

management ethics

Developing and Maintaining an Ethical Corporate Culture

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EthicsCentre CA announces its publication of the third edition of "Ethics & Governance: Developing and Maintaining an Ethical Corporate Culture" by Prof. Leonard J. Brooks and David Selley, two of the Centre's co-founders. This publication, launched on March 6, 2008, is one of the Centre's major educational initiatives and serves as a practical resource for business. While the book's primary focus is ethical conduct within companies and particularly publicly-traded corporations, it also applies to any organization - large or small - in any sector that seeks to instill ethics as a part of its decision-making process.

Professor Leonard J. Brooks is a Professor of Business Ethics & Accounting and Executive Director of The Clarkson Centre for Business Ethics and Board Effectiveness at the Rotman School of Management, University of Toronto. Professor Brooks has had a long and distinguished career in the field of business ethics and is a recipient of the Ethics in Action Award for Ongoing Social Responsibility. David Selley, FCA is a Public Accountant and a Past Chair of the EthicsCentre CA. Mr. Selley spent much of his career at Ernst & Young Chartered Accountants, where he specialized in auditing standards and methodologies. He has also served on the Board of Directors of Transparency International Canada.

Oscar Wilde summed it up with customary flair in Lady Windemere's Fan; "Experience is the name that every one gives to their mistakes." David Selley adds his own touch by asserting that doing the wrong thing usually causes trouble. If an organization errs ethically, the ramifications can be broad-reaching. Since the early 1990s there has been a growing realization that a supportive ethical culture - a culture

of integrity - is critical to an organization's success. Len Brooks' and David Selley's updated book **Ethics & Governance: Developing and Maintaining an Ethical Corporate Culture** provides an invaluable blueprint for organizations through practical guidance to the development of a culture of integrity as the core of governance reform.

Many successful companies had already established a culture of integrity before the Enron, Arthur Anderson and WorldCom scandals in the United States became front page news. For those at the leading edge in corporate ethical conduct, the formula was readily apparent; good ethics are good business. Good ethics can not only support a competitive advantage, but can also foster enthusiastic support among employees, customers and stakeholders. These successful companies were also aware that all employees - irrespective of position level - as well as company agents, customers and suppliers, need guidance about a company's values and integrity expectations. Guidance can ensure that decisions made are not only ethical but also serve to protect and further the company's strategic objectives, enhance a company's reputation and future profits and ensure sound risk management based on ethical principles.

The much-publicized corporate scandals presented a silver lining in that they ushered in actions to restore corporate credibility and public confidence in capital markets. The resulting governance reform also introduced the need for compliance with new legislation such as the Sarbanes-Oxley Act (SOX) of July, 2002. CEOs, CFOs and Boards of Directors were obliged to ensure that adequate and effective internal corporate controls were in place, both to protect

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the company and the accuracy of financial reporting. Brooks and Selley note that good governance now requires an assessment of a company's culture of integrity to be part of the risk management and internal control review processes.

There were lessons learned from other ethical situations including Union Carbide, Ford Pinto, Intel, Shell, Texaco, the Tylenol recall, Parmalat and more recently, Hollinger International.

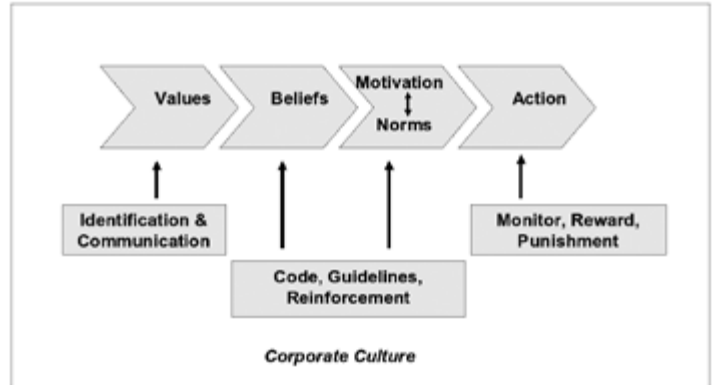
Canadian securities regulators have also adopted some of the U.S.

regulatory elements. Many Canadian companies and their auditors are now subject to SOX and Securities and Exchange Commission (SEC) regulations. The Toronto Stock Exchange adopted new rule changes at year-end 2002. New trends, including review of the independence of Directors, clarification of responsibilities, greater transparency, clarified legal liabilities of the CEO, CFO and Directors and independence of auditors have emerged. The new governance places a premium on reputation management, ethics risk assessment, corporate citizenship and mechanisms to improve ethics management

What is an ethical culture?

What constitutes an ethical culture and how does it work? What values define an ethical culture? In essence, an organization's culture is akin to corporate DNA - "the way we do things around here." It includes broader values and normative patterns that guide employee behavior. A corporate culture is the set of beliefs, norms and practices that are shared by an organization's members. A *culture of integrity* depends on the set of values that drives beliefs, norms and actions. The need to explore how to make corporate culture better remains a constant challenge. Brooks and Selley believe that developing and maintaining an ethical culture is a *key* determinant of stakeholder support and success. Ethical cultures are seen as

Figure 2.1
Organizational Culture Influence Chain



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important building blocks to help focus on and improve corporate governance.

Employee actions flow from beliefs and norms that are conditioned through an organization's mission statements, codes, communications and employees' own personal values.

Why does an organization need an ethical culture?

The answer is really quite simple - "It's Good Business". Brooks' and Selley's work emphasizes why building and maintaining an ethical culture is important to any organization, irrespective of its size and nature of business or service. The business case for creating and sustaining a culture of integrity remains strong. If an organization can successfully inculcate an ethical culture into the way it does business, it is highly likely that the company will be more successful than an unethical counterpart. In the post-Enron environment, personal and corporate legal liability for misdeeds have soared. If decision makers do not take into account the strategic significance of ethical and legal considerations in pursuing profits, they fail to appreciate the potential damage that may be caused to the company in the long run. Brooks and Selley assert that the pace and complexity of business operations continue to increase and in turn will place even greater reliance on building relationships and managing risks ethically. Increasing attention on



developing an additional point of reference for decision-making - an ethical corporate culture to guide employees to behave ethically - is essential.

Organizations are not only held accountable to shareholders, but also to stakeholders including employees, customers, suppliers, legislators and regulators and host communities. Stakeholders increasingly expect that their interests will be taken into account in return for their support. A *culture of integrity* is important for enthusiastic support among employees, customers and stakeholders to help maintain a productive environment that is aligned with business objectives and to sustain sales margin. A culture of integrity can serve as an effective recruitment mechanism in which talented individuals seek out ethical organizations and shy away from those with less than ideal ethical values. An ethical corporate culture does more than providing a frame of reference for employees, it can also improve the level of trust that employees have in the organization. A culture of integrity gives essential guidance about an organization's values or integrity expectations. These in turn help everyone within the organization to make decisions that protect the company's reputation and also to further its strategic objectives.

Can a culture of integrity *really* help an organization? Recently published studies including KPMG's Ethics Survey, 2005-2006 provide compelling evidence that an ethics program leading to the development and maintenance of an ethical corporate culture not only improves perceptions of behavior but also is critical to the ongoing success of a corporation. KPMG's survey compares corporations with and without ethics programs and finds that an ethics program improves perceptions or behavior based on the following statistics:

- Between six and 12 per cent *reduction* in observed misconduct or violation of values and principles in the prior 12 months.

- A range of nine to 16 per cent improvement in *prevention* of misconduct.
- Between 39 and 48 per cent improvement in comfort among employees in *reporting* misconduct to a supervisor.
- 27 to 46 per cent improvement in belief that appropriate *action* will follow reporting of misconduct.
- Between 43 and 54 per cent improvement in employee perception that the CEO and other top executives set the right "tone at the top."
- 37 to 49 per cent improvement in employee motivation to "do the right thing."

Sound risk management provides another compelling reason for an effective governance system based on an ethical corporate culture. Brooks and Selley assert that although between 10 and 20 per cent of employees will *never* bend the rules, steal or commit fraud and the same percentages will do so irrespective of any system to prevent such acts, the majority of employees – between 60 and 80 per cent – *will* bend the rules, steal or commit fraud *if they think that they can get away with it*. Without sound ethical guidance and related internal controls, organizations risk vulnerability to illicit acts from between 80 and 90 per cent of employees. With a sound ethical culture in place, that number can be dramatically reduced to between 10 and 20 per cent.

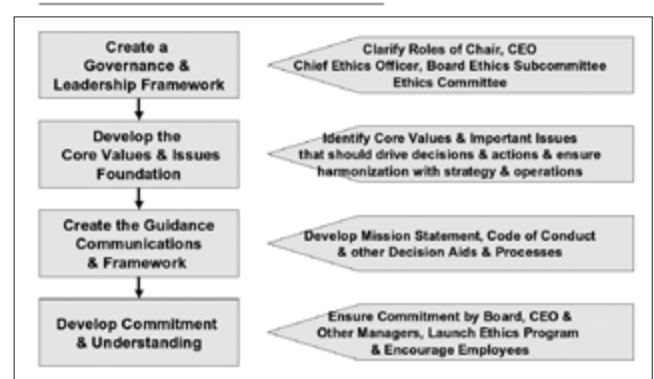
How does an organization create the "right" culture?

Just as doing the "right" thing is not always easy, designing, implementing and sustaining a corporate culture of integrity can be challenging. Brooks' and Selley's book helps organizations to determine whether or not their culture is sufficiently ethical. Pragmatic

checklists and guidelines provide essential steps for effective follow through and implementation. **Figure 3.1** outlines the key sequence in **Creating and Implementing an Ethical Corporate Culture**:

Clarifying roles: building a proactive ethical culture requires strong and committed ethical leadership - the "tone at the top". Demonstrated support from senior management is essential in creating and sustaining an ethical corporate culture. The CEO must endorse the process. These elements can not be left on the shelf but need to be put into practice on a daily basis. (See Figure 3.2 *The Leadership Component*).

Figure 3.1
Creating & Implementing an Ethical Corporate Culture



Research also indicates that to be perceived as an ethical leader, an individual must both articulate and demonstrate a corporation's expectations of ethical values. Speaking out is key. Without these actions, employees may believe that the bottom line is all that matters. Profits that are made also need to be made ethically as well as legally.

Identifying values and issues: while *values* are key "touchstones" in establishing patterns of motivation, norms and behavior among employees, an effective ethical system of governance requires more than "signposts pointing in the right direction." Elements need to be appropriately integrated *and* effectively

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monitored without trial and error. Without support and reinforcement mechanisms, Codes of Conduct have restricted utility. Ethical values and rules can be difficult for employees to both grasp and observe because the positives of an ethics program are often not intuitively self-evident. Brooks and Selley acknowledge that convincing employees requires “an all-out effort...Employees will not buy into an ethics program unless there is a strong, dedicated, well-resourced effort directed at developing and maintaining an ethical corporate culture.” Guidance and senior management support must underpin the organization’s strategic objectives.

Guidance: developing the *core values and issues* foundation (see figure 3.3) is the basis for cultural guidance. This can define important behavioral principles and guide how employees will act with the organization’s stakeholders. Ethical values need to be front and centre in establishing a culture of integrity. Many corporations choose core values related to *reputation-drivers* (trustworthiness, credibility, reliability, responsibility (see Figure 3.4); *hyper-norms* (honesty, fairness, compassion, integrity, predictability, responsibility; and *ethical decision criteria* (net positive utility or consequences of an action, observance of duties, rights and/or fairness and expected virtuosity. Integration of ethical values into the organization’s strategic and operational goals is the next essential step. Consistency is key to avoid confusion and to keep performance in line with desired objectives. Brooks and Selley explore ethical decision-making approaches and criteria (see figure 3.6) along with a *Value Desirability Framework* (see figure 3.7) to determine what specific value-added and desired/expected behaviors are required. Ethics issues need to be identified and articulated by the organization’s leadership. Important ethical issues requiring ethical guidance can be identified through various approaches, including environmental sensitivity scans, stakeholder consultation groups and ethics audits.

Effective communication of organizational values and objectives is also essential to minimize employee

confusion and to achieve employee understanding, commitment and support for desired behaviors. Brooks and Selley provide insights for creating guidance communications and a framework relating to the company’s mission statement, Code of Conduct and other decision aids. Jointly these can develop commitment to and understanding of the organization’s ethical objectives. They show how to integrate core values into strategic objectives and operational goals. Effective communication of values and building on input from all levels within an organization are also critical to success. Launching a new ethical corporate culture along with effective training are also keys in developing employee understanding and commitment to the underpinning of an ethical culture.

Are We There Yet?: when these steps are achieved, organizations need to work on reinforcing and sustaining the organization’s values and preferred practices as well as fostering compliance with its policies. Brooks and Selley discuss a variety of techniques, including reinforcement of values, communication and feedback mechanisms, management development, Ombuds offices, hotlines, whistle-blower programs and inquiry services, standalone and/or integrated ethics training, appropriate feedback and recognition and reward of desired behaviors. Ethical values may be spelled out in an organization’s Code of Conduct but unless they are also incorporated into performance evaluations and employee job descriptions, the Code will fall short of an effective process for dealing with ethical issues. **Reinforcement mechanisms** (see chapter six) are needed to ensure that employee commitment to the culture of integrity is sustained and renewed and that appropriate decisions continue to be made. It is important to develop an on-going monitoring/reporting process that helps to achieve employee and management compliance and to address violations of a code of ethics.

Corporate Social Responsibility (CSR): CSR is becoming increasingly important for many corporations as external stakeholders apply rising



pressure for transparency while exerting increasing influence over corporations to “make a difference” through CSR (see Appendix A: *CSR and Sustainability Reports, Indexes and Rankings*). Brooks and Selley discuss CSR and how it relates to ethical performance, along with frameworks for CSR measurement, potential comparators and the audit of CSR reports (see chapter seven).

Brooks’ and Selley’s work also guides organizations through the essential components in achieving a defensible ethical decision - including effective management of conflicts of interest, international operations, not-for-profit and small owner-managed organizations. The authors are clear to point out that “*The values chosen will determine whether or not employees are directed to behave in an ethical manner or not.*” By way of example, if employees believe that the bottom-line is paramount, they are likely to step over the line and act unethically. An organization needs key stakeholder support to attain and sustain its strategic objectives. Stakeholder interests need to be carefully accounted for. As well, Brooks and Selley assert that “*the degree to which a corporate culture is based on ethical principles that respect the rights of a multiplicity of stakeholders will determine its degree of ethicality.*” A self-assessment score sheet to assess this factor, along with Figure 2.3 detailing key stakeholder support is available at the accompanying website <http://www.ethicscentre.ca>

Developing an ethical corporate culture involves going beyond a minimum ethical performance approach that is achieved by setting the bar at a compliance or legal standard level. It is insufficient to put a sound ethics program in place and cross corporate fingers in the hope that it will work. While measurement, monitoring and reporting of performance will go a long way to developing and maintaining an ethical corporate culture, steps need to be effectively integrated and implemented. A well-designed, well-implemented corporate ethics program can reduce an organization’s risk of unethical and illegal actions by employees and agents while responding to the interests of the company’s stakeholders. Once in



From left to right: Len Brooks, Hélène Yaremko-Jarvis and David Selley.

place, how can an organization improve, manage and maintain its ethical culture? Brooks and Selley include a number of useful *checklists and practical tips*, to help organizations determine whether or not their culture is sufficiently ethical. Achievement of a corporation’s strategic objectives cannot be left to chance. Irrespective of an organization’s size, nature of its operations or services, achieving a culture of integrity can result in business success. An ethical corporate culture will not only provide a common frame of reference that influences employee behaviors and instills principles of management and control leading to desirable ethical outcomes, but also becomes the driving force of an organization.

The Canadian Centre for Ethics and Corporate Policy provides a companion website at <http://www.ethicscentre.ca> to assist organizations further in developing and maintaining an ethical culture. Click on the Resources section of the EthicsCentre CA website and go to Articles and Submissions to reach the companion website. This link also provides updates, news and commentary on governance and ethics matters. Also available at this site are downloads of checklists, tables and other helpful documents that are referenced in Brooks’ and Selley’s book. Complimentary copies of the book have been provided to the Centre’s members. Non members may order a copy of the book for \$10.00 (plus shipping and taxes) by contacting the Canadian Centre for Ethics & Corporate Policy either through its website or by calling 416-368-7525. ✱

Photo : David Simpson, Director InterPraxis



The Evolving Role of the Ethics and Compliance Officer



*The Conference Board of Canada published a report in November 2006 on *The Evolving Role of the Ethics and Compliance Officer*, authored by Zachariah Ezekiel. This report is part of a series of reports produced by the Conference Board on organizational ethics. The report draws from the insights of the Corporate Ethics Management Council, one of the executive networks offered by the Board. The Council's Senior Research Associate is Michael Bassett, and the Ethics Centre thanks Mr. Bassett for allowing us to assemble some of the Report's content for this newsletter. The full copy of the report is available through the Conference Board's e-library www.conferenceboard.ca (Vincent Power, Editorial Board, *Management Ethics*).*

Introduction

Many firms still struggle with the best way to manage the corporate ethics function, never mind how to staff it. Indeed, all too commonly,

candidates are thrust into the role with little preparation or training.

Ideally, senior executives selected to lead ethics and compliance programs should have significant and varied experience in the organization and in the industry. Knowledge of the industry can help in understanding the most important risks and in “sniffing out” problems more quickly. But

in certain situations – for example, serious legal or ethical problems in the organization, or employees who have a low level of trust in the existing management team – a search for an external candidate may be required. Whoever is chosen, that person needs credibility with senior management and the Board, and must simultaneously be seen as approachable, accessible and trusted by more junior staff.

In many cases, ethics or compliance positions are created in response to external pressures, rather than to a perceived business need. In other words, companies create ethics offices not because they feel they need one, but because they are forced to, either through regulatory or other legal coercion, or in response to the exigencies of dealing with increasingly jaundiced stakeholders. Indeed, establishment of an ethics or compliance office is often considered an end in itself, with relatively little thought given to what the office will actually do and what value it might add.

A second complicating factor is that many activities related to ethics – such as the management of internal financial controls or conflict

of interest – have traditionally been the purview of other corporate departments or functions. Even organizations with well-developed ethics or compliance programs may find that their legal, finance, risk management, internal audit and human resource departments are still managing and accepting ultimate accountability for these functions.

Engagement versus compliance

Another significant obstacle to a precise definition of the ethics function is that, even among ethics “believers,” opinion has, until recently, sharply diverged with respect to the approach that ethics programs should take. At the risk of oversimplifying, the two dominant – and often competing – perspectives are as follows:

- The **compliance approach** to corporate integrity management (sometimes called the “rules-based” approach) suggests that appropriate organizational and individual behaviour can best be encouraged by a concerted focus on ensuring strict adherence to legal and regulatory requirements and corporate policy. Proponents of this approach favour clear rules, unambiguous communication of those rules, controls to limit individual discretion and to monitor compliance, enforcement of rules and credible sanctions against rule-breaking. They are suspicious of appeals to shared values or ethical ideals, believing those concepts to be too subjective to be meaningfully measured or enforced.
- The **engagement approach** to corporate integrity management (sometimes called the “values” or “values and ethics” approach) tries to shape a “culture of



integrity” within a company by fostering defined organizational values and ethical standards and by encouraging and empowering employees to apply those values and standards in their decision-making. Proponents of this approach favour raising awareness of ethical issues through dialogue, training and other forms of support, and fostering a corporate culture that encourages (or at least tolerates) questioning about the ethics of particular activities. They are uncomfortable with an excessive reliance on rules, which, they argue, encourages conformance to the letter rather than to the spirit of the law. Proponents of engagement contend that rules cannot cover every eventuality and that organizations will want employees to recognize and manage ethical issues that may not contravene specific laws, regulations or policies. They further argue that too many policies, rules and controls can hamstring managers and diminish organizational performance.

Conference Board of Canada research found that a consensus is emerging among practitioners that ethics programs must incorporate both the compliance and the engagement approaches.

Corporations are increasingly taking an integrated “integrity management” approach to their ethics programs, incorporating both compliance and engagement activities. Evidence of this unified approach is found on both sides of the Canada–U.S. border.

The regulators weigh in

What is driving this emerging consensus about

the need to incorporate and integrate both ethics approaches? One important motivator is that regulators and the judiciary have, in effect, mandated a truce. Legal exigencies – notably the U.S. Sarbanes–Oxley Act of 2002 and comparable Canadian securities regulations – are making proponents of the engagement camp come to terms with compliance and controls whether they like them or not. Conversely, although many of the most publicized regulatory interventions have involved mandated compliance based activities, the positive effects of the engagement approach have not been lost on regulators.

For example, the U.S. Federal Sentencing Guidelines (to which Canadian companies with U.S. operations are subject) strongly encourage a hybrid approach. They define companies with effective ethics and compliance programs as those that “exercise due diligence to prevent and detect criminal conduct . . . [and that] . . . otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”

In Canada, regulators have also taken several steps to enhance compliance activities in publicly traded corporations. However, they are also increasingly paying attention to the importance of organizational culture for ethical business conduct.

Research suggests that an integrated approach works best

The ceasefire between the compliance and engagement camps is also being driven by a growing body of research and experience suggesting that a hybrid of the compliance and engagement approaches yields better

results than does compliance alone. Research by Linda Treviño and Gary Weaver (in “Managing Ethics and Legal Compliance”) found that, although compliance-type programs deliver some benefits in terms of reduced misconduct, values-based programs represent more powerful influences on employees’ attitudes and behaviors.”

Conclusions: The integrity management function

More and more Canadian corporations are adopting an integrated *integrity management* orientation to managing corporate ethics. The ascendance of this unified approach is being driven by a growing recognition—among practitioners, regulators and researchers alike—that neither a compliance nor an engagement approach can, by itself, yield optimum results.

However, although integrity management is increasingly being accepted as an integral corporate role, it remains a profession without its own professionals. The Conference Board of Canada report, *The Evolving Role of the Ethics and Compliance Officer*, provides a sample job description to help clarify the skills required by compliance oriented or engagement-oriented personnel. The Conference Board research was conducted in response the lack of clarity across organizations regarding the kind of people who are best qualified and suited to effectively lead and manage the unified integrity function.

In a future issue of Management Ethics, we'll look at an Integrity Manager's Profile and Job Description in an effort to help organizations more effectively recruit for this increasingly important role. ✪



EDITORIAL

Respect in the Workplace

By Flip Oberth

I don't get paid enough. Really, it's true. And I'm not appreciated. My boss always uses e-mail and never once drops by to ask me how I'm doing. I don't think that (s)he trusts me or recognizes the valuable contribution that I make to the organization. I never get positive feedback. He definitely has favorites and I'm not among them. Have you seen the way that he looks at me in meetings when I try to speak up? How he cuts me off mid-sentence? I'm sure that he distrusts me if I take a sick-day. I'm not given a shred of flexibility. I feel micro-managed every moment of the work day. Seriously, should I consider moving on?

Does this sound – or feel – familiar? Let's change the scene to Paradise. Setting aside its Hawaiian location for a moment or two, imagine the island in the television series "Lost" as *your* workplace. Before thinking "nice work if you can get it", consider one of the characters – Sawyer – and his seemingly endless list of nicknames for those with whom he interacts. Few are immune from his unrelenting insults. "Deep Dish", "Stay Puff", "Pillsbury", "Hit the Buffet", - to name but a few - are flung at an overweight Hurley who also suffers from a mental health disability. Each nickname is carefully selected to resonate with a particular individual's personal characteristics, creed and physical appearance: "Kato", "Mohammed", "Daniel Boone", "Mr. Clean", "Dr. Quinn", "Pos de Leon" and "Short Round". Each name, except perhaps for "Freckles" - Sawyer's love interest - is designed to both humiliate and demean the recipient. Even in Paradise, is Sawyer the equivalent of the abusive and harassing boss or co-worker? Is he the grown-up schoolyard bully?

Sawyer is smart. He already knows that "I was just joking" doesn't cut it. A particular brand of "humor" in the workplace can be misplaced. While the protagonist claims that the recipient is over-reacting and simply too sensitive, such lack of respect may constitute either personal harassment and/or harassment on a prohibited ground under corporate policies and provincial human rights codes. While larger corporations may have well-defined policies with respect to abuse, harassment and violence in the workplace, are they



translated into appropriate practices? Smaller companies and the not-for-profit sector may find it challenging to implement zero tolerance policies in light of pressing work demands and increasingly limited resources.

Employees often talk about respect and trust as matters of fundamental importance. When asked to define what respect in the workplace looks like, things can begin to get a bit fuzzy. It usually boils down to how employees *feel* they are being treated. Demonstrating respect is more than a management responsibility; it crosses all position levels in the company.

Flexibility, tolerance, showing acceptance to people around us, showing common decency to our co-workers and being considerate of others' legitimate needs are critical. Acknowledging that one's own behavior towards others has an impact is also an essential ingredient of a respectful workplace. To *get* respect, one also has to *give* respect. The immediate supervisor, the "boss", senior management, work colleagues and "Me" – we are jointly responsible for starting and sustaining the cycle of respect in the workplace.

What if the workplace "bully" is your boss? Some employees unfortunately become accustomed to the abuse and while not liking it, accept it as the norm while looking for another position. Short-term self-preservation becomes an act that condones an intolerable situation. Staff resentment gradually builds until one day someone erupts only to end up facing discipline. While there is no singular cookie-cutter solution as to what constitutes a "good" managerial style, an office bully - particularly when it is "the boss" - can not only affect employees' health and well-being but can also insidiously undermine an organization's operational strategies and business goals.

Should bosses be held to a higher ethical standard, given that they are in positions of authority with the power to grant or deny a benefit and presumably are to be role models? **Please send your comments to the editor@ethicscentre.ca** Watch for the next editorial for more on the difference between schoolyard bullies and those in the workplace, along with preventative and remedial strategies for the employer. ✨



A Message from the Executive Director



The 15 cm snowfall and ensuing commuting chaos on March 5, 2008 did not bode well for the Centre's long-awaited launch of the book *Ethics & Governance: Developing and Maintaining an Ethical Corporate Culture*. On that stormy morning I had visions of an empty room – and possibly even no speakers - for this special event which was to be the culmination of 18 months work by the authors on this book commissioned by the Centre.

As it turned out, even winter storms cannot deter those interested in corporate ethics. Indeed, attendance at the lunch actually surpassed the 85 who had pre-registered for the event! Professor Leonard Brooks and David Selley provided the audience with a brief yet informative overview of their book and, as promised, a complimentary copy of the book was provided to all in attendance. Copies were also later mailed to the Centre's corporate and individual members. (Copies are available for \$10 from lmarsh@ethicscentre.ca). Blair

Peberdy and his team at Toronto Hydro are to be thanked for their contribution to the success of this event through their marketing efforts, promoting the launch with the media and various organizations. We could not have done it without them.

In our previous newsletter, I noted that we were planning to increase the number of “member only” breakfast events. We have since held three breakfasts featuring (i) Professor David Shugarman, Director of York University's Centre for Practical Ethics on the *Federal Accountability Act* – co-sponsored with Transparency International Canada, Inc.; (ii) Georges Dessaulles, RBC Compliance Director, on *Insider Trading and Tipping – Managing the Risks*; and (iii) Louise Cannon, Senior Vice President, Compliance, Scotiabank on *Outsourcing Risk Management*. The excellent attendance and feedback has encouraged us to plan more breakfast events, beginning with one in September featuring Vince Power, Director of Corporate Communications at Sears, speaking on corporate charitable and community investment programs. Your suggestions for future topics for these practical and informal learning sessions are welcome.

On March 25 our Speaker Series guest speaker was Michael Jantzi, President of Jantzi Research. A leading Canadian spokesperson on socially responsible investing (SRI), Michael explored the evolution of SRI in Canada and internationally, reasons underpinning its growth, legal and fiduciary developments, and what the future may hold. Michael's power point presentation can be viewed on the Centre's web site under Past Events. Our April 17 Speaker Series lunch event – generously sponsored by First Canadian Title Inc. (and

sold out with 116 in attendance), featured Julie Dickson, Superintendent of Financial Institutions, speaking on ethics, incentives and risk management in the context of recent financial market turmoil. We will conclude this year's Speaker Series with our May 28 Annual General Meeting where we will welcome Mary Dawson, Q.C, Conflict of Interest and Integrity Commissioner, as guest speaker.

Those of you who visit our web site may have noticed that we have introduced a new calendar of events on which we are posting ethics related events of other organizations which may be of interest to our members. We are also inquiring into the cost of creating a “member only” section on the site to allow for communications with members and information exchanges among members.

In concluding this message I would like to extend a warm welcome to the Centre's three new corporate members: Ontario Power Generation, the Public Accountants Council for the Province of Ontario and Starbucks Inc. With nine new corporate members this past year, we have attained a record high number of corporate members for the Centre. This is very encouraging as our corporate members are key to the Ethics Centre's success as it is their financial support which allows the Centre to carry out its various activities promoting corporate ethics. Should your organization wish to discuss membership in the Centre, please contact me at 416-368-7525 or at hmyj@ethicscentre.ca.

I look forward to meeting you at our events and thank you for your support of the Centre.
Hélène Yaremko-Jarvis, B.C.L., LL.B.
Executive Director



Legislative Watch

Proposed Changes to Executive Compensation Disclosure

Robert Yalden and Tara Law - Osler, Hoskin & Harcourt LLP

The Canadian Securities Administrators (the “CSA”) have proposed amendments to the rules governing executive compensation disclosure in order to improve the transparency and consistency of that disclosure. The proposed effective date for the new requirements is December 31, 2008.

In releasing its proposals, the CSA noted that it believes that the rules governing the specifics of what must be disclosed are out of date and that current disclosure requirements do not provide investors with adequate information about the basis on which Boards of Directors make decisions about senior executive compensation. The proposed amendments are designed to provide investors with more complete information to assess the stewardship and governance of a company and to assist in their understanding of a company’s executive compensation practices.

Compensation Discussion and Analysis

The proposed amendments would require an issuer to include a Compensation Discussion and Analysis (the “CD&A”) section in its annual disclosure with respect to how senior executives have been compensated (typically found in a public company’s proxy circular). The purpose of the CD&A would be to provide a narrative overview that would help investors understand the disclosure that follows. A company would be required to explain all significant elements of compensation awarded to its most senior executive officers (the “Named Executive Officers” or the “NEOs”) for the most recently completed financial year, including:

- the objectives of the compensation program;

- what the compensation program is designed to reward;
- each element of compensation;
- why the company chooses to pay each element;
- how the company determines the amount (and, where applicable, the formula) for each element;
- how each element of compensation and the company’s decisions about the element fit into the company’s overall compensation objectives and affect decisions about other elements;
- any new actions, decisions or policies that were made after the end of the most recently completed financial year that could affect a reasonable understanding of an NEO’s compensation for the most recently completed financial year;
- *in a significant development*, benchmarking data used in determining compensation including the peer group and how companies were included and excluded in the selection criteria; and
- *in another significant development*, targets based on objective identifiable measures (or if targets are subjective, a description of the targets without providing specific measures).

The proposed requirements would also contain a confidentiality provision that may allow a company to exclude target levels that relate to specific quantitative and qualitative factors or criteria if disclosure would seriously prejudice the company’s interests. Where performance target levels are not disclosed, a company would however have to state what percentage of the NEO’s total compensation relates to this undisclosed information and



how difficult it could be for the NEO, or how likely it would be for the company, to achieve the undisclosed target levels. This exemption would not be not applicable if the target levels have been publicly disclosed.

The CSA states that companies should be prepared to explain any decision to omit target information on the basis that it would seriously prejudice their interests. Thus, while one might be able to omit information regarding the objective identifiable measures that went into the decision relating to, for example, the bonus awarded to a Senior Vice-President, Marketing on the grounds that revealing that information would disclose sensitive information about sales targets, the CSA is still calling for a discussion of the challenges associated with meeting those sales targets.

The Summary Compensation Table

The CSA also proposes amending the Summary Compensation Table (the “SCT”) that is included in executive compensation

disclosure to ensure that it calls for the following:

- the inclusion of a ‘Total compensation’ column for each NEO. The presence of a total compensation number is meant to facilitate the objective of communicating what the board of directors intended to pay each NEO. The CSA feels that a single compensation figure will also be helpful to investors as it will be easier to compare compensation of individual executives;
- disclosure of share awards and option awards based on the grant date fair value;
- a description of the methodology used to calculate the grant date fair value, disclosure of the key assumptions and estimates used for the calculations, an explanation of why the company chose that particular methodology, and an explanation of any difference between the grant date fair value and accounting fair value;
- removal of the ‘Bonus’ column in the

SCT since the CSA believes that the distinction between bonuses and non-equity incentive plans could lead to potentially misleading and confusing disclosure. All non-equity incentive plans, including bonuses, will be disclosed in the ‘Non-equity incentive plan compensation’ column;

- disclosure of only compensatory amounts rather than the change in actuarial value (which includes both compensatory and non-compensatory amounts) when calculating pension values; and
- narrative disclosure of any significant factors necessary to understand the information provided in the SCT.

The director compensation table would also be amended to reflect the changes made to the SCT.

Retirement Plan Benefits

Amendments are also being proposed to the defined benefit plans table found in executive compensation disclosure to reflect emerging Canadian best practices in this area. The table would now have to include a continuity schedule with respect to the accrued obligation to date. A defined contribution plans table would also be added to the Form that contains the rules governing compensation disclosure.

It is not yet clear whether the CSA will implement all of these changes in the form proposed, but it is clear that the CSA is concerned to see public companies provide more focused information that it believes will address investor concerns about some of the perceived deficiencies in the existing rules. ✱

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ETHICS CENTRE CA

Upcoming Events

**Vincent Power, Vice-President,
Corporate Communications,
Sears Canada Inc.**

Members Only Breakfast Meeting
Wednesday, September 17, 2008
8:00 am - 9:00 am

Bell Canada Office, 483 Bay Street,
Basement Level, Room 45

Mr . Power' s remarks on corporate charitable/community investment programs will focus on how to start them, how to engage with meaningful organizations, how much to give, potential pitfalls and communication to your publics about your programs.

Register on the Centre's web site at www.ethicscentre.ca or contact the Centre by phone: (416) 368-7525 or e-mail: lmarsh@ethicscentre.ca, noting any special dietary requirements.



**Courtney Pratt, Chairman & CEO,
Toronto Region Research Alliance**

Luncheon Series
Wednesday, November 5, 2008
12 noon until 2 pm

The Albany Club, 91 King Street East, Toronto

Register on the Centre's web site at www.ethicscentre.ca or contact the Centre by phone: (416) 368-7525 or e-mail: lmarsh@ethicscentre.ca, noting any special dietary requirements.

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