



Exclusion System Summary Canada

I. Government-Wide Legal and Institutional Framework:

Government-Wide Exclusion Framework? Yes (policy-based only).

- The exclusion framework is mandatory for the core public service departments and agencies but voluntary for other federal entities (e.g., Agents of Parliament and Crown Corporations). Exclusion decisions are made outside the procurement process and according to national policy. Exclusions have government-wide effect.

Governing Policy:

- [The Ineligibility and Suspension Policy](#) (issued April 4, 2016).

Primary Legal Foundation:

- Contract Law. [Supply Manual, § 4.21 – Integrity Provisions](#) must be included in applicable solicitations (described further in Section 4 of the Policy).

Related Law and Regulation:

- [The Department of Public Works and Government Services \(“PSPC”\) Act § 7\(1\)\(a\)](#). The Minister of PSPC has the legislative authority to “investigate and develop services for increasing the efficiency and economy of the federal public administration and for enhancing integrity and efficiency in the contracting process.”

Decision-Maker: Centralized; Functionally Independent from Senior Procurement Officials.

- The decision-maker is the Registrar of Ineligibility and Suspension within PSPC.

Qualification:

- None stated in the legal framework.

Independence:

- Not legally required, but PSPC has taken steps to ensure the independence of the Registrar (e.g., Registrar has limited contracting authority, and no exclusion-based responsibilities are assigned to any other high-ranked official).

II. Functioning and Enforcement of the Government-Wide Exclusion System:

General Provisions:

Type of Procedures: Administrative.

Decision Deadline: No stated deadline for decision-maker to make a final determination.

Provisional Exclusions: Yes. A supplier can be suspended for up to 18 months if charged with (or admits guilt of) a listed offense. The suspension can be extended pending final disposition of the charges. If the supplier is convicted, the Registrar will make a final determination of ineligibility.

Commencement of Proceedings: Ability to Initiate an Exclusion Proceeding.

- The Registrar cannot initiate a proceeding without a referral from PSPC.
- PSPC may make referrals upon its own initiative or upon receiving a request from a supplier or contracting authority.

Notice Requirements & Opportunity to be Heard: Yes & Yes.

Notice of Proceedings:

- Suppliers receive notice of proceedings when:
 - The decision-maker decides that grounds exist to initiate a review;
 - The exclusion, including any provisional exclusions or suspensions, becomes effective.
- Notice of proceedings must contain the grounds for exclusion.
- Decision-maker must make reasoning available to the supplier (not to the public).

Opportunity to be Heard:

- Suppliers are entitled to respond to the decision-maker and may:
 - Make a written submission to the decision-maker.
 - Present evidence to the decision-maker.

Appellate Review of Exclusion Decisions: Yes.

Nature and Forum of Review: Administrative and Judicial.

- Judicial review of a decision of the Registrar.
- Administrative review of a determination of ineligibility based on the supplier's affiliation with the convicted party (*i.e.*, whether the supplier directed, influenced, authorized, assented to, acquiesced in, or participated in the offence(s) of which its Affiliate was convicted).

Means Available to the Supplier: As part of appellate review, suppliers may:

- Make a written submission to the appellate body.
- Request an in-person hearing with the appellate body (judicial review).

Duration of Appeal Process: Not known.

Legal Representation: A supplier **may** be represented by counsel.

Subsequent Modification of Exclusion Decision: Yes.

- A supplier may at any time request to have its ineligibility period reduced through an Administrative Agreement.
- The supplier must demonstrate that it cooperated with law enforcement authorities or has undertaken remedial actions to address the wrongdoing.

III. Substantive Grounds for Government-Wide Exclusion:

Automatic Exclusion: Yes.

Based on a supplier's conviction in the past three years for the following:

- Corruption-related offences;
- Bribery (including foreign public officials);
- Fraud;
- Collusion and/or infringing competition;
- Money laundering;
- Tax-related offenses;
- Criminal breach of contract;
- Organized crime-related offences;
- Trafficking in controlled substances;
- Lobbying violations;
- Subcontracting with an ineligible first-tier subcontractor.

Discretionary Exclusion: Yes.

- Being charged with a listed offence (provisional exclusion only);
- Breaching any term of an Administrative Agreement; or
- Based on the conviction of a supplier's affiliate within the past three years for the following and, in the decision-maker's opinion, the supplier directed, influenced, authorized, assented to, acquiesced in, or participated in the offence:
 - Corruption-related offences;
 - Bribery (including of foreign public officials);
 - Fraud;
 - Collusion and/or infringing competition;
 - Money laundering;
 - Tax-related offenses.

Exclusion based on Bankruptcy and Cross-Debarment: Canada does **not** exclude suppliers based on Bankruptcy, Insolvency, or Debarments imposed by other jurisdictions.

IV. Scope and Effect of Government-Wide Exclusion:

Types of Excluded Suppliers:

- Individuals and Corporations.

Scope of Exclusion:

Extension to other Government Agencies:

- Exclusions prohibit suppliers from contracting with all departments and agencies within the Government of Canada (federal level).
- Adoption of the Integrity Regime is voluntary for federal entities outside of the core public service (e.g., Crown Corporations).

- Exclusions do **not** automatically extend to subnational governments.
- No known countries or international organizations that automatically recognize and apply exclusions from Canada.

Effect on Ongoing Contracts:

- Ongoing contracts are **not** automatically cancelled; the contracting authority has discretion to terminate ongoing contracts as a business decision.
- Subsequent modifications to ongoing contracts are **not** affected by a supplier's exclusion.

Effect on Subcontracting:

- Excluded supplier **cannot** serve as a first-tier subcontractor except to provide commercially available "off-the-shelf" goods.

Effect on Excluded Individuals:

- Excluded individuals **must not** be employed by a corporate supplier as a **senior manager** or **corporate director**.
- Exclusion **may** extend to companies controlled by the excluded individual.

Tailoring Exclusion:

- No option to tailor the exclusion to certain divisions, operating units, or business lines within a corporate supplier.

Effect on Affiliates:

Corporate Affiliates:

- Exclusion **may** apply to affiliated companies (controlling, controlled, under common control) if it is determined that the affiliate directed, influenced, authorized, assented to, acquiesced in, or participated in the offense.
- Affiliated companies must be given an opportunity to contest the action.

Extension to Affiliated Individuals:

- Exclusion of a corporate supplier **may** extend to individuals that own or control the supplier and executive officers.
- Affiliated individuals **must** be given an opportunity to contest the action.

Duration of Exclusions:

Duration Specified in Legal Framework:

- Ten years, possibly reduced by five years in specific circumstances.

Duration Depends on Applicable Exclusion Ground?

- Yes. In a limited number of instances, a supplier may be excluded indefinitely.

Discretion to Deviate?

- No. The decision-maker does not have discretion to deviate from the duration specified in the legal framework.

Exceptions/Waivers to Exclusions:

- Yes. A contract may still be awarded to an excluded supplier through a Public Interest Exception (PIE) related to emergencies, public safety, and national security.

Other Sanctions: Not addressed.

V. Government-Wide Transparency and Exclusion List:

Official List of Excluded Suppliers? Yes, and it is publicly available.

- The [Public list](#) for corporate suppliers only; excluded individuals are not publicly available due to privacy considerations.
- The Public list does **not** provide information on the grounds for each listed exclusion.

Procurement Checks:

- Yes. Procuring entities must check the list of excluded suppliers before awarding a contract (verifications are conducted through a web-based portal containing information on specific convictions, charges, and exclusions).

Reporting on Exclusions:

Number of Exclusions: Figures are known through other means (tracked internally).

Regular Reporting: No requirement for regular reporting on exclusions, but PSPC publishes [an annual report](#) on the operation of the Integrity Regime.

Other Transparency Mechanisms: Government operations are subject to regular public reporting to Parliament and Access to Information Act.

VI. Limited Scope Exclusion Systems:

Entity-Wide (e.g., Single-Agency) Exclusion? No.

Contract-By-Contract (e.g., Single-Tender) Exclusion? No.

Subnational Exclusions:

- Exclusion mechanisms exist at the Provincial/State and Municipal/Local levels.
- Exclusion decisions of one subnational body do not extend to other subnational bodies.