

Canadian Corruption Of Foreign Officials Act Update: Three Takeaways From The Cryptometrics Case

June 6, 2014 | [Government Investigations, Privacy, The GEE Blog](#)



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The Royal Canadian Mounted Police (the RCMP) [recently announced](#) charges against Robert Barra, Dario Bernini and Shailesh Govindra, three individuals connected with Cryptometrics Canada (Cryptometrics), a subsidiary of U.S.-based Cryptometrics Corporation (Cryptometrics USA), for violations of Section 3.1 of the Canadian Corruption of Foreign Officials Act (the CFPOA). These charges relate to a failed scheme to bribe Indian officials to secure the award of a \$100 million contract for facial recognition software, and come in the wake of the conviction and sentencing of Nazir Karigar, a Canadian citizen and former agent for Cryptometrics, for his involvement in the scheme. The charges are significant for U.S. companies – particularly those doing business in Canada – for three reasons. First, the charges were brought against three individuals who are not Canadian citizens – a reminder that an individual (or company) may be subject to prosecution under anti-corruption laws in more than one jurisdiction. Barra and Bernini, both former officers of Cryptometrics, are U.S. citizens. Govindia, a former agent for Cryptometrics, is a U.K. citizen. It would not be surprising to see these individuals move for dismissal of the charges, especially in light of the [recent decision in the SNC-Lavalin case](#) in which a judge in Toronto dismissed CFPOA charges against a Bangladeshi government official with no ties to Canada. If the CFPOA charges against Mr. Barra and Mr. Bernini were to be dismissed, it would be interesting to see if the U.S. authorities proceed with an FCPA prosecution. Mr. Govindra may be especially lucky, since the allegedly unlawful conduct in which he engaged occurred prior to the enactment of the U.K. Bribery Act. Second, this is very likely evidence of the type of “behind-the-scenes” coordination between U.S. and foreign authorities that has been referenced by DOJ and SEC representatives in recent months. The amendments to the CFPOA contain provisions that, in many cases, will prohibit prosecution under the CFPOA if an individual or entity has already faced prosecution in another jurisdiction for the same offense. The FCPA contains no such provisions; nevertheless, the DOJ and SEC have stated that multi-jurisdictional investigations are on the rise, and that, as a policy matter, they will endeavor to cooperate with other jurisdictions to ensure that resources are used appropriately and to prevent separate investigations or

prosecutions where appropriate. The lack of a U.S. prosecution of Cryptometrics or any of its employees to date – despite the myriad connections to the U.S., including that Cryptometrics is a subsidiary of Cryptometrics Corporation, a U.S.-based company – indicates that the U.S. has likely been in contact with Canadian authorities and decided to defer to them on the matter (at least for the time being). U.S. companies should be aware that where there are several jurisdictions whose anti-corruption laws reach their conduct, silence or even a declination from the DOJ or SEC does not mean the company will not face charges elsewhere. Finally, the Cryptometrics case is a good reminder that, under the FCPA and the CFPOA, a bribery scheme does not have to be successful to be actionable. While the court in the *Karigar* case hinted that the failure of a bribery scheme may be a mitigating factor at sentencing, the lack of success is not a barrier to prosecution with the same force and penalties as if the scheme had been successful. Click [here](#) for a previous blog post on the likelihood of increased prosecutions in Canada under the CFPOA in the wake of recent amendments thereto.