

Karigar handed three-years in jail in bribery case

Subtitle: First Canadian sentenced under Canada's Corruption of Foreign Public Officials Act

Written by [Jennifer Brown](#)

Friday, 23 May 2014

The first Canadian charged and convicted under Canada's Corruption of Foreign Public Officials Act was handed a three-year jail sentence Friday.

Nazir Karigar, 67, appeared in an Ottawa court Friday and was sentenced by Ontario Superior Court Justice Charles Hackland. Some are calling the sentence appropriate, while others say it's "outrageous" and an "over-reaction."

"I think it's outrageous and a novelty because he's the first," says Norm Keith, a partner with Fasken Martineau DuMoulin LLP and author of Canadian Anti-Corruption Law and Compliance. "Real criminals — sex offenders and pedophiles are actually being treated more leniently than white-collar criminals these days."

Karigar was convicted last August and the Crown was asking for a four-year jail term. The maximum penalty he faced was five years in prison. Amendments to the CFPOA that came into force last June changed the maximum to 14 years, however Karigar's case began in 2011 before they were introduced. The increase in penalty means the maximum is higher in Canada than it is in the U.S. or U.K.

In the trial decision in [R. v. Karigar](#), Hackland ruled Karigar, an Indian-Canadian businessman acting as an agent, plotted to bribe Indian officials on two occasions amounting to US\$450,000. His targets were officials at Air India in Mumbai and an Indian cabinet minister, whom he offered cash in exchange for a contract to use a security technology system from Canadian firm Crypto Metric.

"I think he's being made a poster child of white-collar crime, which I think is very unfair," says Keith. "He's an elderly gentleman and by all accounts a minor player in a larger scheme. He was basically the delivery guy of some cash between two large corporate entities involved in some sort of agreement."

"For him to get potted and put away for three years as if he's some hardened and serious criminal is very disappointing," says Keith.

However Ken Jull, a partner with Baker & McKenzie LLP in Toronto, says Hackland's sentence was "bang on."

"I think it's not just because it was a first case. More importantly what this case shows is that conspiracy to bribe is a serious offence. The conspiracy related to the potential sale of facial recognition software to Air India, which is a state enterprise. Facial recognition software can aid in determining who gets in and out of the country. I think the decision recognizes the seriousness of the offence. This should scare a lot of people into thinking about corporate compliance."

In his reasons, Hackland emphasized denunciation and deterrence.

“He said the sentence reflects Canada’s international obligations and that it was consistent with sentences handed to those who commit domestic bribery, and I agree with that. The sentences traditionally for large scale frauds have been penitentiary terms,” says Jull.

A comparative case, he says, is that of Garth Drabinsky and Myron Gottlieb, who were found guilty on fraud and forgery charges in 2009. At trial, they both received penitentiary terms, but the sentences were reduced on appeal.

Keith acknowledges the court was seeking a “strong and serious” penalty to reflect the message being sent to the “so-called” white-collar crime community. But will it change behaviour? He says no.

“The general deterrence theory that everyone is watching this case and it will change behaviour is pretty thin. The practical value of general deterrence in this case is quite low.”

Karigar himself exposed the scheme to the FBI and admitted many facts in the case. Ultimately, the plan was a failure as no bribe was actually paid.

“It was a conspiracy to bribe and so as a mitigating factor there were no actual benefits obtained,” says Jull.

However, the scheme was sophisticated and targeted a senior cabinet minister in India. There was also a scheme to do a bid-rig by having Karigar’s company put in a bid higher than the CryptoMetrics bid.

“That was an aggravating factor because the judge said it was another level of criminality,” says Jull.

Karigar also viewed it as a cost of doing business with apparently no realization what he was doing was wrong.

Jull says it underscores the importance of corporate compliance programs in the future for Canadian companies to have programs in place. He compares it a [Morgan Stanley case](#) in the U.S. involving a former managing director of the company’s real estate group who went to jail in April 2012 for conspiring to circumvent internal controls.

Garth Peterson transferred a multi-million dollar ownership interest in a Shanghai building to himself and a Chinese public official. He was sentenced to nine months in jail despite the fact the government wanted six years. He also settled with the SCC on civil charges.

“In that case, despite the guy going to jail, Morgan Stanley was not prosecuted and one of the reasons was they had constructed and maintained a system of internal controls which was very rigorous and provided assurances employees were not bribing public officials. That’s a message to companies that if you have robust corporate compliance programs, even if an individual commits an offence it may mean you will not be prosecuted,” says Jull.

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[back to top](#)