Legislative Summary **LS-440E**

BILL C-14: THE EXPORT AND IMPORT OF ROUGH DIAMONDS ACT

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28 October 2002
Revised 8 January 2003

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LEGISLATIVE HISTORY OF BILL C-14

HOUSE OF COMMONS	
Bill Stage	**Date**
First Reading:	10 October 2002
Second Reading:	21 October 2002
Committee Report:	6 November 2002
Report Stage:	8 November 2002
Third Reading:	8 November 2002

SENATE	
Bill Stage	**Date**
First Reading:	19 November 2002
Second Reading:	26 November 2002
Committee Report:	4 December 2002
Report Stage:	
Third Reading:	5 December 2002

Royal Assent: 12 December 2002

Statutes of Canada 2002, c.25

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-14: THE EXPORT AND IMPORT OF ROUGH DIAMONDS ACT*

Bill C-14, An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for the export of rough diamonds in order to meet Canada's obligations under the Kimberley Process, received first reading in the House of Commons on 10 October 2002.(1) Second reading was completed on 21 October 2002, and on the same day, the bill was referred to the House of Commons Standing Committee on Foreign Affairs and International Trade. The Committee reported the bill back to the House with several amendments on 6 November 2002, and the bill received third reading on 8 November 2002.

Bill C-14 received first reading in the Senate on 19 November 2002. Upon second reading on 26 November 2002, the bill was referred to the Standing Senate Committee on Energy, the Environment and Natural Resources. The Committee reported the bill back to the Senate with no amendments on 4 December 2002. On 5 December 2002, the bill received third reading in the Senate; Royal Assent was given on 12 December 2002. The Act will come into force upon order of the Governor in Council.

The Kimberley Process is an internationally agreed upon system of certification for rough diamonds that is intended to prevent conflict diamonds(2) – rough diamonds used by rebel movements to finance military activities, including against legitimate governments – from entering lawful markets. This certification scheme requires participating countries to ensure that rough diamonds are imported and exported in tamper-resistant containers accompanied by a

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* Notice: For clarity of exposition, the legislative proposals set out in the Bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) See the News Release and accompanying Backgrounder, both dated 10 October 2002, put out jointly by the departments of Natural Resources, Foreign Affairs and International Trade, and Indian and Northern Affairs (http://www.nrcan-rncan.gc.ca/media/newsreleases/2002/2002120_e.htm).

(2) Such diamonds are also sometimes referred to as "blood" diamonds.

valid certificate from the government of the exporting country stating that the diamonds are not conflict diamonds. The Process is described in greater detail later in this document.

Bill C-14 implements Canada's obligations as a participant in the Kimberley Process by designating Natural Resources Canada as the national authority for the import and export of rough diamonds and by setting out a Canadian certification process. As well, the bill contains provisions detailing Canada's inspection and enforcement obligations, and, as required under the Kimberley Process, it allows the export of diamonds only to other participating countries.

Although every effort has been made to summarize the bill accurately in this document, reference should be made to the bill itself.

BACKGROUND

Diamonds tend to evoke images of beauty, glamour, wealth and love. Such images may ring true in certain parts of the world, but in others, especially in Africa, diamonds and the diamond trade have for decades been synonymous with corruption, violent conflict and misery. In countries such as Sierra Leone, Angola and the Democratic Republic of Congo, diamonds have long fuelled numerous conflicts that are often catalyzed by rebel groups using the proceeds from illicit diamond sales to finance arms purchases.

In January 2000, the Ottawa-based non-governmental organization Partnership Africa Canada (PAC) published a detailed – and now seminal – report entitled *The Heart of the Matter: Sierra Leone, Diamonds & Human Security*.(3) Written by Ian Smillie, Lansana Gberie and Ralph Hazelton, the report provides a comprehensive overview of the intricacies of the global diamond industry and describes how the diamond trade in Sierra Leone has contributed to political and military instability throughout West Africa, thus severely compromising security and human rights in the region. This report was one of the stimuli for the launch of the Kimberley Process, and built on the groundbreaking work done by the United Kingdom-based non-governmental organization Global Witness (GW) in its December 1998 report on Angola: *A*

(3) Ian Smillie, Lansana Gberie and Ralph Hazleton, *The Heart of the Matter: Sierra Leone, Diamonds & Human Security*, Partnership Africa Canada, Ottawa, January 2000. The full report is accessible from the PAC web site: http://partnershipafricacanada.org/hsdp/index.html.

Rough Trade: The Role of Companies and Governments in the Angolan Conflict.[4] Similar work has also been done by the human rights group Amnesty International (AI), most recently with respect to the Democratic Republic of Congo in the October 2002 report entitled *Democratic Republic of Congo: Making a Killing*.[5]

Before addressing the Kimberley Process, it is helpful to have an idea of how the diamond industry operates.

A. A Snapshot of the Diamond Industry[6]

The diamond industry is a massive corporate enterprise: in 2000, approximately 120 million carats of rough diamonds were produced with a market value of US$7.5 billion. Once cut, polished and set into consumer-friendly jewellery – approximately 70 million different pieces of jewellery – these diamonds held a net worth of about US$58 billion.

The diamond business is controlled by a small number of corporations. The most notable of these is the South Africa-based De Beers group of companies, which purchases the vast majority of all diamonds produced in the world, and largely regulates global diamond supply and demand through its Central Selling Operation (CSO) in London, England. The company describes itself as the world leader in diamond exploration, mining, recovery, sorting, valuation and marketing.[7] Smillie *et al.* describe how the CSO functions:

> The CSO sources diamonds from De Beers mines as well as from the "outside market" – diamonds produced by non-De Beers firms. Diamonds purchased by the CSO are in turn sold at ten annual "sights" (sales) to 160 "sightholders." Sightholders are designated by De Beers and are presented with mixed "parcels" of diamonds. The parcels are packages of combined rough gem quality and industrial diamonds, and may include stones from a combination of countries. Parcels are

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(4) *A Rough Trade: The Role of Companies and Governments in the Angolan Conflict*, Global Witness, London, December 1998. The full report is accessible from the GW web site: http://www.globalwitness.org/campaigns/diamonds/reports.html. Also available from this site is GW's June 2000 report entitled *Conflict Diamonds: Possibilities for the Identification, Certification and Control of Diamonds*.

(5) *Democratic Republic of Congo: Making a Killing*, Amnesty International, London, 22 October 2002. The full report is accessible from the AI web site: http://web.amnesty.org/ai.nsf/Print/AFR620212002?OpenDocument.

(6) For more detail, see Smillie *et al.* (January 2000), pp. 15-39.

(7) See the De Beers web site at: http://www.debeersgroup.com/deBeers/dbIntroduction.asp.

> priced by De Beers and are bought by sightholders – ironically enough, sight unseen. Sightholders then take the diamonds to other cities where they are resorted and repackaged for onward sale, or for cutting and polishing.(8)

Most of these "sightholders" reside in Antwerp, Belgium, which is the world centre for rough diamonds, as well as the main "outside market" for over half of the diamonds on the global market. This Antwerp-based diamond market is run by a non-profit industry organization known as the Hoge Raad voor Diamant (HRD), or Diamond High Council, which is largely responsible for the monitoring of diamond imports and exports on behalf of the Belgian government. As Smillie *et al.* factually document in their report, this delegation of power by the government has been an invitation to corruption and abuse of the system by organized crime.(9) They note that the HRD records the origin of a diamond as the country from which the diamond was last exported, so that diamonds produced in Sierra Leone may be officially registered as imported from Liberia, Israel, the United Kingdom, or whatever other trading centre they may have moved through before coming to Belgium. This obviously contributes to the ease with which conflict diamonds from Sierra Leone can be "laundered" by their illicit source. The certification system set out in the Kimberley Process is intended to prevent such diamond laundering.

B. The Kimberley Process

In May 2000, the Government of South Africa initiated the Kimberley Process by calling for the development of an international certification scheme for rough diamonds to prevent conflict diamonds from entering legitimate markets. This first meeting of concerned governments, the diamond industry and non-governmental organizations was held in the town of Kimberley – hence the name of the Process – where South African diamonds were discovered almost 150 years ago. The initiation of the process was preceded, and continues to be buttressed, by the concerted efforts of non-governmental organizations, individual governments, the United Nations (UN) and the diamond industry to take action on the issue of conflict diamonds.

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(8) Smillie *et al.* (January 2000), p. 3.

(9) Smillie *et al.* (January 2000), pp. 34-36.

The UN has adopted a number of resolutions pertaining to diamond-related conflicts in particular countries and the role, in general, of diamonds in fuelling conflict.(10) One of the results of the PAC report – *The Heart of the Matter: Sierra Leone, Diamonds & Human Security* – was greater recognition of the situation in Sierra Leone by the international community. In particular, Resolution 1306, adopted by the Security Council on 5 July 2000, banned the direct or indirect import of all rough diamonds from Sierra Leone to UN Member States' territory and requested the UN Sanctions Committee to assess the role of diamonds in Sierra Leone. This led to the establishment of a UN Expert Panel – on which Canada was represented by Ian Smillie of PAC – which conclusively demonstrated the connections between the trade in diamonds by rebel groups and their acquisition of arms to fuel conflict in the region.(11)

Canada has played a key leadership role in efforts to stop the trade in conflict diamonds. Apart from PAC, Member of Parliament David Pratt has been deeply involved in these efforts as a result of his deep, ongoing interest and experience in Sierra Leone in particular. In February 1999, he was asked by then Minister of Foreign Affairs Lloyd Axworthy to take on the role of Special Envoy to Sierra Leone. After several fact-finding trips to Sierra Leone and surrounding areas, Mr. Pratt produced two substantive reports that have expanded the knowledge base of the crisis in Sierra Leone and the diamond trade in West Africa.(12) He later introduced a Private Member's Bill – Bill C-402(13) – aimed at prohibiting the importation of conflict diamonds into Canada. His bill was later overtaken by developments with the Kimberley

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(10) From the UN General Assembly, Resolution 55/56, *The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts*, 29 January 2001 (accessible at: http://www.un.org/Depts/dhl/resguide/r55.htm). See also the following resolutions adopted by the UN Security Council: Resolution 1173 (1998) on Angola; Resolution 1295 (2000) on Angola; Resolution 1304 (2000) on the Democratic Republic of Congo; Resolution 1306 (2000) on Sierra Leone (all accessible at: http://www.un.org/documents/scres.htm).

(11) The December 2000 report of the Expert Panel is accessible at: http://www.partnershipafricacanada.org/english/esierra.html.

(12) The first report, from 23 April 1999, is entitled *Sierra Leone: The Forgotten Crisis*. The second, *Sierra Leone: Danger and Opportunity in a Regional Conflict*, was presented to the Minister of Foreign Affairs on 27 July 2001. Both are accessible at: http://www.davidpratt.ca/specreport.htm.

(13) Bill C-402, An Act to prohibit the importation of conflict diamonds into Canada, first reading, 18 October 2001, 1st Session, 37th Parliament (accessible at: http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/private/C-402/C-402_1/C-402_cover-E.html).

Process. Mr. Pratt also represented Canada at a ministerial-level Kimberley Process meeting in Gabarone, Botswana, in November 2001.

In July 2000, the diamond industry, through the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, created the World Diamond Council. The Council's mandate is the development, implementation and oversight of a tracking system for the export and import of rough diamonds to prevent the exploitation of diamonds for illicit purposes such as war and inhumane acts.(14)

The most recent Kimberley Process meeting was held in Ottawa in March 2002. That meeting produced the latest version of the Kimberley Process Working Document, which sets out the details of the process, including the obligations of participants.(15) Participants are required to do the following:

- Require rough diamond exports to be accompanied by a duly validated Kimberley Certificate;
- Require rough diamond imports to have a duly validated Kimberley Certificate (which at a minimum includes the Certificate number, the number of parcels, the carat weight, and the details of the importer and exporter);
- Require that the original of the Certificate be readily accessible for at least three years;
- Ensure that no shipment of rough diamonds is imported from or exported to a non-participant;
- Establish a detailed system of internal controls designed to eliminate the presence of conflict diamonds from shipments of rough diamonds imported into and exported from its territory;
- Designate an importing and an exporting authority;
- Ensure that rough diamonds are imported and exported in tamper-resistant containers;
- As required, amend or enact appropriate laws or regulations to implement and enforce the Certification Scheme and to maintain dissuasive and proportional penalties for transgressions; and

(14) For more information on the Council, see its web site at: http://www.worlddiamondcouncil.com/.

(15) An earlier version of the Working Document (December 2001) is accessible at the World Diamond Council web site (see the US Legislation section): http://www.worlddiamondcouncil.com/.

- Collect and maintain relevant official production, import and export data, and collate and exchange such data as directed in the Working Document.(16)

The Process is chaired by the Government of South Africa and currently includes 48 countries,(17) representing 98% of the global diamond trade. In April 2002, the UN General Assembly adopted Resolution 56/263(18) fully supporting the progress to date on the Kimberley Process and urging UN member states to participate actively in the proposed international certification scheme. The Resolution also requests that a progress report be submitted to the General Assembly by its 57th session. On 5 November 2002, Kimberley Process participants signed the "Interlaken Declaration"(19) adopting the Process and committing to launch it simultaneously beginning on 1 January 2003. They also agreed to ensure that measures taken to implement the Process are consistent with international trade rules. Accordingly, on 12 November 2002, Canada, Japan, the Philippines, Sierra Leone, Thailand, and the United Arab Emirates submitted a formal Request to the World Trade Organization (WTO) for a waiver from certain WTO provisions, in particular those in the 1994 *General Agreement on Tariffs and Trade*, that would conflict with implementation of the Kimberley Process.(20)

A key problem that remains with the Process is that it does not include a regular, independent, international monitoring scheme to oversee the national control systems being implemented by each participating country. This is something the involved non-governmental organizations have demanded; they argue that without such monitoring any country can join and

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(16) *Kimberley Process Working Document*, nr 1/2002, Ottawa, 20 March 2002, Section IV.

(17) Angola, Australia, Austria, Belarus, Belgium, Botswana, Brazil, Canada, Central African Republic, China, Cyprus, Czech Republic, Democratic Republic of Congo, Denmark, Finland, France, Gabon, Germany, Greece, Guinea, India, Ireland, Israel, Italy, Ivory Coast, Japan, Luxembourg, Mauritius, Mexico, Namibia, Netherlands, Norway, Portugal, Russia, Sierra Leone, Singapore, South Africa, South Korea, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, United Arab Emirates, United Kingdom, United States of America, and Zimbabwe.

(18) *The role of diamonds in fuelling conflict: breaking the link between the illicit transaction of rough diamonds and armed conflict as a contribution to prevention and settlement of conflicts*, 9 April 2002 (accessible at: http://www.un.org/Depts/dhl/resguide/r56.htm).

(19) *Interlaken Declaration of 5 November 2002 on the Kimberley Process Certification Scheme for Rough Diamonds*, Interlaken, Switzerland, 5 November 2002.

(20) *Kimberley Process Certification Scheme for Rough Diamonds – Request for a WTO Waiver*, WTO Document G/C/W/431, Council for Trade in Goods, World Trade Organization, Geneva, 12 November 2002. The Request (and the Interlaken Declaration, which is annexed to it) is accessible at the WTO web site by typing the above Document Number into the "Document Symbol" field of the search engine: http://docsonline.wto.org/gen_search.asp.

remain in the system without inspection. Thus, a country like Congo (Brazzaville), which produces no diamonds of its own, but which exported US$221 million worth of diamonds to Belgium last year, can join without inspection. The lack of such a verification system could seriously compromise the credibility and effectiveness of the whole Process.

C. Diamonds in Canada

The Kimberley Process and Bill C-14 have special relevance for Canada, as its diamond industry is one of the newest players in the global diamond marketplace. Canada is now responsible for about 6% of global rough diamond production by value (4% by weight) through its Ekati mine in the Northwest Territories (NWT), approximately 300 km northeast of Yellowknife. The mine is owned by BHP Billiton Diamonds Inc. and currently employs about 650 people. All diamonds produced by the mine are currently exported to London or Antwerp for sorting.

In 2003, the Diavik mine located near Ekati is expected to begin production. It is 60% owned by Diavik Diamond Mines Inc., which in turn is owned by Rio Tinto plc, and 40% by Aber Resources Ltd. This will increase Canadian rough diamond output to 12% of world production by value. As well, De Beers and Tahera Corporation each expect to begin operating new diamond mines at Snap Lake, NWT, and in Nunavut, respectively, by 2007. De Beers, Kensington Resources Limited and Cameco Corporation are involved in a joint venture exploring key diamond target areas in northern Saskatchewan. A diamond cutting and polishing industry is also beginning to develop, with approximately 80 people currently employed in the NWT as well as others in the Gaspé region of Quebec.

DESCRIPTION AND ANALYSIS

The purpose of Bill C-14 is to implement Canada's obligations under the Kimberley Process. As stated in the Preamble of the bill, "the Kimberley Process establishes minimum requirements for an international scheme of certification for rough diamonds with a view to breaking the link between armed conflict and the trade in rough diamonds."

Clause 1 states the short title of the bill: the Export and Import of Rough Diamonds Act.

Key definitions are set out in the clause 2 interpretation provision. A "Canadian Certificate" refers to a "Kimberley Process Certificate" issued under the bill, and the latter certificate is a document issued by a participant in the Kimberley Process certifying that rough diamonds for export or import or in transit have been handled in a manner meeting the minimum requirements of the Kimberley Process. The term "conflict diamond" is not mentioned in the bill. Instead, all explicit diamond references are to the term "rough diamond," which is a diamond that is unsorted, unworked or simply sawn, cleaved or bruted, and that comes within the list of tariff provisions in the schedule to the *Customs Tariff*. The Minister of Natural Resources is the "Minister" responsible for implementing the bill and any accompanying regulations.

A. Ministerial Powers (Clauses 3-7)

Clause 3 enables the Minister of Natural Resources to add names to the schedule of the Act listing Kimberley Process participants. These could include the name of a state, international organization of states, dependent territory of a state, or a customs territory. Name deletions are also authorized for those ceasing to participate in the Process. The schedule currently contains the names of the 48 countries noted above in the background discussion of the Kimberley Process.

In administering the Act, the Minister is allowed, under clause 4, to disclose any information received in a Canadian Certificate application or gathered through an inspection under the Act **if, as amended by the House Committee, the Minister considers the disclosure to be in the public interest, taking into account the competitive position of the individual, corporation, partnership, trust, organization or association of persons affected by the disclosure**.

Clause 5 allows the Minister to collect, compile and use statistics respecting Canadian Certificates and Kimberley Process Certificates accompanying imports into Canada for analysis, study or exchange with other Process participants. Publication of the number of certificates dealt with is also allowed.

The Minister has broad powers of delegation under the bill. Clause 6 authorizes the Minister to delegate to *any* person the exercise of *any* power under the Act, except with respect to amending the schedule (clause 3), designating inspectors and investigators (clause 7(1)), and making regulations under the Act (clause 35). Clause 7(1) enables the

Minister to designate any person or class of persons the Minister considers qualified as an inspector or enforcement investigator under the Act. Such persons must receive a designation document specifying the terms and conditions of their position.

B. Exporting Rough Diamonds (Clauses 8-13)

Clause 8 requires every person exporting rough diamonds to ensure the diamonds are in a container meeting the requirements in the regulations to the Act and are accompanied by a Canadian Certificate.

The process for issuing Canadian Certificates is set out in clause 9. The bill describes only how applications submitted by residents of Canada are handled. There is no provision for applications by non-residents.(21) The Minister will issue a Canadian Certificate if the application meets the requirements in the regulations and the following criteria:

- the export is to a participant in the Kimberley Process;
- the information in the application is accurate;
- the rough diamonds covered by the application originated in Canada, **were extracted from mineral concentrates in Canada (as amended by the House Committee)**(22) and were imported from a Process participant or were in Canada when this provision came into force; and
- the fees enumerated in the regulations have been paid.

If the application does not meet the criteria listed above, the Minister will reject the application and send the applicant written reasons for the rejection. If the application does not meet the requirements of the regulations, the Minister must provide the applicant with a notice including written reasons for the deficiency. Under clause 10, if the applicant does not remedy the deficiency within what the Minister considers a "reasonable" time, the Minister may reject the application.

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(21) See also the discussion later in this document of clause 43, which describes the potential liability of a Canadian resident who applies for a Canadian Certificate on behalf of, or for the use of, a non-resident, and the non-resident commits an offence under the Act.

(22) This amendment ensured that the legislation would apply only to the extracted rough diamonds and not to the large kimberlite mineral samples (often ranging from 100 to 1,000 tonnes), which are regularly sent to specialized processing facilities in other countries.

Clause 11 authorizes the Minister to issue a replacement Canadian Certificate where any information on the certificate is inaccurate or has changed and the certificate holder applies for a replacement. The Minister is able to invalidate a certificate under clause 12 upon determining that any information provided by the applicant to get the certificate, or any information on the certificate, is inaccurate or has changed.

Persons exporting rough diamonds have an obligation under clause 13 to report the export to the Minister in accordance with the regulations. Furthermore, such persons must carry out the export only at a point of exit designated in the regulations, if any are so designated.

C. Importing Rough Diamonds (Clauses 14-16)

Clause 14 requires importers of rough diamonds to ensure that on import the diamonds are in a container approved under the regulations, and are accompanied by a valid and accurate Kimberley Process Certificate issued by a Process participant. If the certificate requirement is met but the container has been opened, clause 15 permits the Minister to order the importer to return the rough diamonds to the participant who issued the certificate. If such an order is made, the diamonds may not be seized.

Clause 16 obligates rough diamond importers to report their imports to the Minister as directed in the regulations, and to do the import at a point of entry designated in the regulations, if any are so designated.

D. In-Transit Rough Diamonds (Clauses 17-18)

Clause 17 empowers investigators under the Act to seize in-transit rough diamonds if they are not accompanied by a Kimberley Process Certificate or are in a container that has been opened. The Minister may order in-transit rough diamonds that arrived in Canada "opened" to be returned to the Process participant who issued the certificate. Clause 18 makes explicit that, for the purposes of the Act, in-transit diamonds are deemed not to be imported or exported.

E. Inspections (Clauses 19-22)

Under clause 19, inspectors charged with administering the Act have the power to:

- enter and inspect any place – apart from a dwelling-place – or vehicle[23] where they have reason to believe there are rough diamonds, documentation or data relevant to the Act;
- open any package or container they have reason to believe contains any of the above-noted items;
- require any person to present any of the above-noted items for an inspection under whatever conditions the inspector considers necessary;
- require any person to present any document or thing to assist in identifying the person or the origin of the rough diamonds;
- examine the rough diamonds or anything related to them;
- examine and make copies of any documents or data they have reason to believe are relevant to the Act; and
- measure the rough diamonds and conduct tests or analyses not affecting their value.

In exercising these powers, inspectors may use any computer or data processing system to examine any data in the system. They may make, and remove for examination, printouts of any such data. They may also use the equipment at the inspection site to make any copies of documents or data **(the House Committee amended the provision to ensure the authority to make such copies was not limited to those of "electronic" data)**. Clause 20 empowers inspectors to stop any vehicle, or direct it somewhere where they can inspect it, if they have reason to believe it contains rough diamonds, documentation or data relevant to the Act.

Clause 21 requires inspectors exercising their powers under the Act to show their designation document on request. Under clause 22, the owner or person in charge of a place entered by an inspector, as well as all others present, has a duty to give the inspector all reasonable assistance in exercising his or her powers under the Act. This includes providing whatever information the inspector may require.

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(23) This includes land, water and air vehicles. The bill uses the legal term "conveyance," which is broad enough to cover any vehicle.

F. Investigations (Clauses 23-24)

Clause 23 requires investigators exercising their enforcement powers under the Act to show their designation document on request. Clause 24 gives investigators broad powers of entry on private property. They may enter on and pass through or over private property. **The House Committee removed from clause 24 the exemption from liability for damage to property or infringement of rights relating to property when making such incursion on private property. This will ensure property owners are indemnified if damage occurs.**

G. Disposition of Things Seized (Clauses 25-27)

Clause 25 requires an investigator or peace officer who seizes rough diamonds or other things to, as soon as practicable, advise their owner or the person controlling them of the reason for the seizure and that they may apply for an application for their return (under clause 27(4)). The investigator or officer may store the diamonds or other things at the place where they were seized or at a secure storage site (clause 26).

Clause 27 prohibits the continued detention of diamonds and other things seized once the investigator has determined they meet the requirements of the Act, or 180 days have passed since their seizure. If following the 180-day period no prosecution has been initiated, the diamonds and other things must be returned to their owner or the person controlling them when they were seized.

However, if a prosecution is initiated under the Act, the diamonds and other things may be further detained until the conclusion of the proceedings. As well, following initiation of a prosecution, and where the diamonds or other things have been seized but not forfeited, their owner or the person controlling them at the time of the seizure may apply to the court conducting the proceedings for an order that they be returned. The court may make such an order if it is satisfied sufficient evidence exists or may reasonably be obtained without further detaining the diamonds or other things. If the accused is acquitted, the court may order that the diamonds and other things be returned to their owner or the person controlling them when they were seized.

H. Forfeiture (Clauses 28-32)

Under clause 28 of the bill, if a person is convicted of an offence under the Act, the convicting court may, on its own or at the request of either party, order the forfeiture to the federal Crown of any rough diamonds or other things seized in relation to the offence. If the owner of rough diamonds or other things seized consents to their forfeiture at any time, they are forfeited to the federal Crown (clause 29).

Upon the forfeiture of anything under the Act, the Minister must under clause 30 provide the former owner or person in control of the goods when they were seized with a forfeiture certificate. Clause 31 states that the manner of disposal of forfeited rough diamonds or other things is to be as prescribed in the regulations. Any rough diamonds or other things that are seized but not forfeited under the Act must be returned to their owner or the person controlling them when they were seized (clause 32). The only exception is when the owner or controlling person is convicted and fined; the goods may be retained until the fine is paid.

I. Liability for Costs (Clause 33)

Clause 33 states that anyone convicted of an offence under the Act is liable for all of the federal Crown's costs relating to the seizure, detention or forfeiture of rough diamonds or other things, less any proceeds obtained from the disposition of forfeited goods. These costs are considered debts due to the Crown, who may pursue them in court within five years of the time they were incurred.

J. Regulations (Clauses 34-35)

Clause 34 authorizes the Governor in Council to make any regulations necessary for the Act, including regulations setting fees for the issuance or replacement of a Canadian Certificate, and regulations designating points of entry for rough diamond imports and points of exit for exports. Clause 35 enables the Minister to make regulations on the following issues:

- the process for submitting an application for a Canadian Certificate or replacement certificate, including required information and documentation;
- the content of Canadian Certificates and their period of validity;
- the process and required information to submit a rough diamond export or import report;

- the requirements for containers for exporting or importing rough diamonds;
- the documents and data to be kept by exporters and importers of rough diamonds, including their form and content and how long they must be retained; and
- the disposition of rough diamonds and other things forfeited under the Act, including persons to be notified of their disposition and the manner of notice.

K. Offences and Punishment (Clauses 36-45)

The bill sets out a strict enforcement regime that can be used against those that contravene the Act. Clause 36 prohibits misrepresentations or the use of false or misleading information when applying for a Canadian Certificate or in connection with any subsequent use of the certificate. This also applies to any activities surrounding the export or the disposition of rough diamonds to which the certificate relates. As well, clause 37 prohibits the forging or altering of a Canadian Certificate. As stated in clause 38, certificates may not be transferred, assigned, given, bartered or sold if it is known, or should be known, that the certificate will be used for the export of rough diamonds other than those for which it was issued. Clause 39 prevents anyone from avoiding compliance with the Act by failing to maintain or falsifying records they are required to keep under the regulations.

Clause 40 sets out the offence of obstruction, **which prohibits anyone from interfering with an inspector's work under the Act, or prevents an inspector from doing such work. The House Committee slightly altered the construction of the provision to make it clearly imperative, and removed the reference to a summary conviction.**

As there were some technical errors in the construction of the punishment provisions in the first reading draft of the bill, the House Committee rearranged these provisions. The Committee added clause 40.1, which sets out the summary conviction offence[(24)] punishments for persons who contravene the following provisions:

- **export reporting and point of exit requirements (clause 13);**
- **import reporting and point of entry requirements (clause 16);**

(24) The two types of offences are "summary conviction" or "indictable." The basic difference between the two is that indictable offences are more serious and thus lead to harsher penalties. There are also various procedural distinctions between the two types of offences.

- **the duty to assist an inspector (clause 22); or**
- **obstruction of an inspector (clause 40).**

Any prosecution that arises under one of the above summary conviction offences may not be initiated after three years from the time when the complaint arose.

Clause 41 sets out the indictable and summary conviction offence punishments for persons who contravene the following provisions:

- **exporting requirements (clause 8);**
- **importing requirements (clause 14);**
- **false or misleading information, and misrepresentation (clause 36);**
- **forging or altering a Canadian Certificate (clause 37);**
- **transfer, sale, etc., of a Canadian Certificate (clause 38); or**
- **failing to maintain or falsifying records (clause 39).**

Anyone contravening any of the above clause 41 sections is guilty of:

- **an indictable offence and is liable to a fine of an amount at the discretion of the court or up to 10 years' imprisonment, or both; or**
- **a summary conviction offence liable to a fine of up to $25,000 or up to 12 months' imprisonment, or both.**

Under clause 41(2), the accused may use as a defence the fact that the Minister has ordered the rough diamonds in question returned (under clause 15(1)). Clause 41(3) states that summary conviction offences may not be initiated after three years from the time when the complaint arose. Clause 41(4) directs the court, when imposing a sentence on an offender, to consider the nature and value of the exported or imported rough diamonds in question, as well as any other relevant factors. Where a convicted person has benefited monetarily from committing the offence, clause 41(5) enables the court to order the person to pay an additional fine equal to what the court determines to be the monetary benefit the person received.

Clause 42 states that where a corporation commits an offence under the Act, any officer or director who was involved is also guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Where a Canadian Certificate is issued to someone who applied for it on behalf of another person who is not a resident of Canada and the other person commits an offence under the Act, the applicant is guilty of the same offence, whether or not the non-resident has been prosecuted or convicted (clause 43). The applicant is also liable on conviction to the punishment provided for the offence, as long as it is proven that person was aware of the offence occurring or did not exercise due diligence to prevent the commission of the offence.

Clause 45 authorizes the Crown to use any "shipping document" as admissible evidence for any prosecution under the Act as long as it appears from the document that:

- the rough diamonds were sent or shipped from Canada or came into Canada;
- a person, as shipper, consignor or consignee, sent or shipped the rough diamonds from Canada or brought them into Canada; or
- the rough diamonds were sent or shipped to a particular destination or person.

Furthermore, in the absence of evidence to the contrary, an admissible shipping document is considered proof of the above facts.

The House Committee added clause 45.1, which requires the Minister to review the provisions and operation of the Act three years after it comes into force. Within six months of undertaking the review, the Minister is to submit a report on the review to Parliament. If Parliament is not sitting at that time, the report is to be submitted within the first 15 of its next sitting days. The three-year period was chosen to coincide with the mandated three-year review of the international Kimberley Process.

This falls short of the suggestion made by non-governmental groups to create an independent board consisting of government officials along with industry and civil society representatives to monitor the implementation of Bill C-14 in Canada.

L. Coming into Force (Clause 46)

The Act is to come into force on a day or days fixed by order of the Governor in Council.

COMMENTARY

During second reading debate in the House of Commons, all federal political parties expressed strong support for the bill. This helped it move relatively quickly through the parliamentary process, in time to meet the international implementation target of the end of 2002.

Following first reading of the bill, several newspaper articles briefly described the Kimberley Process context and gave a broad idea of what the bill entails.(25) The most animated commentary appeared in the *Yellowknifer*,(26) which serves the region of Yellowknife, NWT. The people of Yellowknife have a definite vested interest in the bill, as the only operational mine in the Canadian diamond industry – the Ekati mine – operates out of the city's backyard, and there is the potential of hundreds of new jobs in the years to come as new mines open and the diamond polishing and cutting industry grows.

In its consideration of Bill C-14, the House Committee heard from several industry stakeholders as well as from representatives of the Canadian non-governmental organization, Partnership Africa Canada (PAC). All were generally positive about the Kimberley Process and the bill, and the need for both. PAC reiterated the position it has always taken, along with other involved non-governmental organizations around the world, that the Kimberley Process needs to, but does not currently, include a system for regular independent monitoring of national control mechanisms for it to be credible. As Ian Smillie of PAC recently explained in a *Globe and Mail* op-ed piece:

(25) Hélène Buzzetti, "Trafic de diamants : Ottawa exigera la certification des pierres brutes," *Le Devoir*, 11 October 2002, p. A3; Mike Blanchfield, "Canada moves to ban blood diamonds: Illicit stones used to finance African civil wars," *Ottawa Citizen*, 11 October 2002, p. A6; "Bill to ban blood diamonds," *Windsor Star*, 11 October 2002, p. A6.

(26) Thorunn Howatt, "Blood diamond bill tabled: Conflict diamonds are a humanitarian issue – Pelletier," *Yellowknifer*, 23 October 2002, p. A22; "Stonewalling Northern diamonds: Federal government's lack of action no surprise," *Yellowknifer*, 11 October 2002, p. A7; Thorunn Howatt, "Clock ticking on gem bill: Time tight to get federal law in place by January deadline," *Yellowknifer*, 9 October 2002, p. A23.

> **Why would anyone accept, without question, a certificate of authenticity from the Central African Republic when, for years, it has been exporting triple what it is capable of producing? Why would anyone trust Belgium? Through the 1990s, it imported annually anywhere from $500 million to $1 billion (U.S.) worth of diamonds from five West African countries in excess of what they were capable of producing. … The growing chorus of advertisers who say that the problem is solved and that diamonds can now be guaranteed are wrong. All Canadian diamonds go to Antwerp for sorting, and some come back for cutting and polishing. Without credible, independent inspection, there are no guarantees.(27)**

Since second reading in the House, various other newspaper articles have contributed to the commentary on the bill and the Kimberley Process in general by highlighting the importance of the initiative and this outstanding concern that it does not include a mechanism for regular independent monitoring of national control systems.(28)

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(27) **Ian Smillie, "Global Diamonds are flawed, Think that gift is blood-free? Think again, says conflict diamond expert," *Globe and Mail*, 10 December 2002, p. A19.**

(28) **See, for example: Paul Knox, "Dealers' diamond cleanup code called toothless," *Globe and Mail*, 4 November 2002, p. A8; Mark Huband, "Diamond chiefs OK conflict-gem code," *National Post*, 30 October 2002, p. F14.**