



Tone at the Top

The critical and misunderstood trickle down anti-corruption control

By Peter Dent, Partner, Deloitte LLP and Gina Campbell, Partner, Deloitte LLP

The authors would like to express their appreciation to Tracy Sangster, Senior Manager, Deloitte LLP and Heidi Bereta, Senior Manager, Deloitte LLP for their hard work and involvement in the development of this chapter, and to all those who read, offered comments, and assisted in the editing, proofreading and design. Without their hard work, this chapter would not have been possible.

Table of Contents

1. Introduction 3

2. Accountabilities and behaviours – Setting the tone at the top 7

 2.1. The board.....8

 2.2. CEO 11

 2.3. Chief Compliance Officer (“CCO”)..... 13

 2.4. Mood in the Middle 15

 2.5. Buzz at the Bottom 16

3. Ways that a company can establish and reinforce tone at the top..... 17

4. Summary 20



1. Introduction

George Orwell's **Animal Farm**, an allegory for Russian Totalitarianism, is an example of how organizational culture can be negatively impacted by those in positions of leadership. In Orwell's **Animal Farm** the seventh "commandment," which the pigs, with control, modify from "All animals are equal" to

"All Animals Are Equal / But Some Are More Equal Than Others"

is an important concept to consider when establishing and evaluating the tone at the top for anti-corruption, fraud and ethics in general¹. "Tone at the top is best described as the consistency among statements, assertions and explanations of the management and its actions."² In other words, setting an inconsistent tone where those in senior positions are "more equal" than those they supervise is detrimental to an ethical culture. Ethics cannot be situational and must be both consistently applied and broadly uniform.

Establishing a strong and ethical tone at the top is the backbone in creating, maintaining, and reinforcing a strong compliance program including internal controls, communications, training and monitoring. It is the foundation on which the culture of an enterprise is built. "The tone at the top is the ethical environment fostered by organizational leadership and the single most important factor in determining the organization's resistance to bribery and corruption."³ The concept of tone at the top is not easily tangible and, therefore, implementing actions and expected behaviours in a meaningful way and objectively assessing their success is something with which many companies struggle. Failure to prevent or detect issues is often not because the programs or controls themselves are lacking but because rules are ignored. This is a failure of culture where senior leaders are not setting a strong or consistent "tone at the top" about acceptable and unacceptable behaviours, just like Orwell's pigs in **Animal Farm**.

¹ Corruption is one of the three categories of occupational frauds according to the Association of Certified Fraud Examiners. Due to this categorization as a type of fraud there are instances where only fraud is referred to within the narrative however the concepts discussed still apply to the matter of corruption within the context of tone at the top and compliance programs.

² Determinants and Consequences of "Tone at the Top"; Staicu, Anca Monica, Ralucu Julia Tatomir, Aurora Costina Linca; International Journal of Advances in Management and Economics; Vol.2 Mar. – April 2013; page 76.

³ Auditing Anti-bribery and Anti-corruption Programs – June 2014: The Institute of Internal Auditors.



Rarely do companies or management realize or admit that they have a poor tone at the top prior to large scale fraud. The Treadway Commission's report in October 1987 stated, "The tone set by top management – the corporate environment or culture within which financial reporting occurs – is the most important factor contributing to the integrity of the financial reporting process. Notwithstanding an impressive set of written rules and procedures, if the tone set by management is lax, fraudulent financial reporting is more likely to occur."⁴ The infrastructure to prevent financial crime may be sound, but its effectiveness still depends on execution, on individuals doing the right thing at the right time – culture is what enables and drives those appropriate behaviours. This was emphasized in The Sarbanes-Oxley Act of 2002, after a series of major corporate accounting scandals occurred; it prioritized tone at the top as an important element in the prevention and detection of fraud, corruption and other unethical financial practices

A robust compliance program is designed to be effective at mitigating the three elements of the fraud triangle – opportunity, pressure and rationalization – factors which together can lead to an individual engaging in

fraudulent or corrupt behaviour. However, programs and controls will have minimal, if any, effect on the ability to defeat the rationalization that accompanies perpetrators of fraud or corruption without a strong tone at the top to bolster one's own internal restraint.

The fraud triangle consists of three elements that are generally present when fraud occurs



⁴ Committee of Sponsoring Organizations of the Treadway Commission (COSO); *Report of the National Commission on Fraudulent Financial Reporting*; October 1987.

Many boards miss the lesson one can take from Orwell's pigs. As mentioned above, Animal Farm's seventh commandment speaks to the integral role that consistency plays in either creating or destroying an ethical culture. Environments where everyone is equally accountable reinforce the expectation of ethical behaviour, but where some are treated "more equal" ethical foundations are undermined. Differential treatment in the face of similar inappropriate behaviour creates conditions ripe for rationalization. Without the ability to rationalize their behaviour ethical people remain ethical as the vast majority of us are wired to avoid conditions of cognitive dissonance. In other words, perpetrators of fraud or corruption need to be able to justify their dishonest actions so they reduce negative feelings for doing something they know is against the rules. It is common to hear such rationalizations as; "I wasn't doing anything that others weren't doing," "I was doing it to benefit the company", "There was nothing in it for me", "No one got hurt," or "I was just getting my share." All of these are variations of a theme exhibited during some of the largest white-collar fraud and corruption cases such as Enron.

As mentioned earlier, companies or management often do not realize or admit that they have a poor tone at the top⁵ prior to a large scale fraud being identified and this can lead to negative consequences for the company when attempting to resolve such matters. According to the 2014 Report to the Nations the fourth largest contributing factor to frauds was poor tone at the top and in the 2012 Report to the Nations, was the primary factor in 18% of cases cited for those frauds that resulted in a loss of \$1 million or more⁶. The SEC noted in the Siemens Foreign Corrupt Practices Act ("FCPA") case that the misconduct and those involved "reveals a corporate culture that had long been at odds with the FCPA" and a corporate culture in which "bribery was tolerated and even rewarded at the highest levels"⁷. This is just one example of a corruption case which led to penalties because of a failure in tone at the top. Similarly, the Kellogg Brown & Root LLC ("KBR") plea agreement, the US Department of Justice ("DOJ") noted that "tolerance of the offense by substantial authority personnel was pervasive throughout the organization" as part of the culpability score for determining the applicable fine



⁵ Report to the Nations on Occupational Fraud and Abuse – 2014 Global Fraud Study – ACFE; page 39.

⁶ Report to the Nations on Occupational Fraud and Abuse – 2012 Global Fraud Study – ACFE; page 38.

⁷ United States District Court for the District of Columbia, Case: 1-08-cv-02167; U.S. Securities and Exchange Commission v. Siemens Aktiengesellschaft; Complaint; December 12, 2008.

range⁸. Both Siemens and KBR are two of the largest penalties enforced under the FCPA to date.

However, purposeful attention to establishing and reinforcing a strong tone at the top can potentially lead to more favourable results for the company if faced with dealing with such matters as a corruption investigation. In the recent case of PetroTiger, while three former officers of PetroTiger pled guilty to violating the FCPA, the DOJ declined to prosecute PetroTiger itself. One of the reasons, as put forward by Timothy Treanor, partner at Sidley Austin LLP and lead outside counsel for PetroTiger, “The board was very aggressive in demanding disclosures and in trying to institute reforms to put in place a code of conduct ... we were able to establish a struggle that showed that the board members were not turning a blind eye to misconduct. They were not interested in profiting from corruption. They, in fact, were very aggressively trying to establish an environment of integrity”⁹. While the strong actions undertaken by the PetroTiger board to establish the tone at the top did not prevent the wrong doing from happening by the former

officers, these actions allowed the company to effectively deal with the situation and obtain a more favourable result.

Tone at the top can drive value – not just positively but also negatively¹⁰. In a negative sense, a company may take a *laissez faire* approach or set a negative tone at the top, whether purposeful or not. An example being where so long as the organization is making profits, management turns a blind eye to the actions of their employees. This mentality can promote negative value in the eyes of stakeholders or lead to other consequences such as penalties should such discretions be uncovered, both of which can harm a company’s reputation and market value. Profits can hide an enormous number of sins so it is just as important to understand the underlying reasons for profits as it is for losses.

In order to set the tone at the top Orwell’s pigs maintained control by creating and preserving their roles on the farm. Each pig had a very important role to play in order to keep up the “culture” that they were trying to cultivate. Accountabilities and behaviours are also important for setting an ethical tone at the top in any organization. In addition, the

⁸ United States District Court – Southern District of Texas – Houston Division, Criminal No. H-09-071; United States of America v. Kellogg Brown & Root LLC; Plea Agreement; Received February 11, 2009.

⁹ The Overlooked Lessons of PetroTiger Trial; Tom Fox; Compliance Week; July 14, 2015.

¹⁰ 10 Ways to Measure The Tone At The Top; Corporate Compliance Insights; June 4, 2012

individuals assigned these responsibilities need to be given the appropriate tools, and be held accountable.

2. Accountabilities and behaviours – Setting the tone at the top

“Culture eats strategy for breakfast”

– Peter Drucker

All individuals in an organization and those charged with governance must be setting an ethical tone that matches the culture envisioned or the corporate strategies will be undermined. Tangible steps to create an ethical culture must be considered when developing the foundation of the company’s strategy. By aligning and embedding the ethical culture with corporate strategies, ethical behaviours will have an easier time enduring in setting the organizational culture. Otherwise, regardless of a company’s strategy, culture will dictate the direction of the company if they are not cohesively joined.

The DOJ utilizes the United States Sentencing Guidelines to assess and calculate any penalties for those companies that have been found to violate the FCPA. Companies that show they exhibited some or all of the identified elements of an

effective compliance and ethics program as outlined in the guidelines may receive lower penalties or the opportunity for a deferred or non-prosecution agreement. We therefore often utilize the sentencing guidelines as a way of measuring a company’s compliance and ethics programs by ensuring they have incorporated elements that the DOJ views as part of an effective compliance and ethics program. The 2004 amendments to the United States Sentencing Guidelines provide some guidance into the roles and responsibilities that each individual in the organization has for setting the tone. It states that “an organization shall promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”¹¹ Section 8B2.1 of the guidelines provides further guidance on promoting a culture that encourages ethical conduct at all levels of the organization including the following:

- The governing authority should exercise reasonable oversight over the implementation and effectiveness of the compliance and ethics program.
- High-level personnel shall ensure that the organization has an effective compliance and ethics program and at least one individual will be

¹¹ United States Sentencing Commission Guidelines Manual; November 1, 2014; page 511; Section 8B2.1.



assigned overall responsibility.

- Day-to-day responsibility for the program will be assigned to specific individuals who will report to the high-level personnel and the governing authority.
- The program will be promoted and enforced through appropriate incentives and disciplinary measures.

In addition the UK Bribery Act's Six Principles of Adequate Procedures states "The top-level management of a commercial organization (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organization in which bribery is never acceptable."¹²

The board, CEO, and CCO play critical roles in establishing the tone at the top. The process of establishing the tone at the top entails addressing such questions as "What role should the board play? What actions should CEOs take to establish the tone at the top? What role can the CCO play in helping cascade the tone at the top to the middle and beyond?" Leslie R. Caldwell, assistant attorney general for the

DOJ's Criminal Division stated in an interview "Management should make sure that everyone understands that the company is serious about compliance. And it's very important to put resources into the compliance program and to empower it within the company. Those two things often are not given enough priority."¹³ Having a board which focuses efforts on compliance and giving the CEO and CCO the mandate and resources to focus on compliance will give organizations a boost in establishing a strong tone at the top.

2.1. The board

"If companies aren't managing culture, culture is managing them"¹⁴

Increasingly boards are recognizing culture as an effective framework to allow them to address compliance, ethics and integrity risks¹⁵. No single decision drives tone at the top more than the selection of the CEO. That process must necessarily focus on competence, character, and chemistry and raises questions such as the following:

¹² The Bribery Act 2010 – Guidance; Ministry of Justice; page 23.

¹³ "Didn't comply? Then fully cooperate"; Fraud Magazine; Carozza, Dick; May/June 2015.

¹⁴ Risk and Compliance Journal – Deloitte risk and Compliance – Wall Street Journal – How Boards Can Raise the Bar on Ethics and Compliance; October 23, 2014.

¹⁵ Ibid.

- Does the prospective CEO have the requisite skills and experience to move the organization forward?
- Does this person possess the character and moral fiber to model and contribute to the development of a values-centered enterprise and strategy?
- Does the CEO have the chemistry and communication skills necessary to rally others to successfully and consistently deliver on the organization's value proposition to all stakeholders

The governing authority must ensure that ethical objectives are built into the actions and strategy of the organization, and that they are not merely a statement of good intentions. All personnel in the organization are treated equally.

There are various methods an organization can employ to understand whether the "mood in the middle" and the "buzz at the bottom" are consistent with the "tone at the top". The following are examples of ways in which the board can gain an understanding:

a. Board questions

The role of the board is imperative in influencing the culture and tone of the organization. According to the Deloitte 2014

Reputation@Risk survey, a global risk survey of more than 300 business executives, 87% of executives rated reputation risk as more important than other strategic risks, with ethics/integrity (fraud, bribery, corruption) identified as one of the top three reputation risk drivers of concern (55%).

Therefore it is important that board members not only have a process for oversight of corruption risks but also become involved in obtaining a periodic view into the organizations culture through hands-on observations and working with management. Valuable insights can be garnered by the board through simple inquiry, including the following questions that boards may want to ask:

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Does the organization support the ethical culture and anti-corruption compliance program through training and communication which includes allowing employees to raise ethics and corruption compliance issues without fear of retaliation? <input type="checkbox"/> What is the process for assessing ethics and corruption compliance risks within the organization? Have they updated their policies, procedures and internal controls to address emerging risks (i.e., cyber risk, anti-corruption)? | <ul style="list-style-type: none"> <input type="checkbox"/> Does the current ethics and anti-corruption compliance program cover the organization's global operations, including management, employees, shareholders, customers, subcontractors, business partners and vendors? <input type="checkbox"/> Does the organization have an ethics and compliance officer? <input type="checkbox"/> Does a reporting and monitoring process keep the board of directors informed of key ethics and corruption compliance issues, as well as the actions taken to address them? Are ethics and corruption compliance issues a regular item on the board agenda? |
|--|--|

b. Employee exit interviews

An often overlooked but useful avenue to understand if there are any tone at the top challenges is through employee exit interviews. In some cases, ethical concerns may be the catalyst behind an employees' decision to leave the company and while not all departing employees may be vocal with their concerns, with specifically tailored questions, you may have the opportunity to understand if organizational culture or specific unethical acts were a contributing factor.

c. Open lines of communication

The board should have open lines of communication with both top and middle management. While a company cannot control the actions of every employee, reinforcing a culture of ethics and integrity will go a long way in influencing employee actions that will be seen in a positive light. Due to social media it is important that communications and actions match as information regarding inappropriate actions will travel

quickly through the masses, whether that be employees or the general public. If the pigs in Animal Farm had open lines of communication, they most likely would have been wise to the discontent among the other animals. This concept centers on concern by those governing with the impact of culture on behaviour, and the principles of tone at the top enduring. If followed by Orwell's pigs, then perhaps so too would the idealistic 7 original tenets of animalism prevailed.

d. Site visits

Site visits can give the board insight into what is happening in the "office". They will have a hands on experience of the organizational culture and hear directly from lower level employees how programs can be improved.

2.2. CEO

The Organisation for Economic Co-operation and Development (OECD), of which Canada is a signatory, stated in its Good Practice Guidance that companies should have:

“Strong, explicit and visible support and commitment from senior management to the company’s internal controls, ethics and compliance programs or measures for preventing and detecting foreign bribery”¹⁶

The CEO is the face of the organization, the figurehead to whom employees ultimately look for vision, guidance, and leadership. Leadership derives from trust, and trust is built upon a common understanding between people.¹⁷ Leaders must find ways to connect with people inside and outside the organization on an ongoing and transparent basis, using different platforms and distribution systems.

Both communication and behaviour tells employees what counts and what’s rewarded and punished. A CEO should show through actions that he or she is committed (e.g. not accepting gifts from vendors or seeking legal advice on ethical questions) and accountable for the tone at the top. The CEO must show that he or she will suffer the same consequences for wrong doing. There are no “sacred

cows” in the organization that are above the rules. As with the pigs in **Animal Farm** the CEO cannot just talk a big game.

CEOs should use various types of reporting to assess whether the appropriate tone is being reinforced within the organization including the following:

- Whistleblower hotline statistics - statistics from the whistleblower hotline help assess whether the appropriate tone at the top is being reinforced
- Surveys – results of ethics or cultural pulse surveys performed help to determine if there are any indicators or concerns regarding the culture and tone at the top. If indicators or concerns exist, the CEO can utilize these results to determine ways that they can improve the tone at the top
- Open lines of communication - appropriate communication practices and open lines of communication are important to strengthen and assess tone at the top. Lines of communication should be diverse, including practices



¹⁶ OECD; Good Practice Guidance on Internal Controls, Ethics, and Compliance; Adopted February 18, 2010; Annex II page 1.

¹⁷ Darcy, K.T. A Companion to Business Ethics, edited by Robert E. Frederick, “Ethics and Corporate Leadership,” Blackwell Publishers Inc., 1999: 405.

available to external customers and stakeholders as well, in order to allow for messaging to be received by the appropriate parties in a timely manner

2.3. Chief Compliance Officer (“CCO”)

The person selected for this role must be someone whose integrity is clear and who can earn the respect of personnel at all levels to establish and reinforce the tone at the top. The CCO and their team, play a crucial role in creating a “speak up” culture. In addition, the CCO helps convey key ethics and compliance messages in both internal and external communications and assists the board in both understanding and executing their role in establishing the tone at the top.

Compliance programs are found to be far more effective when the CCO reports to the board. It shows the importance of the CCO role and the issues at the organization¹⁸. At a minimum the CCO should have direct access to the board. It allows the CCO to undertake their role and responsibilities in a collaborative manner with the board’s confidence, the respect of management and enhanced transparency

While not all organizations may feel they can support the specific

role of a CCO, whether it is due to the size of the organization or a lack of resources, it is essential for an organization to thoughtfully assign the responsibilities that a CCO would normally retain to other member(s) of management within the organization and be committed to holding these individuals accountable for implementing and sustaining these activities in the absence of a CCO. It will be up to the board and management to decide if assigning these roles to members of management will achieve the same effectiveness in the absence of a CCO.

The CCO should report on a regular basis to the board and other members of senior management regarding the effectiveness of the compliance program based on measures such as the whistleblower program, employee surveys, and findings from investigations where applicable. The CCO should also send out regular communications to middle management and employees stating the importance of a strong culture of compliance and reinforcing the values of the company. Tools that a CCO can utilize to assess and report a company’s tone include the following:

¹⁸ Griffin, Aimee; MakingWaves Blog – The 2014 Ethics & Compliance Program Effectiveness Report: Reporting Structures and Tone at the Top; May 23, 2014.

a. Clear code of ethics

A good starting point for establishing tone at the top is to issue a code of conduct and an anti-bribery and anti-corruption policy endorsed by the board and included as part of the organization's strategy.

Organizations can potentially do a disservice to themselves by implementing vague policies or communications that leave room for misunderstandings or decisions with potential anti-corruption implications (e.g. gift-giving, facilitation payments) up to individual employees where their decision may undermine the intended message of the company, even if inadvertently. Management and employees must all be held accountable.

b. Whistleblower hotline

A whistleblower hotline provides another avenue of communication for all stakeholders, both internal and external. If promoted effectively, it can provide early insight into concerns that internal and external stakeholders may have that could be reflective of a poor tone at the top before these stakeholders escalate the concern beyond the control of the company.

Employees with the courage to step forward with ethical concerns must also be appropriately recognized and rewarded to help encourage others to follow suit.

c. An ear to the ground

It is critical for companies to understand how the organization is perceived by employees, customers, and other stakeholders of the organization by "keeping an ear to the ground".

Customers / other stakeholders

It is important to connect with customers outside the organization to understand how the culture of the organization is perceived by outsiders. This can be done via various methods, some of which may involve customer feedback surveys, social media, or the company hotline. With the prevalence of social media, valuable insight into a company's reputation can be obtained by reading what individuals are saying about the company in online media. Regardless of how an organization chooses to obtain customer insight, the CCO should consider what kind of customer feedback is being received or communicated and how, if at all, could this be impacted by the internal culture of the organization.

If customers or other stakeholders perceive the organization as lacking integrity or communicate significant criticisms and concerns about the actions and behaviours of employees, a positive tone at the top may be lacking or not effectively translating downwards to those employees



in customer-focused roles. Organizations should consider if these perceptions or criticisms are indicative of the need to take necessary actions to reinforce the ethical culture desired.

Employees

More than just customers and other stakeholders, CCOs need to connect with employees. Employee surveys involving questions around employee engagement, the perception of culture and management integrity can provide insight into how tone at the top is actually perceived. Do employees perceive the company values as merely a statement without intention or do employees feel that those in management positions “walk the talk”? An example of a survey tool which Deloitte has developed is the Deloitte Team Assessment which measures goals, people, behaviour and leadership and benchmarks these factors to effective teams.

The further away from headquarters, the greater the likelihood that the ethical message gets lost in translation. Organizations with internationally located subsidiaries or business units can often have a more challenging time establishing tone at the top if efforts aren’t made to engage the subsidiary or business unit.

Mergers and acquisitions can also pose a unique challenge. Using survey results, the CCO can also compare how various business units or subsidiaries compare and may help to identify areas of the business where the messaging may not be resonating or communicated as effectively and the CCO can put in place the appropriate procedures.

2.4. Mood in the Middle

“the one slice of the organization where CCOs fear the biggest gap between culture and values: middle management”¹⁹

There is often the misconception that tone at the top can be achieved with only the board and executive management making efforts at stating the ethical values and intended corporate culture of the company. Management and boards tend to under communicate values by a factor of 10²⁰. Middle management therefore plays a critical role in making sure that message is effectively reinforced with employees as they are the representatives of the organization that employees deal with on a day-to-day basis and are primarily their direct

¹⁹ In Focus: Compliance Trends 2014; A collaboration between Deloitte and Compliance Week; May 2014.

²⁰ Risk and Compliance Journal – Deloitte risk and Compliance – Wall Street Journal – How Boards Can Raise the Bar on Ethics and Compliance; October 23, 2014.

employees take their cues from corporate leaders. Thus, the DOJ and SEC consider the commitment of corporate leaders to a “culture of compliance” and look to see if this high level commitment is also reinforced and implemented by middle managers and employees at all levels of a business.”²¹ Middle management must not only clearly establish the tone in fraud risk management policy documents but they should also reinforce this tone through proper communication to their employees. Organizations should also pay attention to how middle management are acting, not only at work but also in their personal lives, as behaviour outside of work is generally representative of how they behave in the workplace. If middle management is not aligned with the board and executive management or not actively living the corporate culture and compliance program initiatives, the message being received by employees could be drastically different from what was intended.

2.5. Buzz at the Bottom

The buzz at the bottom can provide important insight into whether or not an organization has established and reinforced the ethical culture intended. Consider what employees are saying about management

pressures to meet performance expectations, ethical concerns around other management or employee actions, or how are they responding to the ethics and compliance initiatives such as training attendance.

It is important for an organization’s culture to create open lines of communication, to encourage employees to raise concerns without fear of retribution. Not only should there be an ability for staff to report incidences of fraud and corruption, but staff should also be held responsible for the following:

- ☐ Understand their role within the internal control framework
- ☐ Read and understand policies and procedures, including fraud policy, code of conduct, whistleblower policy as well as other operational policies such as procurement manuals, etc.
- ☐ Participate, as required, in the process of creating a strong control environment, designing and implementing control activities, and participate in monitoring activities
- ☐ Have, at least, a basic understanding of fraud and corruption and an awareness of the associated of red flags



²¹ FCPA – A Resource Guide to the U.S. Foreign Corrupt Practices Act; Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission; November 14, 2012; Page 57.

Organizations should create a seamless integration, beginning with orientation followed by continuous training on ethical behaviours including anti-corruption. Comments heard during training can be valuable in objectively assessing whether there is room to improve the tone at the top (i.e. are employees receiving the message that is intended?).

To enforce a culture of anti-corruption the organization needs to enforce a strong tone at the top so that employees have the confidence to do the right thing. Empowering employees by providing them with knowledge of the applicable regulations, policies and procedures, as well as case study examples and involving them in discussions regarding fraud and anti-corruption risks and mitigating controls will help entrench the culture. Embedding these activities throughout the year into the culture of the organization and not just paying lip service to the activity or following a check the box mentality will reinforce in employees the importance and commitment to ethical behaviour by the organization.

3. Ways that a company can establish and reinforce tone at the top

Beyond the roles described above, the board and executive

management help translate the “tone at the top” to a healthy “mood in the middle” by creating accountability. The organization must have “trickle down integrity”. Upper management must be just as accountable as front line employees.

Organizations can establish and reinforce tone at the top by embedding activities throughout their general everyday practices with more tangible actions than just training employees. For example, hiring employees based on their character, competence and chemistry can make it easier for these employees to buy-in to culture and help to develop a corporate reputation for integrity; hiring individuals that have a history of wrong-doing will not reinforce an ethical tone at the top. Other examples of ways that companies can establish and reinforce tone at the top throughout their general practices include:

3.1. Walk the talk

Despite the concept that “culture eats strategy for breakfast”, many organizations continually spend a disproportionate amount of time developing and improving their strategy, or celebrating financial successes, often assuming that a code of conduct or infrequent statements about acting ethically will suffice in setting up an ethical culture. Organizations must do more than just

communicate the importance of acting ethically and with integrity; executives and senior management need to “walk the talk”, on an ongoing basis, and in their personal lives as well.

Policies and messaging providing clear direction and processes for employees to take when encountered with ethical situations or situations of risk to the organization will assist in establishing the appropriate tone of the organization. However further to this, organizations must ensure that the messaging and processes are not contradicted by the actions that executives and senior management undertake when encountered with these same situations. If employees feel like the “rules” only apply to them, employees may become disengaged or take their own liberties when it comes to questionable decisions. Organizations must ask themselves whether or not executives and senior management are demonstrating the organizational objectives expected of employees.

A common challenge companies face, especially in areas where corruption concerns can be heightened is that legality doesn’t always mean ethical. Executives and senior management that maintain professionalism and avoid potentially compromising

situations go a long way in demonstrating the values of the organization to both internal and external stakeholders.

3.2. Reward for principled performance

Recognition and rewards should be aligned with desired values and behaviours. According to the “In Focus: Compliance Trends Survey 2014”, only 27% of respondents indicated that compliance is considered in the measurement of senior managers’ performance and discretionary compensation.²²

One of the supporting elements to obtaining buy-in to an organizations’ ethical values by senior management and getting them to “walk the talk” is by establishing goals involving ethics and compliance into their variable compensation plans. Incorporating targets involving anti-corruption or anti-fraud compliance, for example, will help to balance to pressure that senior management may feel to meet certain performance targets. Making the targets realistic and providing a reasonable balance to variable compensation between the two sometimes competing objectives, organizations can reduce the incentive to focus solely on financial performance metrics. Otherwise, if financial performance metrics are favoured by senior management

²² In Focus: Compliance Trends 2014; A collaboration between Deloitte and Compliance Week; May 2014; page 5.

over acting ethically, employees will have less consideration for the organizations ethical objectives as the tone trickles down the line.

Organizations should also consider the current and past ethical behaviour of employees being promoted into senior leadership roles or even general promotions. If these employees exhibit indifference or disregard for the ethical values of the company yet receive rewards or promotions, other employees may not feel that focusing on ethical values is a valued aspect of their performance when in fact it is a critical component.

3.3. Penalties or punishments

“If you give an inch, they’ll take a mile”

While organizations should reward principled performance, there must be consistent discipline of ethical violations or individuals whose actions are contrary to the organization’s beliefs. “Consistent discipline requires a well-defined set of sanctions for violations and strict adherence to the prescribed disciplinary measures. If one employee is punished for an act and another employee is not punished for a similar act, the moral force of the company’s

ethics policy will be diminished.”²³

While the punishment should fit the crime, organizations should consider the appropriateness of terminating employees who consistently or severely violate the rules or fail to abide by the compliance program (e.g. repeated failure to take anti-corruption training, failure to communicate conflicts of interest or enforce conflict of interest rules). Employees that show complete disregard for the culture of the organization by engaging in these consistent or severe violations can have a detrimental impact on other employees who may start to mirror their behaviour.

Organizations should also encourage vendors to follow the company ethics and compliance program, followed-up with consequences if they do not. Failure to hold employees and vendors accountable creates a tone at the top that is at odds with its intent.

People talk, whether you want them to or not. Unethical behaviour and how you respond will likely be widely known throughout the organization, therefore organizations must consider what messaging they want to send when disciplining, or not disciplining an ethical violation. Will it conflict or align with communicated values?



²³ Tone at the Top: How Management Can Prevent Fraud in the Workplace; Association of Certified Fraud Examiners



4. Summary

“Creating a culture of integrity begins with tone at the top, but it has to include the mood in the middle and the buzz at the bottom. . .

As important and essential as compliance is, in the struggle between culture and compliance, culture always wins”²⁴

Tone at the top is one of the most important elements that an organization needs to establish to maintain an ethical culture. An organization must maintain roles and responsibilities that build culture into the strategy. No one in the organization should be treated “more equal” and the board, and upper management should be held accountable to maintain the ethical environment. Tone at the top is a difficult element of an ethics and compliance program to measure - it isn’t tangible. Organizations shouldn’t assume they are doing a passable job; they should assess the factors discussed above and benchmark themselves against their industry peers and others of a similar size. Tone drives behaviour and is imperative to effectively managing organizational risk.

²⁴ Risk and Compliance Journal – Deloitte risk and Compliance – Wall Street Journal – How Boards Can Raise the Bar on Ethics and Compliance; October 23, 2014