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Client Alert

A $200,000 Bribe Nets a $10 Million Fine: Canada Moves One Step Closer to Robust Enforcement of the *Corruption of Foreign Public Officials Act*

Canadian companies with global operations have been susceptible, from time to time, to foreign anti-corruption laws, such as the U.S. *Foreign Corrupt Practices Act*. However, their activities are also subject to Canada's own *Corruption of Foreign Public Officials Act* ("CFPOA").

The CFPOA provides that:

> 3.(1) Every person commits an offence who, in order to obtain or retain an advantage in the course of business, directly or indirectly gives, offers or agrees to give or offer a loan, reward, advantage or benefit of any kind to a foreign public official or to any person for the benefit of a foreign public official
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> (a) as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or
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> (b) to induce the official to use his or her position to influence any acts or decisions of the foreign state or public international organization for which the official performs duties or functions.

Niko Resources Ltd. ("Niko"), a Canadian energy company, was recently convicted under the CFPOA as a result of bribes (i.e. a gift and the payment of some modest business expenses) paid to a Bangladeshi official while pursuing its business interests. The bribes included a luxury SUV [Toyota Land Cruiser] and a trip to New York and Calgary. The Alberta court imposed a fine of almost $10 million, even though the value of the improper payments was only a fraction of that amount (approximately $200,000). As well, Niko will be subject to a level of ongoing judicial supervision and review via an audit/reporting process.

Why is this case important? First, the case confirms that Canadian companies can be liable under the CFPOA for activities that occur elsewhere provided that there is a real and substantial connection between the offence and Canada. Second, it demonstrates the growing commitment of Canadian authorities to develop and pursue these cases. Third, the size of the penalty reflects a judicial willingness to impose penalties with meaningful deterrent value. Finally, the case illustrates that gifts and entertainment exchanged with foreign officials while doing business can be construed as bribes for CFPOA purposes. Whether or not such

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practices were tolerated in the past, they are clearly unacceptable and legally dangerous now.

What should Canadian companies with global operations do? First, they need to recognize and take seriously the CFPOA risks associated with foreign operations and activities. Second, they need to develop and implement strong compliance programs to prevent improper conduct by their employees and representatives. Ideally, such compliance programs should be designed in consultation with recognized legal experts in the field who will have credibility with the Canadian government. Third, they need to have appropriate plans in place to deal with any issues that may arise, efficiently and effectively.