

Canadian Companies that Operate Abroad Beware ... the Mounties are coming

Canadian enforcement of anti-corruption has dramatically increased, and this trend will continue.

The recent announcement that the RCMP is investigating SNC Lavalin Group for possible corruption in connection with a Bangladeshi World Bank project, is merely the latest reported activity of the still relatively new RCMP international anti-corruption unit.

In June of this year, Niko Resources Ltd., a Calgary based oil and natural gas exploration and production company with international operations was convicted of a criminal offence and fined \$9.5M for bribing a foreign public official. In addition, Niko must pay for and implement a robust anti-corruption policy and address deficiencies in its internal controls, policies and procedures as part of a three year probation order. Niko must also retain an independent auditor and report to the RCMP. The bribe included providing a \$190,000 luxury sports utility vehicle to the Bangladeshi State Minister for Energy and Mineral Resources. In addition, Niko paid \$5000 travel costs to that public official towards a visit to New York after attending an oil and gas expo in Calgary. The official was responsible for deciding the amount of Niko's compensation to villagers whose community was damaged from a blowout of one of its wells earlier that year. There was no evidence that the bribe actually worked.

The Niko conviction was the conclusion of the first of many ongoing RCMP investigations of Canadian companies. The RCMP has established a new investigative unit dedicated to investigating bribery offences under Canada's *Corruption of Foreign Public Officials Act*. With these added resources, the Canadian Department of Justice is increasing its enforcement of the Act, and there are currently at least 22 additional ongoing investigations. Many of those companies under investigation will not learn that they are suspects until a search warrant is executed against them. There is no limit to what a company can be fined, nor is there a statute of limitations. Jail time is also a possibility. Other potential negative consequences for publicly listed companies such as Niko include a drop in share price and exposure to a securities class action. For example, Niko's share price dropped approximately 3.7 percent in response to the guilty plea and two Canadian law firms with expertise in class action lawsuits subsequently announced that they will probe Niko's disclosures, stock option practices and foreign business practices.

There are three specific defenses to a bribery charge under the CFPOA, but all of those defences require proof of very specific facts to ensure that they are safely utilized. The best practical defense, however, is to be proactive and prevent bribery before it occurs. To protect your company you should:

- Do a risk assessment
- Prepare a rigorous anti-corruption policy
- Implement that policy through comprehensive procedures
- Train your employees
- Monitor the reporting under the policy
- Enforce the anti-corruption policy

Miller Thomson has practical experience creating and implementing anti-corruption policies for Canadian companies, including assisting companies to identify exposure risks, creating policies to address corruption risk, and assisting in setting internal policies on gifts and entertainment expenses. We also provide legal advice to companies that believe they may already have an internal problem with corruption. Contact James M. Klotz (jmklotz@millერთhompson.com) or Emily Cole (ecole@millერთhompson.com).