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# CORRUPT PRACTICES

Is it really worth it?

BY LINDA WOLSTENCROFT

SNC Lavalin reminds us that Canada is one of only a small number of countries that – until now – has had an appearance of being serious about international corrupt practices.

The International Monetary Fund has suggested that global corruption could be as much as \$1.5 to \$2 trillion annually, with tragic social costs. But, a February CBC Radio piece citing the views of Transparency International, an organization engaged in fighting global corruption, has spoken out about the fact that Canada has a low rate of enforcement for corruption engaged in by Canadian companies working abroad.

Canadian defence companies, almost by definition because of the small market in Canada, *must* export, and therefore need to deal with international corruption. And, sadly, to win export work, bribes are often expected. Therefore, to the detriment of Canadian companies competing globally, doing business internationally requires figuring out how to deal with corruption. Despite the fact that there may have been political interference in the SNC Lavalin case, what's important is how defence companies deal with corruption.

At issue is the “deferred prosecution agreement”, which recently came into existence in Canada even though it has been in place in other countries for some time. It is a softer punishment for companies caught engaging in corruption abroad. How this will be applied in Canada is unknown, but the view of Transparency International is that it should be applied in cases in which a ‘rogue’ employee commits a corrupt act that is against the principles of the organization. It is not intended to be a wholesale “get out of jail free” card. SNC Lavalin is proposing

such an agreement and it will be up to the judiciary to decide whether such an agreement is appropriate.

### LAX ENFORCEMENT IN CANADA

Notwithstanding what may happen with the SNC Lavalin case, the fact is that it is now publicly known that the enforcement in Canada has been lax. A new interest in corruption may arise as a result of this case. Therefore, it's important that defence firms consider their position.

Boards and CEOs will need to agree on how they will handle this in an era of increased scrutiny. Will they (1) put an anti-corruption policy in place, and then, nudge nudge wink wink, only *pretend* to enforce it? Or will they (2) subscribe to the adage of, “It's not the crime that matters, it's whether we are *caught* committing the crime.” Or will they (3) engage in a socially responsible practice, and closely track the projects that potentially could require corruption to be successful?

If the third – and best – choice is taken, the first issue is to determine whether corruption is likely to be involved in a given project. At the early stages of pursuing a project the subject of potential corruption may not be top of mind. I'm suggesting that companies realize that the stakes are high and prioritize the subject.

On the surface, assessing the possibility of having to deal with corruption is relatively simple; there are lists available ranking the state of corruption in countries around the world, and in-country representatives should be in a position to advise on this. However, in-country representatives may be biased, and choose to skirt the issue in the short term until the company is heavily invested, when the choice of whether to bribe or not becomes more difficult. Canadian government agencies such as the Canadian Commercial Corporation (CCC) provide support on this matter.

### CCC CAN PROVIDE SUPPORT

It is also important to know what the competition is capable of doing. Even in a project in which it is assessed that the project will be corruption-free, there's always the possibility of changes in the situation. A new government. Hidden crooked players. Influences from the competition. Is the competition capable of paying bribes, have they been known to do so in the past, and would they do so given their home regime?

If it's an important opportunity for your company and you have discovered that the project is at risk of corruption, work with the customer to take bribes off the table. Sometimes this is not possible, and if this is the case know that the risk of engaging in corruption outweighs the benefits.

In short, in international transactions, make an assessment of corruption one of the top priorities.

What if *most* of the new projects for a company are at risk of corruption? Then it may be time to look at other options. Such as projects in other countries. Developing new products and new services. Expanding business with existing customers. Advocating against international corruption. Exploring the possibility of a Government-to-Government contract using CCC.

The 2017 Transparency International Corruptions Perceptions Index 2017 ranks Canada as 8th, tied with Luxembourg, the Netherlands and the United Kingdom. Australia is ranked 13th and the United States is ranked 16th. New Zealand is ranked 1st.

Canada's reputation has, until now, been relatively unblemished. And this has been a great benefit to Canadian companies doing business internationally.

Let's keep the Canadian advantage – be careful out there!

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