

CANADIAN CENTRE FOR  
**ETHICS  
&  
CORPORATE  
POLICY**

**SUBMISSION TO THE CANADIAN DEMOCRACY & CORPORATE  
ACCOUNTABILITY COMMISSION  
APRIL 3, 2001**

The Canadian Centre for Ethics & Corporate Policy (the “Centre”) is pleased to make a submission to the Canadian Democracy & Corporate Accountability Commission. The Centre’s submission is focussed on the key discussion area “Making social responsibility and stakeholder considerations part of business.” We do not intend to address the other five very broadly-framed corporate accountability questions that you raise.

This submission will first outline the Centre and its mission. Previous and ongoing work of the Centre is directly related to making social responsibility and stakeholder considerations part of business. A brief background to several of the Centre’s initiatives aimed at furthering this goal will illustrate our approach.

**The Centre and its Mission**

The Centre was founded in 1988 dedicated to developing an ethical culture within organizations and its mission is “to champion the application of ethical values in the decision-making processes of business and other organizations”.

The Centre encourages organizations to take into account the impact of their actions on those who have a stake in those actions, in particular those whose interests are not already protected by contract or statute. These “stakeholders” may include customers, employees, lenders, shareholders and suppliers, and/or the community in which the organization operates or society as a whole. We refer to corporate behaviour which takes into account the interests of all of an organization’s stakeholders as “ethical” behaviour. While doing what we can to promote this behaviour, the Centre does not pass judgment on specific actions taken by organizations.

The Centre is an independent ethics centre and a registered charity. It has about 40 institutional supporters mainly from the corporate sector but also from the government, professions, NGOs and academic sectors. It has 70 individual supporters. It is governed by a volunteer 22 member Board of Directors, supported by a permanent staff of 2.

The Centre provides opportunities for business and other organizations to learn and share their knowledge and experience and to help in developing new approaches to creating an ethical culture or handling ethical dilemmas. The Centre offers a speaker series, workshops, conferences, and issues a regular newsletter *management ethics*. The Centre

works in partnership with other organizations such as the Conference Board of Canada, Transparency International, and the international Caux Round Table.

### **Corporate Social Responsibility and Attempted Legislative Change**

The public's expectations of leadership by the business community have developed significantly beyond the traditional measures -- in largely financial terms -- of corporate success and corporate community contributions. Now business leadership is also being measured in terms of an environmental responsibility as well as social responsibility, e.g., responsibility in terms of human-resource management practices and human rights, and in terms of relationships with local communities. The development of these expectations by the public has been particularly rapid during the past dozen years or so since the Centre's founding.

Since the mid-nineties, the federal government has been engaged in a major process of updating the law regulating federally-incorporated companies. This is the most significant update since the law -- the Canada Business Corporations Act or CBCA -- was first developed back in the early 1970s. And, with the Centre's focus on corporate social responsibility, the Centre has been attempting -- but so far unsuccessfully -- to persuade Ottawa to enact a "black-letter" statutory law provision acknowledging the importance of corporate stakeholders that are not shareholders. In 1996 and again in 1998 and 1999, the Centre proposed the addition to the CBCA of a clarifying provision regarding directors' and officers' duties -- particularly their fiduciary duty to act "with a view to the best interests of the corporation". The provision would *permit* -- but *not require* -- directors and officers in their decision-making to consider the interests of stakeholders who are not shareholders in circumstances where the interests of the non-shareholder stakeholders might appear to conflict with those of shareholders. But -- recognizing higher responsibility to shareholders than to non-shareholder stakeholders -- our provision would also state explicitly that it would not create any duties by the corporate decision-makers to the corporation or to non-shareholder stakeholders, or give rise to causes of action.

The Centre's proposed provision would seek to redress the concern expressed by decision-making corporate leaders who in many circumstances are uncertain about their entitlement to take the interests of non-shareholder stakeholders into account. Of course, the primary corporate objective is well understood to be to maximize share value for shareholders -- and this often seems to imply a focus on short-term profitability versus longer-term success. While we must acknowledge that, although the corporate leaders' fiduciary duty is to act in the best interests "*of the corporation*" rather than "*of shareholders*", courts and commentators have tended to equate the corporation's interests with those of shareholders.

We believe that our proposal would reflect the modern reality of how successful corporations are managed. Today's decision-making directors and officers are actively concerned about meeting all legal requirements but, as indicated above, are often uncertain about the permissibility under their fiduciary duty of taking the apparent interests of non-shareholder stakeholders into account.

Our proposed provision appears to fall within the ambit of the second of the corporate accountability questions raised in your discussion paper, and we note that you have reproduced the latest draft of our proposal to Ottawa in the box on page 33 of your paper. At the present time a major CBCA amending bill -- the culmination of the statutory review process that began in the mid-nineties -- is in discussion in the Senate's Banking, Trade and Commerce Committee, and the bill will probably become law later in the year; it does not include the Centre's proposed clarification provision or anything substantively similar.

The prospect in the near future of a legislative change such as we recommended seems doubtful. Some have argued that such a change in legislation is not required to facilitate the consideration of non-shareholder stakeholder interests. Perhaps the Commission might undertake or finance research for its report on the impact of the CSR provisions in the US and UK in sensitizing corporate leadership to the need to balance shareholder and non-shareholder stakeholder interests. And perhaps research also on the effectiveness of directors' defences to claims by shareholders based on CSR issues.

### **Business Ethics “Summits”**

In 1999 the Centre initiated the first Canadian Business Ethics Summit. This event was co-hosted by the Centre, the Conference Board of Canada and the Globe & Mail.

This event brought together experts in the field of ethics from all over North America and Europe. During the two days of the Summit, these people discussed issues facing the ethics community. Participants identified a number of barriers including: lack of common measures and standards; basic confusion on even the meaning of words such as “ethics”, “values” and “stakeholders”; some business leaders remain skeptical of the benefits of corporate social responsibility; and many people entering the work force have had no exposure to business ethics. Working groups were developed to review and develop work programs along four themes to address these issues.

The four themes identified by the Summit were:

1. Develop common measures and standards for business ethics. (A Corporate Social Responsibility “CSR” Index)
2. Develop a common language and framework for business ethics and corporate social responsibility.
3. Develop the business case for investing in an ethical orientation.
4. Develop improved education and training in business ethics.

Volunteers started to research and develop these themes and brought their initial findings back to the 2000 Canadian Business Ethics Summit in November. The Summit in November 2000 was named "Reality Check". This was because we wanted to check the direction of the work being carried out with business leaders. The 2000 Summit

attendees included representatives from business, academia, government, and non-government organizations, as well as ethics experts. At the 2000 Summit, we asked the leaders to comment on the direction of the themes being carried out by the volunteer working groups.

### **Summit Initiatives Underway**

The first theme, developing common measures and standards for business ethics, is being developed through a co-operative effort of the Conference Board of Canada and the Canadian Centre for Philanthropy. Along with an advisory committee comprised of representatives of the business community, the Conference Board of Canada and the Canadian Centre for Philanthropy through George Khoury and Chris Pinney respectively are developing benchmarks to promote the measurement of a company's performance in CSR. This work has been described further in the submission to the Commission by the Conference Board of Canada which we are also pleased to support.

Professor Morley Lemon of the University of Waterloo along with Michael Deck of PricewaterhouseCoopers is leading the second theme, developing a common language. Professor Lemon and his team are collecting numerous words and phrases commonly used in the ethics field and working on developing and codifying these words and phrases to clearly communicate the intention of the dialogue.

The third theme, developing the business case for an ethical orientation, is being led by Steven Cross, CEO of Absolutely Diapers. He, along with his team of volunteers, has developed a substantial amount of evidence to support the case for business investing in an ethical orientation. A copy of a report on the work to date is attached. This project is now at the stage where funding will be sought to provide for targeted marketing and promotion of the business case.

The fourth theme, developing improved education and training, is being led by Jim Ridler, an ethics educator at Queen's University. This theme recognizes that while it is important to train people already in the workforce, education in business ethics must be made more available in universities and the public school system. Jim Ridler has brought together a team of academic and business people who are conducting a survey on the current status of teaching business ethics in Canada. They will then build a database identifying current business ethics teaching and training in Canada, leading to a vision for the future and a plan to get there.

The Centre is pleased to be able to help champion these efforts and wants to impress upon the Commission that most of this work is being carried out by volunteers from business and academe to champion ethical business practices in Canada. In some cases, particularly with respect to the education and training initiative, considerable funding will be required.

A copy of "Reality Check, Business Ethics in the Real World' is attached as is a copy of a Globe & Mail ROB Supplement in March 2001 which talks about the 2000 Canadian

Business Ethics Summit and which was designed to help raise the awareness of business ethics.

## **Leadership**

While the Centre believes that some good progress has been made in developing a greater awareness of the need for corporate social responsibility, it also believes associated desirable behaviour could be greatly accelerated by the provision of stronger role models, both organizational and individual. This is largely a function of leadership and example across all sectors whether it is business, government, or politics.

Public expectations regarding the ethical behaviour of organizations are increasing as society evolves. It will be a challenge for organizations to keep up with public expectations let alone get ahead of the pack.

The Centre believes that there is a need for a cross-sector initiative to bring leaders together to discuss ways in which leadership behaviour can be encouraged and recognized. For its part, and as an example, the Centre is creating an Advisory Council of business and community leaders to provide advice to the Centre and to facilitate discussion on topical issues.

## **Conclusion**

The Centre believes that there is growing awareness amongst corporations of the need to demonstrate corporate social responsibility. There is considerable work being undertaken, some of it in its infancy, within corporations and by voluntary organizations such as the Centre to pursue that goal.

While some statutory umbrella that would encourage corporations to consider the interests of non-shareholder stakeholders in the decision-making process would be useful, it seems unlikely that this will occur in the short-term. This would suggest that the Centre's strategy of encouraging voluntary action is both pragmatic and appropriate. It may also suggest a role for government in promoting such voluntary action by a variety of measures that might include the provision of some funding to organizations such as the Centre.

The actions of the Centre outlined in this submission should be considered as ways to accelerate the pace of making social responsibility and stakeholder considerations an integral part of business, and we hope may help the Commission in identifying other opportunities.

Attachments to this April 3, 2001 submission include:

- Centre Membership Package
- Summit Summary
- ROB Supplement
- Business Case.