

Address to Ontario Bar Association & Canadian Ethics Centre

“CSR, Business, Human Rights, & Sustainability”

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I. Drivers for CSR – from the realms of law, the market, and ethics, and the market

e.g. 90% of Canadian citizens believe CSR should be as important to companies as profit and shareholder value

e.g. 91% of Canadian consumers prefer companies that adhere to CSR standards

e.g. Canadian government (like many others) notes that CSR involves both voluntary and mandatory measures: “the full scope of information, voluntary, economic, and regulatory instruments”

- A. Significant Legal Developments in Canada and globally, to the point that CSR should not be seen as merely “voluntary” but is imbued with legal concepts and meaning (examples, including *Peoples v. Wise*)
- B. Soft Law and Ethical Norms crystallizing into Harder Law Norms (examples, including GRI)
- C. Culture and Values still vital complements to Legal and Market Incentives (examples)

II. The Key Legal Principles ordering the field (as discussed in the book) – Global, but with prominent Canadian examples in each area

- A. Integrated Decisionmaking (triple bottom line; systemic; across silos) – cf various definitions of CSR including Canadian government, Canadian BSR, Canadian Conference Board, leading Canadian companies, '94 Dey Report of Toronto Stock Exchange on Corporate Governance

1. Directors' Duties: permissive integration (cf. UK, Chinese, US, Australian, other approaches)
2. Concepts of Long-term Enterprise Value and "Responsible Citizenship" as opposed to short-term shareholder or management value
3. Role of due diligence and growing de facto safe harbors; limits thereof
4. Canadian CSR Implementation Framework

B. Stakeholder Engagement

1. Shareholder Proposals (e.g. HRIA's)
2. Case law e.g. *Mining World Canada v. Canada*
3. Various Soft Law Standards and Voluntary Initiatives (e.g. Responsible Care, FSC, etc)
 - a. Interplay and cross-references to hard law norms, as elsewhere
4. Implementation in Business Decision-making and Operations (e.g. Workplace H&S Committees)

C. Transparency: increasingly the norm – as with the 80% of Toronto Stock Exchange (TSX) composite index companies reporting on sustainability (steadily increasing)

1. As in US and elsewhere, several mandatory Enviro/Social reporting regimes in Canada
 - a. Securities Laws
 - b. Public Accountability Statements
 - c. CEPA NPRI
 - d. GGE
 - e. Others
2. Examples of voluntary initiatives and dynamic interplay with mandatory
3. Significant foreign and global developments on this score

D. Global Normative Convergence: Consistent Best Practices

1. Increasingly, companies (especially large public companies, with disproportionate impact in so many areas) subscribe to *highest* global standards (for reasons of administrative convenience, risk management, social expectations, etc) – whether at home or abroad
2. Not doing so can create legal liability as well as reputational risk, license to operate issues (legal and social), and other costs
3. Canadian examples, including C-298 and
4. Significant foreign and global examples

E. Prudent Risk Management: A Reasonable Version of the Precautionary Principle

F. Accountability: Canadian and foreign examples

1. Tort cases and statutory causes of action (e.g. ATCA)
2. Administrative liability
3. Global and Regional Mechanisms
 - a. E.g. Human Rights regimes
 - b. E.g. OECD NCPs
 - c. E.g. ILO Tripartite Declaration
4. Market Mechanisms

G. Community Investment: Lex Ferenda

1. But examples exist of mandatory developments even here
2. Consider e.g. de facto and de jure Impact and Benefit Agreements
 - a. Canada and beyond

III. Examples of Innovative Applications Driving Enterprise Value