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BARRISTERS & SOLICITORS

# Client Update

## Anti-Corruption Legislation

February 2013

### Canada to toughen laws on bribery of foreign officials

In the wake of Griffiths Energy International Inc.'s guilty plea for providing bribes to a Chadian Ambassador's wife and several other continuing investigations involving alleged bribes paid to foreign government officials by Canadian companies, the Government of Canada has introduced a number of amendments to the *Corruption of Public Foreign Officials Act* in the Senate

The amendments include the following:

*Extra-territorial jurisdiction* - The amended Act will explicitly provide that Canadian authorities have jurisdiction over Canadian nationals (individuals and corporations) who bribe foreign officials, regardless of where the alleged bribe takes place. This amendment is in response to the presumption that Canadian legislation only applies to persons, property and events within Canada's territorial jurisdiction. It is rare for Canada to assert extra-territorial jurisdiction over individuals and events outside Canada. Canadian nationals should be aware that while Canadian Courts' and investigators' powers may extend beyond Canada's borders, the rights and freedoms of Canadian nationals under Canadian law may not be protected outside of Canada.

*Elimination of facilitation payments* - The amended Act will do away with the exception for "facilitation payments". Presently, the Act

permits a payment to a foreign official if it is made to "expedite or secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official's duties or functions". This provision recognized that in many countries "facilitation payments" are a common occurrence and that businesses cannot efficiently operate without making such payments. The removal of the exception would render many small, routine, and insignificant payments illegal.

*Exclusive authority to the RCMP* - The amended Act will provide the RCMP with exclusive authority to lay charges under the Act.

*Amending the definition of "business"* - The proposed amendments will remove the words "for profit" from the definition of business. A media release from the Minister states that the purpose of this amendment is "to ensure that the act applies to all business, regardless of whether profit is made." This, however, may understate the practical effect of the amendment. "Business" is defined to include a "calling" or "undertaking of any kind". A likely consequence is that activities of non-profit organizations will now fall within the scope of the legislation.

*Increased Penalty* - The amended Act will see the maximum penalty raised from 5 years in jail to 14 years to jail. Possible fines

