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2017

### Innovations in Oversight: Cities' Proactive Approaches to Fighting Corruption

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# Innovations in Oversight: Cities' Proactive Approaches to Fighting Corruption

In June 2017, CAPI presented the second installment of our signature conference, Global Cities II, which brought together anti-corruption leaders from government and civil society worldwide, including delegates from Bogotá, Cape Town, London, Melbourne, Miami, Montréal, New York, Paris, Rio de Janeiro, and San Francisco, to discuss important topics such as using data analytics to combat corruption, government transparency, enforcement challenges and victories, and innovations in oversight. Videos and other materials from Global Cities II can be found [here](#).

## Original CAPI Publication:

This brief was prepared by the Center for the Advancement of Public Integrity at Columbia Law School. We can be reached at [CAPI@law.columbia.edu](mailto:CAPI@law.columbia.edu).

CAPI would like to thank Adoree Kim, CAPI summer research intern and PhD candidate at Cornell University for her authorship of this brief.

## Introduction

The Innovations in Oversight panel featured the distinguished heads of three relatively new oversight agencies: Alistair Maclean, Chief Executive Officer of the Independent Broad-based Anti-corruption Commission (IBAC), Melbourne, Australia; Philip Eure, Inspector General for the New York Police Department (OIG-NYPD), New York; and Denis Gallant, Inspector General for Montréal, Canada. The panelists discussed the structure, powers, and functions of their oversight agencies and the myriad challenges such agencies face. PowerPoint presentations and videos of the Oversight panel can be found [here](#).

## Alistair Maclean, CEO of the Independent Broad-based Anti-corruption Commission (IBAC)

[The Independent Broad-based Anti-corruption Commission](#) (IBAC), the first anti-corruption body in the Australian state of Victoria, was established by the [IBAC Act](#) in 2011. This legislation followed years of public pressure on Victoria's government, as well as a state election in 2010 in which the [establishment of an anti-corruption commission](#) became an important political issue. Fully operational since 2013, IBAC is the youngest of a number of similar state-level anti-corruption bodies established in Australia, with jurisdiction over state and local government statutory bodies, judiciary, parliament, and police.

IBAC encountered widespread cynicism about its ability to serve as an effective anti-corruption body. Aside from being saddled with a narrow statutory definition of corrupt conduct, IBAC was faced with strict threshold requirements for commencing an investigation; these posed significant challenges for the fledgling agency. The lack of basic powers of arrest, search and seizure, and interviewing without summons were a further constraint.

However, certain tools contributed to IBAC's early success and gave the agency leverage to expand its range of functions and powers. Mr. Maclean observed that the ability to hold public hearings on corrupt conduct, in particular, operated as an "extremely effective and necessary tool" that attracted significant media attention, raised public support, and started to reverse the government's complacency regarding corruption. The statute containing the original language that circumscribed IBAC's powers was amended in 2016 to include a broadened definition of corrupt conduct, authorize IBAC to commence investigations at a lower threshold, and require heads of public sector bodies to report suspected corrupt conduct to the agency. Mr. Maclean noted that despite its lack of law enforcement powers, IBAC is now in a "much better position" to address corruption.

## **Philip Eure, Inspector General for the New York Police Department**

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Established in 2014, the [Office of the Inspector General for the New York Police Department](#) (OIG-NYPD) conducts systemic investigations of police misconduct and submits recommendations on policy and organizational changes to the city's police department. The OIG-NYPD was created in the face of considerable opposition from New York's former mayor, whose [veto of the bill was overridden by the New York City Council](#).

Mr. Eure spoke at length about the OIG-NYPD's efforts to conduct systemic police oversight in New York City. Despite early criticisms that the office would replicate the city's existing police oversight bodies, OIG-NYPD's investigative reports have generated considerable publicity and many of OIG-NYPD's recommendations have been implemented by the NYPD. Reports of note include [assessments of accountability in NYPD chokehold cases](#), and [NYPD policies regarding police use of force](#). In its 2015 comprehensive report on the NYPD's use of body cameras, the OIG reviewed body camera policies of police departments across the country, issuing recommendations to the NYPD on transparency, privacy, and data accessibility in the body camera program.

The OIG-NYPD is composed of investigators, attorneys, analysts, and auditors. The OIG-NYPD has the power to issue subpoenas to support its investigations, but does not have the authority to force implementation of its recommendations within the NYPD. However, the NYPD must respond to an OIG report within ninety days, during which time the NYPD may choose to implement or partially implement a recommendation. Although lacking formal enforcement powers, OIG holds the police department accountable by issuing public annual reports evaluating the NYPD's implementation of recommendations. According to Mr. Eure, exposure through public reports is where the office "gets its teeth."

OIG-NYPD differs from many police oversight bodies across the country. In particular, older agencies, such as New York City's Civilian Complaint Review Board, tend to focus on investigating individual allegations of police misconduct. However, Mr. Eure noted a broad movement across U.S. cities toward establishing agencies that investigate systemic patterns of police misconduct. In addition to his own office, Mr. Eure highlighted Chicago, which recently confirmed its first Deputy Inspector General for Public Safety, and Seattle, which recently enacted legislation creating an inspector general, as prime examples of this trend.

## **Denis Gallant, Inspector General of Montréal**

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[The Office of the Inspector General \(OIG\) of Montréal](#) was created in early 2014 after a large-scale public scandal revealed the involvement of kickbacks in many of the city's public contracts. Montréal's mayor, Denis Coderre, who had pledged to create the city's first inspector general within 100 days of taking office, [appointed Mr. Gallant to the position with the ratification of the city council](#). Mr. Gallant, a former prosecutor specializing in organized crime and deputy chief counsel for a provincial inquiry into corruption in the construction industry, discussed the intriguing circumstances leading up to the creation of the OIG, as well as the relatively new office's powers and functions.

The OIG's primary charge is to oversee public contracts by the city or city agencies and to recommend to the city council measures that would foster compliance and prevent breaches in integrity. The OIG performs administrative, not criminal, investigations, which allows the office to carry out inspections without a search warrant and to use a lower standard of proof than that required for criminal indictment.

Mr. Gallant explained that the OIG's "most powerful tool" is its authority to cancel, rescind, or suspend contracts and annul calls for tenders in its own discretion. For the OIG to exercise this power, two legal conditions must be met: 1) the bidder must have either submitted false information during the bidding process or failed to meet at least one of requirements specified in the call for tenders or the contract; and 2) the seriousness of the breach must

justify the cancellation or suspension. Once the OIG gathers sufficient evidence of collusion, bid-rigging, or other wrongdoing to meet the standard of proof, the office may issue a decision annulling or suspending the contract. This is a more expeditious process than would typically occur in most criminal investigations of procurement fraud.

## Common Topics of Discussion

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The panelists discussed the components of an effective oversight agency. Emphasis was placed on agency independence in three areas: hiring, term limits, and budgets. Per Mr. Gallant, the appointment of Montréal's Inspector General by the city council gives the IG considerable independence from the administration. The IG's non-renewable five-year term, and the fact that the IG is removable only for cause by two-thirds of the city council, further depoliticizes the office. Independent funding is also critical in ensuring the oversight agency's independence from other government bodies. For instance, the budget of the Montréal OIG is provided by statute, automatically allotting the office 1% of the city's overall budget.

Strong accountability is another component of an effective oversight agency. Mr. Maclean described several checks and balances on IBAC's exercise of powers, including judicial review, a statutory inspectorate overseeing the agency, federal and state audit requirements, and state parliamentary oversight of IBAC. Mr. Gallant explained how the Montréal City Council, which oversees the OIG, has the authority to remove the IG with cause, as well as overturn OIG contract cancellations.

The panelists also discussed agency efforts to resist "capture" by government bodies subject to oversight. Mr. Maclean recounted how several government departments had requested IBAC sit on department management committees and contribute to department policies and procedures. Mr. Maclean stated that IBAC "made a conscious decision not to," as an effort to maintain separation and prevent agency capture. Likewise, Mr. Eure noted OIG-NYPD's policy of declining to sit on NYPD committees.

## Breakout Session

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The Oversight Breakout Session brought nearly thirty city delegates together to discuss innovations, ideas, and trends in municipal oversight. Led by session leader Melinda Miguel (Melinda Miguel Solutions; former Chief Inspector General for the Executive Office of the Governor of Florida) the session touched upon the following oversight issues:

- 1. Administrative vs. Criminal Investigations:** Are administrative investigations a necessary supplement to criminal investigations of corruption and fraud? Administrative investigations may be unnecessary if the city possesses an effective criminal justice system. However, an administrative body with investigatory and enforcement powers may add to the effectiveness of the oversight process. Montréal's Inspector General, for instance, has the ability to dissolve a public contract much more quickly than would likely result from a multi-year criminal investigation of procurement fraud.
- 2. Educating Government and the Public:** How can cities educate government bodies and the public on anti-corruption policies and operations? Departments and agencies across the world have adopted a variety of different methods of educating and raising awareness. In certain cities in Brazil, a provincial division has been charged with explaining new rules and standards of ethical conduct to civil servants. Other departments, such as the Florida Department of Transportation, run mandatory ethics and compliance training programs for vendors. In New York City, the Construction Fraud Task Force, formed in 2015, brings prosecutors, inspectors general, and contractors together to learn about issues of fraud and abuse. Since 2002, the New York City Department of Investigation (DOI) has carried out a corruption-prevention outreach lecture program for all City agencies and individuals who do business

with the City. These lectures, designed to increase City employee awareness about obligations to report corruption to DOI, [have contributed to a greater number of whistleblowing reports and arrests](#). In Victoria, Australia, public hearings held by the Independent Broad-based Anti-corruption Commission (IBAC) have played a critical role in educating the public about anti-corruption measures and undercutting the complacency in government about the existence of corruption.

3. **“Best Practices:”** What are the qualities and powers critical to a well-functioning oversight body? An oversight agency must be independent, especially in the areas of appointment, removal, and funding. Depending on who selects the Inspector General and the source of the agency’s funding, the degree of independence and politicization may vary. The watchdog agency should have broad authority and discretion, including subpoena powers (or a similar witness summons power) and statutory immunity. In addition, delegates argued for the necessity of reporting requirements for governments departments and agencies, penalties for non-reporting and non-cooperation, and strong whistleblower protections.
4. **Taking a “Holistic” Approach:** There was broad consensus that oversight efforts should expand beyond investigatory capacities to take on a more “holistic” approach, including prevention, auditing, and community education. Oversight efforts should strive to proactively prevent corruption, in addition to investigating crimes and rules violations.

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The series is made possible thanks to the generous support of the Laura and John Arnold Foundation. The views expressed here are solely those of the author and do not necessarily represent the views of the author’s organization or affiliations, the Center for the Advancement of Public Integrity, Columbia Law School, or the Laura and John Arnold Foundation.