

## FOREIGN ANTI-CORRUPTION ENFORCEMENT BECOMES AN RCMP PRIORITY

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The *Corruption of Foreign Officials Act* ("CFOA") was enacted by Parliament almost ten years ago after Canada's adoption of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. This criminal legislation has been applied infrequently by federal law enforcement officials, with only one reported decision resulting from the guilty plea and sentencing of Calgary-based Hydro Kleen Services Inc. in 2005.

In 2007, Canada ratified the *United Nations Convention Against Corruption*. It requires participating states to dedicate law enforcement resources to the enforcement of legislation such as the *CFOA* and to assist other states in the enforcement of anti-corruption legislation. To meet these obligations, in April the RCMP created two investigation teams totalling fourteen officers located in Calgary and Ottawa dedicated to the enforcement of the *COFA*

Section 3 of the *CFOA* prohibits Canadian business organizations (through their employees, agents and consultants) from offering a benefit to a foreign public official if the purpose is to obtain or retain for the organization a business advantage by offering the benefit:

- as consideration for an act or omission by the official in connection with the performance of the official's duties or functions; or
- 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..

Section 3 is an indictable offence providing for a maximum of five years imprisonment for individuals and unlimited fines for both individuals and business organizations.

The broad application of section 3 is narrowed by an exemption for "facilitation payments" which are benefits provided to expedite or secure the performance of an "act of a routine nature" by a foreign official. "Acts of a routine nature" are defined not to include decisions that award new business or to continue business with a particular organization.

Canada, like many other developed countries, does not have a record of diligent enforcement of its anti-corruption legislation. The United States has been the most active enforcer having undertaken, for example, eleven prosecutions in 2006 under its *Foreign Corrupt Practices Act* ("*FCPA*"). One of these resulted in a plea by Steven Head, the former CEO of Titan Africa. Head had allegedly paid \$2 million (U.S.) into the President of Benin's re-election campaign in return for higher management fee on a wireless telephone contract in Benin. On the same set of facts, Titan was fined \$28.5 million (U.S.).

Many business organizations with international operations have firmly established and practiced procedures designed to minimize the risk of a breach of the *COFA* and the *FCPA*. Compliance programs typically include the organization's adoption of a statement as to the importance of compliance, the dissemination of the statement throughout the organization, accompanied by training and re-training. Many organizations have also internal regional advisors who are available to assist the organization's representatives who may be concerned that their interaction with foreign officials risks breaching the legislation. Like all compliance systems, however, it is only through an organization's dedication to a culture of compliance that it can succeed in minimizing or eliminating the risk of non-compliance.