

Canada and the Corruption of Foreign Public Officials Act

Last Friday, on the weekly Compliance Week podcast, Compliance Week Editor Matt Kelly interviewed Michael Morrison, partner in the Calgary law firm of Blake, Cassels and Graydon on the Canadian *Corruption of Foreign Public Officials Act*. The CFPOA was passed in back in 1999. However, up until this year, there was only one enforcement action under the legislation involving a Canadian company and no prior enforcement actions against individuals. The Canadian government, as a signatory to the OECD Treaty Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, felt an obligation to actively enforce its foreign anti-corruption and anti-bribery statute. This led to the funding for and creation of two RCMP units dedicated to enforcing the act, in 2008.

Mr. Morrison termed this increased enforcement thrust by the Canadian government as “Canada holding Canadians accountable for their actions overseas” which may lead to bribery and corruption. He cited a very recent example of the arrest of Nazir Karigar, 63, who was charged with one count of corruption. His company, a Canadian firm, allegedly bribed an Indian government official to win a multi-million dollar contract for the supply of a security system. To date the Canadian government has not identified the Indian or Canadian company involved in the alleged bribery scheme. This lack of information led Mr. Morrison to speculate that one or more companies may also be indicted under the CFOPA before all the dust is settlement.

Mr. Morrison was asked to compare and contrast the CFPOA with the US Foreign Corrupt Practices Act (FCPA). He started by noting that the criminal provisions of anti-corruption and anti-bribery were almost identical in the two laws. However, the CFPOA has no equivalent to the books and records component and there is no civil component which is enforced by the US Securities and Exchange Commission (SEC). The CFPOA only contains a criminal component, similar to that which is enforced by the US Department of Justice (DOJ).

Additionally, the FCPA has a longer jurisdictional reach than the CFPOA, applying to issuers in the United States, domestic concerns and any person pursuing a bribery arrangement with a foreign official while within the territory of the US. This is contrasted with the Canadian test for jurisdiction which requires that the cases involved have a “real and substantial” link to Canada. This was interpreted to mean that a portion of the illegal activities must have been committed in Canada or have a real impact on Canadians. It would seem somewhat anomalous that a law intended to enforce bribery and corruption outside of Canada would require that the illegal activities occur inside the country. The RCMP said it would provide no further information about the case against Nazir Karigar so at this point it is unclear which of these nexii the RCMP was relying in its arrest. Mr. Karigar was arraigned this week in Ottawa and will appear in court again on July 28.

While it is unclear whether a US subsidiary of a Canadian corporation can be held liable for the actions of one of its Canadian employees, it does appear clear that a Canadian subsidiary of a US

corporation would be liable under the CFPOA. Once again, as there are no civil charges, only criminal charges which can be brought so the consequences for a Canadian subsidiary of a US company could be quite severe. So the CFPOA is one more international regulation US companies need to be aware of in the growing list of international laws in the field of anti-corruption and anti-bribery.

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