



Do You Know What Day It Is? It Is International Anti-Corruption Day

By Cyndee Todgham Cherniak on December 9th, 2015

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December 9th is International Anti-Corruption Day. International Anti-Corruption Day has been observed annually, on 9 December, since the passage of the United Nations Convention Against Corruption on 31 October 2003.

International Anti-Corruption Day urges countries to do their part by exposing and cracking down on corruption and engendering a culture of values of ethical behaviour.

In 1999, Canada enacted the *Corruption of Foreign Public Officials Act* (“CFPOA”) in order to combat corruption of foreign public officials. It is Canada’s version of the *Foreign Corrupt Practices Act*. On June 18, 2013, the Government of Canada enacted Bill S-14, *An Act to amend the Corruption of Foreign Public Officials Act*. Bill S-14 received Royal Assent was the following day. The amendments advanced the CFPOA coverage and reach:

1. The CFPOA now contains nationality jurisdiction applicable to all offences;
2. The maximum sentence of imprisonment applicable to the offence of bribing a foreign public official was increased from 5 years to 14 years;
3. The CFPOA now contains an offence relating to books and records and the bribing of a foreign public official or the hiding of that bribery; and
4. The CFPOA now applies to not-for-profit organizations.

While Bill S-14 contains a provision to repeal the facilitation payments exception, his amendment has not yet been given effect (but will it receive effect today?)

Today presents an opportunity for Canadian companies to consider whether they are doing enough to combat corruption and whether they can do more. It is time to dust off any internal policies (Codes of Conduct) and look at whether the systems and controls put in place actually are being followed (e.g., is there any evidence that employees and agents/representatives are ending relationships when bribes are requested?) and whether they are working (e.g., is there any evidence that bribes have been paid?). Any Canadian company that does business with foreign governments/foreign government officials in a country where corruption is prevalent should ask (1) whether the systems/controls are working; and (2) Is there anything that can be done to improve the systems and/or controls.

For example, look at your Christmas gift-giving activities and make sure to review the expense reports of each person. Did anyone give a gift that is over \$100 (not that there is magic in that number)? Did any expensive gift go to a public official? Why did the public official get the gift? Was the gift given to obtain or retain business? If you have any concerns as a result of the Christmas gift giving practices, you should look deeper.

Sometimes it is best to ask someone to come in to review the company's systems and controls. With so many things, we cannot see the flaws in things with which we are too comfortable. Professionals (e.g., lawyers with experience in anti-corruption compliance) have looked in the books and records and policies and systems of other companies. They know where to look for what may be hidden from plain view.

If you are looking for assistance, please contact Cyndee Todgham Cherniak at 416-307-4168 or at cyndee@lexsage.com.

Tags: Canada, CFPOA, Corruption of Foreign Public Officials Act, facilitation payment, gifts, International Anti-Corruption Day, nationality

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