

## Canada To Add Export Smuggling Offence into *Customs Act*

June 21, 2016

On June 15, 2016, the Government of Canada introduced Bill C-21 “An Act to amend the *Customs Act*” in the House of Commons. The amendments to the *Customs Act* focus on exports of people and goods. Many of the amendments deal with the gathering of information about the export of goods and people. However, one of the hidden changes relating to export smuggling may be more important for businesses.

New subsection 159(2) of the *Customs Act* creates a new offence of smuggling out of Canada. Subsection 159(2) provides:

“Every person commits an offence who smuggles or attempts to smuggle out of Canada, whether clandestinely or not, any goods that are subject to duties, or any goods the exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.”

This provision must be read in conjunction with many other statutes, such as the *Export and Import Permits Act*, the *Special Economic Measures Act*, the *United Nations Act*, etc.

Section 160 of the *Customs Act* is amended to extend the punishment to export smugglers. If a person commits an offence under new Subsection 159 (2) of the *Customs Act*, the person may, upon summary conviction, be fined up to \$50,000 and/or face up to six (6) months in prison. Upon indictment, the person may be fined up to \$500,000 and/or face up to five (5) years in prison.

The Canada Border Services Agency and the Royal Canadian Mounted Police will enforce the new export smuggling provision in the *Customs Act*.

The new smuggling offence will not be in effect until Bill C-21 completes the legislative process. The date that the amendments to the *Customs Act* will come into effect will be established by Cabinet.

Canadian businesses should be mindful of this new export smuggling offence because it layers the punishment for exporting controlled or prohibited goods without proper paperwork. Canadian business persons are the most likely to run into difficulty by traveling with the controlled or prohibited goods in their luggage. This would include traveling with samples that are on the Export Control List.

Based on our experience, the CBSA x-rays luggage leaving Canada. In addition, the Canadian Air Transportation Security Authority (CATSA) x-rays luggage that travelers take with them. If CATSA sees large sums of cash in a person’s carry on luggage, they report the cash to the CBSA and the person is removed from the flight. The same can hold true for goods within a person’s luggage. This means that if

a traveler does not have the proper paperwork relating to the permissibility of an export of goods (e.g., an export permit or Ministerial Authorization), it could delay travel of the person or the goods. As a result, it will be more important to ask questions about Canada's export controls laws.

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