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Government of Canada
Portage III, Tower A 10A1
11 Laurier Street
Gatineau, QC K1A 9S5

Dear Sirs,

RE: DPA Consultation

Probe International hereby submits this letter to the federal government's consultation with Canadians on potential enhancements to the Integrity Regime and on considerations regarding the possible adoption of a deferred prosecution agreement (DPA) regime in Canada.

It is our view that Canada should not adopt DPAs and that the Integrity Regime should be modified. The federal government should prosecute the individuals within the firms that have committed the crimes, disgorge the companies of ill-gotten gains, fine the companies to give shareholders an incentive to get rid of corrupt and incompetent management and directors, and ramp up enforcement capabilities to investigate, charge and prosecute guilty individuals and corporations.

We have not answered the questions found in "Expanding Canada's Toolkit to Address Corporate Wrongdoing" because they presume DPAs are a legitimate tool in the kit and are therefore not applicable to our position.

In summary, we reject DPAs for the following reasons:

- They decriminalize corporate crimes and make the consequences a mere cost of doing business. As a result, they do not deter corporate crime;
- They involve corporate monitors who take over executive functions without the concomitant industry expertise, profit incentive, or duties to shareholders;
- They create a moral hazard that encourages prosecutors to accuse companies of wrongdoing for self-interested reasons (large corporate fines that fund government agencies and major headlines) absent a provable crime, and divorced from the public interest;
- They promote regulation by prosecutors rather than legislators;
- They turn the prosecution into prosecutor, judge and jury, thereby giving them boundless discretion, and compromising justice, the rule of law, and public confidence in the judicial system.

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With respect to the Integrity Regime Consultation: Expanding Canada's Toolkit to Address Corporate Wrongdoing, we believe the automatic nature of the ineligibility (debarment), and the 10-year duration of that ineligibility period for companies charged or convicted of an offence, while warranted to satisfy a public impulse for justice and to protect and safeguard the use and expenditure of public funds, would almost certainly put some convicted companies out of business. It is this existential threat that has created a corporate lobby for DPAs, which allow a company to survive. This blunt debarment tool, which may harm many innocent parties and ultimately allow the guilty individuals to walk free, warps and undermines our system of justice. For this reason, the Integrity Regime should be modified to allow for greater discretion, dependent upon the robustness with which the guilty individuals and corporation have been prosecuted, convicted, and sentenced. Strong sentences against individuals would provide true deterrence value and give the federal government greater confidence that the crimes will be less likely to be repeated.

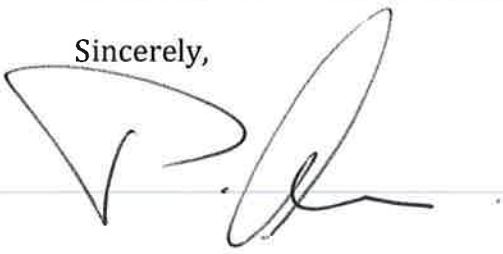
Lastly, in response to Question 9, the Integrity Regime should also be applied to Export Development Canada.

I include two of my articles which make the expanded case found in this letter. They are:

Corporate shakedowns: Companies under threat of prosecution are filling government coffers

Deferred prosecution agreements won't stop corporate corruption

Sincerely,



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