



## CONFERENCE NOTES

**Keynote Presentation:** A view from both sides: Why corruption happens and real strategies to protect your people and business

**Moderator:** Kristine Robidoux QC, CCEP, Senior Compliance Regulatory Counsel, [Gran Tierra Energy Inc.](#)

**Presenters:**

- **Richard Bistrong**, Former FCPA Violator and FBI/UK Cooperator, CEO, [Front-line Anti-Bribery LLC](#)
- **Sergeant Pat Poitevin (ret.)**, Senior Investigator - Outreach Coordinator, Sensitive and International Investigations, National Division, [Royal Canadian Mounted Police](#)

**Further Resources:** [Richard Bistrong Q&A](#)

Foreign corruption – Canada has had anti-corruption laws since 1998. What does that mean for Canadian companies who want to move their work to other countries?

- Foreign corruption is much more sophisticated than “bags of cash”
- Definition of corruption: Giving, offering or promising money, gift(s) or favour(s) to a public official in order to obtain an advantage

**Canadian anti-corruption efforts:**

- Seeing more aggressive enforcement practices over past decade
- Fines used to be the “cost of doing business”
- Law enforcement agents are targeting senior/middle management.
- It is not simply organizations – directors/executives are being held accountable for their actions and going to jail for their involvement
- Profits are considered “proceeds of crime”
- Following through by doing your “due diligence” will help protect your company
- Unlike in the U.S. and UK, there is no civil resolution in Canada – it is an indictable offense and there is no ability to plea yourself out of it
- The average investigation lasts 5 years; however, being cooperative with authorities will shorten the time of the investigation

**What does a lower threshold bribe look like on the ground?**

Although facilitator payments (baby bribes) are illegal in most countries, the U.S. is still permitted to pay a facilitator payment to expedite action. In Canada, the order has not yet been signed – to give companies an opportunity to get used to the new reality of not paying these facilitator payments. As an example, *NICO was prosecuted for giving the use of the vehicle to a minister.*

In foreign markets, procurement personnel are not necessarily highly trained or well compensated – it is important to know your business risk when your goods/services hit foreign soil. In some situations, the corruption can be built into the procurement process (e.g. inspection committee).

For Richard Bistrong, cheating was a choice – his company provided him with the U.S. FCPA guidelines. Simply “nodding his heading” and agreeing to a pay toll fee for a legitimate business transaction could be cause for indictment.

### **How do you protect yourself from “maybe you do know – may you don’t know” situation of bribery?**

What you don’t know is going to hurt you. It’s the questions you aren’t asking that can get you in trouble.

The legal answer is that you are liable for all payments (made directly or indirectly). You must demonstrate that due diligence was followed and avoid being “willfully blind”. How much oversight has been done? What processes have you put in place to ensure that bribery does not take place.

**80% of corruption cases involve agents - you are responsible for their actions.** It is incumbent upon you to ensure that the people representing you have abiding by the rules.

### **How do we train people to enter foreign borders?**

It is important to mitigate circumstances. In some jurisdictions, it is not “if” but rather “when” you will be asked for a bribe. If you are known as a company willing to pay a bribe – it is simply the start and it can quickly devolve into being trapped in a cycle of paying bribes.

In certain parts of the world – your risk of corruption is inevitable. It is important to do a “deep dive” and determine what resources you need and how you are going to conduct yourself. It is important to be prepared. Rehearse your responses and role play so you are prepared.

How would you counsel us to answer when asked for a bribe?

- Important to provide coping strategies... Sometimes saying no is simply not a safe decision. One option is to say: “I need to think about it and get back to you”. Another route is to blame legal counsel: “the lawyer would kill me”.
- You can’t afford not to implement a compliance program. There are resources available for little or no cost to SMEs – don’t look at it as an expense, but rather an investment
- Train on possibilities – engaging in dialogues – and provide employees with an ability to report

- Corporate culture: “TONE AT THE TOP”. Are your stated values the same as your operational values? It is important that the tone get all the way to the frontline. Compliance often gets turned off at mid-level management. How are you incentivizing your employees? All incentive systems have side effects. Do those side effects promote what you are trying to do?
- Evaluate the strength of a compliance program –
  - What types of training?
  - Is everything well documented?
- Take the time to implement a compliance program – it increases productivity and resilience of employees. Short term gains are great but not at the detriment of long term viability. We won’t eliminate corruption, but we need to protect ourselves from it.

### How do Canadian companies compete if they refuse to pay tolls? At what cost?

Know that your prospective client still wants your services/goods. Trade commissioners have been trained on how to detect bribes and provide various strategies to employers. There is not one answer.

Another option is carry a business card and say: “I was told to call and report this type of conduct to head office”. Often times, this type of declaration shines unwanted light on their activity/request and they will back down.

### Things to remember:

- New technologies provide additional opportunities to collectively cooperate, but more importantly, more opportunities for individuals/businesses to be caught.
- From a legal perspective, authorities don’t have to prove a money exchange, all that must be demonstrated is that there was an agreement to pay a bribe.
- As a company - you are only as strong as your weakest link

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