

GLOBAL CORRUPTION

GLOBAL CORRUPTION

LAW, THEORY & PRACTICE

Legal Regulation of Global Corruption under
International Conventions, US, UK and Canadian Law

Third Edition

GERRY FERGUSON



University
of Victoria

© 2018 Gerry Ferguson

Third Edition

Published in Canada by the University of Victoria
Victoria, BC V8P 5C2
press@uvic.ca

Book design by Yenny Lim, Copyright & Digital Publication Services Assistant, University of Victoria Libraries

This book is released under a Creative Commons Attribution-Non-commercial-Share Alike 4.0 license (CC-BY-NC-SA). See creativecommons.org/ for more information. This book, or parts of it, may be reproduced for non-commercial purposes, provided that proper attribution is given to the original author.

Ferguson, Gerry. (2018). *Global corruption: Law, theory & practice*. Victoria, BC: University of Victoria.

To obtain permission for uses beyond those outlined in the Creative Commons license, please contact Gerry Ferguson at gferguso@uvic.ca.

While every care has been taken to ensure the accuracy of this work, no responsibility for loss or damage occasioned to any person acting or refraining from action as a result of any statement in it can be accepted by authors, editors or publishers.

Library and Archives Canada Cataloguing in Publication

Ferguson, Gerry, author

Global corruption : law, theory & practice / Gerry Ferguson.

Issued in print and electronic formats.

ISBN 978-1-55058-574-2 (softcover).--ISBN 978-1-55058-575-9 (PDF)

1. Corruption--Law and legislation. I. University of Victoria (B.C.), issuing body II. Title.

K5261.F47 2018

364.1'323

C2017-907410-5

C2017-907411-3



ePUBLISHING SERVICES
University of Victoria Libraries

IMAGE CREDITS

Images were used in this book under the following applicable Creative Commons licenses. Reuse and attribution should consider the following:

Front cover art (clockwise from top left):

- *Man in suit holding with woman's hand reaching to take 50 euro banknotes*, (Kiwiev on Wikimedia Commons, 2014), online: <[https://commons.wikimedia.org/wiki/File:6 - _man in suit holding with woman's hand reaching to take 50 euro banknotes - _royalty free, without copyright, public domain photo image.JPG](https://commons.wikimedia.org/wiki/File:6_-_man_in_suit_holding_with_woman's_hand_reaching_to_take_50_euro_banknotes_-_royalty_free_without_copyright_public_domain_photo_image.JPG)>. Licensed under [Creative Commons CC0 1.0 Universal Public Domain Dedication](#).
- *Developing nation for the past 60 years*, (Karthikeyan K on Unsplash.com, 2012), online: <<https://unsplash.com/photos/xOfsok7rw4>>. Licensed under the [Unsplash open license](#).
- *Marshall Center Workshop examines anti-corruption policies, measures, solutions 160204-A-KT579-291* by Sgt. Amanda Moncada, (Fæ on Wikimedia Commons, 2017), online: <[https://commons.wikimedia.org/wiki/File:Marshall Center Workshop examines anti-corruption policies, measures, solutions 160204-A-KT579-291.jpg](https://commons.wikimedia.org/wiki/File:Marshall_Center_Workshop_examines_anti-corruption_policies_measures_solutions_160204-A-KT579-291.jpg)>. Public Domain.
- *Saigon-slums-asia-vietnam-poor-53144* (Thomas_G on Pixabay.com), online: <<https://pixabay.com/en/saigon-slums-asia-vietnam-poor-53144/>>. Licensed under [Creative Commons CC0 1.0 Universal Public Domain Dedication](#).

Back cover art:

- *Slums built on swamp land near a garbage dump in East Cipinang, Jakarta Indonesia*, (Jonathan McIntosh on Wikimedia Commons, 2003), online: <https://commons.wikimedia.org/wiki/Poverty#/media/File:Jakarta_slumhome_2.jpg>. Licensed under [Creative Commons Attribution 2.0 Generic](#).

Figure 1.1:

- *Scenes from the Kibera in Nairobi* by Karl Mueller, (khym54 on flickr.com, October 3, 2005), online: <<https://www.flickr.com/photos/khym54/53364949/>>. Licensed under [Creative Commons Attribution 2.0 Generic](#).

SPONSORS

The following organizations have kindly agreed to be web sponsors for this book. The book may be found on their websites.



The **United Nations Office on Drugs and Crime (UNODC)** is a global leader in the fight against illicit drugs and international crime. It has developed TRACK (Tools and Resources for Anti-Corruption Knowledge)—a web-based anti-corruption portal containing legislation and jurisprudence relevant to the United Nations Convention against Corruption. TRACK also includes the Anti-Corruption Academic Initiative (ACAD), which is a collaborative academic project that aims to promote anti-corruption education in universities and other academic institutions worldwide. *Global Corruption* is part of the ACAD initiative.

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



The **International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR)** is an independent, international institute whose mission is to promote the rule of law, democracy, human rights, and good governance in criminal law and the administration of criminal justice, domestically, regionally, and globally.

<https://icclr.law.ubc.ca/resources/global-corruption-law-theory-and-practice/>



Transparency International Canada (TI Canada) is Canada's leading anti-corruption organization. Its mandate involves education and building awareness on the effects of corruption across the country and worldwide.

<http://www.transparencycanada.ca/what-we-do/publications/>



The **Canadian Bar Association (CBA)** is the largest professional association for lawyers in Canada. CBA promotes fair justice systems, facilitates effective law reform, upholds equality and the legal profession, and are devoted to eliminating discrimination. They are the premiere provider of quality legal training and information in Canada.

<http://www.cba.org/Sections/Anti-corruption/Resources/Resources/Global-Corruption-Law,-Theory-and-Practice-Course>



University
of Victoria

UVicSpace—the **University of Victoria's** institutional preserves and provides access to the digital scholarly works published by UVic faculty, students, and staff.

<https://dspace.library.uvic.ca/handle/1828/9253>

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

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

TABLE OF CONTENTS

TABLE OF ACRONYMS	xxi
ABOUT THE AUTHOR	xxix
PREFACE AND ACKNOWLEDGMENTS	xxxii

VOLUME I

CHAPTER ONE | 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	8
1.3 Four Other Related Concerns about Corruption	11
1.4 Empirical Evidence on the Relationship between Corruption, Reduced Economic Growth and Poverty	22
1.5 Poverty and Corruption: A Growing Concern.....	40
2. THE MANY FACES OF CORRUPTION	45
2.1 No Universal Definition of Corruption.....	45
2.2 Imposing Western Definitions of Corruption Globally	49
2.3 The Prevalence of Corruption	50
3. DRIVERS OF CORRUPTION.....	58
4. PERCEPTIONS AND MEASUREMENTS OF CORRUPTION	61
4.1 Commonly-Cited Indexes of Corruption.....	61
4.2 Some Limitations Associated with Corruption Indexes Based on Perceptions	66
5. MORE ISSUES ON MEASURING AND UNDERSTANDING CORRUPTION	68
5.1 What is Corruption?	68
5.2 Which Countries Are Most Corrupt?	68
5.3 What are the Common Characteristics of Countries with High Corruption?.....	69
5.4 What is the Magnitude of Corruption?	70
5.5 Do Higher Wages for Bureaucrats Reduce Corruption?.....	70
5.6 Can Competition Reduce Corruption?.....	70
5.7 Why Have There Been So Few (Recent) Successful Attempts to Fight Corruption?.....	71
5.8 Does Corruption Adversely Affect Growth?.....	72
6. HISTORICAL DEVELOPMENT OF INTERNATIONAL CORRUPTION LAWS	73
6.1 Early History from Antiquity to the OECD Convention in 1997	73
6.2 International Corruption Instruments Culminating in UNCAC (2005).....	88
6.3 The Meaning and Effect of International Conventions	96
6.4 Development and Revision of National Laws Against Corruption	99

7.	DIVERGENT POLITICAL AND ECONOMIC VIEWS ON CORRUPTION	101
7.1	Libertarians, Cultural Ethnographers and Liberal Democrats	101
7.2	The Three Authority Systems: Traditional, Patrimonial and Rational-Legal.....	106
8.	A SOCIOLOGICAL PERSPECTIVE ON INSTITUTIONAL CORRUPTION	112
9.	CORPORATE SOCIAL RESPONSIBILITY AND CORRUPTION	117
9.1	What is Corporate Social Responsibility?.....	117
9.2	How Did CSR Develop?	118
9.3	Some Current CSR Policies and Initiatives	121
9.4	The Need for Increased Trust in Business.....	125
9.5	Concluding Note	126
10.	SUCCESSES AND FAILURES IN INTERNATIONAL CONTROL OF CORRUPTION: GOOD GOVERNANCE.....	127
10.1	Ten Lessons to Be Learned in Designing Anti-Corruption Initiatives.....	127
11.	ANOTHER CASE STUDY: BAE ENGAGES IN LARGE-SCALE CORRUPTION IN SAUDI ARABIA	134

CHAPTER TWO | BRIBERY AND OTHER CORRUPTION OFFENCES

1.	INTRODUCTION AND OVERVIEW.....	138
2.	DOMESTIC BRIBERY.....	141
2.1	UNCAC.....	141
2.2	OECD Convention.....	145
2.3	US Law.....	145
2.4	UK Law.....	149
2.5	Canadian Law	159
3.	BRIBERY OF FOREIGN PUBLIC OFFICIALS	175
3.1	UNCAC.....	175
3.2	OECD Convention.....	177
3.3	US Law.....	182
3.4	UK Law	190
3.5	Canadian Law	192
4.	FACILITATION PAYMENTS AND THE OFFENCE OF BRIBERY.....	195
4.1	Arguments for and Against Facilitation Payments.....	197
4.2	Facilitation Payments and Culture.....	201
4.3	The Economic Utility of Facilitation Payments	202
4.4	UNCAC and OECD Convention.....	204
4.5	US Law.....	205
4.6	UK Law	209
4.7	Canadian Law	211
4.8	Eliminating Facilitation Payments	213
5.	ACCOUNTING (BOOKS AND RECORDS) OFFENCES RELATED TO CORRUPTION.....	218
5.1	UNCAC.....	218

5.2	OECD Convention	220
5.3	US Law	221
5.4	UK Law.....	225
5.5	Canadian Law.....	226
APPENDIX 2.1.....		228

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

1.	JURISDICTION: TO WHAT EXTENT CAN A STATE PROSECUTE BRIBERY OFFENCES COMMITTED OUTSIDE ITS BORDERS?.....	236
1.1	Overview	236
1.2	UNCAC	238
1.3	OECD Convention	240
1.4	Other International Anti-Corruption Instruments	241
1.5	Corporate Entities	241
1.6	Overview of OECD Countries Jurisdiction.....	242
1.7	US Law	245
1.8	UK Law.....	253
1.9	Canadian Law.....	256
1.10	Concerns with Expanded Jurisdiction.....	262
2.	CRIMINAL LIABILITY OF CORPORATIONS AND OTHER COLLECTIVE ENTITIES	264
2.1	Introduction	264
2.2	UNCAC	267
2.3	OECD Convention	269
2.4	Overview of Corporate Liability in the 41 State Parties to the OECD Anti-Bribery Convention.....	270
2.5	US Law	277
2.6	UK Law.....	279
2.7	Canadian Law.....	284
3.	PARTY OR ACCOMPLICE LIABILITY	289
3.1	UNCAC	289
3.2	OECD Convention	290
3.3	US Law	290
3.4	UK Law.....	291
3.5	Canadian Law.....	292
4.	INCHOATE OFFENCES	293
4.1	Attempts.....	293
4.2	Conspiracy	297
4.3	Incitement (or Solicitation).....	301

CHAPTER FOUR | MONEY LAUNDERING

1.	INTRODUCTION TO MONEY LAUNDERING.....	306
2.	THE ESSENTIAL ELEMENTS OF MONEY LAUNDERING.....	308
3.	THE MOST COMMON METHODS OF MONEY LAUNDERING	308
3.1	Use of Corporate Vehicles and Trusts	311
3.2	Use of Gatekeepers.....	314
3.3	Use of Domestic Financial Institutions	317
3.4	Use of Nominees.....	320
3.5	Use of Cash.....	321
4.	INTERNATIONAL STANDARDS FOR PREVENTION AND CRIMINALIZATION OF MONEY LAUNDERING.....	323
4.1	UNCAC.....	323
4.2	OECD Anti-Bribery Convention.....	338
4.3	FATF Recommendations	339
5.	STATE-LEVEL AML REGIMES: US, UK AND CANADA	343
5.1	Introduction to the Essential Elements of AML Regimes	343
5.2	Financial Intelligence Units.....	344
5.3	Regulation of Financial Institutions and Professionals	348
5.4	Money Laundering Offences.....	354
5.5	The Role of Legal Professionals	366
6.	EVALUATING THE EFFECTIVENESS OF AML REGIMES.....	371
6.1	Introduction.....	371
6.2	The Basel AML Index.....	372
6.3	FATF Mutual Evaluations	373
6.4	Other Evaluations.....	378
6.5	Barriers to Creating Effective AML Measures	382

CHAPTER FIVE | ASSET RECOVERY AND MUTUAL LEGAL ASSISTANCE

1.	INTRODUCTION	386
2.	ASSET RECOVERY CONCEPTS AND TOOLS	387
2.1	Asset Recovery Steps	387
2.2	International Asset Recovery Agencies	394
2.3	State-Level Financial Intelligence Units (FIUs).....	395
2.4	Types of Tools for Asset Recovery	399
3.	INTERNATIONAL CONVENTION OBLIGATIONS.....	417
3.1	UNCAC.....	417
3.2	OECD Anti-Bribery Convention.....	420
3.3	Other Instruments	421
4.	STATE-LEVEL ASSET RECOVERY REGIMES	423
4.1	US	423

4.2	UK	443
4.3	Canada.....	458
4.4	A Typical Example of the Asset Recovery Process	472
5.	EFFECTIVENESS OF ASSET RECOVERY REGIMES.....	483
5.1	Overview of Existing Data.....	483
5.2	Continuing Challenges to Effective Asset Recovery	486
5.3	Emerging Tools in Asset Recovery	501
6.	INTERNATIONAL MUTUAL LEGAL ASSISTANCE AGREEMENTS	506
6.1	Introduction to Mutual Legal Assistance Agreements	506
6.2	Legal Basis for MLA	507
6.3	Mutual Legal Assistance under UNCAC.....	508
6.4	Mutual Legal Assistance under OECD Anti-Bribery Convention.....	510
6.5	Request Processes and Procedures	510
6.6	Request Process in the United States	513
6.7	Request Process in the United Kingdom.....	521
6.8	Request Process in Canada	522
6.9	Request Process for Asia-Pacific Countries	527
6.10	Grounds for Refusal of Mutual Legal Assistance Request under UNCAC and OECD Anti-Bribery Convention.....	528
6.11	Barriers to MLA.....	531

VOLUME II

CHAPTER SIX | INVESTIGATION AND PROSECUTION OF CORRUPTION

1.	INTRODUCTION	536
2.	INTERNATIONAL OBLIGATIONS TO INVESTIGATE AND PROSECUTE CORRUPTION... 538	
2.1	Overview	538
2.2	UNCAC and OECD Provisions and Their Implementation by the US, UK and Canada ..	539
3.	ENFORCEMENT BODIES	559
3.1	UNCAC and OECD Provisions.....	559
3.2	Varying Levels of Independence in Anti-Corruption Enforcement.....	568
3.3	Investigative and Prosecutorial Bodies	570
3.4	Cooperation Agreements between State Parties and between Enforcement Bodies.....	580
4.	INVESTIGATING CORRUPTION: INTERNAL AND EXTERNAL INVESTIGATIONS	581
4.1	Sources of Internal Investigations	582
4.2	Internal Investigations by Corporations: Five Basic Steps.....	585
4.3	Sources of External Investigations	587
4.4	An Overview of the Essential Elements of an External Investigation.....	591
4.5	Investigation Strategy in Corruption Cases.....	598
4.6	Investigative Techniques.....	599

5.	OVERVIEW OF DISPOSITIONS RESULTING FROM CORRUPTION INVESTIGATIONS	607
5.1	Introduction.....	607
5.2	Criminal Options and Procedures.....	607
5.3	Civil Options and Procedures.....	608
5.4	Comparative Data on the Use of Different Remedies in Bribery of Foreign Officials	608
6.	CHARGING POLICIES	610
6.1	US	610
6.2	UK.....	620
6.3	Canada	626
7.	ISSUES OF CONCURRENT JURISDICTION.....	638
7.1	Parallel Proceedings	638
7.2	Risks of Parallel Proceedings	640
7.3	Approaches to Multijurisdictional Enforcement	642

CHAPTER SEVEN | CRIMINAL SENTENCES AND CIVIL SANCTIONS FOR CORRUPTION

1.	INTRODUCTION	646
2.	UNCAC.....	647
3.	OECD CONVENTION.....	647
4.	US SENTENCING LAW	648
4.1	Federal Sentencing Guidelines	648
4.2	Sentencing Procedure and Guiding Principles.....	651
4.3	Specific Corruption Related Guidelines	652
4.4	Imposition of Fines.....	658
4.5	Sentencing Corporations and Other Organizations.....	659
4.6	<i>FCPA</i> Sentencing	662
4.7	Other Financial Consequences.....	668
4.8	Comments on <i>FCPA</i> Enforcement.....	668
5.	UK SENTENCING LAW.....	671
5.1	General Principles of Sentencing.....	671
5.2	Sentencing Cases before the <i>Bribery Act 2010</i>	671
5.3	Sentences under the <i>Bribery Act 2010</i> (Pre-Guidelines)	673
5.4	Sentencing Guidelines for Corruption-Related Offences by Human Offenders.....	678
5.5	Sentencing Guidelines for Corporate Offenders	684
5.6	Deferred Prosecution Agreements in the UK	689
6.	CANADIAN SENTENCING LAW	690
6.1	Sentencing Principles in General.....	690
6.2	Sentencing Principles for Corporations and Other Organizations	692
6.3	Sentencing Cases for Domestic Corruption and Bribery.....	694
6.4	Sentencing Cases for Corruption and Bribery of Foreign Public Officials.....	701

7. CRIMINAL FORFEITURE	711
8. DEBARMENT AS A COLLATERAL CONSEQUENCE OF A BRIBERY CONVICTION.....	711
8.1 UNCAC	712
8.2 OECD.....	712
8.3 The World Bank	713
8.4 US Law	717
8.5 UK Law.....	718
8.6 Canadian Law.....	720
8.7 Applicability of Integrity Provisions to Other Government Departments.....	730
9. DISQUALIFICATION AS COMPANY DIRECTOR.....	731
9.1 Introduction	731
9.2 US Law	731
9.3 UK Law.....	733
9.4 Canadian Law.....	737
10. MONITORSHIP ORDERS.....	737
10.1 UNCAC and OECD	737
10.2 US Law	738
10.3 UK Law.....	738
10.4 Canadian Law.....	739
11. NON-CONVICTION BASED FORFEITURE.....	741
12. CIVIL ACTIONS AND REMEDIES	741
13. INTERNATIONAL INVESTMENT ARBITRATION	741
13.1 Introduction	741
13.2 International Arbitration Explained	743
13.3 Why Parties Agree to Arbitrate.....	746
13.4 Treatment of Allegations of Corruption in International Investment Arbitration	753
13.5 Conclusions: International Investment Arbitration and the Global Fight against Corruption	767

CHAPTER EIGHT | THE LAWYER'S ROLE IN ADVISING BUSINESS CLIENTS ON CORRUPTION AND ANTI-CORRUPTION ISSUES

1. INTRODUCTION	770
2. ROLES OF LAWYERS IN BUSINESS.....	771
2.1 Multiple Roles.....	771
2.2 Who Is your Client?	771
2.3 In-House Counsel and External Counsel.....	772
2.4 The Lawyer as a Corporate Gatekeeper	775
3. LEGAL AND ETHICAL DUTIES OF LAWYERS.....	778
3.1 Conflicts of Interest.....	779
3.2 Duty to Not Advise or Assist in a Violation of the Law	783
3.3 The Duty of Confidentiality and Solicitor-Client Privilege	786
3.4 Solicitor-Client Privilege, Confidentiality and Reporting Wrongdoing	795

3.5	Duty to Know Your Customer.....	800
4.	WHERE LAWYERS MIGHT ENCOUNTER CORRUPTION.....	800
5.	RELATIONSHIP BETWEEN DUE DILIGENCE, ANTI-CORRUPTION COMPLIANCE PROGRAMS AND RISK ASSESSMENTS.....	801
6.	ANTI-CORRUPTION COMPLIANCE PROGRAMS	802
6.1	Introduction.....	802
6.2	International Framework for Anti-Corruption Compliance Programs.....	804
6.3	US Framework	814
6.4	UK Framework	818
6.5	Canadian Framework	822
6.6	Critiques of Compliance Programs	824
7.	RISK ASSESSMENT	825
7.1	What is a Risk Assessment?	825
7.2	What Risk Areas Are Being Assessed?	827
7.3	Conducting an Effective Risk Assessment	828
7.4	US Law.....	830
7.5	UK Law	830
7.6	Canadian Law	830
8.	DUE DILIGENCE REQUIREMENTS	831
8.1	Third Party Intermediaries.....	832
8.2	Transparency Reporting Requirements in Extractive Industries	833
8.3	Mergers and Acquisitions	839
9.	INTERNAL INVESTIGATION OF CORRUPTION	845
10.	CORPORATE LAWYERS’ POTENTIAL LIABILITY FOR A CLIENT’S CORRUPTION	845
10.1	Introduction.....	845
10.2	Criminal Liability	846
10.3	Accessory Liability in Civil Actions	846
10.4	Tort of Legal Malpractice.....	848
10.5	Shareholders’ or Beneficial Owners’ Actions Against the Corporation’s Lawyer	849
10.6	Lawyers’ Civil Liability under Securities Acts	851

CHAPTER NINE | PUBLIC OFFICIALS AND CONFLICTS OF INTEREST

1.	INTRODUCTION	854
2.	AN OVERVIEW OF CONFLICTS OF INTEREST.....	855
2.1	Conceptualizing “Conflict of Interest”	855
2.2	Enforcement Mechanisms: Historical Foundations and Contemporary Tensions	860
2.3	Political Culture and Conflicts of Interest	862
3.	A COMPARISON OF INTERNATIONAL STANDARDS AND NATIONAL REGIMES IN THE US, THE UK, AND CANADA.....	864
3.1	International Law, Standards and Guidelines	864
3.2	General Structure of National Conflict of Interest Regimes: Statutes, Policies and Guidelines.....	866

3.3	General Structure of National Conflict of Interest Regimes: Bodies of Authority	870
3.4	The Substance and Interpretation of National Conflict of Interest Rules	876
4.	CONCLUSION.....	887

CHAPTER TEN | REGULATION OF LOBBYING

1.	INTRODUCTION	890
2.	TERMINOLOGY	892
2.1	Defining Lobbying	892
2.2	Terminology in a Comparative Context.....	894
3.	LOBBYING AND DEMOCRACY.....	895
3.1	Democracy as an Indicator of Transparency	895
4.	REGULATORY SCHEMES	897
4.1	Lobbying and the Broader Regulatory Framework.....	897
4.2	Principles of Lobbying Regulation	897
5.	COMPARATIVE SUMMARY	903
6.	REGULATORY FRAMEWORK AND CONTEXT FOR LOBBYING	905
6.1	US: Framework and Context	906
6.2	UK: Framework and Context.....	907
6.3	Canada: Framework and Context	910
7.	MAIN ELEMENTS OF LOBBYING REGULATION	911
7.1	Definition of Government Officials	912
7.2	Definition of Lobbyist.....	913
7.3	Definition of Lobbying Activity	914
7.4	Exclusions from the Definitions of Lobbyist and Lobbying Activities	916
7.5	Disclosure Requirements	919
7.6	Codes of Conduct.....	927
7.7	Compliance and Enforcement	931
8.	COMPARISON WITH LOBBYING REGULATION IN EUROPEAN UNION INSTITUTIONS	938
9.	CONCLUSION.....	939

CHAPTER ELEVEN | CORRUPTION AND PUBLIC PROCUREMENT

1.	INTRODUCTION	942
1.1	Adverse Consequences of Corruption in Public Procurement	943
1.2	How Much Money Is Spent on Public Procurement?	946
1.3	Public Procurement Corruption within Developed Countries	947
1.4	The Importance of Maintaining a Low-Risk Environment.....	949
2.	RISKS AND STAGES OF CORRUPTION IN PUBLIC PROCUREMENT	949
2.1	Risk of Corruption by Industry and Sector	949
2.2	Stages and Opportunities for Procurement Corruption	950

2.3	Corrupt Procurement Offences.....	956
3.	TYPES OF PUBLIC PROCUREMENT: P3s, SOLE SOURCING AND COMPETITIVE BIDDING	957
3.1	P3s.....	957
3.2	Sole Sourcing.....	962
3.3	Competitive Bidding.....	964
4.	HALLMARKS OF A GOOD PROCUREMENT SYSTEM.....	966
4.1	Transparency.....	966
4.2	Competition.....	968
4.3	Integrity	968
5.	PRIVATE LAW ENFORCEMENT OF TENDERING FOR PUBLIC CONTRACTS.....	970
5.1	US Private Law	970
5.2	UK Private Law.....	971
5.3	Canadian Private Law.....	972
6.	PUBLIC LAW FRAMEWORK.....	974
6.1	International Legal Instruments	974
6.2	US Law and Procedures	983
6.3	UK Law and Procedures.....	986
6.4	Canadian Law and Procedures.....	991
7.	EVALUATION OF PROCUREMENT LAWS AND PROCEDURES	1001
7.1	OECD Review of Country Compliance.....	1001
7.2	Other Procurement Issues and Concerns	1003

CHAPTER TWELVE | WHISTLEBLOWER PROTECTIONS

1.	INTRODUCTION	1008
2.	WHAT IS WHISTLEBLOWING?.....	1009
3.	INTERNATIONAL LEGAL FRAMEWORK	1010
3.1	UNCAC.....	1010
3.2	The OECD Convention	1012
3.3	Other Regional Conventions and Agreements.....	1014
4.	“BEST PRACTICES” IN WHISTLEBLOWER PROTECTION LEGISLATION	1018
4.1	Limitations of Best Practices	1018
4.2	Sources for Best Practices	1020
4.3	General Characteristics of Best Practices.....	1021
5.	WHISTLEBLOWER PROTECTION IN THE US: A PATCHWORK OF LEGISLATION	1030
5.1	Whistleblower Protection in the Public Sector	1030
5.2	Encouraging Whistleblowing through Rewards: The <i>False Claims Act</i>	1035
5.3	A Brief Discussion of Federal Whistleblowing Protection in the Private Sector	1037

6.	WHISTLEBLOWER PROTECTION IN THE UK: <i>PUBLIC INTEREST DISCLOSURE ACT 1998</i>	1039
7.	WHISTLEBLOWER PROTECTION IN CANADA	1044
7.1	The Development of the Common Law Defence	1044
7.2	Federal Legislation: The Public Servants Disclosure Protection Act	1045
7.3	Securities Regulation in Canada: The Ontario Securities Commission Whistleblower Program	1059
8.	CONCLUSION: WHERE DO WE GO FROM HERE?	1067

CHAPTER THIRTEEN | CAMPAIGN FINANCE LAWS: CONTROLLING THE RISKS OF CORRUPTION AND PUBLIC CYNICISM

1.	INTRODUCTION	1072
2.	HOW ELECTION CAMPAIGNS ARE FINANCED	1074
2.1	Direct Contributions or Loans to Candidates and Political Parties	1074
2.2	Public Funding	1074
2.3	Independent Expenditures by Third Parties	1074
2.4	Self-funding	1075
3.	OVERVIEW OF TYPES OF CAMPAIGN FINANCE REGULATION	1075
3.1	Transparency Requirements.....	1075
3.2	Spending and Contribution Limits	1076
3.3	Public Funding	1076
4.	RATIONALES FOR CAMPAIGN FINANCE REGULATION	1077
4.1	Corruption and the Appearance of Corruption	1077
4.2	Equality, Fairness, and Participation	1080
4.3	Informed Voting.....	1082
4.4	Public Confidence	1082
4.5	Other Rationales.....	1083
5.	OVERVIEW OF CHALLENGES IN REGULATING CAMPAIGN FINANCE	1084
5.1	Freedom of Expression and Association	1084
5.2	Entrenching Incumbents and Differential Impacts on Different Political Parties	1085
5.3	Loopholes	1086
5.4	Circumscribing the Scope of Regulated Activities.....	1086
5.5	New Campaigning Techniques.....	1087
6.	THE REGULATION OF THIRD-PARTY CAMPAIGNERS	1088
6.1	The Role of Third-Party Campaigners	1088
6.2	Regulating Third-Party Campaigners to Reinforce other Campaign Finance Controls ..	1089
6.3	The Regulation of Third Parties and Freedom of Speech	1090
6.4	Third-Party Spending and Corruption.....	1090
6.5	The Regulation of Institutional Third Parties.....	1091
6.6	Incidence of Third-Party Electioneering in Canada and the UK	1094

7. INTERNATIONAL LAW.....	1095
8. US LAW.....	1096
8.1 Constitutional Rights and Campaign Finance Regulation in the US.....	1097
8.2 Regulatory Regime in the US.....	1109
8.3 Criticisms of Campaign Finance Regulation in the US.....	1112
9. UK LAW.....	1115
9.1 Freedom of Expression and Campaign Finance Regulation in the UK.....	1115
9.2 Regulatory Regime in the UK.....	1118
9.3 Criticisms of Campaign Finance Regulation in the UK.....	1135
10. CANADIAN LAW	1139
10.1 Constitutional Rights and Campaign Finance Regulation in Canada.....	1139
10.2 Regulatory Regime in Canada.....	1144
10.3 Criticisms of Campaign Finance Regulation in Canada.....	1154
11. CONCLUSION	1157

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
DPA _s	US, UK, Deferred Prosecution Agreements
DPOH _s	Canada, designated public office holders
DPP	Canada, Director of Public Prosecutions
DTR5	UK, Transparency Directive Review
EA	Canada, <i>Evidence Act</i>
EBO _s	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>
IAs	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 & 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

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.

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

ACKNOWLEDGMENTS

I am deeply indebted to Mary Wallace for her dedication and diligence in helping to transform the electronic version to this print version and to Leyla Salmi for her research assistance on various topics in the early stages of producing this edition. Likewise, I am equally indebted to Inba Kehoe, Stephanie Boulogne and Yenny Lim for the care and attention that they have put into the editorial production and the design, including cover, of this version.

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

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.

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

September 2015

ACKNOWLEDGMENTS

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.