ANNUAL REVIEW
Corporate fraud & corruption

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Q. To what extent are boards and senior executives in Canada taking proactive steps to reduce incidences of fraud and corruption from surfacing within their company?

DROLET: Boards and senior executives are becoming more attuned to the risk of fraud and corruption in their organisations. Consequently, fraud risk assessments and prevention are becoming a topic of discussion at the board table. Internal risks are reviewed and analysed but cyber threats are top of mind. As a result, boards and senior executives are meeting with IT professionals to pursue proactive measures against cyber risks. Senior executives, particularly those with bank access, are trained on phishing schemes and alterations to bank approval rights, and authority levels are made to reduce risks accordingly. Internal controls are being reviewed on a proactive basis and the implementation of recommendations to reduce weaknesses is occurring. Data analytics on payroll and procurement, as well as other functions, are outsourced at the hint of a red flag. If a fraud is detected, a full investigation and the pursuit of criminal charges are becoming more common. Demonstrating that wrongdoing will not be tolerated is being taken as a measure to deter fraud.
Q. Have there been any significant legal and regulatory developments relevant to corporate fraud and corruption in Canada over the past 12-18 months?

DROLET: Recent changes to the Corruption of Foreign Public Officials Act (CFPOA), and proposed changes to the government of Canada’s integrity regime, may significantly impact how anti-bribery and corruption (ABC) legislation is policed in Canada. An exception allowing facilitation payments under the CFPOA was scrapped as of 31 October 2017. This means that ‘facilitation payments’, or payments generally of a small amount to a foreign official to expedite or secure an act of a routine nature that does not require the exercise of discretion, now could be considered as a bribing offence. The Canadian government also announced in February 2018 its intention to introduce legislation to allow for deferred prosecution agreements (DPA), to deal with serious cases of corporate crime such as fraud and bribery. While the particulars of the intended changes remain unclear, this should increase the flexibility and effectiveness of white-collar crime enforcement in Canada. Only time will tell if these changes will address Canada’s reputation for lacking serious ABC enforcement.

Q. When suspicions of fraud or corruption arise within a firm, what steps should be taken to evaluate and resolve the potential problem?

DROLET: When faced with potential fraud or corruption it can be easy to let emotions take over, which could be detrimental to the company in many ways. While there is a litany of things to consider in these circumstances, there are a number of key steps that can be taken. First, develop an investigation plan with your fraud committee and the help of experts, such as legal counsel, audit committee, human resources, forensic accountants and other subject matter experts. Second, discreetly attempt to corroborate the suspicions to determine the necessity for a full investigation. Third, obtain and preserve any evidence related to the issues or the persons involved to ensure it is not destroyed or impaired during the investigation. Fourth, consider whether the results of the investigation should be reported within the organisation to help increase awareness and demonstrate the company’s commitment to ethical behaviour.

Q. Do you believe companies are paying enough attention to employee awareness, such as training staff to identify and report potential fraud and misconduct?

DROLET: Companies invest heavily in developing and testing controls but not enough in training employees on fraud awareness and identification. Employees are often unaware of the purpose behind executing a control and without this valuable context, the ability for employees to be actively involved in identifying and reporting fraud is diminished. Inadequate training also reduces the effectiveness of a control as the execution becomes more a ‘rubber stamp’ and less a ‘gatekeeper’ function. Similarly, when employees see something suspicious, the tendency is to turn a blind eye because they do not feel it is their responsibility to report wrongdoing or they feel there must be a good explanation for this potential suspicious activity. A lack of training covering how and when to report fraud and misconduct perpetuates this position. Controls are often seen as the
responsibility of management. More needs to be done by companies to ensure employees are better equipped and knowledgeable about their responsibilities in ensuring the controls are effective.

Q. How has the renewed focus on encouraging and protecting whistleblowers changed the way companies manage and respond to reports of potential wrongdoing?

DROLET: With protection against retaliation more actual than ever, companies have to adapt to this new reality. The change starts with leadership in inspiring trust and confidence in the whistleblower process. To do so, organisations are implementing an anti-retaliation policy. This policy includes training management and employees on what retaliation is, how to prevent and address it, and the legal protections available to whistleblowers. Impartial and rigorous investigations of alleged retaliation should also be performed as per the policy. Companies also need to ensure their investigation plan considers ways to protect confidentiality, including restricting the number of investigators who know the identity of the whistleblower. Anonymity is also a key in encouraging denunciation, since it gives a sense of security to the process.

Q. What advice can you offer to companies on implementing and maintaining a robust fraud and corruption risk management process, with appropriate internal controls?

DROLET: Implementing and maintaining a robust fraud and corruption risk management (FCRM) process can seem daunting for any organisation. The key is to take an evolutionary approach – start somewhere and build the process along the way. This process can be tailored to suit your organisation’s size, structure and available resources. At the end of the day, it is better to implement some element of a FCRM programme than none at all. To get started, organisations should consider using detection and prevention questionnaires on
an annual basis that highlight organisational fraud and corruption vulnerabilities and set an organisational tone from the top. They should also use data and analytics regularly to conduct monitoring to identify anomalies requiring further investigation. Implementing a code of conduct so employees are aware of expected behaviours and implementing a hotline to allow reporting of potential fraud and corruption are also critical. Initiatives can be implemented based on the resources available to the organisation and, if needed, forensic specialists can help guide the development of a robust FCRM process.

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