



FRAUD CONFERENCE CANADA

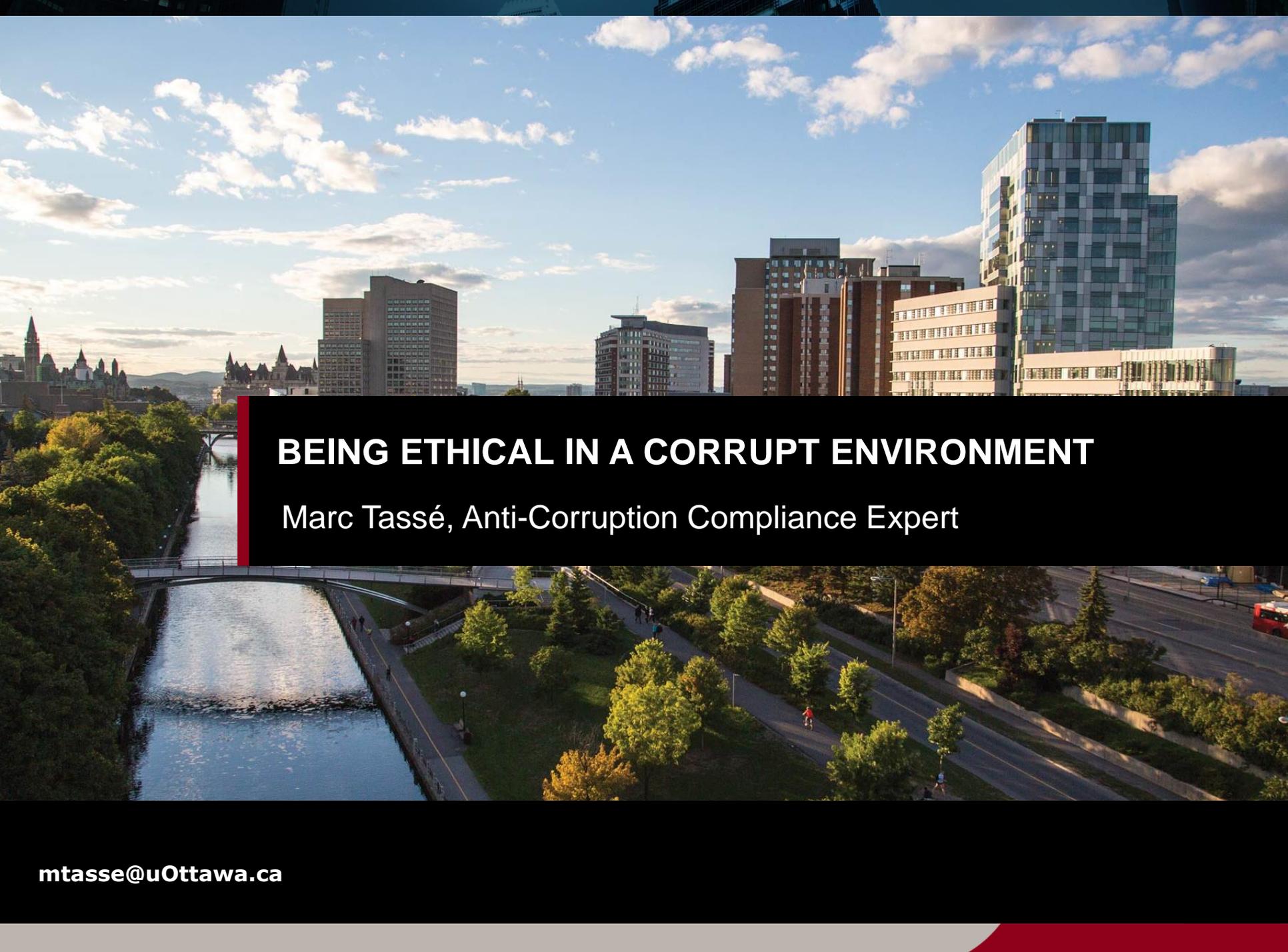
Being Ethical in a Corrupt Environment

Marc Tasse, CPA, CA, CFF, FCPA, CICA

Senior Instructor

Canadian Centre of Excellence for Anti-Corruption



An aerial photograph of a city, likely Ottawa, Canada. The image shows a wide river flowing through the center, with a modern pedestrian bridge crossing it. The city skyline is visible in the background, featuring several tall buildings, including a prominent one with a glass facade. The sky is blue with scattered white clouds. The foreground shows a well-maintained park area with green trees and a paved path where a few people are walking.

BEING ETHICAL IN A CORRUPT ENVIRONMENT

Marc Tassé, Anti-Corruption Compliance Expert

Marc Tassé, MBA, CPA, CA, CFF, FCPA, CICA, CACM



Marc Tassé is a speaker, media commentator, and expert in anti-corruption. He teaches at the university level on white-collar crime, with topics ranging from market manipulation to money laundering, anti-corruption initiatives, and the hidden costs of corruption.

Marc has consulted around the world, helping corporations investigate allegations of corruption, and has served as a litigation consultant working with attorneys representing shareholders in complex court cases involving allegations of improper financial reporting and economic crimes.

Introduction



- Businesses are coming under increased scrutiny, both at home and abroad, to ensure that their domestic and foreign operations comply with anti-corruption and anti-bribery legislation.
- International trends towards tougher legislation and increased enforcement of anti-corruption laws internationally make noncompliance a real risk that companies must address as a business priority.
- There are significant financial, business, and reputational repercussions to not having an anti-corruption policy and effective compliance program in place. These could include criminal charges, hefty fines, and lost revenues.

Introduction



- Ethical behavior is more noticeable in corrupt environments than in ethical ones; it is easier for an ethical company to stand out in a corrupt environment.
- A seemingly endless stream of fraud stories hits the headlines every day. In March 2016, Andrew Caspersen, an ivy-league-educated financier who worked at investment banker Paul Taubman's PJT Partners Inc., defrauded his victims of more than \$38 million.
- The WorldCom accounting scandal was a situation in which corporate governance failed and the board of directors were caught unaware.
- The Olympus fraud shows that tone at the top matters. C-level executives must act according to the principles expected of employees at all levels and across the enterprise.

Introduction



- Citizens in countries across the globe continue to see business executives and politicians as corrupt. Corruption shakes the foundations of civil society, weakens trust in the public institutions, and destroys faith in the leadership upon which democracy depends.
- Corruption is decried across cultures and throughout history; but, like other crimes, it has grown increasingly sophisticated over the last several decades, with devastating effects on the well-being and dignity of countless innocent citizens.
- Corruption and bribery, price-fixing, systemic financial manipulation, toxic spills, and corporate misconduct have tragic and far-reaching consequences for individual victims and society at large.

The Importance of Establishing a Strong Ethics and Compliance Program



- Boards of companies currently operating and of those planning to expand internationally face constantly shifting risks and unique challenges, including political, economic, regulatory, and legal risks.
- They need to be able to evaluate these risks in the context of ongoing operations or expansion abroad. As well, they need policies, protocols, and other mechanisms to deal in real-time with actions of foreign governments and their regulators who may be influenced by motives, politics, culture, and value systems embedded in foreign markets but unknown to corporate headquarters.
- Fines for corporate misconduct have reached astronomic levels unthinkable a handful of years ago, yet individual managers and directors are rarely held accountable.

The Importance of Establishing a Strong Ethics and Compliance Program



- However, those issues weigh heavily on a company's corporate reputation and jeopardize goodwill with regulators, investors, shareholders, customers, and vendors. We have seen over the past few years that companies named in fraud and corruption scandal allegations have had the market price of the shares reduced substantially.
- There clearly is a new recognition that establishing a corporate compliance program is no longer “nice to have”, but rather an absolute “must have” for all corporations. As more and more stakeholders are demanding robust compliance programs, those companies that embrace ethics and compliance will emerge with a competitive advantage.

The Importance of Establishing a Strong Ethics and Compliance Program



- C-suite executives need to provide the appropriate tone from the top and ensure that ethical behavior will be considered as part of the performance evaluation process for middle and senior managers. Equally, there should be zero tolerance for violations, even if it may affect top executives and other “high achievers”.

How to Instill Ethics from the Top of the Organization



- A key element of the foundation for a successful compliance program will always have to be a thorough compliance risk assessment, taking into consideration the companies' geographical footprint, industry sector, government interactions, past identified fraudulent activities and other policy violations, third-party relationships, and overall business models, to name just a few of the input factors that should be considered for an in-depth compliance risk assessment.
- If you are a senior executive, as part of your good governance responsibilities, you should ask yourself the following questions:
 - Is your board structured to accommodate the constant demands of your geographic presence, use the tools at its disposal, and demonstrate vigilance leading to reliable oversight?

How to Instill Ethics from the Top of the Organization



- How does your board make informed decisions and assess the financial impact of these risks?
- Who does your board rely on and how does it obtain truthful, independent, and knowledgeable feedback through formal or informal channels when it cannot be on-site?
- How does your board understand the complexities that include political instability or expropriation risk; adverse tax regimes, product compliance; environmental laws; human resources issues, including local expectations of benefits and pension obligations; fraud; money laundering; corruption; corporate wrongdoings; and legal enforcement instigated without due process, which may all arise in international operations and influence ethical behaviors across an enterprise?

How to Instill Ethics from the Top of the Organization



- The most challenging aspect of anti-corruption compliance is ensuring that it is integrated into company operations and the overall business strategy.
- In the same way that security regulations are only effective if they are accepted, understood, and implemented by all; anti-corruption procedures require employees to accept and appreciate their effectiveness to ensure appropriate implementation.
- Although talented people with the best intentions design anti-corruption compliance procedures, they are up against audacious individuals who can be very creative at bypassing company rules.

How to Instill Ethics from the Top of the Organization



- That is why it is necessary to question our way of addressing the issue on a regular basis. Compliance must evolve constantly to adapt to the ever-changing methods used by criminals.

Examples of What Makes an Ethics and Compliance Program Effective



Here are some useful suggestions that were shared with me by Mrs. Huguette Labelle (who has chaired the board of directors of Transparency International) and that hopefully can be useful to board members and executives:

- Sustained leadership on transparency and integrity is vital.
- Strong anti-corruption measures and repeated staff training is crucial.
- The compliance office must be answering directly to the CEO and reporting regularly to the board.
- When allegations occur, move quickly with a forensic audit, and if criminal issues are uncovered, turn them over to the appropriate authorities.

Examples of What Makes an Ethics and Compliance Program Effective



- Ensure that staff remuneration is not an incentive to sell contracts at all cost.
- Make it clear in documentation that this is a “clean” company that does not bribe – this has been demonstrated to be a deterrent for bribe asking.
- Include in the external audit a review of the compliance on anti-corruption measures.
- Ensure full transparency in contract management.
- Publish who the real beneficial owners of their company and subsidiaries are.

Examples of What Makes an Ethics and Compliance Program Effective



- Beware of transfer pricing and tax evasion since they create poverty in countries where the company is working, especially in the natural resources sector and in poorer countries.

Conclusion



International authorities are beginning to establish a track record of corporate convictions and multimillion-dollar penalties. Recent and ongoing criminal prosecutions of individuals have also put executives on notice that they too will face the harsh consequences of violating anti-corruption laws, including the U.S. Foreign Corrupt Practices Act (FCPA) or the Canadian Corruption of Foreign Public Officials Act (CFPOA). Under Canada's Integrity Regime, companies that do business with government also face suspension or debarment when charged or convicted under the CFPOA or similar foreign anti-corruption laws.

Conclusion



- Recent cases have shown that enforcement agencies are going to continue to scrutinize anti-bribery and anti-corruption (ABC) compliance programs and will likely bring charges when violations are the result of willful or reckless conduct. In particular, enforcement agencies may bring charges when there is a failure to adequately ensure the existence of an effective ABC compliance program resulting in the failure to prevent violations of the law.
- Therefore, board members and executives must protect their organizations and themselves by effectively implementing a robust ABC compliance program, as well as maintaining effective detection and investigation procedures, including continuous improvement of the effectiveness of any existing ABC compliance program.

Questions



Thank you for participating



If you have any questions, please feel free
to email them to:

Marc Tassé

mtasse@uottawa.ca



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