

CONFESSION, COOPERATION, AND COMPLIANCE: MITIGATING CONSEQUENCES OF ALLEGED BRIBERY AND CORRUPTION THROUGH SELF-REPORTING

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The RCMP recently announced a rising trend of companies self-reporting potential acts of bribery and corruption. This trend was sparked by Canada's 2018 adoption of remediation agreements, a deferred prosecution agreement regime under Canada's *Criminal Code*. As quickly as a few days after the new regime took effect, the RCMP received a confession of corporate crime leading to the opening of an investigation file. This trend has since continued as parties offer their cooperation to authorities with an aim of promoting out-of-court settlement. Remediation agreements encourage cooperation from companies to address alleged corporate malfeasance using pre-trial alternatives such as acknowledging conduct, paying a penalty, and adopting prescribed conditions to avoid criminal prosecution.

Inspector Denis Beaudoin (National Division Sensitive and International Investigations, RCMP) has announced that several Canadian companies are self-reporting to demonstrate significant proactive cooperation, in the hopes of benefiting from lenient treatment under a remediation agreement. In reference to the frequency of self-reports, Inspector Beaudoin highlighted, "going from pretty much none before September, 2018, [when the law came into effect] to where we have them every year now."^[1]

Companies Self-report to Avoid Criminal Conviction

Companies self-report misconduct with an aim of avoiding criminal prosecution. By cooperating and volunteering information about a potential economic crime, companies can help authorities end the illegal conduct, while avoiding the consequences of a criminal conviction.

This upsurge of self-reporting in Canada is consistent with the experience of similar regimes in other countries (see our previous commentary on international deferred prosecution regimes [here](#) and [here](#).) In Canada, a criminal conviction stands to do more damage than merely reputational damage, such as being prohibited from bidding on government contracts under federal and provincial integrity regimes. Remediation agreements, on the other hand, can involve partaking in governance reforms, paying significant penalties, and providing ongoing assistance to authorities – while allowing the company to avoid the negative collateral

consequences of a criminal conviction.

Bribery and Corruption Patterns Lead to Investigations

According to Inspector Beaudoin, voluntary reports tend to surface when new management become suspicious about the legitimacy of certain historical payments and in turn notify the RCMP. Many of these illicit activities follow a pattern of a corporation funneling money through subcontractors, who then use those funds to bribe a government official with an aim of guaranteeing government contracts. Inspector Beaudoin also specifies that the bulk of the RCMP's investigations around allegations of corruption and bribery mostly involve businesses in the mining, engineering, and construction industries.

Self-reporting Facilitates More Efficient Investigations

The prospect of mitigated consequences significantly helps to reduce the prevalence of “untouchable” conduct. Investigating alleged bribery and corruption involves a huge investment of government resources – money, labour, and time.

Nonetheless, Inspector Beaudoin stresses that even with a company's cooperation, it can take three or four years to reach the stage where a remediation agreement will become available to the self-reporting company. An absence of cooperation stands to prolong this timeline significantly. According to the Sergeant Guy-Michel Nkili, an investigator of international corruption cases with the RCMP, cooperation “changes the tone of the relationship with the company” and “facilitates [investigative] work”, including gaining “access to witnesses and documents” and makes a significant difference for witness interviews, search warrants, and international assistance requests.^[2]

As of the publication date of this bulletin, prosecutors from the Public Prosecution Service of Canada have yet to present an opportunity to negotiate a remediation agreement to a single company. However, on September 23, 2021, provincial prosecutors in Quebec offered SNC-Lavalin Inc. and SNC-Lavalin International Inc. an opportunity to negotiate a remediation agreement after being charged under the *Criminal Code* for fraud and conspiracy to commit fraud between 1997 and 2004 in connection with the refurbishment of the Jacques Cartier Bridge. This marks the first time that a Canadian company has received such an invitation.

RCMP's Call-to-Action

The RCMP urges businesses to self-report when they make internal discoveries of bribery or corruption. The RCMP also seeks to emphasize that a corporation's lawyer can phone the RCMP on a “no-names” basis to get a sense of what options are available to companies that self-report misconduct, describing it as a practically “risk-free” means of understanding options for managing these circumstances.

McMillan's White Collar Defence group is well equipped to advise companies with respect to contemplation of self-reporting alleged bribery or corruption activity.

[1][ps2id id='1' target=''] See Robert Fife and Steven Chase, "[RCMP say Canadian companies are now self-reporting allegations of bribery](#)", The Globe and Mail (November 10, 2021).

[2][ps2id id='2' target=''] Vincent Larouche, "[De Plus en Plus D'Entreprises se Dénoncent Elles-Mêmes](#)", La Presse+ (11 novembre 2021), (translated into English).

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A Cautionary Note

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