

## **State capture in South Africa and Canada: A Comparative Analysis**

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Corruption in all its forms, from bribery to influence and distortion of oversight, accountability and justice systems, in order to protect the criminal behavior of functionaries (public officials and political officials) is a global phenomenon. Corruption as a phenomenon is found in well-established democracies such as Canada, and is often endemic in young democracies such as South Africa, who fall into a cycle of political corruption and administrative accountability avoidance.

What are the cross-cutting risk factors and mitigation factors that shape the functionality of anti-corruption mechanisms? This comparative analysis of corruption and state capture provides insight into the functionality of oversight, anti-corruption and accountability mechanisms in both countries. Findings indicate that both Canada and South Africa are at risk of the erosion of safeguards and at risk of the deterioration of the levels of vigilance required to prevent state capture.

**Key words:** Accountability, corruption, whistleblowing, anti-corruption mechanisms; state capture.

## 1. Introduction

Avoidance of oversight, anti-corruption and accountable mechanisms undermines public trust and good governance. Although state capture, collusion and patronage are global phenomena, empirical research about corruption often fails to target the universal character of the features that condition the functionality of anti-corruption mechanisms. If some factors are historically inherited and context-dependent what are the cross-cutting risk factors and mitigation actors that shape the functionality of anti-corruption mechanisms?

Old democracies, such as Canada, and in new democracies, such as South Africa have experienced corruption scandals, in light of which independent inquiries were put in place. These inquiries offer a snapshot into the way corruption operates and the factors that act to fight capture and promote public integrity. This comparative analysis indicates that both Canada and South Africa are at risk of the erosion of safeguards and at risks of the deterioration of the levels of vigilance required to prevent state capture.

From an in-depth comparative empirical analysis of state capture's processes, conclusions are drawn as to the features that contribute to uphold public ethics, and those that erode ethical safeguards. This analysis illustrates that in both young and old democracies, there are limits to the public administrations' capacity to prevent capture, that impunity and lack of learning represents a major source risks for democracies and public trust.

## **2. Conceptual Framework**

The concepts of corruption, oversight, accountability and state capture have ascribed many and varied forms of interpretation, most with specific contexts to suit the area under consideration. The selected countries will be contrasted and compared along seven main dimensions.

### ***2.1 Corruption***

A broader definition of corruption is provided in the South African National Anti-Corruption Strategy (2016), namely that corruption occurs when any person accepts directly or indirectly any offers, or agrees to offer or accepts any form of gratification that will benefit themselves. Pauw and colleagues (2002) aver that corruption flourishes when statutory and regulatory frameworks are flawed and there are no consequences for corrupt behavior and acts of dishonesty.

Corruption further thrives when the South African national oversight institutions are weakened and prevented to fully perform their functions of oversight to hold corrupt ministers and functionaries to account for their actions. When the key anti-corruption mechanisms such as the South African Police Service (SAPS), Special Investigation Unit (SIU), Assets Forfeiture Unit (AFU), in South Africa are not functioning effectively to investigate alleged corruption, corruption will flourish.

In Canada, mechanisms in place to prevent corruption and influence trafficking have not been entirely effective when it comes to circumventing or eliminating ethical and political scandals. Although the Auditor General and the Ethics Commissioner can issue recommendations, they do not enjoy punitive or strict corrective powers. The Privy Council can also appoint ad hoc Commission of Inquiries, but their findings and recommendations are not binding.

Corruption, maladministration and the lack of accountability can be seen not only as individual acts, but also as an indication of ineffective governance which has a major negative impact upon public confidence and good governance. Mechanisms against corruption experience implementation problems. When oversight institutions and anti-corruption mechanisms are weakened, there will be no consequences for corrupt activities and corruption will flourish.

## ***2.2. Institutional Infrastructures and Policies***

Oversight and accountability are formally sustained by institutional structures whose effectiveness will vary according to context-specific attributes. Covert networks can undermine these formal structures. Expertise, resources allocation and enforcement powers are critical for ethics and accountability-focused institutions. These provisions in turn depend on political factors, such as leadership support and political appetite for reform.

The South African Constitution (1996) makes specific provision for national oversight institutions such as the national and provincial legislatures, the Public Protector, the Auditor-General, the Public Service Commission and the Human Right Commission and other institutions, so as to safeguard against the abuse of authority and to uphold the key tenets of a democracy. For the Canadian government, the federal and legislatures' Auditor Generals represent the main accountability and oversight bodies. The Canadian Conflict of Interest and Ethics Commissioner initiates prevention initiatives (i.e. training, educational sessions) and issues private advice to Members of Parliament and public reports after inquiring potential breeches of the *Conflict of Interest Act* and MPs *Conflict of Interest Code*. The Election Commissioner safeguards the integrity of the electoral process from undue patronage and financial influence. Their mandate includes the supervision of lobbying activities, political parties funding and expenditures. There are several other ministry-specific permanent Commissioners that conduct government business' auditing, and issue recommendations and reports. When policies fail to safeguard public ethics, and those aforementioned regulatory bodies experience regulatory or institutional failure, public trust is bridled.

### ***2.3. Political appetite for reform***

Accountability is one of the key principles of any modern government to ensure that public functionaries are accountable for their actions to the public (Van Niekerk, 2017; 2018; Van Niekerk & Dalton-Brits 2016). It refers to the answerability for one's functions, actions and the performance of public institutions. It represents an obligation for functionaries to be answerable and to give a satisfactory explanation concerning the exercise of authority and the use of public resources entrusted to them. High political salience combined with a change of elected officials (those involved in ethical misconduct) make structural reforms possible. When political appetite for reform is

absent, scandals tend to reoccur. That is because ethical mechanisms fail to be renewed, strengthened, or given proper inquiry, recommendatory, or enforcement powers.

#### ***2.4 Whistleblowing and disclosure channels***

Miceli and Near (1985) in their seminal work defined whistleblowing as “an activity of disclosure by organizational members for illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations who may be able to effect action”. Whistleblowing is the deed of disclosing observed organizational wrongdoing by reporting it to authorities who are in positions to remedy the particular situation (Holtzhausen, 2012). As “insiders”, whistleblowers are often first to discover wrongdoing, and may eradicate corruption in its early phase (Cho & Song, 2015).

Whistleblowing is also a symptom of state capture. Whistleblowing tends to occur then internal institutional integrity-preserving mechanisms have failed.

#### ***2.5 State Capture***

State capture refers to the capturing of national resources and the appropriation of money through money laundering, looting of state-owned enterprises and bribing of executives and top functionaries in key positions, in order to prevent investigations (Hosken, 2017). Milder forms of capture include: covert networks of influence that bridle the independence of public mega-projects’ governing boards; undue influence of private subcontractors within the public contracting process; the leak of sensitive government-owned information; informal rewards for political loyalty through public office appointments; as well as the mismanagement of public projects, programs, responsibilities (Graycar, 2015). Individuals within covert networks of influence collude to create self-interested publically-binding contracts increase (Charbonneau & Lachance 2015).

The capturing of a State requires protection of high-level politicians from law enforcement agencies and constitutional oversight institutions (Bhorat et al. 2017). State capture occurs when a small elite political group and a small number of private companies systematically channel national resources for their own private gain and self-enrichment (Gumede, 2017). Regimes under capture are incapable of overcoming the pressures and the influences rendering them inefficient in upholding or implementing the legal and ethical standards prescribed by their own policies.

### ***2.6 Ethical risks and the need for collaborative governance***

Preservation of public integrity values within the institutional actors is a continuing endeavor that must rely on ethics-driven collaborative governance networks. However, there are factors that lead to ethical inertia and continuing capture (Valiquette L'Heureux 2016). Capture risks factors thus include (but are not limited to) the fragmentation of regulation enforcement efforts, drifts in goals, accountability deficits and blame-avoidance. Specifically, political “blame games” in ethical risks regimes create an accountability void where institutional safeguards are not reinforced and continue to be at risk of slow and permanent decay. Indeed, there is oftentimes a disconnect between the immediate agenda-setting effect of a crisis or scandal and the longer-term, incremental efforts that are required to correct accepted institutional norms and the overall deviant policy course.

### **3. State Capture: A short description of two countries' ethical scandals**

The ethical scandals and ethical mishaps that constitute State Capture within South African and Canadian public sectors are discussed in the section below. Both these cases were analyzed using a document analysis of secondary sources. After a presentation of the two cases, an analysis of the cross-cutting themes is presented.

### ***3.1 The South African Case***

Although corruption can be seen as a global phenomenon, the extent of massive ongoing corruption at state-owned enterprises (SOEs) and government departments has exposed the fact that corruption runs deep in South Africa (Phakgadi, 2019). This statement is supported by the announcement of the Global Corruption Barometer on Africa (2015) that indicates that South Africa ranks first in Africa when it comes to the perception of corruption's increase (Pring 2015, p.3). As of 2019, almost 70% of citizens believed the South African government is doing badly in tackling corruption (Pring & Vrushni 2019). Transparency International's (2020) Corruption Perceptions Index, which ranks countries according to their perceived levels of corruption in the public sector, gave South Africa a score of 44/100, ranking it 69<sup>th</sup> out of 179 countries.

The former Public Protector Thuli Madonsela's (2015) Report on State Capture documented how the former President Jacob Zuma and senior government officials in South Africa institutionalized corruption with the support of the Gupta family and other corrupt senior government officials. The alleged corruption and corporate capture of the state, including looting of state-owned enterprises (SOE's) such as Transnet and Eskom, and the weakening of constitutional oversight institutions such as the Public Protector, the Auditor-General, the National Prosecuting Authority and the Public Service Commission had a negative impact on public trust (Mkhwanazi, Maqhina & Mtyala, 2018).

The former President of South Africa and other key functionaries were implicated in the alleged capturing of the state. A concern is that there have been no consequences for any of the alleged corrupt activities. Thanduxolo and Skiti (2018) point out that alleged capturing of the state entails that the state had been captured for private gain and there have been no consequences for anyone.



The former Public Protector's Report on State Capture, which was published on 02 November 2016 after an investigation, followed three complaints. The first complaint was laid by Father Mayevb of the Dominican Order of Catholic Priests, to investigate whether there was any irregularity, and undue influence or corruption in the Gupta family businesses, and whether the family had offered cabinet positions to Mcebisi Jonas, who was offered the Minister of Finance position held at that stage by Minister Nhalanhla Nene, and Vyntjie Mentor who was asked to drop the South African Airways (SAA) route to India and to allegedly give it to the Gupta family. The second complaint came from the leader of the opposition party Mmusi Maimane, who alleged that the former President, Jacob Zuma, had breached the Executive Ethics Code of members of the executive. This was based on media reports to investigate Zuma's conduct and the involvement of the Gupta family in the appointments of Cabinet ministers. The third complaint came from an unnamed member of the public concerning the government's intervention when commercial banks refused to continue offering banking services to the companies owed by the Gupta family (Van der Walt, 2018; Karim, 2016).

The findings of the Public Protector's Report indicated potential ethical violations and conflict of interest in the conduct of the former President, Jacob Zuma. Firstly, the report found that Jacob Zuma may have violated the Executive Code of Conduct and the Prevention and Combating of Corrupt Activities Act, 2004, by sharing information about the appointment of cabinet ministers with the Gupta family. Secondly, the report found possible violations in the appointment of directors to the boards of certain state-owned enterprises (SOEs). The report investigated Eskom's contract with Tegeta, which supplied the Arnot Power Station with coal at a cost of R470 per ton, (making it one of the most expensive contracts Eskom had ever had), and Oakbay, which is the Gupta

family's investment company. The report further found that Eskom's board appears to have been improperly appointed, due to the fact that the process was not in line with good corporate governance and that the board violated the Public Finance Management Act, 1999. Moreover, the contract between Tegeta and Eskom allegedly constituted a contravention of the Eskom Board's duty to prevent fruitless and wasteful expenditure. The only entity that benefitted from the Eskom supply contract awarded to Tegeta was the awardee, namely the Gupta family. The report recommended that the President constitute a commission of inquiry to investigate the alleged corrupt activities and that the head of the commission must be chosen by the Chief Justice. The report also recommended that the National Prosecuting Authority (NPA) and the Hawks (South Africa's Directorate for priority crime investigation) must be notified of the issues where a crime appears to have been committed. Thus, the report findings appeared to focus on the former President's conduct and the alleged contravention of the *Executive Members Ethics Act*, and the Prevention and Combating of Corrupt Activities Act, of 2004 (Van der Walt, 2018; Karim, 2016).

The Judicial Commission of Inquiry into Allegations of State Capture, or the Zondo Commission, was appointed on 09 January 2018, when Chief Justice Mogoeng Mogoeng appointed Deputy Justice Raymond Zondo to head the commission. Former President, Jacobs Zuma's controversial relationship with the Gupta family, and the allegations that he allowed the Gupta family to influence cabinet appointments and the awarding of state contracts, are investigated by the Zondo Commission (Feketha, 2018a). A senior official of the National Treasury was one of the first to take the stand in the state capture inquiry, to give evidence on alleged irregularities in the awarding by Eskom of a substantial coal contract to the Gupta owned company, Tegeta. Soon after the former Public Enterprises Minister Barbara Hogan implicated Jacob Zuma in the

capture of state-owned enterprises, Minister Pravin Gordhan, Minister of Public Enterprises, testified at the Zondo Commission as to how signs of what became known as state capture emerged soon after Jacob Zuma became the President of the country. Minister Pravin Gordhan further testified that soon after the leaked Gupta e-mails came into the public domain, the intentions and the activities of the Guptas, senior leaders and other role players became evident. Gordhan also testified as to how the former President pushed for the appointment of Tom Moyane, the former boss of the South African Revenue Services. Documents contained in the Gupta e-mail leaks showed how a Chinese rail company paid large suspected kickbacks to the Gupta-linked entities for the Transnet deals totaling R5.3 billion (Hofstatter, 2018; Feketha, 2018b; Munusamy, 2019; Van der Walt, 2018).

More shocking allegations of state capture were revealed when the whistleblower Angelo Agrizzi testified at the Zondo Commission on the alleged corrupt activities of Bosasa. Bosasa is a company that had questionable dealings with the Department of Correctional Services (DCS). Agrizzi gave more deplorable testimony alleging that top National Prosecuting Authority officials, and a number of officials of the DCS, including cabinet ministers, received payments and bribes from the alleged corrupt Bosasa company (Van der Walt, 2018; Munusamy, 2019; Mange, 2019). Even more shocking testimony followed, implicating top National Prosecuting Authority (NPA) officials Nomgcobo Jiba, Lawrence Mrwebi and Jackie Lapinka for receiving monthly payments from Bosasa for protection and in exchange for confidential information and secret documents related to the case against Bosasa (Munusamy, 2019).

### ***3.1 The Canadian Case***

Numerous politico-ethical scandals have surfaced in Canada, in the last decades. This case analysis will focus on three scandals: First, the SCN-Lavalin/Trudeau

government scandal involving Lybia; second, the SNC-Lavalin/ McGill University Health Center scandal, and third, we will present findings pertaining to the Charbonneau Commission Report, which concerns the corruption and collusion schemes orchestrated by covert networks to loot the state's resources, through colluding in the bidding for public infrastructure contracts.

In 2018, head of State Justin Trudeau was personally incriminated as himself and other cabinet members inappropriately pressured the Minister of Justice behalf of SNC-Lavalin (Fife & Chase 2019). Jane Philpott, Treasury Board Minister, and Jody Wilson-Raybould, Justice Minister resigned, exposing that SNC benefited from direct access to the executive branch of government. SNC called upon its strong "political allies" such as premier Trudeau in order to avoid persecution and in cases of corruption involving Libya (Gowling & Kapelos, 2019).

The SNC-Socodex-Lybian dealings scandal is an important case of state capture and bribery of recent Canadian history. Riadh Ben Aissa was head of Socodex, the SNC's sister company who dealt with the Libyan regime for constructing prisons (Austin, 2012) and head of construction at SNC-Lavalin. He paid Saadi Gaddafi, the son of former Libyan leader Muammar Gaddafi, 160 million (CAD) in personal spoils and bribes in return for granting SNC-Lavalin engineering contracts (Marowits, 2014). However, SNC-Lavalin publically pleaded having no knowledge of its vice-president's wrongdoings, despite the 160 million dollars used to bribe Saadi Gaddafi in exchange for engineering contracts came from SNC-Lavalin (Cousineau & Mc Arthur, 2013). Moreover, in 2013, SNC-Lavalin was banned from obtaining contracts from the World Bank for 10 years in the wake of the Padma Bridge corruption scandal, the longest exclusion period to be imposed by the World Bank (World Bank, 2013; Ferguson, 2018). Despite these revelations SNC's influence trafficking within Canadian

Parliament remained, as illustrated by the resignation in 2018 of two federal ministers after scandalous influence trafficking-related revelations.

A deputy premier of a Canadian province, Jean-Marc Fournier, worked as second-in-command to Ben Aissa at Socodéc, from 2008 to 2010 (Robitaille, 2010). Fournier only left the political sphere from 2008 and 2010, as he worked under Ben Aissa's leadership for Socodéc on behalf of SNC on projects in Libya, prior to the Gadhafi regime's downfall (Ménard & Laplante, 2015). He later returned to politics and since, acts as senior advisor of prominent federal politicians.

SNC-Lavalin was yet involved in another scandal: The MUHC bribery scandal. It represents the "largest fraud in Canadian history" (Cherry, 2018) and dates back to 2008. Philippe Couillard, then Québec's Health minister, announced the construction of the McGill University Health Centre (MUHC). A new infrastructure-oversight agency model, the "public-private partnership" (PPP), was trialed. Under this regime, construction expenditures for the MUHC initially estimated to two billion dollars tripled (Hamel, 2010). An SNC-Lavalin executive working directly under Riadh Ben Aissa, Charles Chebl, admitted meeting illegally with MUHC officials during the consortiums' selection process. SNC-Lavalin in fact rewarded him for displaying such dishonest behavior (Hamilton, 2014). This private-public partnership debacle led to lengthy legal battles and ruinous out-of-court settlements (Rukavina, 2016, Canadian Broadcasting Corporation, 2018).

The person in charge of the Oversight of the MUHC construction was MUHC director Arthur Porter, Philippe Couillard's appointee, business partner, and friend. He conspired to defraud 22.5 M CAD of the 1.3 billion dollars-contract granted to the McGill Health Infrastructure Group, a consortium led by SNC-Lavalin for the mega-hospital's construction (Green, 2013). Arthur Porter was arrested in Switzerland in 2012

for corruption. He died in a Panama Prison while fighting extradition to Canada. Other of SNC's tactics to secure contracts are noteworthy. In 2008 SNC created a 45 days of personalized training sessions for Saadi Gaddafi, son of Libyan dictator, Muammar Gaddafi, (Pineda 2019). Important Canadian public figures such as Minister for Health Dr. Philippe Couillard, Senators, Bankers, and CEOs of transportation agencies and public investment funds were among Saadi Gaddafi's private trainers. As for criminal investigations, SNC Lavalin / Socodéc's former leader, Riadh Ben Aissa chose to be an informant in other fraud and embezzlement investigations (Panasuk & Tremblay, 2015) in return for immunity in the MUHC accusations scandal. He pleaded guilty and was convicted for bribery and money laundering in 2014 at a court in Switzerland (Sutherland & Muse, 2014). He also pleaded guilty in 2018 to using forged documents in Canada (Feith, 2018).

The guilty plea and court settlement allowed for preliminary inquiry documents to be released, documents outlining that public agencies leaders and politicians were apparently well acquainted with the firms' international contract-securing tactics, and actively engaged in them, for instance, as private trainers of Saadi Gaddafi. SNC admitted violating to the Canadian Election Act and in 2019, SNC agreed to pay fines and public prosecutors withdrew charges for corruption against SNC-Lavalin and its affiliates (Makrael, 2019).

Yet, another corruption scandal, specific to Canada led to the establishment of an Inquiry commission on the Awarding and Management of Public Contracts in the Construction Industry (Charbonneau & Lachance, 2015). Through the inquiry's headings, it was revealed that prominent construction firms used the bidding process to their advantage (Valiquette L'Heureux, 2022). They cooperated to artificially inflate the costs of public contracts over government-owned infrastructure, such as bridges,

highways, roads and hospitals (Saint-Martin, 2015). In return, elected officials would turn a blind eye to the collusion over the government contracts' bidding process. Thus a network operating covertly captured and rigged local, state and federal government contracts' bidding systems.

Prominent Canadian political figure Québec's Vice-Premier Nathalie Normandeau and her political aids were arrested on charges of fraud, bribery, breach of trust, conspiracy and corruption (Schingler, 2016; Woods 2016), but their trials were delayed and later aborted (Canadian Press 2018).

Construction firms' executives played a prominent role in orchestrating schemes of illegal electoral campaign financing, called "sectorial financing" (Charbonneau & Lachance, 2015). Québec's liberal party's fundraising managers were also meddling in the nomination of Justices, with the knowledge and approval of Premier Jean Charest according to a whistleblower, Marc Bellemarre (Chartrand, 2010). Finally, the *Permanent Anti-corruption Unit*, a special police force, was created in 2011 to tackle political corruption. It was later revealed that the Permanent Anti-corruption Unit's leader, appointed by Charest, was himself under police investigation (Fortin, Séguin & Thibault, 2019). The Canadian Case reveals that schemes of covert corruption operated at the federal, state and local level, and exposed faults in the corruption and accountability mechanisms in place. Newly elected State-level politicians reacted to this legitimacy crisis by strengthening the ethical safeguards. However, such mechanisms remain at risk of failure, for reasons we will discuss next.

#### **4. Analysis of Cross-cutting themes**

This cross-case analysis integrates core features and issues common to the two national settings. We here outline some reflections for the understanding and overcoming of

state capture and corruption. Cross cutting themes of corruption, oversight and accountability whistleblowing and state capture prevention, are discussed next.

#### ***4.1 Corruption***

Corruption schemes are intricate. The Canadian SNC-related scandals illustrate how corruption risks are present, and that the symptoms of integrity and ethical mishaps are reoccurring. Similarly, the South Africa Report on State Capture proved Jacob Zuma violated corruption regulation.

[Insert table 1 about here]

#### ***4.2. Institutional infrastructure/ policies***

Laws can remain unenforced and phenomena such as the revolving door (Makkai & Braithwaite, 1992; Vidal, Draca & Fons-Rosen, 2012) can weaken the independence of public officers. SNC-Lavalin's executives were able to remain a "close ally" with direct access to the highest executive powers and South-African functionaries are not held accountable for their action or inaction. This illustrates that covert corrupt networks circumvent institutional policies in place. Informal networks can undermine formal mechanisms' functionality.

#### ***4.3 Political appetite for reforms***

Appetite for reform following the SNC-Lavalin related scandals remained weak at the federal level. In South Africa, we denoted a culture of no consequence for corrupt individuals who were caught influence trafficking. When caught in a scandal political leaders are more concerned with ensuring political survival, and judicial checks and balances may be vitiated by political appointments.



#### ***4.4 Disclosure channels /Whistleblowing***

The Gupta email leaks, the Agrizzi revelations and the Bellemarre allegations exemplify how critical are whistle-blowers and channels of disclosure. They allow for momentum and lead to Commissions of Inquiry in both young and old democracies.

#### ***4.5 Capture and regulatory failure***

Symptoms of capture such as “the revolving door” and major public governance mishaps – i.e. unforeseen and unjustified increases of public projects’ expenditure - were well documented in both cases. Political appointments also create problems when it comes to ensuring the impartiality of judges, including those who serve as chairpersons of public inquiries. Regulatory failures both derive from and contribute to maintain a state of government capture, since oftentimes, the agenda-setting effects of these regulatory failures create room for policy entrepreneurs that may use their network of influence to push for a de-regulation agenda.

#### ***4.6 Ethical risks***

Whistleblowers are important for ethics to remain politically salient, and public inquiry commissions were appointed following the revelations of whistleblowers among one of Canada’s legislatures. In South Africa, corruption-related facts deriving from the Zongo Commission entered the public domain several years back, without triggering decisive response (Mkhabela, 2018). Ethical risks factors such as enforcement issues and poor ethical risk governance persist in both cases.

#### ***4.7 Collaborative governance***

If coercion and punitive/deterrence measures can fail, collaboration-based mechanisms can also be ineffective. In Canada, for instance, the Election Commissioner can only use “non-punitive corrective measures” if, upon investigating a complaint, he

concludes that offences were committed. Collaboration must be strengthened within the integrity networks so that resources and strategic goals can be shared.

#### **4. Conclusion**

The cases of both South Africa and Canada illustrate that failure to uphold the principles of a state apparatus' independence, legislature members' moral integrity, and effective oversight of the mechanisms put in place to regulate these risks can lead to more profound public confidence crises. Indeed, when the lessons of political corruption and regulatory enforcement failure are not learned, the government lends itself to further erosion of its ethical and legal safeguards.

It is clear from the two case studies presented that the state allowed itself to be captured by individuals (the Gupta family in South Africa) and corporations (SNC-Lavalin in Canada). At the core of these examples were powerful politicians and/or government officials. In many of the cited examples, the general public became aware of what was happening due to a whistleblower disclosing their concerns over a matter. This demonstrates the importance and value of civil society in keeping governments honest. De-centralized systems of government may not be more efficient in fighting corruption, but more empirical analyses of sub-national cases may inform further the multi-level dynamics at play.

With all this said, the Canadian and South African institutional landscapes have been and remain at risk of state capture if public servants and civil society alike do not stay vigilant to implementing and upholding legal and ethical policies and standards.

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December 5, 2021

Dear Dr. Sean McCandless, Editor of Public Integrity,

Dear Reviewers,

We trust this letter finds you well.

Thank you for providing us with additional comments on our Manuscript, A Comparative Analysis of the Functionality of Anti-corruption, Oversight and Accountability mechanisms: the case of state capture in South Africa and Canada. Here are the comments you provided and our response to the comments made by our peers-reviewers.

**Reviewer 1:**

- Comment #1 More citations are needed throughout the piece.

Answer: We are using APA – 7<sup>th</sup> edition, which means that a given citation does not need to be repeated once inserted in the text. The conceptual framework transparently indicates all citations, and findings are thoroughly supported by numerous secondary sources (publically available document, which are thoroughly cited). One can also note that the authors of this article are experts in corruption in their respective countries, and that the originality of this articles lies in the summarization and popularization of corruption within these two national contexts.

- Comment #2 it is still not clear why Canada and South Africa are being compared. Yet even more fundamentally, the argument is not clear throughout— The authors need to clarify this far more in the opening of the piece and carry it throughout.

Answer: The introduction was entirely revised to clarify the empirical comparison's rationale.

- Comment #3 Relatedly, the authors need to use far more evidence—whether statistics, or results of interviews, or weaving in official reports, or news stories, or all of these and more—to justify their conclusions. This is especially evident in Section 4 where large, sweeping claims are made, yet they are just fully justified. The discussion of the cases themselves are also incredibly brief, so an in-depth analysis is really not presented.

Answer: The presentation of our two cases is precise and thoroughly referenced. Although succinct, because of the maximum word count of 6500 words, our prior revisions took into account the reviewer's comments in this regard. The concepts from the literature review are built upon. In section 4 (analysis), we compare and contrast our two cases along the concepts presented in the conceptual framework. Also, we added

the table that was suggested to illustrate in depth what findings emerge from our cross-case analysis. Now, all core findings and comparative points are summarized in this table that we added in light of the Reviewer's prior suggestions. This further meant condensing the cases' presentation.

- Comment #4 (we suggest) shortening the introduction to more clearly present the argument; give a clearer presentation of the theoretical background; have a brief methods section (including the justification of comparing the two cases);

Answer: We have implemented the first recommendation to the effect the introduction needed to be revised (see answer to comment 2). The theoretical background was re-structured and revised in depth upon first review, and therefore previous comments made by reviewer #1 to this effect have been acted upon thoroughly. Our analytical comparative strategy (i.e. methodology) is now more clearly presented in the introduction and is also made clearly and limpid in the presentation of the "conceptual framework".

- Comment #5: have a findings section with a stronger presentation of themes and evidence; and (...) discuss implications.

Answer: This comment was already addressed in our previous revisions, precisely to respond to the concerns voiced by the review to this effect. Indeed, the reviewers and editors will find the themes (cross-cutting themes) are presented clearly in our (previously) revised conceptual framework and that the analysis is structured consistent with the conceptual framework.

We are confident the revisions we added to the introduction and made in response to the reviewer's comments, explained below, will meet the publication's standards and editors' expectations.

## **Reviewer 2:**

- Comment #1: The author's revision is responsive to the suggestions from prior reviewers (...) The article states that it is a case study of South Africa and Canada. Although the discussion of Canadian institutions is framed in national law and national agencies, the examples provided to illustrate corruption and the failure of institutional safeguards are entirely from the Canadian province of Quebec.

Answer: Because of the order in which the scandals were presented, the reviewer may have been under the impression that the examples were exclusively from Québec, but this was not the case. We have modified the presentation of the Canadian case to present first (and therefore emphasize) the scandals that pertain mainly to the federal government.

- Comment #2: Given that there are significant differences in political culture and administrative effectiveness can be ascribed to Francophile and Anglophile Canadian provinces, the authors need to justify the nation-to-nation comparison of SA and Canada by using some non-Quebec examples, and add some analysis and conclusions that show the author's understanding of this confounding variable. This is especially true since SA and Canada are both (former) British Commonwealth countries, a fact that buttresses their selection as "most similar" cases.

Answer: First of all, thank you for this on-point observation. We agree with the reviewer that the analysis of de-centralized systems may offer great grounds for further research and therefore we added in the conclusion a remark to this effect. We emphasized that further research may look at the multi-level character of capture. We write: “De-centralized systems of government may not be more efficient in fighting corruption. More empirical analyses of sub-national cases may inform further the multi-level dynamics at play.”

Secondly, as explained in the previous answer, we revised the order in which we present the cases of scandals. We start now with a description of the most recent scandal, that led to the resignation of two Canadian Ministers. We then explain the MUHC scandal, in which SNC Lavalin was also involved, and then thirdly, we end the discussion of the Canadian case with the presentation of the scandal linked to the Québec construction industry.

Thirdly, we concur with the reviewer in that the commission Charbonneau was instituted by executive powers from the State of Québec (a semi-autonomous “province” within a system that is “asymmetrical federalism”). However, the testimonies concerned all levels’ parties (including federal) and results apply to the Canadian national context, which is why we added a note in the text to clarify this: “Thus a network operating covertly captured and rigged *local, state and federal governments* contracts’ bidding systems.” (emphasis added).

Fourth, we believe that the semi-autonomous character of the Québec legislature, the cultural differences between Québec and Canada’s political institutions, or questions regarding why the State of Québec was able to initiate a large-scale public inquiry on matters of ethics and corruption affecting all levels of government, were unfortunately, outside of the scope of this article. We also prioritized clarity and comprehension. We decided to maintain the focus on the strategies firms use to loo state resources, and on the “covert” nature of the networks that captured states.

Finally, regarding the level of government (federal vs national/state) being a “Confounding variable”, this is a relevant comment and we have acknowledged this in our conclusion where, as previously stated, we emphasized that further research may look at the multi-level character of capture. However, given this is not an explanatory

research (hypothesis-based), but a comparative, qualitative analysis, we maintain the use of the term “dimensions” (as opposed to variables) to refer to the cross-cutting themes. In short, our descriptive analysis focuses on two cases, and then builds on this empirical description to discuss specific dimensions, grounded in the literature.

We hope that the reviewers and editors will appreciate the innovative and “grounded” character of the observations and insights provided in this manuscript. We are confident in the originality of our qualitative and comparative case-study and in the thorough discussion of cutting-edge themes – corruption, capture, whistleblowing, ethical risks – and of paths forward – collaborative governance, safeguards effectiveness, vigilance, accountability – will meet the peer’s panel’s standards and expectations.

Thank you very much for the opportunity to resubmit our manuscript and to answer remaining concerns from the reviewers. Do not hesitate to contact us if you need further explanations or if further modifications are required.

Sincerely,

**Table 1: Comparison of the main dimensions of State Capture: Canada and South Africa**

Dimensions	Canada	South Africa
<ul style="list-style-type: none"> <li>Corruption</li> </ul>	<p>The possibility for corruption is well established. Although delayed and eventually aborted in the judicial system, the acts and scheme of corruption have been well documented and tend to reappear over time.</p>	<p>The extent to massive ongoing corruption at state-owned enterprises and involvement of senior political leaders, ministers and functionaries has exposed the fact that corruption runs deep in South Africa as a young democracy.</p>
<ul style="list-style-type: none"> <li>Institutional infrastructure/policies</li> </ul>	<p>The channels through which covert corruption operated in 2005-2008 and beyond may have certainly evolved and mutated. Individuals who have been targeted by ethical mishaps and criminal investigations still occupy position of influence in federal and state politics, and in a variety of new outlet. Leaders can tolerate or turned a blind eye to the corruption problems of their organizations for various reason. Integrity failures are slow-paced processes.</p>	<p>Current fragmented anti-corruption mechanism and oversight mechanisms do not provide solutions. The established constitutional oversight institutions and anti-corruption and accountable mechanisms must fulfil their mandate to ensure that ministers and functionaries are accountable for their actions or inactions.</p>
<ul style="list-style-type: none"> <li>Political appetite for reforms</li> </ul>	<p>In the Québec legislature, additional rules, ethical safeguards and enforcement powers were granted after an ad-hoc inquiry commission (Government of Québec 2018; C-23.1; Québec’s Ethics Commissioner 2019), although, the Canadian government did not adopt similarly binding dispositions in the wake of ethical scandals.</p>	<p>It has become fashionable in South Africa for senior leaders, ministers and functionaries who are implicated in corrupt activities not to resign, but to remain parliamentarians. Accountability is a prerequisite to underpin public trust and to promote good governance.</p>

Dimensions	Canada	South Africa
	<p>Several individuals who were allegedly in conflict of interest have not appeared to lose much influence within their political circles, as the most recent SNC-Lavalin scandal revealed. Reinforced mechanisms are a result of previous crises.</p>	
<ul style="list-style-type: none"> <li>• Disclosure channels /Whistleblowing</li> </ul>	<p>Marc Bellemarre’s allegation led to years of political turmoil surrounding conflict of interest between construction and accounting firms within the Québec legislative, executive the juridical branch. The Charbonneau inquiry commission allowed several whistleblowers to come forward, but the access to and effectiveness of the reporting mechanisms is mitigated in success.</p>	<p>Shocking allegations of state capture were revealed when the whistle blower Angelo Agrizzi testified at the Zondo Commission on the alleged corrupt activities of Bosasa, alleging that top National Prosecuting Authority officials, and a number of officials of a government department received payments and bribes from the corrupt Bosasa company.</p>
<ul style="list-style-type: none"> <li>• Capture and regulatory failure</li> </ul>	<p>Capture is present. The recurring scandals surrounding SNC Lavalin over decades is an indication of the state of relative government capture in the Canadian Context. Other symptoms include the Ben Aissa-Fournier and Couillard-Porter MUHC cases of ethical scandals. Favors and friendships create possibility and appearances of interest conflicts.</p>	<p>The alleged capturing of the state reveals the extent to which small elite of private companies, with the support of corrupt political leaders, ministers and functionaries, bent backwards to undermine statutory and legislative frameworks, and to weakened constitutional oversight institutions with the appointment of corrupt officials, with the intention to loot national resources and state-owned enterprises for private gain.</p>
<ul style="list-style-type: none"> <li>• Ethical risks</li> </ul>	<p>The recent “disclosure” climate, which has deeply shaken the parties and agencies that</p>	<p>Soon after the former Public Protector submitted a Report on State Capture on 02</p>

Dimensions	Canada	South Africa
	<p>were targeted by the investigations, may have positively affected the capacity of public servants and of members of society to culturally reject corruption.</p>	<p>November 2016, the leaked “Gupta” emails about the intentions and activities of the corrupt business owners, state-owned enterprises and the involvement of corrupt political leaders became known in the public domain. The ongoing investigations since 2018 till date of the Zondo Commission should lead to criminal charges against corrupt political leaders, functionaries and corrupt business owners.</p>
<ul style="list-style-type: none"> <li>• Collaborative governance</li> </ul>	<p>Little citizen involvement and a political climate of disinterest and divisions erode the democratic fabric and the possibilities of strongly reinforced ethical policies. Watchdogs’ priorities tend to shift and safeguards thus erode. There is a general lack of collaborative governance within federal structures towards the preservation of ethics and integrity.</p>	<p>The established oversight institutions and established anti-corruption mechanisms responsible for the investigation and prosecution of corruption, the recovery and taxation of assets and the proceeds of corruption must fulfil their responsibilities in an effective and collaborative manner to ensure that corrupt political leaders, functionaries hold to account for their actions or inactions.</p>