



Griffiths Energy Violates the Canadian *Corruption of Foreign Public Officials Act*



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Calgary-based Griffiths Energy International Inc. (Griffiths) was created in August 2009 to obtain oil and gas production sharing contracts in the Republic of Chad. Within two years, the corporate leadership had changed, the corporate founder Griffiths was dead, and the company faced a major corruption scandal.

In November 2011, when it was conducting due diligence for an initial public offering scheduled to occur the next month, Griffiths detected a few dubious “consulting” agreements. It promptly struck a committee of independent directors, hired outside professionals to comb through 212,000 documents, and interviewed many people related to the transactions.¹

At a cost of over \$5 million, Griffiths' internal investigation revealed that between August 30, 2009 and February 9, 2011, prior management had entered into two contracts with a Chad foreign public official, Mahamoud Adam Bechir, and his wife, Nouracham Niam. Mr. Bechir was Chad's ambassador to Canada and the United States at the time.

These contracts, a U.S. \$2 million cash payment and four million "founders" shares of Griffiths, were bribes to obtain exclusive drilling rights in two oil and gas properties in Chad. The consulting services promised in return by the ambassador's wife were about "providing advisory, logistics, operational and other assistance with respect to implementing Griffiths' oil and gas projects in Chad". She formally arranged a meeting between Griffiths and Chad's president through the embassy. The drilling rights were a big win for the fledgling Griffiths, which had failed in several earlier attempts to purchase rights to produce oil and gas in Chad's rich southern oil fields.

The \$2 million was transferred to Ms. Niam's Washington-based company Chad Oil Consultants LLC.² The shares, transferred at a price of less than one cent each, were by the start of 2013 trading at over \$6, so that the value of the original four million shares now exceeded \$20 million.

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At the time of the illegal bribes, Griffiths had been receiving legal advice from the law firm in Toronto that employed former Canadian Prime Minister Jean Chrétien. While Mr. Chrétien had helped numerous Canadian companies in their dealings with African countries, there was no evidence he had specific input into, or knowledge of, the Griffiths bribes.

On January 25, 2013, two years after signing the drilling rights contract with Chad, Griffiths pleaded guilty to bribery under section 3(1)(b) of the Canadian anti-corruption legislation with an Agreed Statement of Facts in the Court of Queen's Bench in Calgary, Alberta.⁴ The "negotiated resolution" was a guilty plea accompanied by a fine of \$9 million and a 15% victim fine surcharge, for a total of \$10.35 million dollars, and an obligation for Griffiths to assist prosecutorial authorities "in other processes or legal remedies that the Crown may pursue that are relevant to this matter."

Griffiths was not placed on probation. All of its directors and senior executives had changed since the time of the offence. The company, under new management, had adopted an anti-corruption compliance program and strengthened its internal controls. The fact that Griffiths had initiated the internal investigation and turned

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itself in to law enforcement authorities was viewed as a mitigating factor.⁵ This is the first instance under the Canadian anti-corruption legislation where a company has voluntarily disclosed its own corruption after an internal investigation.

There is no maximum fine set out in the Canadian federal anti-corruption legislation and no limitation period for the most serious category (indictable) offence. In addition to corporate liability, directors and officers can be sanctioned with fines and imprisoned for up to five years, although no individual has been charged under this legislation in Canada yet.

In July 2011, a few weeks after the new management took over at Griffiths, founder Brad Griffiths, a former investment banker, fell out of his fishing boat and drowned in the lake outside of his Ontario cottage.⁶ It was shortly after his death that the bribes were discovered by the new management. No charges were laid against other members of the original Griffith management team.

Mahamoud Bechir continues to dispute the Griffiths bribe, and disclaims any benefit from the \$2 million given to his wife. Nevertheless, he was relieved of his duties as Chad's ambassador (to South Africa, by this time) on January 26, 2013.⁷

Griffiths continues to operate with 44 workers in Chad. The company began to spud its third well on January 24, 2013 and expected to be testing the well within a month.⁸ It hopes to start pumping oil from one of these properties within a few months. It maintains rights to explore and extract resources over a total area of 26,103 square kilometres in southern Chad.

The prosecutor in the Griffiths case is seeking to reclaim both the \$2 million payment and the shares. Some of the proceeds have already been spent – on a luxury house in the suburbs of Washington D.C., investments, and a car for a teenager, one of the couple's nine children.

Griffiths plans an initial public offering in London this spring at a 50% premium on its current grey market price, which would value the company at more than \$1.1-billion.⁹ If this European IPO is successful, it would tend to vindicate the new management's strategy in voluntarily dealing with this corruption. The company may be seen as replacing its management, investigating its own previous malfeasance, blowing the whistle on itself, co-operating with legal authorities and paying the fine. A full corruption clean-up cost of significantly less than \$20 million is a miniscule price to pay for a \$1.1 billion market reset valuation of the company.

Shortly after this guilty plea to corruption, on February 5, 2013, the Government of Canada introduced *An Act to Amend the Corruption of Foreign Public Officials Act* (Bill S.14). Promising to "redouble" its fight against corruption, the federal government proposes by this amendment to increase the maximum jail term to 14 years (from 5 years) for individuals, permit prosecutions against Canadians and their companies regardless of where the alleged

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bribery took place, enact a new records crime of falsifying records or hiding payments related to bribery of foreign public officials, and stage out the exemption for facilitation payments.

Notes

1. *Globe and Mail*, "Getting to the bottom of the Griffiths Energy bribery case", February 2, 2013.
2. Osler, Hoskin & Harcourt LLP. Rlyaz Dattu. *Vigorous Canadian anti-corruption enforcement continues unabated: Griffiths Energy fined \$10.3 million pursuant to the CFPOA* (January 29, 2013).
3. *Petroleum Africa*. "Griffiths Works to Close Investigation". January 18, 2013.
4. *Corruption of Foreign Public Officials Act*, SC 1998, c 34, Canada NEWSWIRE. *Griffiths Energy International Announces Settlement*. January 25, 2013.
5. *Canadian Press*. "Griffiths Energy to pay \$10.35M fine for bribing officials in Chad", January 22, 2013.
6. *Financial Post*. "Energy, Judge approves \$10.35M fine for Griffiths Energy in Chad bribery case". January 25, 2013.
7. *Globe and Mail*. "Fired Chadian ambassador defends 'done in the daylight Griffiths deal'," Press release. January 31, 2013.
8. Griffiths Energy International. *Griffiths Energy Provides Development and Exploration Update*. January 28, 2013.
9. *Globe and Mail*, "In wake of scandal, Griffiths Energy plans IPO in London", February 04, 2013

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