APRIL 2014

Newsletter

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Wilful Misconduct & Limitation of Liability: S.C.C. Releases *Peracomo* Decision

The Supreme Court of Canada released its decision on April 23rd 2014 in *Peracomo Inc. v. Telus Communications Inc.*, 2014 SCC 29. The decision dealt with two important issues – a) could the owner of a vessel limit his liability to $500,000 under the *Marine Liability Act* despite what appeared to be his intentional or reckless conduct (a willful misconduct act) and b) did the willful misconduct act give rise to an exclusion under his marine liability insurance?

Mr. Vallée was a crab fisherman in the St. Lawrence River. One of his anchors on his boat, the *Realice,* snagged a cable lying on the river bottom in 2005. He adverted to the risk that the cable could be in use, but formed the belief that it was not. This belief was based on a handwritten note on some sort of map that he had seen for a few seconds the year before on a museum wall. He made no further inquiries to confirm or dispel his belief and proceeded to cut the cable. The cable was, in fact, a live fiber-optic cable co-owned by or used by Telus. Amazingly, Mr. Vallée snagged the cable again in 2006, he cut it with a circular electric saw and buoyed one end of the cable. A few days later, while fishing in the same area, his anchor got snagged on the cable once more. Mr. Vallée cut the cable a second time. The result was almost $1 million in damage.

The trial judge held that because Mr. Vallée had cut the cable on purpose he could not limit his liability under the *Convention on Limitation of Liability for Maritime Claims, 1976,* 1456 U.N.T.S. 221 ("*Convention*") as incorporated in Canada in the *Marine Liability Act.* The trial judge also found that his insurance policy was inapplicable because cutting the cable constituted "wilful misconduct", a statutory exclusion from marine liability insurance set out in section 53(2) of the *Marine Insurance Act.* The Federal Court of Appeal dismissed the appeal.

The Supreme Court of Canada noted that both the limitation of liability and the insurance issues turned on Mr. Vallée's degree of fault. He would not be entitled to the limited liability if the loss resulted from his act "committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result" (Art. 4). Similarly, the loss would be excluded from his insurance coverage if it was attributable to "wilful misconduct."

FIRM AND INDUSTRY NEWS

- **Fernandes Hearn LLP** is pleased to announce that the firm has been listed in the 2014 edition of Chambers Global as a top tier Transportation Law firm with **Rui Fernandes** and **Gordon Hearn** listed as notable practitioners

- **Gordon Hearn** will be presenting a paper on "Carrier's Rights and Remedies for Unpaid Freight Charges" at the Annual Meeting of the Transportation Lawyers Association and Mid- Annual Meeting of the Canadian Transport Lawyers Association at St. Petersburg, Florida on May 2, 2014. **Kim Stoll** will be moderating an interactive workshop on "Developments in Cross Border Issues and Canadian Law". **Kim Stoll** will co-chair the Canadian Transport Lawyers Association's inaugural CLE programme during this conference and will moderate two panels including one on Cross Border Freight Forwarding issues and one on Venue and *Forum Non Conveniens*. **Martin Abadi** will be presenting a paper as part of this programme on "Regulation of Cross-Border Commercial Transportation of Goods Between Canada and the U.S."

- **Rui Fernandes** will be presenting a paper on "Protecting Your Business From The Dark Side – Law Suits" at the Mari-Tech conference at Niagara Falls on May 9th, 2014.

- **Rui Fernandes** will be presenting a paper on "Subrogation: Ringo Starr Was Right - It Don't Come Easy!" at the Canadian Board of Marine Underwriters Semi-Annual Meeting on May 22nd 2014 in Collingwood Ontario. **Kim Stoll** will also be representing the firm.

- **Gordon Hearn** will be representing the Firm at the Defence Research Institute Trucking Law Seminar in Las Vegas, Nevada on June 18-20 and at the Conference of Freight Counsel Meeting in Beaver Creek, Colorado on June 22-23, 2014.

The Supreme Court of Canada distinguished the "fault" on the two issues differently. The majority judges found that the *Convention* imposes a higher level of fault than does the insurance exclusion. The Court found that Mr. Vallée's conduct did not meet the very high level of fault so that he lost the benefit of the *Convention*'s limit on liability, but it did constitute wilful misconduct for insurance purposes. Accordingly, it found that Mr. Vallée was personally liable for the damage, that he was nevertheless entitled to the limitation on liability under the *Convention*, but that the loss was excluded from his insurance coverage.

Section 29 of the *Marine Liability Act* limits liability for property damage caused by the operation of ships in the same class as the *Realice* at $500,000. However, this limit does not apply if the loss "resulted from [the defendant's] personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".

The Supreme Court of Canada found that Mr. Vallée knew that he was cutting a cable and that this was sufficient to establish an intention to cause the loss. The Court noted that this was not enough to bar limitation, stating (at paragraphs 23 and following):

> [23]…In my respectful view, the Federal Court of Appeal took too narrow an approach to the intent requirement under art. 4 of the *Convention*. It held, in effect, that if Mr. Vallée knew he was "cut[ting] the very cable for the loss of which he is sued", the intent element of the *Convention* was satisfied. I cannot agree. This amounts to saying that all that is required to break the limit on liability is knowledge that one is interfering with property. Such an approach undermines the *Convention*'s purpose to establish a virtually unbreakable limit on liability and does not accord with its text.
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> [24] I turn first to the *Convention*'s purpose. The contracting states to the *Convention* intended the fault requirement to be a high one — the limitation on liability was designed to be difficult to break … The *Convention* has been described as a "trade-off": "As a *quid pro quo* for the increase of the [limitation] fund, the article providing for the breaking of limitation became tighter, so that it is almost impossible for the claimants to break the right to limit" … Meeting the threshold fault requirement requires a high degree of subjective blameworthiness … The fault standard set by art. 4 has been described as "a virtually unbreakable right to limit liability" … It is worth noting that the contracting states considered, but expressly rejected, the inclusion of "gross negligence" as a sufficient level of fault to break the liability limit…
>
> [26] Turning to the text of the *Convention*, my view is that the Federal Court of Appeal's approach fails to distinguish between, on one hand, the limitation of liability that relates to a "claim" and, on the other, the bar to the limitation which arises if there was intention to cause "the loss" that resulted from the act or omission of the person liable. As we shall see, the limitation is expressed in broad and generic terms while the intention required to break the limitation relates to specific consequences of the conduct of the person liable.

The Court noted that two things stand out about the relationship between the limitation set out in article 2 of the *Convention* and the conduct barring that limitation set out in article 4:

> [28] First, the limitation of liability in art. 2 relates to liability for "claims". "Claims" refer to the broad, generic categories of consequences for which recovery may be sought, such as in this case, "damage to property". In short, it is "claims" that are subject to limitation of liability and this limitation is expressed in broad and generic terms. Second, the conduct barring the benefit of the limitation is expressed in much more restrictive language. The bar, unlike the limitation itself, is not expressed in relation to claims. The bar arises only if the "loss" resulted from the intentional act of the person liable, or as a result of reckless conduct committed with knowledge that the loss was probable. This signals that the intention which invokes the bar must relate to more specific consequences of the person's conduct than that captured by the sorts of generic consequences referred to by the word

> "claims". This requirement of intention in relation to more specific consequences is underscored by the use of the words "such loss" in connection with the intent and knowledge clauses of art. 4. Before the bar arises, the *loss* must be shown to have resulted from the "personal act or omission" of the person liable "committed with the intent to cause such loss or recklessly and with knowledge that such loss, would probably result". As one leading text puts it, "the use of the words 'such loss' in Article 4 seem[s] to underline the fact that the right to limit is barred *only* if the type of loss intended or envisaged by the 'person liable' is the actual loss suffered by the claimant": Griggs, Williams and Farr, at p. 36 (emphasis in original); see also Damar, at p. 173.

The Court concluded that the "loss" that "resulted" from Mr. Vallée's act was the diminution in value of the cable measured by the cost of repairing it. Mr. Vallée did not intend to cause that "loss" or know that it was a probable consequence of his actions. The Court noted that Mr. Vallée thought the cable was useless – no matter how recklessly he may have reached that view and therefore did not think it would be repaired because he thought it had not value.

The Court found that the Federal Court of Appeal was in error in finding that it was sufficient to break the limit on liability under article 4 by Mr. Vallée intending to cut the cable. He did not intend the actual loss.

In dealing with wilful misconduct under the insurance policy the Supreme Court of Canada noted that the trial judge had found that Mr. Vallée's conduct (by ignoring notices to shipping, and not having a proper chart) was a "marked departure" from the norm and so constituted wilful misconduct excluding coverage.

The Supreme Court of Canada rejected that Mr. Vallée's submission that the fault standard under the insurance exclusion and the *Convention* are the same, stating:

> [49] Both the purposes and the text of the provisions are different. The purpose of the *Convention* provision, as I discussed earlier, was to create a virtually unbreakable upper limit on liability. The purpose of the exclusion of coverage for insurance purposes is to define and limit the type of risk insured under that overarching limit created by the *Convention*. The two provisions are, of course, related. One of the purposes of the *Convention*'s upper limit on liability is to facilitate insurability at affordable rates by providing assurance that liability will not exceed the limited amount
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> [51] The purpose of the insurance provision is related to a fundamental principle of insurance law. Insurance contracts allocate risk. A loss caused by the insured's wilful misconduct is not the product of a fortuitous event or an accident and is therefore not within the scope of the insured risk. The purpose of the wilful misconduct exclusion, therefore, is to draw a line between the sorts of perils that are insured and the sorts that are not.

The Court summarized that in the context of marine insurance, the principle that coverage was excluded for losses resulting from wilful misconduct predated, and was in effect codified by, the English *Marine Insurance Act*, *1906*, 6 Edw. 7, c. 41, s. 55(2)(*a*) [section 53 of the Canadian *Marine Insurance Act*]. Most of the "wilful misconduct" cases in the marine insurance field involve deliberate scuttling of a vessel to obtain the insurance proceeds — an obvious example of wilful misconduct. The Supreme Court noted that there is relatively little jurisprudence interpreting the finer points or meaning of the phrase. In fact, the Supreme Court of Canada had previously never interpreted "wilful misconduct" in the context of a marine insurance exclusion.

The Supreme Court of Canada looked at cases that dealt with "wilful misconduct" in other contexts and concluded that the formulations in those cases capture the essence of wilful misconduct as including not only intentional wrongdoing but also conduct exhibiting reckless indifference in the face of a duty to know.

The Court found that Mr. Vallée's conduct constituted wilful misconduct as described adding:

> [63] As to misconduct, there can be no doubt as I see it that Mr. Vallée's acts were "so far outside the range of conduct" to be expected of him in the circumstances as to constitute misconduct. As the trial judge found, it was Mr. Vallée's duty to be aware of the cable and "he failed miserably in that regard": para. 34. The trial judge accepted the opinion evidence of Captain Jean-Louis Pinsonnault that Mr. Vallée exhibited a "lack of elementary prudence": paras. 33-34. Thus, the trial judge's findings fully support the conclusion that Mr. Vallée's actions constituted misconduct because, in light of his duty and all of the other circumstances, his actions were "far outside" the range of conduct expected of a person in this position.

The Supreme Court concluded that while the threshold to break liability under the *Convention* requires intention or recklessness with knowledge that the loss will probably occur, wilful misconduct under the *Marine Insurance Act* does not require either intention to cause the loss or subjective knowledge that the loss will probably occur. It requires, in the context of this case, simply misconduct with reckless indifference to the known risk despite a duty to know.

Rui M. Fernandes

2. The Federal Motor Carrier Administration (FMCSA) Confirms Application of "MAP -21" to Canadian Domiciled Carriers

As reported in the October, 2013 edition of this newsletter, the recently enacted MAP-21 ("*Moving Ahead for Progress in the 21st Century Act"*) (*1) legislation in the United States provides requirements for brokers of property and freight forwarders to register with FMCSA. MAP-21 also requires that any entity that 'brokers out' freight – including motor carriers - obtain and maintain surety bond security for $75,000.

On November 28, 2013 the Canadian Trucking Alliance announced in a press release that it was seeking clarification from the FMCSA on the applicability of the MAP-21 requirements to *Canadian motor carriers* and the various brokered freight movements that they might arrange (e.g. involving Canada to U.S., U.S. to U.S., U.S. to Canada routing) and whether a carrier's brokerage operation must carry a separate registration number.

The Canadian Trucking Alliance recently announced on April 9, 2014 that it received confirmation from counsel for the FMCSA that carriers who engage solely in the brokering of freight from Canada to the U.S., between points within the U.S. and from the U.S. to Canada are in fact required to register with FMCSA and to comply with the surety bond or trust fund requirement of $75,000.

In terms of how carriers might structure their brokerage operations from a registration process, the FMCSA indicated in its response that there is no need to separate the broker authority from a motor carrier authority. In the future, the Agency expects to require that if the motor carrier and broker are in fact separate entities then each entity would have a separate USDOT number.

The FMCSA has indicated that at present carriers seeking to register / apply for a broker authority should follow the application instructions on the FMCSA website (www.fmcsa.dot.gov).

Background

As reported in our October, 2013 edition, October 1, 2013 was the implementation date for the subject registration and surety bond provisions of MAP-21. The initial 'take' was that this legislation would be of critical interest to Canadian load brokerage operations and motor carriers who carry on brokerage (i.e. "non-asset backed") operations in the United States – which, by virtue of the foregoing, would now seem to have been confirmed.

MAP-21 requires anyone acting as a broker or as a freight forwarder subject to FMCSA jurisdiction to register and obtain broker or freight forwarder authority, and it significantly increases the financial security requirements for "property brokers"(*2).

The legislation defines a 'broker' as a person or an entity that, for compensation, arranges or offers to arrange for the transportation of property by a motor carrier. A broker does not transport the property and does not assume responsibility for the property.

"Non-asset backed" brokers are not the only entities caught by the U.S. legislation: as mentioned MAP-21 prohibits *motor carriers* from brokering transportation services unless they are registered as a broker and meet the surety bond requirements. Accordingly "asset backed" entities, who either operate incidentally as brokers, or who on a "one off" basis "broker out" a load need to hold a broker authority and be compliant.

One important distinction concerns the true "*interline*" situation. To "interline" a shipment is to transfer the property between two or more carriers for movement to its final destination under one carriage mandate. The origin carrier hauls the freight to an intermediate location, with the interline delivery partner completing the carriage to destination. A motor carrier that is

performing a part of a single continuous transportation movement as an interline operation may perform that service under either its own operating authority or the authority of the originating carrier and accordingly will not be caught by the new MAP 21 regime.

Accordingly, when one carrier hands cargo off to another in an interline situation, after having hauled the freight part way, it will not be considered to be brokering the cargo to the delivering carrier and as such a broker registration will not be required - However a truckload shipment that is moved from origin to destination by a subcontracted carrier will be considered to involve a "brokered out" operations.

Conclusion – the "Take Away"

Canadian based operations engaged in the brokering of shipments involving at least in part a U.S. 'leg' need to 'take notice'. While it remains a question as to what if any regulatory 'teeth' the U.S. government may have respecting the non-compliant broker / motor carrier *in* Canada, any Canadian enterprise coming within the scope of MAP-21 must tread carefully. MAP-21 provides for a civil penalty for a broker or freight forwarder who engages in operations without the required registration: A broker who knowingly engages in inter-state brokerage operations without the required operating authority is liable to the United States for a civil penalty not to exceed $10,000 and can be held liable to any "injured third party" for a valid claim, without limitation. The penalties and liability to injured parties apply jointly and severally to all corporations or partnerships involved in the transportation and individually to all officers, directors and principals of those business forms. (Note that a broker of household goods who engages in interstate operations without the required operating authority is subject to a civil penalty to the United States of not less than $25,000 for each violation).

While we are in the 'early days' of the MAP-21 regime, there accordingly being no precedent of any attempt by U.S. authorities (or for that matter, any party said to have been adversely affected by the lapse in compliance by a Canadian broker) to enforce any such sanction *on* Canadian soil, time will tell if any attempts might be taken to impose and enforce civil liability for an infraction. The risk will remain that a civil proceeding might be brought in the United States which, if culminating in a judgment against the Canadian 'broker' might eventually be the subject of 'recognition' and 'enforcement' proceedings *in* Canada against the broker - and its assets. Of course, if the Canadian 'broker' has operations and assets located in the United States then it remains all the more directly exposed to its day of reckoning.

That freight brokerage activities are by and large unregulated in Canada should not lull the unwary broker (or a 'motor carrier' brokering a load) into regulatory default south of the border.

Gordon Hearn

(*1) Department of Transportation, Federal Carrier Safety Administration Document 4910-EX-P FR Doc. 2013-21539 [Filed 09/04/1013]

(*2) Sections 32915 – 32918 provide an increase from the historical $10,000 requirement for load brokers to $75,000.

3. Maritime Law or Quebec Civil Code? Odd Prescription Analysis

In the recent decision of G.B. v. L.Bo. 2014 QCCS 18 the Court had to decide whether Canadian maritime law or the Civil Code of Quebec applied to an accident which occurred on the Rivière-des-Prairies, which is a navigable inland waterway separating Montreal from Île Jésus. The Court also had to decide the appropriate prescription period to determine if the claim was time barred.

The claimant and defendant were a couple living together at the time of the accident. On July 4, 2008, Ms. L. Bo. was driving a 22-ft, 330 horsepower water-ski boat when she accidentally ran over Mr. G.B. after he had accidentally fallen into the water from a surf board which was being pulled behind that boat.

Mr. G.B. was severely injured and went through a lengthy period of hospitalization with numerous operations as well as a lengthy period of rehabilitation at a rehabilitation facility. In the three years after the accident, Ms. L. Bo. conscientiously visited Mr. G.B. and attended to his needs. In 2011, the couple separated. Almost four years after the accident on June 13, 2012, he instituted legal proceedings against Ms. L. Bo.

The Court concluded that Canadian maritime law, and not the Civil Code of Quebec, governed prescription in the present case of a vessel striking a person in the water of a navigable inland waterway. However, the Court concluded that since this was neither a claim by dependants nor an accident arising out of the collision of two vessels, articles 6, 14 and 23, *Marine Liability Act*, did not apply. Those sections provide:

> 6. (1) If a person is injured by the fault or neglect of another under circumstances that entitle the person to recover damages, the dependants of the injured person may maintain an action in a court of competent jurisdiction for their loss resulting from the injury against the person from whom the injured person is entitled to recover.
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> […]
>
> 14. No action may be commenced under subsection 6(1) later than two years after the cause of action arose.
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> 23. (1) No action may be commenced later than two years after the loss or injury arose to enforce a claim or lien against a ship in collision or its owners in respect of any loss to another ship, its cargo or other property on board, or any loss of earnings of that other ship, or for damages for loss of life or personal injury suffered by any person on board that other ship, caused by the fault or neglect of the former ship, whether that ship is wholly or partly at fault or negligent(this Court's emphasis).
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> (2) A court having jurisdiction to deal with an action referred to in subsection (1):
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> (a) May, in accordance with the rules of court, extend the period referred to in that subsection to the extent and on the conditions that it thinks fit;
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> […]

Interestingly, the Court also had to deal with the application of section 140 of the *Marine Liability Act*, which provides that "no proceedings under Canadian maritime law in relation to any matter coming within the class of navigation and shipping may be commenced later than three years after the day on which the cause of action arises."

The Court noted, however, that section 140 only came into force on September 21, 2009, some time after the accident. The Court held that section 140 applied to incidents where a person in the water is injured in a boat accident that occurred before article 140 came into force.

In its reasoning the Court held that no prescription applied for the period from when the cause of action first arose, July 4, 2008 up to September 21, 2009. The Court determined that the three year prescription of article 140 did run in this case from September 21, 2009 to September 21, 2012. The Court concluded that the claimant's cause of action arose at the time

of the incident but was unaffected by any prescription up to September 21, 2009. On that date, section 140 came into force and the three-year prescription ran from that date forward, "thus treating both parties fairly."

The result was that the claimant's claim was not prescribed since it was instituted within the applicable three-year prescription.

Rui M. Fernandes

4. Economic Sanctions Enforcement / Bribery of Foreign Officials – Beware

The Calgary Herald recently reported on an Alberta company, Lee Specialties Ltd., charged with sending O-rings to Iran that could be used to make Nuclear Weapons. The fine was $90,000.00.

The Herald reported (*1):

> Trying to export a low-tech rubber ring with a high-tech use in nuclear energy has earned an oilfield equipment company a $90,000 fine for violating federal sanctions against Iran.
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> Provincial court Judge Allan Fradsham imposed the fine against Lee Specialties Ltd., after the company pleaded guilty Monday to breaking the federal Special Economic Measures Act (SEMA), which restricts imports and exports to certain countries.
>
> The case began in 2011, when Canada Border Services Agency officers at Calgary International Airport inspected a shipment destined for Iran.
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> Among the goods, officers found 50 O-rings made of a synthetic rubber called Viton, which can withstand high temperatures and exposure to chemicals.
>
> The O-rings — worth only $15 — can be used in oilfield applications, but their potential use in nuclear energy production prompted the federal government to forbid their export to Iran, which is suspected of trying to develop a nuclear weapons program.

The case demonstrates that corporations selling goods abroad should ensure they have proper compliance programs in place to deal with various economic crimes. The Government of Canada and other nations are aggressively enforcing international sanctions and the concurrent legislation in place. Lee Specialties Ltd. was charged under regulations that took effect in July 2010. Those rules have been amended and broadened on five occasions. The regulations are always changing and evolving and individuals and corporations must keep up to date with the changes. In addition to the *Special Economic Measures Act* (SEMA), the Canadian Government imposed various measures such as sanctions, asset freezes, bans on shipments of certain goods and services, bans on the transfer of technology and restrictions on dealings with individuals and countries.

The most commonly used pieces of legislation are:

United Nations Act – gives Canada authority to enforce sanctions imposed by the UN Security Council.

Customs Act – set out export controls

Corruption of Foreign Public Officials Act – deals with offering or agreeing to offer bribes to foreign public officials

Freezing Assets of Corrupt Foreign Officials Act - prohibitions on dealings in property and goods and assets freezes regarding identified persons (*2)

In August of 2013 the first conviction, after a trial, under the *Corruption of Foreign Public Officials Act* was rendered in *R. v. Karigar*, 2013 ONSC 5199. Three prior convictions were entered after a guilty plea (*3). Mr. Karigar was charged with offering or agreeing to give or offer bribes to Air India officials and India's then Minster of Civil Aviation, in order to secure a major contract from Air India for the provision of facial recognition software and related equipment. Mr. Karigar was acting as a paid agent for Cryptometrics Canada of Ottawa.

The contract was never awarded to Cryptometrics Canada. However, there was a significant body of evidence that Mr. Karigar agreed to offer bribes to a targeted group of Air India officials and the Indian Minister of Civil Aviation. The evidence established that Air India was a corporation owned and controlled by the Government of India and that the targeted officials fell within the definition of Foreign Public Officials under the *Act.*

One of Mr. Karigar's defences was that Canada lacked the territorial jurisdiction to try the offence. He argued that the bulk of the elements of offence were not grounded in Canada, there wasn't a substantial connection to Canada. (*4). The court disagreed, stating:

> When the accused first approached Cryptometrics Canada, a Canadian company based in Ottawa, Mr. Karigar was a Canadian businessman resident for many years in Toronto. At all material times in reference to efforts to secure the Air India contract, he was employed by or/and acted as an agent of Cryptometrics Canada. A Canadian company (Cryptometrics Canada) based in Ottawa was the contracting party. Mr. Karigar and his co-conspirators contemplated obtaining work, and an unfair advantage, for a Canadian company or for a significant Canadian component of an International Company, as the fruit of a contract with Air India obtained through bribery. Had the contract been awarded the evidence shows that a great deal of the work would be done by Cryptometrics Canada employees in Ottawa. This scenario provides a sufficient substantial connection to confer jurisdiction on this Court over the bribery offence charged.

Mr. Karigar was found guilty.

The case highlights the real risks Canadian companies face when conducting business in jurisdictions where corruption is prevalent, and the importance of implementing robust anti-corruption compliance programs.

Rui M. Fernandes

Endnotes:

(*1) http://www.calgaryherald.com/business/Deer+firm+fined+violating+sanctions+with+ring+shipment+Iran/9737051/story.html

(*2) In response to the Ukraine crisis in Crimea, Canada, on March 17th, 2014, implemented the *Special Economic Measures (Russia) Regulations* and the *Special Economic Measures (Ukraine) Regulations (the "Regulations")* under the *Special Economic Measures Act (SEMA).* The regulations listed seven high ranking Russian officials as the object of the sanctions, while the latter identified three former Ukrainian officials. The Canadian government considers that there are reasonable grounds to believe that the

"designated persons" are engaged in activities that directly or indirectly facilitate, support, provide funding for, or contribute to the deployment of Russian armed forces to Crimea. The Regulations prohibit persons (broadly defined to include companies, partnerships, funds and unincorporated associations) in Canada and Canadians abroad from dealing directly or indirectly with any property that is owned or controlled by one of the designated persons and making any goods available to such persons wherever the property or goods are situated. In addition to the above Regulations the Canadian government implemented the *Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations* on May 5th, 2014, under the *Freezing Assets of Corrupt Foreign Officials Act.* These Regulations, adopted at the request of Ukraine's Prosecutor General, were implemented against 18 former Ukrainian officials, identified under these Regulations as "politically exposed foreign persons," and include former Ukrainian President, Viktor Yanukovych. These Regulations prohibit (i) dealing in any property, wherever situated, of a listed politically exposed foreign person; (ii) facilitating any financial transaction related to such a dealing; and (iii) providing financial services in respect of any property of a politically exposed foreign person.

(*3) Griffiths Energy International Inc. entered a guilty plea on January 22, 2013 to a criminal charge under section 3(1)(b) of the *Corruption of Foreign Public Officials Act*, and agreed to a fine in the amount of $10.35 million.

(*4) Bill S-14 amends the *Corruption of Foreign Public Officials Act* to establish "nationality jurisdiction" as a basis for Canadian Courts to exercise jurisdiction over persons accused of violating the *Act*, i.e. jurisdiction based on the nationality of the offender. The recent changes to the *Act* were not in place at the time of this decision and therefore the court had to resort to the substantial connection test.

DISCLAIMER & TERMS

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CONTEST

This month we are giving away a prize (Fernandes: Boating Law of Canada 2nd edition) for the first individual to email us the location where the photoraph on page 2 was taken. Email your answer to info@fernandeshearn.com with a subject line "Newsletter contest". First response with the correct answer wins.