
Official Interpretations of the “ODA Accountability Act” – One Year Later

Introduction

The Official Development Assistance (ODA) Accountability Act (ODA Act) came into force on June 28, 2008. This now legally requires Canadian ODA to contribute to poverty reduction, take into account the perspectives of the poor, and be consistent with international human rights standards. Over the past year, the Canadian International Development Agency (CIDA), Foreign Affairs Canada (FAC), and Finance Canada have been developing plans on how to interpret and implement the Act. To date, only Finance Canada has held a consultation on the Act, with neither CIDA nor FAC disclosing its plans. Consultations must be held before September 30, 2009, when CIDA is expected to release the first annual report on the Act.

Finance Canada – Interpretation of the Act

On the basis of an Access to Information (A to I) request, it seems that Finance has developed “Guidelines for Implementation [of the ODA Act] at Finance” which offer provisions for assessing compliance with the Act, for consultation and reporting, and for deeming what ODA payments the Act covers.

Assessing Compliance with the Act

In terms of how to apply the ODA criteria, individual Finance officials assess how a specific initiative (e.g., bilateral debt relief vs. Haiti’s debt relief) meets the Act’s three criteria. Following biennial consultations, the respective official adds notes to their assessment on the consultation, a summary of opinions provided, Finance’s reaction to issues raised, any follow-up taken, and any revisions to the assessment deemed necessary. The assessment is then approved by the Branch Chief, and “opinions” on how the initiative complies with the Act form part of the memo to the Minister. How Finance actually assesses whether ODA payments meet the three criteria is not known, since the assessment is based on a legal opinion formulated by Justice Canada and CIDA that was withheld under section 23 of the A to I Act.

Consultation

Finance plans to hold consultations every two years, starting fall 2008, with three to four weeks prior notice given. The consultation will be web-based both “to help the department keep full and precise records, including the date, names of participants and the opinions provided” (vs. minutes from a meeting that would need verification by all participants), but also to ensure participation from a broader range of groups than otherwise possible in a meeting. Formal submissions are also deemed necessary in case of legal challenges. The Department indicated no intention to respond to individual submissions other than to acknowledge receipt.

Reporting

The Guidelines outline the various reporting requirements of the Act, and the need to coordinate with CIDA the type of information required.

ODA Payments

The Guidelines describe Finance's ODA payments this year (see section below), while noting that Act would cover contributions to other entities where they have contributed funds in the past (for example, the IMF's Poverty Reduction Growth Facility and the Exogenous Shocks Facility, capital subscriptions to the World Bank and European Bank for Reconstruction and Development, and the Heavily Indebted Poor Country Trust Fund).

Finance Canada – Implementation of the Act

Finance's First Consultation

In December, six months after the ODA Act became law, Finance Canada launched its first consultation on the ODA Act. Finance was the first government department to do so, well within the two year timeline required by the Act, and did so because of payments due in January 2009. It sought feedback on how the three areas for which it had provided ODA had met the conditions laid out in the Act, that is, for bilateral debt relief, the multilateral debt relief initiative (MDRI), arrears clearance and contributions to the International Development Association (IDA). It also sought input on how to improve future consultations.

Despite Finance's good faith in holding consultations early, the consultation seemed perfunctory – Finance provided no documents indicating how it had interpreted the Act, few guidelines in terms of providing input, no transparency in terms of who else had participated in the consultation nor what they said, and no indication of what would be done with the comments provided. The consultation was also ill-timed – four weeks in December. That said, Finance considers this first consultation a pilot, with the format possibly evolving over time.

The Halifax Initiative (HI), the Canadian Council for International Co-operation (CCIC), the Association of Canadian Engineering Companies (ACEC), the Social Justice Committee (SJC) and the World Bank all submitted comments through the consultation process. Concerned that the weak process did not allow for meaningful input, the Halifax Initiative and CCIC opted to provide extensive feedback on the consultation process and some broad principles for Finance to consider how Canadian policy at the IFIs through a rights-based approach might be made consistent with the Act. ACEC indicated that project-based funding, in particular for infrastructure investment, should be the sole focus of Canadian aid, and questioned the poverty reduction impacts and degree of accountability of both debt relief and arrears clearance. SJC's argued that some Bank projects are inconsistent with international human rights standards, citing specific cases, and made the case the Bank conducting human rights impact assessments of projects and for giving the Bank's Inspection Panel the authority to remedy violations. Finally, given neither Finance Canada nor the Bank have the appropriate policies to assess the Bank's compliance with the Act, SJC recommended the department establish a policy and the capacity to assess the human rights implications of Bank projects. Finally, the World Bank submitted comments identifying how Canada's ODA contributions to the Bank satisfied all three criteria: IDA credits and grants allow low-income countries to achieve the Millennium Development Goals and manage for development results; the Bank's Country Assistance Strategy and Community Driven Development program allows for the perspectives of the poor to be reflected; and, while the Bank has no explicit human rights policies, it contributes to the promotion of human rights through its programs.

These consultations formed the basis of the first "opinion" sent in the memo to the Minister for the approval of payments to IDA and the MDRI. Regrettably, their assessment of the issues raised, follow-up taken and revisions to their assessment deemed necessary – 11 pages in all – was redacted in the A to I request we received under section 21 (1)(a) of the A to I Act.

Annual Report to Parliament on the Bretton Woods Institutions

The next point of reference during which Finance Canada could have given some indication of their interpretation of the Act was during their Annual Report to Parliament on the Bretton Woods Institutions. A section dedicated to the Act provides an overview of the provisions of the Act, indicates how the feedback on the consultation process had been shared with other departments, and indicates that the substantive input received would inform Finance's contribution to the new ODA Annual Report.

Foreign Affairs – Interpretation of the Act

An A to I request submitted to FAC on their interpretation of the Act has revealed little information. With the exception of one letter, all information indicating the Department's interpretation of the Act and its impacts on the Department was redacted in the A to I request. The one letter from FAC Deputy Minister Leonard Edwards to CIDA President Margaret Biggs simply indicates the completion of an interim implementation plan in June 2008, and that as of February 2009, the department is "well-advanced in finalizing a long-term strategy for ensuring that DFAIT remains compliant with the Act". This includes "examining options for forming the Ministerial opinion on which programming activities constitute ODA, identifying measures that meet the consultative requirement, and compiling DFAIT ODA statistics for the interdepartmental reporting processes".

CIDA – Interpretation of the Act

CIDA has yet to respond to an A to I request submitted in February 2009. However, in our A to I request to Finance Canada, we know that CIDA's Senior Counsel, Louise Sénéchal, provided a 15 page legal analysis of the Act on June 3, 2008. Jane Arbour, General Counsel of the Human Rights Law Section at Justice Canada provided 10 pages of further comments on this. Regrettably, all of the text was redacted under section 23 of the A to I Act.

CIDA and Foreign Affairs – Implementation of the Act

No Consultations Yet

CIDA and FAC have yet to hold any consultations on the Act, although they are using the process input provided in the December Finance consultation to shape their own process. While the first annual ODA Report to Parliament is due to be released by September 30, 2009, neither CIDA nor FAC are legally required to hold a consultation before then.

Preliminary Conclusion

Without access to any of the assessments or legal opinions made on the Act, at best the Act seems to have simply added an additional bureaucratic process to getting Finance's ODA contributions approved, with seemingly no shift in its actual priorities or actions at the Bank.

Similarly, the one letter from Foreign Affairs suggests a tight-reading of the Act: current activities will simply be framed to ensure compliance, rather than the Act used to frame and interpret future activities.



153 Chapel Street
Ottawa, ON K1N 1H5
Canada

TEL: (613) 789-4447
FAX: (613) 241-4170
WEB: www.halifaxinitiative.org