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The importance of the independence of international organizations playing an active role in fighting transnational corruption

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Corruption is a scourge which transcends frontiers. In response to this situation, Canada has chosen to pass the *Corruption of Foreign Public Officials Act* (hereinafter referred to as the "CFPOA") in 1998, then reinforced the regime thereof more recently. The difficulty with this Act lies in the fact that the offences must have been committed abroad. International cooperation thus remains essential to its application.

The difficulties related to the transnational nature of corruption are real. The construction of a bridge across the Padma River, in Bangladesh, a project with an estimated value of 2.9 billion U.S. dollars, constitutes a typical illustration of effective transnational cooperation leading to the indictment of four individuals under the CFPOA.

Last spring, in the context of this case, Justices Moldaver and Côté, writing for the Supreme Court of Canada (hereinafter referred to as the "Supreme Court") unanimously confirmed the applicability of immunities and privileges conferred upon the World Bank Group (hereinafter referred to as the "World Bank") and its personnel, who had been for several months refusing to communicate to the four accused individuals some documents pertaining to their informants.[1]

Indeed, after the World Bank received emails from various tipsters suggesting that bribe promises had been made to Bangladeshi officials responsible for awarding an important contract which it financed, its Integrity Vice-Presidency (hereinafter referred to the "INT"), responsible for reviewing fraud, corruption and collusion allegations, had decided to investigate. In view of its discoveries, the INT had sent part of these emails, of its investigation reports and other documents to the Royal Canadian Mounted Police (hereinafter referred to as the "RCMP").

On the basis of this information, the RCMP had obtained a court authorization to wiretap the private communications of the four individuals, which turned out to be self-incriminating. The Crown then charged the four persons for offences committed contrary to the CFPOA.

The judgment of the Supreme Court was rendered at the stage where the four individuals contested the wiretap applications, seeking to have the Court order the communication of all the files of the INT. In other words, they sought to obtain the confirmation of the validity of subpoenas they issued to force two INT representatives to testify.

At the outset, the Supreme Court noted that it is essential to protect international organizations that play an active role in fighting transnational corruption against state interference.

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In the case at bar, the respondent sought to have the senior investigators of the World Bank, who had worked in close collaboration with the various tipsters, appear before the Canadian courts and provide all their notes, memoranda, emails, documents obtained from the tipsters and all their communications of any nature.

However, the Articles of Agreement of the World Bank provide that all its files and documents cannot be the subject of a communication order from a judicial body of a member country since they are described as being inviolable. The term “inviolable”, used in the Articles of Agreement, implies the absence of unilateral interference, which was exactly what the accused persons sought.

Canada being a signatory of the Articles of Agreement of the World Bank, the Supreme Court confirmed the applicability of this privilege. In so doing, the Court emphasized that it is through compliance with, and recognition of such privilege that international organizations can retain their freedom and independence.

Moreover, against the subpoenas issued against its employees responsible for the investigation, the World Bank raised the issue of the immunity of its personnel. The subpoenas in question would not only have forced the communication of documents, but also the testimonies of the investigators.

None of the parties was contesting that the investigators were acting in the course of their duties when they collected all the information leading to the indictment of the four individuals. Neither was it contested that the immunity of the World Bank employees under the Articles of Agreement protects them against civil and penal proceedings and also against subpoenas. However, the four accused individuals maintained that since the World Bank had already communicated part of its investigation documents, it has implicitly waived such immunity.

The Supreme Court ruled that the subject-matter and purpose of the treaty rather required an imperatively express waiver of the immunity from the World Bank. In the case under review, the World Bank had not waived the privilege. This type of privilege constitutes a protection granted to international organizations against interference from its member states. The legitimization by the state members of these international immunities is essential since organizations such as the World Bank cannot appeal to federal supervisory bodies due to their inexistence.

In this case, the Supreme Court meant that it is fundamentally this supranational nature of the World Bank which allows it to fight the universal problem of corruption of public officials more effectively than its member states. An interpretation of its Articles of Agreement which recognizes this fact is therefore to be favoured, all the more so since such Articles of Agreement have been approved by Canada.

The risk for corruption of public officials seems to be higher in some territories than in others, for example, in developing countries or in countries where democratic institutions are weaker. However, the risk is not limited to those countries; it remains present in more developed countries.

The consequences of a conviction for having participated in a corruption scheme are serious, both from the legal point of view and public opinion.

Prevention and awareness-raising of all employees in respect of this issue favour the development of a culture of integrity within your business. The development of internal diligence programs and training aimed at demystifying the issues pertaining to foreign countries with which your company deals also represent potential preferred solutions.

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1. Complete reference: *World Bank Group* v. *Wallace*, 2016 SCC 15.

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