

The Perils of War Room Politics

BY MICHAEL W. SUTTON &
CORNELIUS VON BAEYER

Justice John Gomery's final report containing the recommendations from the Commission of Inquiry into the Sponsorship Program has been delayed until February, 2006. An interim report, still to be released on November 1, will outline the facts on the scandal. Michael W. Sutton & Cornelius von Baeyer provide some background thoughts on public-policy ethics.

A number of commentators have argued that the controversy over the sponsorship scandal is in fact merely a tempest in a teapot. Such commentators take exception to Auditor General Sylvia Fraser's (2003-4) criticisms of the way in which then Prime Minister Jean Chrétien's federal Liberal government handled the sponsorship program in response to the narrowly defeated referendum on sovereignty during the crisis of 1995. They further argue that the government actions were warranted and that the government of the day was justified in bending if not breaking administrative and perhaps legal rules and maintaining secrecy in the name of security rather than observing the principle of transparent governance.

Virtual War

The justification such commentators give for not following the rules is that after the near passage of the Quebec sovereignty referendum, a situation of virtual war

existed between the Quebec and the federal government, and that an extreme situation warranted extreme action. Charles Guité, an officer of Public Works & Government Services administering federal sponsorship program monies from 1996 to 1999, has also urged this near-war argument in defence of his actions.

Defence of the Realm

This kind of *ex post facto* defence of the realm reasoning has a long tradition in Westminster-style parliamentary democracies – Canada is one. Certainly this was the reasoning that justified the imposition of the *War Measures Act* by the Trudeau federal Liberal government during the October Crisis of 1970.

The reasoning basically is that given extreme conditions, the defence of the realm allows for the suspension of administrative and legal rules in an atmosphere of secrecy in order to preserve security. According to this line of reasoning, the demands of personal neutrality placed on civil servants in Westminster-style parliamentary governments properly filter out the substantive moral objections that persons occupying official roles might have to do what their role requires rather than do what is right and proper or follow precisely

In this issue:

- Cover: War Room Politics
- Editorial: Accountability at the Top
- Fighting Bribery and Corruption
- Recent Developments
- Upcoming Events
- Letter to the Editors

EDITORIAL

Accountability at the Top but Everyone's Responsibility

LARRY HEBB & JULIE WALSH
Co-editors

Throughout the summer and into the fall, the Centre has witnessed a time of transition. Christina Donely was elected Chair of the Board of the EthicsCentre at the Annual Meeting this past June. Christina joined the Board in 2002 and subsequently was appointed to the Executive Committee. Christina is Director, Employee Relations and Policy Governance for RBC Financial Group with global responsibilities for policy governance issues such as privacy, employment, human rights and labour law and codes of conduct. As Chair of the EthicsCentre, Christina's experience will certainly add value to her work in advancing the Centre's mandate. Looking forward to her new role, Christina commented, "In the current business climate, ethics and governance issues are high on the corporate agenda and the EthicsCentre can play a crucial role in disseminating knowledge and strengthening networks. As organizations explore what are the essential elements of developing and maintaining an ethical corporate culture, the Centre will be focusing its programs on exploring these fundamentals with our members." We anticipate that Christina will bring a lot of enthusiasm to this new agenda and welcome her as Chair.

This past summer also saw Howard Kaufman leave his role of Chair, following many years of committed service. Howard was elected Chair of the EthicsCentre in June 2002 and remains a longstanding Board member, having served in various capacities since 1996. On behalf of the EthicsCentre, we thank Howard for his thoughtful stewardship of the EthicsCentre over the past three years.

Other changes to the Board of Directors included the end of Chris Chorlton's term. Chris served as a director since 1996, including Chair from 2000-2002. The Centre welcomed one new Board member, Vincent Power, Director, Corporate Communications at Sears Canada. There were no other changes to the Board of twenty one. For a complete list of current directors, please visit the Centre's website at www.ethicscentre.ca

This time of transition extends beyond the Centre as we have observed a renewed focus on corporate social responsibility and accountability throughout the business community. In our last edition, Michael Jantzi and David Nitkin provided interesting insights into the challenge of CSR reporting and the evolution of this intersection of citizenship, sustainability and financial performance. In this edition, Susan Côté-Freeman comments on Transparency International's work in fighting corruption and the importance of a united movement in tackling this problem. Michael Sutton and Cornelius Von Baeyer contribute several observations on ethical imperatives and accountability in the public sector.

These articles provoke interesting questions at a time when corporations face increased scrutiny regarding the type of culture they espouse and unprecedented pressure for accountability for their public statements of corporate citizenship, integrity and CSR agendas. This summer, Canadian public companies were required, for the first time ever, to publicly file their codes of conduct with provincial securities regulators. Although this is a far stretch from requiring all companies to adopt codes of conduct (as the Centre had advocated), it is still a laudable development as companies cannot stray from their well-publicized codes without the threat of public criticism. While there has been a proliferation of codes of conduct and similar mission statements in recent years, this new disclosure requirement will make organizations think carefully about which principles for ethical behaviour they adopt and adhere to, as accountability for these principles will become a much more prominent issue.

Corporate integrity has been called into question in recent years and there is clearly a problem of aligning integrity, accountability and transparency. As we observe the new proliferation of codes and board of directors' mandates, it will be interesting to observe whether companies have identified core values that are measurable, and that are communicated from the top down. In essence, is there a culture that clearly values integrity and transparency of the values

it espouses? And how will this "culture" be expressed and developed? While all employees are responsible for ethics in an organization, there must be accountability at the top. A culture of ethics must be pursued as more than just oral statements or the publication of a code of ethics. It must be part of a clearly defined strategy that admonishes unethical actions and expects integrity as the

status quo. As most organizations have now adopted codes of ethics and established, or begun to establish, new internal systems for managing and monitoring corporate conduct and ethics, the danger now is complacency. Adopting these statements and systems is merely the beginning. While this signals a commitment to integrity and accountability, transparency about the inculcation of these

internal mechanisms in the corporate environment should be part of the new focus. Publication of espoused values should lead to more critical assessments of an organization's culture, both from within and from outside, and this assessment should help all realize that, while there must be accountability at the top, ethics remains everyone's responsibility.

CONTINUED FROM COVER

the requirements of administrative rules and law. (A related notion is that reasons of state may be used as a political justification for an immoral act. Machiavelli, for example, argued that reasons of state sometimes can and must override morality and religion.)

Are Wrongful Actions Ever Justified?

In his 1999 book *Ethics for Adversaries: The Morality of Roles in Public and Professional Life*, Arthur Isak Applbaum engages in a philosophical investigation of the following question:

Under normal circumstances, are individuals taking on professional roles (doctor, lawyer, politician, public servant, businessperson, scientist and others) thereby permitted to act in ways which otherwise would be considered wrong?

After detailed discussion of arguments that have been put forward for special moral privileges for professionals, Applbaum answers with a resounding, "No!"

Applbaum argues that public servants must make political philosophical judgments about both the justice and legitimacy of public policies, and that sometimes those judgments will justify disloyalty and disobedience. Political actors must not appeal to the authority of their role without exercising judgment about the legitimacy of the role and of the content of the actions the role prescribes.

No reasonable person will, we think, claim that in situations of war and near-war, certain liberties may not be taken, but it is

both disingenuous and dangerous to suggest that such action is anything more than a necessary evil to be resorted to in response to extreme situations. It is equally disingenuous and dangerous to claim that such action (sometimes referred to as war-room politics) is just another variation of business as usual (no matter how traditional and common this argument may be).

The question then becomes: Was the 1995 post-referendum situation such an extreme situation, especially in view of the fact that the Chrétien government's weak judgment and governance played no small part in leading to the crisis?

The more general questions are: Are Canadian governments really justified in becoming highhanded in order to correct their own missteps, mismanagement and bungling, and if so, in what sorts of situations? Shouldn't guidelines be established as to which situations qualify as extreme and which do not?

We should add here that we were somewhat perplexed and disturbed that the sponsorship scandal has frequently been perceived as an accounting problem (morphing into patronage, waste, and other concerns), while the greater question of accountability – that is, when extreme (and undocumented) action is justified and when not – has been largely ignored, or worse, has not been thought of or articulated very well at all.

The Way Forward in the Federal Sector

A distinctly Canadian values-based approach to ethics regimes and codes is being developed in federal government

circles, in contrast to the legalistic, compliance-based approach adopted in the United States and elsewhere in the 1990's. Continuing in the approach of John Tait, civil service leader, the Canadian approach requires a continuing examination, re-examination and discussion of government ethical values and ethical practices, what is called an 'honest dialogue', as well as the establishment of a values-based code of ethics for government.

Recently, a number of innovations have been introduced to advance the ethics file in government. Bernard Shapiro has been appointed as ethics commissioner reporting to Parliament, thus replacing ethics counsellor Howard Wilson who reported to the Prime Minister, a reporting situation which was loudly and often criticized by opposition parties and the media. In addition, a number of departments have created departmental ethics officers and the long-awaited *Values and Ethics Code for the Public Service* is finally in place.

However, even with these innovations we should not think that the ethics file is closed. Canadians should press for continuing attention to and discussion of ethics in government.

For additional materials related to this issue, see www.WorkplaceEthics.ca/article.html.

Michael W. Sutton is a consultant in organizational ethics. He may be contacted at msutton@comnet.ca. Cornelius von Baeyer is Past Chair of the Ethics Practitioners' Association of Canada (www.epac-apec.ca), and the Principal of Workplace Ethics Consultancy in Ottawa (www.WorkplaceEthics.ca). He can be reached at vonbaeyer@cyberus.ca.

Fighting bribery and corruption - Transparency International

BY SUSAN CÔTÉ-FREEMAN
Transparency International-USA

Bribery and corruption have existed since the beginning of time but in the past decade, their destructive consequences have been exposed and are now universally recognized.

It is estimated that 1.3 trillion dollars are lost every year in bribes. That sum appears staggering but it may only be the tip of the iceberg.

Bribery and corruption have existed since the beginning of time but in the past decade, their destructive consequences have been exposed and are now universally recognized. What was once merely thought to be the beneficial oil that greased the wheels of the economy is now seen as a major hindrance to development and a costly risk to business.

Transparency International (TI), the Berlin-based non-profit organization dedicated to fighting corruption, has played a key role in lifting the taboo of corruption. Founded in 1993 by Dr. Peter Eigen, TI now boasts a network of over 90 national chapters, including one in Canada, based in Toronto. Present on all continents, TI's chapters work in coalition with governments, civil society and business to raise the awareness of corruption and to develop meaningful ways of curbing corruption.

TI is perhaps best known for its annual Corruption Perceptions Index (CPI), a league table of nations ranked according to perceived levels of corruption in the public sector, but its efforts are much wider-ranging. For example, TI has been instrumental in the development of an international regulatory framework for fighting corruption.

In 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was ratified by the world's

biggest trading nations. Under the terms of this treaty, member states introduced new laws that, for the first time, make it possible to prosecute companies in their home countries for paying bribes abroad. To date, 35 countries (including Canada) have signed the Convention and passed implementing legislation.

In addition, all major countries in the Americas have signed up to the Inter-American Convention against Corruption which sets out a blueprint for reducing corruption in the public sector by criminalising a wide range of corrupt acts. Anti-corruption initiatives have also been undertaken in the European Union, Africa and the Pacific. The year 2003 saw the advent of the United Nations Convention against Corruption, the first global convention against corruption.

One of the goals of the OECD Convention is to create a level playing field but this can only happen if the Convention is enforced to the fullest degree. In a recent TI report tracking OECD Anti-bribery Convention enforcement, TI chairman Peter Eigen reinforced this point: "Effective enforcement of the OECD Convention is a critical step in the fight against international corruption. Because most major multinational companies have their headquarters in OECD countries, effective enforcement would substantially reduce the supply side of international corruption." The report indicated that prosecutions or investigations were underway in 15 of the 24 countries surveyed in the report. Canada was one of the 11 countries where prosecutions were underway.

TI firmly believes that any sustainable measures to eradicate corruption must include the support of business. This is why TI worked with a group of leading international companies to develop the Business Principles for Countering Bribery. Launched in late 2002, these comprehensive anti-bribery principles provide companies of all sizes with a framework for creating and improving internal practices and procedures to reduce the likelihood of bribery.

Since the Business Principles were launched in late 2002, TI has been disseminating them to corporate audiences around the world. In addition, they are being promoted by the United Nations Global Compact as a tool for implementation of the 10th anti-corruption principle and have been used as a basis for industry sector based codes developed under the aegis of the World Economic Forum.

The two principal tenets of the Business Principles state that

- The enterprise shall prohibit bribery in any form whether direct or indirect
- The enterprise shall commit to implementation of a Programme to counter bribery.

The working definition of bribery adopted for the purposes of the Business Principles covers abuse of office, breach of trust or illegal acts by an employee or a third party on behalf of the enterprise. Beyond the strict prohibition of bribery, the Business Principles make it a fundamental requirement to implement a Programme to counter bribery. This Programme can be tailored to the special needs and vulnerabilities of a company and should at the very least cover areas such as bribes, political contributions, charitable

contributions and sponsorships, facilitation payments, gifts and hospitality.

An important feature of the Business Principles is that they specify that businesses should apply their Programme to business relationships. How the Programme should be implemented is also outlined and addresses issues including the leadership role of the Board of Directors and senior management, development of a culture of anti-bribery among employees, effective communication of the Programme, the provision of appropriate training, maintenance and audit of effective internal controls and regular review.

The Business Principles have attempted to strike a balance between a compliance approach based on detailed rules and one which rests on clearly articulated values, without which companies are likely to fail in implementing anti-bribery policies and systems. For anti-bribery programmes to be successful, companies, in addition to complying with new laws criminalising foreign bribery, must embed a strong culture of integrity within their own organisations and ensure that it is adhered to throughout the organisation.

TI has produced a comprehensive Guidance Document to provide additional background to the Business Principles and is now working on developing a suite of supporting tools, which, upon its completion, will provide practical information for those wishing to implement the Business Principles and assess their performance. Once completed, the suite will also include a Six-Step Implementation Tool, a Self-Evaluation Module and an External Verification Tool.

The examples of corporate greed, dishonesty and corruption which are publicised in the media almost on a daily basis have shaken public confidence in business worldwide. Restoring that trust requires dedicated efforts to ensure transparency and integrity in business transactions and relationships. In addition

to complying with new laws criminalising foreign bribery, companies must create a strong culture of integrity within their own organisations and ensure that policies devised at headquarters are well understood and adhered to by employees throughout their operations in all company locations around the world.

While the business benefits of ethical behaviour are obvious to responsible companies, TI looks to all companies to consider these benefits and to help stem the flow of corruption. Not only is it in companies' own interest, but in the interest of the men, women and children whose lives are depleted by corruption.

The full text of the Business Principles is available on the TI web site at <http://www.transparency.org>. To obtain a copy of the Business Principles or for additional information, write to businessprinciples@transparency.org. More information about the Canadian chapter of Transparency International is available at <http://www.transparency.ca/>.

Volunteer Opportunity

The EthicsCentre is currently recruiting volunteers for its Communications Committee. Individuals with an interest in advancing business ethics issues and with experience in event promotion, public relations, media relations or website development should contact Tracy Parker at tparker@ethicscentre.ca or 416-368-7525 for more information.

RECENT DEVELOPMENTS

REPORTS ON REPORTING

Over the summer, two studies of Corporate Responsibility Reporting were released.

In a survey of the world's largest corporations, the **2005 KPMG International Survey on Corporate Responsibility Reporting** highlights a marked increase in the number of companies producing separate CSR reports over the past three years. The most dramatic increase can be seen in the financial services sector where the number of reports has doubled. When asked why they are reporting, the majority of companies surveyed referred to innovation and learning, employee motivation and risk management as the most motivating factors.

While the number of reports may be increasing, the survey highlights the need for better measures on CSR programs' results and resolution to the problematic issues of inadequate disclosure and transparency about the substance of such programs. Without these issues resolved, CSR reports do little but summarise CSR policies and programs, rather than provide information about how such initiatives are implemented or their results. Approximately 30% of reports include an independent assurance statement.

With a specific Canadian focus, the Certified General Accountants Association of Canada released a report in July 2005 entitled **Measuring Up: A Study on Corporate Sustainability Reporting in Canada**. The study surveyed a range of companies listed on the Toronto Stock Exchange and TSX Venture Exchange.

Without previous studies as a benchmark (as with KPMG), the CGA study did not measure increases in reporting. However, the percentage of respondents which provide some coverage of their CSR performance (49.8%) was similar to the KPMG study. In contrast to the KPMG International Survey, the most common motivating factors for CSR reporting included: regulatory requirements (49.5%), stakeholder pressure (21.4%) and corporate image objectives (12.0%). Barriers to reporting included costs and information overload.

Issues of credibility and transparency were also addressed in the CGA Report's recommendations which included calls for globally-accepted sustainability reporting guidelines (an evolution of the Global Reporting Initiative (GRI) guidelines) and third-party verification or assurance statements.

A copy of the KPMG report can be downloaded at http://kpmg.com/Rut2000_prod/Documents/9/Survey2005.pdf. Visit <http://www.cga-online.org/canada> for a copy of the CGA report.

RECENT DEVELOPMENTS

ISO 26000 – THE MAKINGS OF AN ISO GUIDANCE STANDARD FOR CSR

Progress is being made on the International Organization for Standardization (ISO) guidance standard for corporate responsibility designated as ISO 26000. Initiated in 2004, the first meeting of the ISO Working Group on Social Responsibility was held in Brazil in March 2005. The Guidance Standard is scheduled for publication in 2008.

ISO 26000 aims to be a guidance document with global relevance used to assist a wide range of organizations in establishing, implementing, maintaining and improving the way they address social responsibility. The Standard is not being designed as a management systems standard like ISO 9001 or ISO 14001 and is therefore not intended for use in certification.

The latest meeting of the Working Group was held at the end of September in Bangkok. For more information on the ISO 26000 please contact:

- Industry representative - Bob White, BRI International Inc., email: bob@bri.ca
- Consumer and Public Interest representative - David Simpson, Interpraxis Consulting, email: david@interpraxis.com
- Government Representative - Dr. Kernaghan Webb, Office of Consumer Affairs, Department of Industry Office, email: webb.kernaghan@ic.gc.ca

BOOK RELEASE

Magnificence at Work: Living Faith In Business by John Dalla Costa published by Novalis. Released October 2005

In *Magnificence at Work: Living Faith In Business*, John Dalla Costa offers a response to the demands for moral excellence and operational excellence that is required from today's managers. His earlier book, *The Ethical Imperative: Why Moral Leadership Is Good Business*, dealt with the challenges inherent in sustainability and competitive demands of global economic development from an organizational perspective. His latest book approaches the same challenges, but with a focus on the personal motivations for ethics with the premise that, in order to meet the demands and challenges of the current business environment, managers need to engage all employees' talents and capacities, including religious and spiritual as well as rational and emotional.

To those not comfortable mixing theology and business, Dalla Costa maintains that the challenges in today's business environment are too wide in scope to be the exclusive domain of any discipline: "especially in making moral sense of complex problems, we need all the tools and wisdom possible for ethical discernment."

FALL LUNCHEON SERIES

THURSDAY, OCTOBER 27TH, 2005

“Building Confidence: Lessons from the corporate and public sectors”

Guest Speakers: The Hon. Coulter Osbourne, Province of Ontario Integrity Commissioner and Lynn Anderson, Vice President, Marketing, HP Canada

Acting with integrity or “walking the talk” in today’s business climate has never been so important or so difficult as we deal with heightened scrutiny and pervasive cynicism. Hear from leaders in the corporate and public sector who are rising above the hype and building confidence among their diverse stakeholders.

Sponsored by:



THURSDAY, NOVEMBER 24TH, 2005

“Integrity in the Financial System”

Guest Speaker: Gordon Thiessen, Chair, Canadian Public Accountability Board (CPAB) and Former Governor of the Bank of Canada

Independent and high-quality auditing play a key role in building public confidence and creating viable capital markets. Gordon Thiessen will discuss these issues in relation to the CPAB’s role in overseeing auditors of public companies.

Both events will be held from 12 noon until 2 pm at the Ontario Club, 30 Wellington Street West, 5th Floor in Toronto.

Cost per luncheon: Members and Guests – \$40.00;
Non-Members – \$45.00; Table of 8 – \$270;
University/College Students – \$20.00 or Table of 8 – \$120.00

For reservations, please contact the Centre by phone: (416) 368-7525 or e-mail: tparker@ethicscentre.ca

LETTER TO THE EDITORS

I enjoyed the Spring Newsletter very much, especially David Nitkin's article. I work for a school board which has a very busy work schedule in spring and early summer, thus my late read of this publication. However, I see great need to implement this kind of perspective into the School Board organization. When school staff are encouraged to submit "Beefs and Bouquets" to school principals who have not been trained to detach from criticism and don't encourage front line empowerment, the result is often not positive. I am forwarding this newsletter to School Board Trustees so that our school board can get on with the ethical business of educating our children.

– Mary Hicks

managementethics is published seasonally by EthicsCentre CA. We welcome appropriate announcements, letters to the editors, short articles of 300 to 1000 words (which will be subject to usual editorial processes) and suggestions from readers.

managementethics is edited by Larry Hebb and Julie Walsh.

You can reach us at:

EthicsCentre CA

One Yonge Street

Suite 1801

Toronto, Ontario

M5E 1W7

Phone: 416-368-7525

Fax: 416-369-0515

E-mail: editor@ethicscentre.ca

Web site: www.ethicscentre.ca

Charitable registration number:
12161 1932 RR 0001

Back issues of **managementethics** are on-line at the Centre’s web site. The opinions expressed in **managementethics** do not necessarily represent the opinions of EthicsCentre CA. This newsletter may be reproduced without permission as long as proper acknowledgment is given.

Printing: Courtesy of The Canadian Institute of Chartered Accountants

Layout: Angela Georgiou-Borzellino

ethicscentre.ca
Canadian Centre for Ethics & Corporate Policy