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Ontario Court of Appeal Upholds Conviction for Conspiracy to Bribe Foreign Public Officials

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In 2014, Nazir Karigar was sentenced to three years in prison under Canada's *Corruption of Foreign Public Officials Act* (CFPOA) for his role in a scheme to offer bribes to Indian officials on behalf of a Canadian technology company. Karigar was the first individual sentenced under the CFPOA. As we reported in an earlier bulletin, Karigar's conviction was notable not only for the length of the prison term imposed but also for the fact that the conviction was based upon a conspiracy to offer bribes: the Crown did not prove that any bribes were actually paid, and the relevant contract was not even awarded to the firm Karigar represented.

On July 6, 2017, the Ontario Court of Appeal upheld Karigar's conviction. The Court confirmed that a conspiracy to offer a bribe to a foreign public official is sufficient to establish an offence under the CFPOA.

Section 3 of the CFPOA prohibits anyone from giving, offering or agreeing to give or offer a benefit to a foreign public official to induce that official to use his or her position to influence any acts or decisions of a foreign state or public international organization to obtain or retain a business advantage. Although the Crown led extensive evidence concerning Karigar's agreement with the company he represented to bribe certain officials in India, it did not present any evidence that he had in fact reached such an agreement with any foreign officials or paid any bribes.

At trial and on appeal, Karigar took the position that the "agreement" referred to in section 3 must be one between the accused and a foreign public official. The trial judge rejected this argument, as did the Court of Appeal. Instead, as Justice Feldman wrote for the Court of Appeal, "the offence is clearly committed when a person agrees with a foreign public official to give that official a benefit. But equally clearly, the offence is not limited to that scenario ... there is no basis to read in a limitation on who must be parties to an agreement."

Justice Feldman also agreed with the trial judge that "to read in such a limitation would constrain the ability of the Crown to enforce the policy of the Act in accordance with Canada's obligations" under the OECD *Convention on Combating Bribery of Foreign Public Officials*, which she found was a valid interpretive aid for the CFPOA.

The Court of Appeal's endorsement of a broad reading of section 3 of the CFPOA, along with the duration of the sentence imposed by the trial judge, is a timely reminder that the Canadian government takes bribery of foreign public officials by Canadians very seriously. International businesses must take care to adopt appropriate compliance policies on anti-corruption legislation.

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