



International Business Ethics and Anti-Corruption

Pushing corruption higher on Canadian organizations' agendas

By Christa C. Wessel, B.A., LL.B., C.Dir.

It has been ten years since Canada adopted the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention, which bans bribery of foreign public officials in international business transactions.

However, a recently released progress report by the international corruption watchdog agency Transparency International called Canada a laggard and identified it as one of 21 countries making little or no effort to enforce its anti-corruption commitment.

Federal Minister of International Trade Stockwell Day has defended Canada, saying that fewer convictions does not mean that Canada is not enforcing the Convention. However, the fact is that there has been only one conviction (*R v. Watts*, [2005] A.J. No. 568) under the Canadian *Corruption of Foreign Public Officials Act, 1998* (CFPOA), the country's main piece of legislation dealing with Canadians participating in corruption in other countries.

One of the obstacles in Canada's anti-corruption law is that it does not claim nationality jurisdiction. This leaves it unclear whether Canadian courts will assume jurisdiction over the bribery of foreign public officials where the offence is committed in whole or in part outside Canada. It requires that a real and substantial link be established between the offence and Canada.

The longer arm of the law

It appears, however, that the Minister of Justice intends to change that. Bill C-31, introduced on May 15, is an Act to amend the CFPOA as well as the *Criminal Code* and the *Identification of Criminals Act*.

Among other things, Bill C-31 expands the jurisdiction of Canadian courts to include bribery offences committed by Canadians outside Canada.

Section 38 of the Bill says that any Canadian citizen, permanent resident or Canadian-incorporated organization who commits an act or omission outside Canada that would be considered an offence within Canada, is deemed to have committed that act or omission in Canada.

If this bill passes, it will strengthen Canada's anti-corruption law and make it easier to enforce the CFPOA against Canadian organizations and individuals carrying on illegal activities outside Canada by claiming nationality jurisdiction. It would eliminate the need for Canadian law enforcement agencies to demonstrate a link between the offence and Canada since the link would be effectively established by Canadian citizenship, residency or incorporation.

Bill C-31 seems to be at least partly in response to increasing pressure being felt by Canada to take stronger action on international corruption.

As well as from the OECD, this pressure comes from the United States – the already-long arm of US law continues to grow, as the US Department of Justice seeks to enforce the US Foreign Corrupt Practices Act, 1977 against organizations and individuals with a relatively limited

nexus to the US. The US Department of Justice is also actively encouraging enforcement agencies in other countries to investigate and take action against organizations and individuals suspected of corruption in those countries. Penalties can include fines, disgorgement of profits and other sanctions, including jail time for directors and officers of the offending organizations.

Bill-31, once law, and the establishment in 2008 of the RCMP's international anti-corruption crime unit, should push corruption higher on the agendas of all Canadian organizations.

Building a structure to protect organizations

What can organizations do to protect themselves from the chances of being accused of corrupt practices in their international dealings?

An organization's best defence is the personal integrity and ethics of its employees. The expectations the organization has of its employees must be outlined in a Code of Ethics. This Code should set out clear expectations regarding how the organization's employees must treat third parties as well as each other. It should also create an expectation that employees will bring their concerns forward.

Many organizations that have a Code of Ethics do not take the steps necessary to make it a living part of the way they do business, nor do they provide necessary supports for the Code. The Code cannot stand on its own.

One of the essential supports is a whistleblower venue – a trusted place or channel where employees can report their concerns. They may be reluctant to do so without the second essential support – a clearly stated and implemented policy protecting whistleblowers from retaliation.

The Code of Ethics, the whistleblower venue and the anti-retaliation policy will be effective only if they are built on a foundation of clear and transparent processes and internal controls. Effective processes and internal controls must be understood by, and implemented in, the front lines of an organization.

These elements, taken together, are a good start towards a program that can protect the organization from the harm that can come from being found to be involved in corruption.

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This article originally appeared in the August 14, 2009, issue of the Lawyers Weekly published by LexisNexis Canada Inc.

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