



## CBA Canadian Legal Conference Dublin, Ireland

# CCCA – 2009 Global Anti-Corruption Compliance

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Gifts & Hospitality  
Excerpts of a Presentation  
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## AGENDA

### **The “Given” or “Motherhood Stuff”**

- (I) G & H Policy
- (II) G & H Procedures/Processes

### **The “Not Given” or “Things My Mother Never Told Me”**

- (I) Writing Style
- (II) G & H Monitoring Control
- (III) Whistle blowing & Self Reporting
- (IV) Misconduct or “Offside” Behaviour
- (V) Local Culture



# The “Given” OR “Motherhood Stuff”



## (I) G & H Policy

Starting point should be a Statement of Values / Code of Conduct / Code of Ethics ..... Moral Fiber

As a minimum, should set the bar at the highest or the most stringent, standards required by the jurisdictions where it does business



## Friendly reminder :

Sarbanes-Oxley Act s. 307 includes the requirement for SEC registrants to have a **Code of Ethics for Financial Reporting and specific duties placed on counsel**, whether in-house or outside counsel to report misconduct up the ladder



**G & H Policy should be part of a  
governance framework  
- An Accountability System –  
that  
“Hangs Together”**



## (II) G & H Procedures/Processes

Process documentation should include warnings, flags, interpretations, FAQs and be supplemented with guidelines

Describe every detail of the execution to be performed in the front lines



**The “Not Given”  
OR  
“Things my Mother Never Told Me”**



## (I) Writing Style:

Avoid quoting laws, especially foreign ones – No one likes to be “ruled” by a foreigner – Instead refer to Vision, Mission, Values and Code of Conduct - They go **beyond legal compliance**, they go to **moral fiber**

Write in language that is operational to the target audience i.e. lay terms or street talk

Be careful of translations – Meanings in one language are sometimes lost in direct one-to-one translation



Describe in specific detail the control expectations and the judgment to be executed, for example:

**Authorized** in accordance with ....

**Validated** against ...

**Discrepancies** identified and returned to ....

**Compared to** physical count / third party document ....

**Assessed for completeness** of .....

**Classified** as .... by using the **checklist** .....





## **(II) G & H Monitoring Control: Grave to Cradle on Books and Records**

Select samples from more than the obvious general ledger accounts

Look at payee and dig into the details e.g. in-trust arrangements

Question valuation of in-kind or non-monetary transactions e.g. research agreements



Question low margin transactions

Question lack of details on invoices

Do a root cause analysis – Sometimes exceptions indicate a need to update the policy and the procedure



## (III) Whistle blowing & Self Reporting:

Ensure **confidentiality** through out the **entire** escalation process and internal (and maybe external) investigation process – **removing names isn't enough** – if the governance framework or accountability system is not credible, neither is the investigation



## **PAY ATTENTION TO THE UNDERGROUND**

Don't dismiss concerns, issues or allegations using statistics and survey results to justify circumstances

Watch out for:

“Poor labour relations”

“Disgruntled employees”



## PROTECT THE WHISTLE BLOWER

Disrespectful behaviour, employee resignations & terminations that are perceived to be unfair deter people from stepping forward

Without transparency, perception is reality



## (IV) Misconduct or “Offside” Behaviour

- Define and commit to a **response time**
- Incorporate a mechanism to **ensure quality of the response**
- Ensure that the organization is prepared and agile enough to **handle the truth** and assess equitable sanctions – develop a Judgment Aid e.g. sanction scorecard

Continued ...



- Develop a mechanism for **calibrating punitive actions** – “Match the Time to the Crime” e.g. graph sanction scores
- C-Suite circumvention and inconsistencies undermines the ethics program by causing **resentment** and **feeding the underground**
- **Once confidence in the Accountability System is lost, it is very difficult and costly to regain**



## (V) Local Culture

Don't under estimate the difficulties of changing the way things are done



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