Legal Aspects of Fraud

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THE LAWYER’S ROLE

- **Prevention**
  - Code of Ethics
  - Policy on fraud and other illicit activities.

- **Detection / Investigation**
  - Search and seizure activities at work.
  - Meeting with witnesses and/or the suspect.
  - Risk management – dismissals.
  - Collaboration and joint effort with police investigators and forensic accountants.

- **Legal Proceedings**
  - Civil recourses
  - Criminal recourses
Why is a lawyer required in the context of an internal fraud investigation?
THE LAWYER’S ROLE

To put the fire out:

- Specific knowledge and expertise in matters of fraud – when and how to stop the bleeding.
- Fraud management and risk minimization – dismissals.
- Urgent interventions – recognized expertise in extraordinary legal remedies.
THE LAWYER’S ROLE

The advantages of working with a lawyer specialized in matters of fraud:

- Immediate results
- Risk management / minimization of damages.
- Recovery of stolen funds and or property.
- Criminal record.
Occupational Fraud: Prevention
Create an environment suitable for preventing fraud

- Effective and operational internal controls.
- Background checks and screening of newly hired employees.
- Detection surveys and other targeted fraud detection procedures.
- Workplace monitoring
- Code of Ethics
- Ethics must be a founding pillar of the company culture.
- Policy on fraud and other illicit activities
Occupational Fraud: Legal Recourses
Certain legal proceedings

- **Anton Piller injunction**
  - Characteristics:
    - Sound evidence
    - Grave and serious potential or actual damages
    - Possession of conclusive evidence – risk of destruction
  - Advantages of this proceeding
  - Disadvantages of this proceeding

- **Injunction**
  - Characteristics
    - Appearance of right
    - Irreparable harm / Balance of inconvenience
    - Urgency
  - Advantages of this proceeding
  - Disadvantages of this proceeding
Certain legal proceedings

- Seizure before judgment
  - Characteristics
    - Property which the plaintiff has the right to revendicate - 734 Cpc.
    - Objective reason to fear that without this remedy the recovery of claim may be in jeopardy - 733 Cpc
  - Advantages of this proceeding
  - Disadvantages of this proceeding
  - Supplement: the “fear of peril” criteria in Seizure Before Judgment versus the “fear of disappearance or destruction” criteria in an Anton Piller Injunction

- Mareva Injunction
  - Characteristics
    - Common Law recourse
  - Advantages of this proceeding
  - Disadvantages of this proceeding
Certain legal proceedings

- **Bankruptcy Petition**
  - Characteristics
    - Acts of bankruptcy
    - Powers of a trustee in bankruptcy
  - Advantages of this proceeding
  - Disadvantages of this proceeding

- **Interim Receiver**
  - Characteristics
    - Urgency
  - Advantages of this proceeding
  - Disadvantages of this proceeding
Certain legal proceedings

- **Motion to name a judicial receiver (or a judicial sequestrator)**
  - Characteristics
    - By virtue of the Civil Code of Quebec
    - An act of bankruptcy is not required
  - Advantages of this proceeding
  - Disadvantages of this proceeding

- **Action for damages**
  - Characteristics
    - Fault, damages, causal link
  - Advantages of this proceeding
  - Disadvantages of this proceeding
Other Civil Recourses

- Motion for forced surrender and taking of possession to administer
- Motion to preserve evidence
- Discovery
- Oppression remedy of the CBCA
- Motion provided for in the *Act respecting the legal publicity of entreprises*
- Hybrid orders / Norwich / Combination of orders
Other Criminal Recourses

- **Criminal recourses - Complaint**
  - Characteristics
    - Criminal record
    - The Crown pursues and prosecutes
  - Advantages of this proceeding
  - Disadvantages of this proceeding

- **Criminal recourses – Access to information (Section 490 (15) Cr. Code)**
  - Characteristics
    - Parallel criminal and civil proceedings
  - Advantages of this proceeding
  - Disadvantages of this proceeding
Employee: Search and Seizure

- Respect of privacy principle
- Search of a desk, lockers, computer ...
- Seizure
- Assistance from police authorities
Question Period

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