateral Development Banks
MIGA	Multilateral Investment Guarantee Agency
MLA	Mutual Legal Assistance
MLACMA	Canada, <i>Mutual Legal Assistance in Criminal Matters Act</i>
MLAT	Mutual Legal Agreement
MLPP	Model Law on Public Procurement (UNCITRAL)
MOJ	UK, Ministry of Justice
MOUs	memoranda of understanding
MPs	Members of Parliament
MSG	UK, Multi Stakeholder Group
NAFTA	North American Free Trade Agreement
NCA	UK, National Crime Agency
NCB	Non-Conviction Based (forfeiture)
NGO	Non-Governmental Organization
NILE	US, National Institute for Lobbying and Ethics
NORAD	Norwegian Agency for Development Cooperation
NPA	US, Non-Prosecution Agreements
OAG	Attorney General of Switzerland
OAS	Organization of American States
OCDETF	Organized Crime Drug Enforcement Task Force
OCE	US, Office of Congressional Ethics
OCHRO	Canada, Office of the Chief Human Resources Officer
OPCS	UK, Office of the Parliamentary Commissioner for Standards
OECD	Organisation for Economic Co-operation and Development

OGE	US, Office of Government Ethics
OM	operate and maintain arrangement
OSC	US, Office of the Special Counsel
OSC	Ontario Securities Commission
P3s	Public-Private Partnership
PACI	World Economic Forum Partnering Against Corruption Initiative
PATT	Proactive Asset Targeting Team
PCA	Permanent Court of Arbitration
PCR	UK, Public Contracts Regulations
PEPs	Politically exposed persons
PIDA	UK, <i>Public Interest Disclosure Act</i>
PIM System	Public investment management system
POCA	UK, <i>Proceeds of Crime Act 2002</i>
POs	US, Public Officials
POHs	Canada, public office holders
PPP Canada	Public Private Partnership Canada
PPSC	Public Prosecution Service of Canada
PQ	Canada, Parti Québécois
PRCA	UK, Public Relations Consultants Association
PRII	Public Relations Institute of Ireland
PSA	UK, <i>Public Services (Social Value) Act 2012</i>
PSCs	People who have significant control over the company
PSDPA	Canada, <i>Public Servants Disclosure Protection Act</i>
PWGSC	Public Works and Government Services Canada
RCMP	Royal Canadian Mounted Police
RFP	Request for Proposal
RFQ	Request for Quotation
RFQu	Request for Qualifications
RFSO	Request for Standing Officer
RICO	US, <i>Racketeering Influenced and Corrupt Organizations Act</i>
SARs	Suspicious Activity Reports
SBEE	UK, <i>Small Business Enterprise &amp; Employment Act 2015</i>
SCC	Arbitration Institute of the Stockholm Chamber of Commerce
SCE	US, Senate Committee on Ethics
SCPO	UK, Serious Crime Prevention Order
SEC	US, Securities and Exchange Commission
SEMA	<i>Special Economic Measure Act</i>
SFO	UK, Serious Fraud Office
SIAC	Singapore International Arbitration Center
SMEs	Small and Medium Sized Enterprises
SOCA	UK, Serious Organised Crime Agency

SOCPA	UK, <i>Serious Organised Crime and Police Act</i>
SOX	US, <i>Sarbanes-Oxley Act of 2002</i>
SPV	Special Purpose Vehicle
SRA Code	UK, Solicitor Regulations Authority Code of Conduct
STRs	suspicious transaction reports
StAR	Stolen Asset Recovery Initiative (WB/UNODC)
TFF	US, Treasury Forfeiture Fund
TI	Transparency International
TI Canada	Transparency International Canada
TI UK	Transparency International United Kingdom
TIPs	treaties with investment provisions
TLA	UK, <i>Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014</i>
TR	EC/EP, Transparency Register
TRO	Temporary restraining order
UEFA	Union of European Football Associations
UKFIU	UK, Financial Intelligence Unit
UKLR	UK Lobbying Register
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UPAC	Quebec, the Unité permanente anticorruption / Permanent Anticorruption Unit
USC	United States Code
US DOJ	United States Department of Justice
UKFIU	UK, Financial Intelligence Unit
VIAC	Vienna International Arbitration Centre
WB	World Bank
WDF	World Duty Free
WGB	OECD'S Working Group on Bribery
WGI	Worldwide Governance Indicators
WJP	US, World Justice Project
WPA	US, <i>Whistleblower Protection Act</i>
WPEA	US, <i>Whistleblower Protection Enhancement Act</i>
WTO-AGP	World Trade Organization Agreement on Government Procurement

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## PREFACE TO THE FOURTH EDITION

This fourth edition marks the transformation of *Global Corruption: Its Regulation under International Conventions, US, UK, and Canadian Law and Practice* from a single-authored work to a collectively authored one. I am excited to introduce 15 anti-corruption experts as authors and co-authors of various chapters. The edition also contains two new chapters entitled Collective Action (Chapter 15) and The Role of NGOs (Chapter 16). Many new and emerging corruption topics are introduced into the updated, fourth edition.

**Gerry Ferguson**

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## PREFACE TO THE THIRD EDITION

I am most grateful to Inba Kehoe, Copyright Officer & Scholarly Communication Librarian at the University of Victoria Libraries, for suggesting that I produce an open-access print version of my 2017 electronic version of *Global Corruption: Law, Theory and Practice*. This edition includes a number of significant anti-corruption developments that have occurred in the past year, but not all changes and developments. Thus this edition is comprehensively updated to January 2017 and selectively updated to February 2018. This edition also adds a new Chapter 13 entitled “Campaign Finance Laws: Controlling the Risks of Corruption and Public Cynicism” and a Table of Acronyms.

**Gerry Ferguson**

February 2018

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## PREFACE TO THE SECOND 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.

**Gerry Ferguson**

January 2017

## ACKNOWLEDGMENTS

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## PREFACE TO THE FIRST 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.

### **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.

**Gerry Ferguson**

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