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Management Ethics [Winter / Spring 2016]

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management ethics

IN THIS ISSUE

Message from the Chair

Crossing the floor: Principle or Opportunism?

Hershell Ezrin & Jesse Freedman

The ABC's of psychological safety in the workplace

Dr. Georgia Pomaki and the Manulife Mental Health
Specialists Team

*Conflict of interest and the perception of conflict of
interest – new boundaries for Canada's lobbyists?*

J. Stephen Andrews



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Canadian Centre for Ethics & Corporate Policy

Message from the Chair

BY ROB TIMBERG

Since this is the first issue of the newsletter for 2016, I would like to take the opportunity to wish everyone, everywhere, a Happy New Year. I sincerely hope that the year will be happy, healthy and safe for all.

The beginning of the new year provides an opportunity to look back at the year that was, and a look forward into the year to come. Last year, 2015, saw significant change at the Ethics Centre, and 2016 promises more of the same.

In 1997 an extremely talented lawyer joined the Board of Directors. Hélène Yaremko-Jarvis remained a director until November 2006 when she stepped down to accept the position of Executive Director. She became the face of the Ethics Centre, and the success of the organization can be attributed almost entirely to her tireless efforts to serve the organization and promote ethical conduct in business, and her unquestioned integrity. But at some point all good things do come to an end, and in May of last year Hélène retired. She will be sorely missed.

Fortunately for the Ethics Centre, Neil St. John accepted our offer to become the new Executive Director. Neil has been Corporate Secretary & Associate General Counsel of Interprovincial Pipe Line Limited, Corporate Secretary and General Counsel of Price Waterhouse Coopers LLP and its predecessor Coopers & Lybrand, Director of Government Relations for the Canadian Public Accountability Board (“CPAB”) and most recently until his retirement in 2014, CPAB’s Corporate Secretary and General Counsel. He was also both Price Waterhouse Cooper’s and CPAB’s Chief Ethics Officer and Chief Privacy Officer. We are looking forward to great things from Neil.

A further significant development also occurred last year. The Board of Directors undertook a comprehensive review of its corporate governance practices under the leadership of Ken Fredeen, Chair of the Centre’s Nominating and Governance Committee, and General Counsel and Secretary at Deloitte LLP. As an organization dealing with ethical issues, it was considered vital that the Centre’s governance practices be both leading edge, and efficient and nimble. The review caused the Board to agree to reduce its size from 25 Directors to a maximum of 16, minimum of 12, as well as to agree on other changes. As I write this, plans are underway to seek the approval of members to implement the changes so that they will be in effect for the Centre’s AGM in May.

Looking forward into 2016 at other significant matters, the Centre has lined up an outstanding program of events for the first half of the year. By the time this newsletter comes to print, our first breakfast event of the year will have taken place. The January 26 event, which is being held in association with the Human Resources Professionals Association of Ontario (Toronto chapter), has attracted an unprecedented turnout for a breakfast event – 100 attendees have signed up and more are on the waiting list – and features Prof. Rick Hackett from the DeGroote School of Business and doctoral candidate Raymond Chiu. They will discuss their work on developing a critical and practical framework for building ethically focused staffing strategies in organizations. The Ethics Centre recognized the importance of their research several years back when Raymond was awarded the Centre’s 2012 Graduate Scholarship.

Even further out, the Centre is fortunate to have lined up Mr. Justice Frank Iacobucci, retired justice of the Supreme Court of Canada, as the speaker at our AGM in mid-May. While this will date me, back in the fall of 1972, I had just entered first year at the University of Toronto Law School. Prof. Iacobucci, as he then was, was known throughout the School as the professor you had to have for your business law courses. His ability to teach, and to speak, were almost legendary. Do not miss this event. You will be disappointed if you do.

A key component of the Centre’s work focuses on offering breakfast and luncheon events on ethical business topics to members and non-members alike. The events I’ve mentioned above are but two of many proposed for the first half of the year. The quality of our program is entirely the result of the hard work of our Events Committee, under the chair of Mark Crestohl, Canadian Labour and Employment Counsel at Accenture Inc. We owe them our thanks.

In closing, I’m sure we have all read Gandhi’s 7 deadly sins, sometimes referred to as 7 dangers to human virtue. Number 4, which is relevant to our work, is often stated as: Commerce (Business) Without Morality (Ethics).

Yours in ethics,



ROB TIMBERG
Chair

Crossing the floor: Principle or Opportunism?

BY HERSELL EZRIN

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AND DISTINGUISHED VISITING PROFESSOR,
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INTERN GLOBAL PUBLIC AFFAIRS AND
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In the run up to the October federal election, politicians of all stripes continued to emphasize trust and values as one of the motivating factors affecting voter decisions. In the Parliamentary system, nothing appears more likely to relate to voters' views about these ethical intangibles than the issue of loyalty – to a constituency, a party and a platform.

Despite running as individuals, politicians understand that they represent a team and their ultimate success or failure depends upon the team's performance.

When a politician crosses the floor, either to another party or to sit as an Independent, pundits often comment upon the relative rarity of such a move. That reasoning is explained by an outpouring of analysis, usually criticism, highlighting the crass and unprincipled political motives of the individual for leaving a party, as well as reflecting on the party they are joining. And some high profile cases have certainly underscored this thesis.

When Belinda Stronach switched parties in 2005, a year after she had run for her party leadership, thereby preserving the delicate voting balance in Parliament, she cited worries about blind partisanship and Conservatives allying themselves with the Bloc Québécois in a budget vote. When asked about the impact of Stronach's switch on the future of his minority government facing a critical budget vote, Paul Martin's succinct response as a leader who had instantly appointed Ms. Stronach to a Cabinet position was "I can count".

In 2006, a scant two weeks after being elected as a Liberal in the general election, David Emerson shocked constituents by crossing the floor to sit as a Conservative and to serve in Cabinet again.

Who can forget the public reaction to the sight of the Wildrose leadership jumping ship to the provincial Progressive Conservatives in Alberta just a few short months ago? The Globe and Mail reported in mid-

December, 2014 that the defections "cemented a partnership that could change Alberta's politics for the next generation." It did, but not the way the Globe reporter expected.

Eve Adams serves as the latest example when she moved from being persona non grata for re-nomination as a Conservative to seeking a federal Liberal nomination in Toronto. Here Justin Trudeau's pledge to keep open party nominations has been put under a microscope.

"THE FIRST FACTUAL MISCONCEPTION IS THAT MOST MEMBERS CROSS THE FLOOR TO GAIN POLITICAL REWARDS FROM THE GOVERNMENT. IN FACT, JUST OVER A QUARTER WENT TO GOVERNMENT FROM THE OTHER PARTIES. ABOUT 25% WENT FROM GOVERNMENT TO ONE OF THE OPPOSITION PARTIES WHILE ANOTHER 30% SAT AS INDEPENDENTS AT LEAST INITIALLY."

How common are such changes? What can we learn about the reasons for them? Is there a balance between principle and opportunism in such choices? And how much impact do these so-called anomalies have on the public's perception of political ethics as well as the electability of those who move? Are the politicians viewed as betraying the electors who put them in office swiftly punished in the next election?

Going back thirty years, some 165 sitting members have

left their initial party at either the federal or provincial level (not counting the PC/Alliance merger); some have moved between those levels of government. Roughly half of the changes occurred at the federal level. But in doing a detailed analysis for why these politicians switched, there emerges a lengthy list of complex reasons why these changes occurred. Crass opportunism (a promise of getting rewarded quickly on the government side or enhanced electoral prospects) seems much less an incentive than principle, leadership and policy concern.

The first factual misconception is that most members cross the floor to gain political rewards from the government. In fact, just over a quarter went to

government from the other parties. About 25% went from government to one of the opposition parties while another 30% sat as independents at least initially. 15% (a third from government) left to form new parties including the Bloc Québécois, Action Démocratique, and the Saskatchewan Party for example. Alberta, Québec and Saskatchewan exhibited the most provincial movement, with Ontario and BC not too far behind.

Sometimes members (around 5% of the total) were dismissed by their old party for some real or perceived moral failing; but over half of the total kicked out had been critical of the leader, the party or a particular policy. This number does not include 13 members of the Canadian Alliance who had been critical of the direction taken by Stockwell Day and were either suspended or resigned to sit as Independent Alliance members but who subsequently returned to the merged new Conservative party. Of the 40% who left their party voluntarily, a third disagreed on policy, another third over concerns with the leader, while almost 25% left either because they lost their party's nomination race or had lost the party leadership nomination.

The irony is the Westminster system the public bemoans as making backbenchers no more than trained seals under the thumb of a central authority also sees principled individuals choosing to make difficult decisions at the expense of their original political position.

Do these floor crossings help or harm public trust in the ethics of the current political office holders? Were those who switched rewarded or punished in the next election? No single hypothesis appears sufficient. Of all those running for re-election, more than 50% of those who switched were re-elected. That includes two politicians who had previously switched parties and then became Premier leading a different party (Quebec and the Yukon). Of the others who decided to run for re-election, around 5% did not even win their nomination bid. So it is fair to say that the electorate has displayed discernment on whether unique circumstances applied in virtually every case. Comfort to both those who feel they were switching for principled reasons as well as reinforcement for those who believed the lack of loyalty would evoke quick punishment. There remains a need for more research about the impact on the public's ethical perspectives in this area.

This issue of floor crossing and ethical leadership of politicians also has to be judged in a broader public opinion context. Here the ethical challenge is much clearer. In a recent study by the Jim Pattison Ethical Leadership Program at Ryerson's Ted Rogers School of Management, over half of Canadians surveyed do not

trust politicians to behave ethically in their roles as compared with 13% who believe they do.

The source of this paucity of ethical leadership is also clear. According to the latest Pattison study in October 2014, 63% of the Canadian public agree with the statement that politics is corrupting rather than believing that only unethical people go into politics. That is why by a large majority, Canadians believe that politicians frequently engage in unethical acts, break election promises, lie to Parliament and the media or spend tax dollars to buy votes.

In this context, why would floor crossing be any different in its perceived impact on public trust? The flurry of public attention promoted by negative media coverage colours what the public thinks about floor crossing and exacerbates their already negative opinions about political ethics. And there are certainly enough cases of self-promotion and self-interest to fuel those opinions. 🍁



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The ABC's of psychological safety in the workplace

DR. GEORGIA POMAKI
AND THE MANULIFE MENTAL
HEALTH SPECIALISTS TEAM



Many Canadians will experience a mental illness in their lifetime and many more will be directly impacted by mental illness of a family member, friend, or co-worker. The associated cost of mental illness to employers is far reaching and extends beyond the costs associated with absenteeism or extended absence from work.

These costs include reduced productivity and innovative or creative capacity, poor interpersonal relationships, as well as increased incidence of errors and accidents.

As a result, the notion of psychological safety has become a concept embraced by employers who are looking for ways to decrease the incidence of mental illness and associated costs to their workplaces.

PSYCHOLOGICAL SAFETY

Psychological health refers to a person's ability to think, feel, and behave in a healthy way at work and away from work. Just as physical hazards can pose a risk to physical safety, psychological hazards are risk factors which can have an impact on psychological health. The first step in working toward a goal of obtaining a Psychologically Safe workplace is to identify and reduce psychological hazards.

Common psychological hazards include:

- Perceived high workload
- Lack of control or autonomy in how work is done
- Lack of support
- Perceived lack of respect
- Unclear, conflicting or changing expectations

BURNOUT

Prolonged exposure to psychological hazards such as these can have a cumulative effect on psychological health and can precipitate burnout and in some instances, mental illness. Job burnout may coexist with more severe mental illness and disability, and it can increase the risk for musculoskeletal or cardiovascular illnesses. It is estimated that between three per cent to seven per cent of the working population may experience severe burnout. The signs of burnout are similar to the signs of depression but may be less severe or shorter lasting.

Common signs of burnout and depression include:

- Fatigue
- Change in appetite
- Change in sleep patterns
- Loss of motivation
- Feeling of detachment
- Feeling helpless or hopeless
- Decreased satisfaction or sense of accomplishment

PSYCHOLOGICAL HAZARDS OR STRESSORS CAN IMPACT THE WAY WE BEHAVE

Changes in behaviour at work may also be a sign of burnout or mental illness. A change in behaviour or work performance may be an indication that a person is having difficulty coping at work and may need help.

Early identification of the signs of burnout or mental illness can provide an opportunity to identify psychological hazards and reduce their impact and an opportunity to suggest early intervention such as counseling through an Employee Assistance

Program (EAP). Early identification strategies that help identify symptoms and facilitate appropriate treatment have been successful in significantly improving employee productivity.

Changes in behaviour which may indicate burnout or depression include:

- Withdrawing from responsibilities
- Procrastinating, taking longer to get things done
- Using food, drugs, or alcohol to cope
- Taking frustrations out on others
- Arriving late or leaving early
- Making more errors in work tasks
- Isolating from others, or depending more on others

THE INTERACTION OF PSYCHOLOGICAL HAZARDS AND BEHAVIOUR CHANGE

Psychological hazards are often not easy to identify and the impact of psychological hazards can have a cumulative effect, with changes in behaviour or work performance occurring slowly over time.

We can all think of someone who has been short-tempered at work. This behaviour may be attributed to their personality, or 'just who they are'. But behaviour is often influenced by factors in the environment such

as stress. If this behaviour is a change from a previous behaviour pattern, it may be a sign of burnout or difficulty coping in a demanding environment. Changes in behaviour may also have a negative impact on social relationships at work. A common example is an employee who, at one time, had positive relationships at work and met expectations in their role, but over time, their behaviour may have changed so that deadlines were missed and trust was lost between co-workers. Eventually, social interaction between co-workers is reduced so that the employee becomes somewhat isolated at work. Later, they might be perceived as anti-social by their co-workers, or aloof, and their failure to manage their workload or the necessity of others to help with their workload may foster feelings of resentment. These factors contribute to the psychological hazards for this individual and may further negatively influence their ability to cope.

“PSYCHOLOGICAL HAZARDS ARE OFTEN NOT EASY TO IDENTIFY AND THE IMPACT OF PSYCHOLOGICAL HAZARDS CAN HAVE A CUMULATIVE EFFECT, WITH CHANGES IN BEHAVIOUR OR WORK PERFORMANCE OCCURRING SLOWLY OVER TIME.”

Changes in behaviour such as these may indicate a need for professional help to assess mental illness and provide appropriate treatment. If there is an ensuing absence from work, the employee will again

be faced with these stressful situations and fractured relationships upon returning to work. These factors will likely increase anxiety or apprehension about returning to work and will need to be addressed in order to ensure a successful and sustained return to work program.

BREAKING THE CYCLE

Creating and maintaining a work environment which fosters psychological safety can help to break this cycle. This can be accomplished by recognizing and acknowledging changes in behaviour, maintaining open communication about stress, burnout, and mental illness, and working with employees to reduce psychological hazards. The following guideline may help to reduce the impact of psychological hazards on work performance. They may also help reduce the incidence of absence from work due to mental illness, and may be applied to assist in promoting long-lasting return to work programs.

THE ABC'S OF MENTAL HEALTH IN THE WORKPLACE

Acknowledge or recognize the signs of burnout or mental illness. This is the first step toward taking action to reduce psychological hazards in the workplace. When changes in behaviour or signs of burnout are noticed, they should be acknowledged and the solutions to help

reduce stress can then be explored. Developing and applying workplace policies and procedures about a psychologically healthy workplace can guide employers and employees in how to best acknowledge signs of mental illness and take appropriate action.

Being Available means more than keeping the office door open. Being available refers to actively engaging employees in discussions about perceived stressors and psychological hazards on an ongoing basis. It is also important that all workplace stakeholders communicate with each other and engage in coordinated action to help address psychological hazards effectively. This is how an employer can help their employees achieve maximum working potential.


Questions beginning with “I” and framed as asking for assistance are most likely to convey availability and desire to help. This act of soliciting help and input also provides an opportunity for the employee to voice their concerns. This act shows respect and consideration which in turn can help to promote confidence and ultimately protect against psychological hazards.

Collaborative Solutions highlight the idea that the best source of information in each situation is the person most impacted. Psychological hazards are generally perceived conditions such as high or insufficient workload, absence of support, or lack of autonomy or control in work function. Therefore, the person who will most likely be able to accurately identify relevant stressors is the one who is affected. Oftentimes, collaborative solutions come in simple and creative accommodations that can help an employee who is struggling stay at work and maintain the positive aspects of workplace participation.

Sources of stress which can trigger symptoms of burnout or, in more extreme instances, mental illness, will differ between individuals. For example, a person who finds a busy or noisy workplace stressful may benefit from a quiet workspace while another may feel isolated in a quiet environment and may benefit more from social support from the people around them. There is only one person who will know what is required to optimize working conditions: the employee. As such, it is essential to engage them in dialogue about what is needed in order to minimize psychological hazards. Being informed about the nature of mental illnesses and the power of the workplace in safeguarding psychological health is a good tool for making the right choices at work and providing guidance to an employee who is struggling and is in need for additional resources to maintain health and productivity.

A NOTE ABOUT CONFIDENTIALITY

Open communication can be achieved without breaching confidentiality by focusing on workplace behaviours and expectations. Asking questions about how a person is feeling and what you can do to help them shows consideration, however, questions about any treatment or therapy that they have received is not information that should be requested, nor be required for that conversation.

For additional tools and resources to help you build a psychologically safe workplace, visit Manulife's Workplace Solutions for Mental Health website at manulife.ca/mentalhealth.

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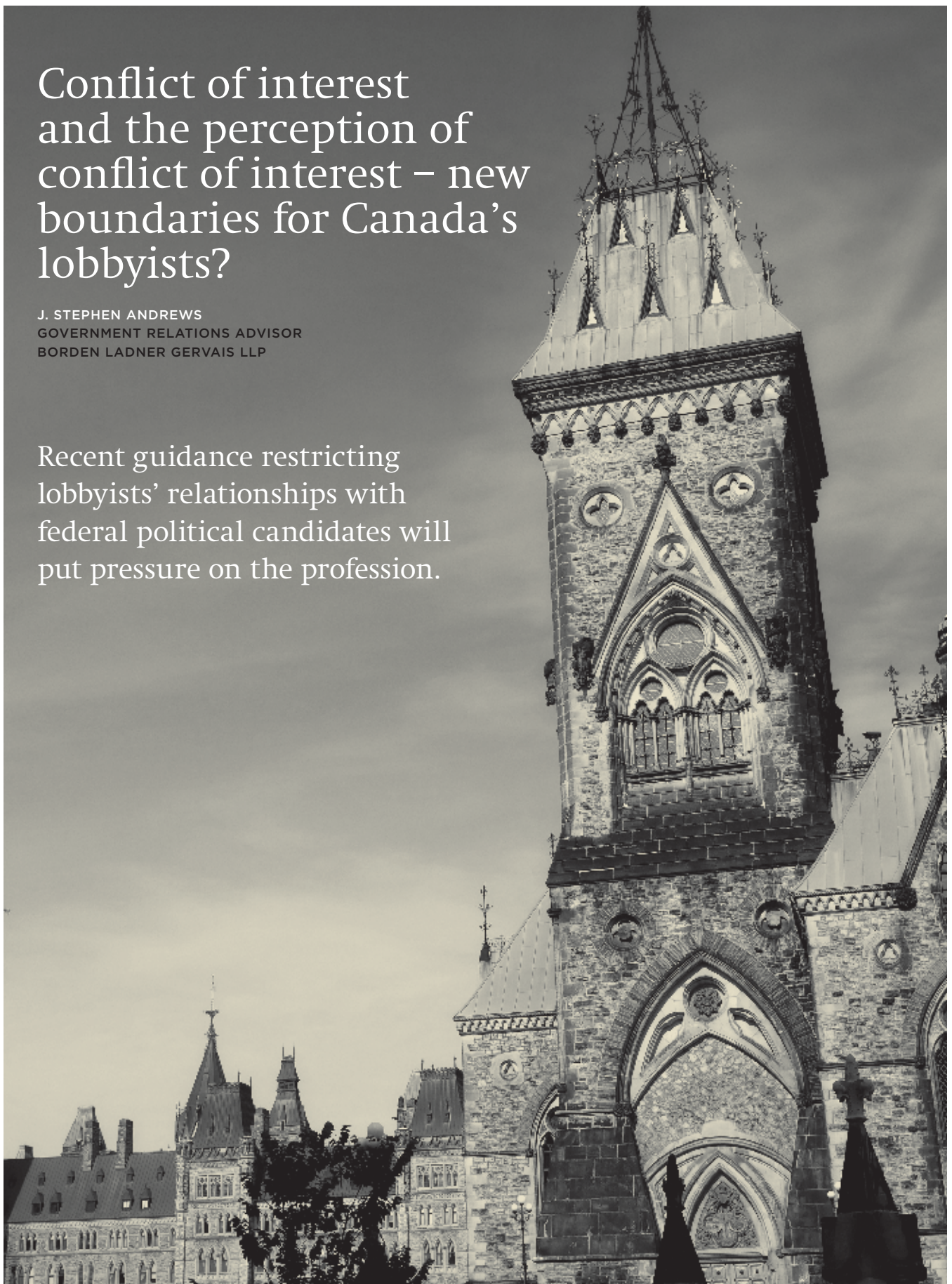
DR. GEORGIA POMAKI

Dr. Georgia Pomaki has a Ph.D. in Occupational Mental Health and a Clinical Psychology Specialization as well as the designation of Certified Disability Management Professional (CDMP). She has taught clinical courses extensively at universities at the graduate and undergraduate levels and is currently teaching the course on Mental Health in Disability Management at Simon Fraser University. She is also a lead author of the Best Practices for Return-to-Work/Stay-at-Work Interventions for Workers with Mental Health Conditions, as well as author of many scientific publications in the area of occupational mental health. At Manulife, Georgia is the Leader of the Mental Health Specialists Team, which develops and implements best practices for the management of psychological health claims.

Conflict of interest and the perception of conflict of interest – new boundaries for Canada’s lobbyists?

J. STEPHEN ANDREWS
GOVERNMENT RELATIONS ADVISOR
BORDEN LADNER GERVAIS LLP

Recent guidance restricting
lobbyists’ relationships with
federal political candidates will
put pressure on the profession.



Lobbyists are political junkies. They live to work on political campaigns of all kinds and often play key strategic roles, which include the following activities:

- Strategy development
- Rapid response communications
- Party platform development
- Tour management
- Fundraising
- Debate preparation
- Local campaign management

These activities often bring lobbyists into close contact with people seeking elected office, either current members of parliament or candidates for various political parties. Intense campaigns fought over the course of several weeks or, most recently months, often result in new professional and personal relationships being formed.

These relationships matter to lobbyists; they help establish credibility in the eyes of many organizations with interests in government policy since they assume that lobbying is (or is at least in part) about communication to these elected officials in an effort to influence policy outcomes. The perception is that the more relationships a person has with elected officials the greater the likelihood of being able to advance the cause of an organization's policy objectives.

Lobbying in Canada is a regulated activity; statutes exist federally and in every provincial jurisdiction except for Prince Edward Island. The cities of Ottawa and Toronto also have by-laws that regulate communications between lobbyists and government officials. A number of jurisdictions have codes of conduct that spell out ethical and professional rules to guide the activities of lobbyists. Federally, the Commissioner of Lobbying administers the *Lobbying Act* and *Lobbyists' Code of Conduct* and instructs lobbyists on various matters involving their interactions with government officials

One key area relates to real and perceived conflicts of interest. The Commissioner states:

Any conflict of interest impairs the public confidence in government decision-making. For this reason, the *Lobbyists' Code of Conduct*, introduced in 1997, prohibits lobbyists from placing public office holders in a conflict of interest. Rule 8 of the *Lobbyists' Code of Conduct* states: lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.¹

“WHEN A LOBBYIST UNDERTAKES POLITICAL ACTIVITIES ON BEHALF OF A PERSON WHICH COULD REASONABLY BE SEEN TO CREATE A SENSE OF OBLIGATION, THEY MAY NOT LOBBY THAT PERSON FOR A SPECIFIED PERIOD IF THAT PERSON BECOMES A PUBLIC OFFICE HOLDER. IF THAT PERSON IS ELECTED, THE LOBBYIST SHALL ALSO NOT LOBBY STAFF IN THEIR OFFICE(S)”.²

For the past year, the Commissioner has been consulting with the public affairs industry on possible changes to the *Lobbyists' Code of Conduct*. The draft updated Code of Conduct was released in early June and comes into effect on December 1st, 2015. The updated Code contains additional criteria on potential conflicts of interest. For example, the revised code outlines “preferential access” as a source of conflict. The new rules 7 and 8 state:

“A lobbyist shall not arrange for another person a meeting with a public office holder when the lobbyist and public office holder share a relationship that could reasonably be seen to create a sense of obligation”;

“A lobbyist shall not lobby a public office holder with whom they share a relationship that could reasonably be seen to create a sense of obligation”.

In addition, in the revised code “political activities” is now explicitly mentioned as a source of conflict between lobbyists and public office holders. The new rule 9 states:

“When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person becomes a public office holder. If that person is elected, the lobbyist shall also not lobby staff in their Office(s)”.

In addition, in June 2015, the federal Commissioner issued guidance outlining the kinds of political activities that may violate rule 9. Playing a strategic or senior role in political campaigns could create the appearance of a conflict between a lobbyist and a successful political candidate if the lobbyist were to lobby that individual after they assumed office. The rationale is that a member of parliament may feel obligated to the lobbyist who assisted in their campaign and this may impair their judgment around public vs. private interest (for instance, getting elected or re-elected).

Examples of strategic political activity outlined in the guidance include:

- Serving as a campaign chair
- Serving in a named position on behalf of a candidate or electoral district association
- Leading the preparation of a candidate for debates or providing strategic advice in the context of debate preparation
- Organizing a fundraising event

What follows from all of this? Obviously, persons playing a strategic role in federal political campaigns and lobbying those successful candidates subsequently will likely run afoul of the federal *Lobbyists' Code of Conduct*. This will result in the lobbyist being investigated and possibly named in a public report to Parliament. This public report will damage the reputation of the named lobbyist and likely impair his or her career significantly. In addition, the lobbying profession as a whole will suffer if viewed as trading on relationships for personal gain. And the perceived integrity of government decision-making will also take a hit because politicians may be viewed as making decisions to support their private interests.

The federal Lobbyist Commissioner has made it very clear that she will view strategic political activity and the subsequent lobbying of elected officials by lobbyists as a violation of the conflict of interest rules in the *Lobbyists' Code of Conduct*.

Lobbyists should therefore stand down from any senior or strategic role in federal political campaigns or at least refrain from lobbying those they assist in campaigns for some period of time. For example, running a “war room” or serving as a paid staff person on a campaign are clearly ruled out. Moreover, lobbyists should pay close attention to the growing pressure on provincial lobbyist registrars to institute similar conflict of interest rules related to political activities. Political activity for lobbyists therefore appears to be coming to an end. 🍁



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¹ Guidance on the Lobbyists' Code of Conduct, June 2015.

² The maximum timeframe to refrain from lobbying is five years. There is no indication however of a minimum.

CALENDAR OF EVENTS

How to Address Employee Off-Duty Misconduct

LUNCH EVENT

Wednesday, February 10, 2016

12 noon – 2 P.M.

The Albany Club, 91 King St. E., Toronto
Soccer games, taxi rides and domestic abuse: When can employers discipline employees for bad behaviour outside of the workplace? In a world of ever-present cameras, social media and the public's willingness to quickly condemn, we have seen many recent examples of a conflict between an employee's right to a personal life and their employers' reputation. We are pleased to present a panel to discuss how employers can, and should, navigate these tricky waters.

Mark Crestohl, Senior Labour and Employment Counsel, Accenture Inc. will moderate the panel consisting of Jason Hanson, Chair of the Employment and Labour Law section at Oslers and Chris MacDonald, Founding Director of the Jim Pattison Ethical Leadership Education and Research Program Chair of the Ted Rogers Leadership Centre at Ryerson University.

Emerging Ethical Trends in Workplace Law

Andrea York, Partner, Blake, Cassels & Graydon LLP

BREAKFAST EVENT

Wednesday, February 24, 2016

7:45 A.M. – 9:30 A.M.

(Breakfast & Presentation)

Blake, Cassels & Graydon LLP,
199 Bay Street, Suite 4000,
Commerce Court West, Toronto

Lunch Event & Annual General Meeting

Speaker: The Honourable Frank Iacobucci,
QC, LLD, LSM, Senior Counsel, Torys LLP

Thursday, May 19, 2016

Lunch Event: 12 noon – 2 P.M.

Annual General Meeting: 2 P.M. – 2:30 P.M.

The Albany Club, 91 King St. E., Toronto

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