

# Case Bulletin: *R v. Karigar*, 2014 ONSC 3093

June 2, 2014

For the first time in Canada, an individual has been sentenced to jail time for bribing a foreign public official. The three-year penitentiary sentence was handed down by the Ontario Court of Justice under the *Corruption of Foreign Public Officials Act*, SC 1998, c 34 (the “CFPOA”).

The imposition of a jail sentence constitutes a major milestone in Canada’s drive towards tackling bribery in international business ventures, and should serve as a stark reminder to all Canadian companies active internationally of the critical importance of having in place a strong anti-corruption compliance program.

In 2013, Nazir Karigar (“Mr. Karigar”) was convicted of breaching section 3(1) of the *CFPOA* for conspiring with employees and associates of Cryptometrics Canada Limited to bribe officials of Air India, a state-owned Indian airline, and an Indian Cabinet Minister in order to secure a business contract. On May 23, 2014, Mr. Karigar was sentenced to a three-year term of imprisonment.

Following recent amendments to the *CFPOA*, the maximum sentence for the offence committed under the *CFPOA* is now 14 years. However, at the time Mr. Karigar committed the *CFPOA* offence, the maximum sentence was only five years. The sentence was therefore towards the higher end of the applicable range.

The Court found that the aggravating factors in sentencing included: (i) the sophisticated nature of the bribery scheme; (ii) attempts at concealment by the creation of a fake competitive bid to create an illusion of a competitive bidding process; (iii) Mr. Karigar’s “sense of entitlement” which led to him openly tell a Canadian trade commissioner of the bribes; and (iv) Mr. Karigar’s deep personal involvement in the scheme.

The mitigating factors included: (i) Mr. Karigar’s cooperation in the prosecution, which avoided a lengthy trial; (ii) his prior clean criminal record; and, perhaps most interestingly, (iii) that the bribery scheme was a “complete failure”. At first blush, the success or failure of a bribery scheme might seem an odd factor to take into account when fixing a sentence; however, the Court noted that because of the failure of the scheme, the harm caused was relatively limited.

The Court’s closing remarks left no room for doubt about the serious nature of *CFPOA* violations:

**“[a]ny person who proposes to enter into a sophisticated scheme to bribe foreign public officials to promote the commercial or other interests of a Canadian business abroad must appreciate that they will face a significant sentence of incarceration in a federal penitentiary”.**

Canadian Courts are clearly prepared to play their part in delivering the message that Canada is serious about the enforcement of its anti-corruption laws. For Canadian companies doing business abroad the warning is clear – they must take business ethics seriously and ensure they have clear policies and vigorous compliance programs in place.

# Your Key Contacts



**Paul M. Lalonde**

Partner, Toronto

D +1 416 361 2372

M +1 416 414 5833

[paul.lalonde@dentons.com](mailto:paul.lalonde@dentons.com)



**Anthony J. Cole**

Partner, Calgary

D +1 403 268 3036

[anthony.cole@dentons.com](mailto:anthony.cole@dentons.com)