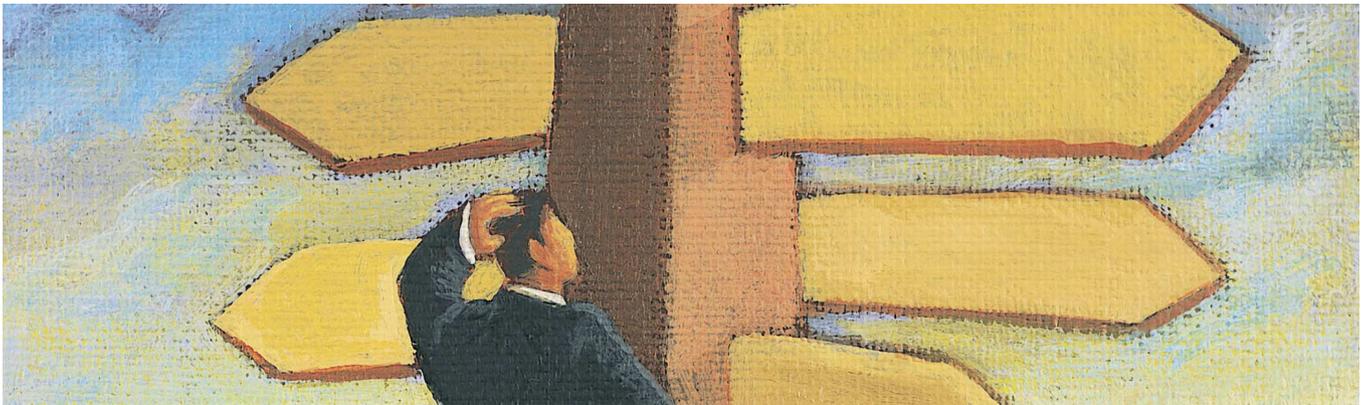




## Ethics bar is rising for professionals

With impending trials and newspaper headlines, the public's put licensed professionals on notice. Doctors, lawyers and accountants are now under an accountability microscope. Will professional engineering be next?



by Jim Ridler, P.Eng.

**T**he evidence keeps coming in, especially in the last two years. Business organizations in North America and the professionals who advise them have been revealed exhibiting ethical lapses that caused major, multiple and ongoing scandals.

Whether as employees, retirees, investors or taxpayers, the public has been abused and hurt throughout the continent and has reacted with anger and calls for action. The media has trumpeted these calls. Regulatory bodies have responded to public pressure. If their reaction was not effective enough in the eyes of the public, governments got the message and weighed in on the side of the public.

It all started with Enron and Arthur Andersen and the less-noticed law firm Vinson & Elkins. WorldCom followed with its chief financial people arrested on television. Then came Citigroup, the investment banker that helped Enron in its financial shenanigans and issued mis-

leading analyst research reports to its retail clients. ImClone followed with insider trading charges, including Martha Stewart and her broker. Tyco executives are charged with stealing hundreds of millions, while their senior lawyer is charged with covering up.

In Canada, YBM Magnex was eventually found to be a money laundering operation run by Russian organized crime, despite the involvement of Canadian lawyers, accountants, auditors and directors. Also here at home, Livent was revealed to be producing seriously fraudulent financial statements despite the accountants and auditors involved. This is a very limited list of the scandals. The conclusion by the public was that systemic problems existed and the ethics bar had to rise.

With the focus on accounting and auditing, new laws were passed and new regulations imposed. New regulatory bodies and processes were put in place. Limits were placed on professional practice. Disclosure of financial information had to be certified—a telling comment on the

lack of trust of auditors. New senior positions came into place to manage and support these changes. Professions lost or had reduced their self-regulatory powers. The bar has certainly risen. More recent developments show that these systemic reforms have deepened in impact and broadened in scope. Let's look at some specific examples.

### Accounting and auditing

The new Public Company Accounting Oversight Board in the United States, established by the *Sarbanes-Oxley Act* of Congress, under the Securities Exchange Commission (SEC), had already taken over the regulating and disciplining of accountants and auditors from the profession's own institute. The board has now stripped away the setting of auditing standards from the institute as well. It can also ban auditors from providing non-audit-related consulting services to audit clients. An advisory council will assist the board and will include investor representatives. The board will hold annual inspections of accounting firms. These

will include evaluating the ethical culture within the firms, as reflected in the tone set by management and how performance against ethical standards is reflected in compensation practices.

In response to these pressures, major accounting firms are establishing senior ethics positions, which report to the top of the organizations, to manage the impacts of all these changes.

Clearly, the bar has risen substantially, in response to the weaknesses seen in this profession. In the process, the profession has also largely lost control to a new, independent regulatory body.

## Lawyers

While not as visible as accountants and auditors, lawyers and their firms have been seen as contributing to the failure to protect the public and shareholders and even to aiding the corporations' management in their scandalous behaviour. Vinson & Elkins, Enron's law firm, is an example.

The new *Sarbanes-Oxley Act* gave the SEC the power to set standards of professional conduct for lawyers advising public corporations. The SEC has proposed rules forcing lawyers, in-house and outside, to break client confidentiality and to report significant misconduct in public corporations, starting with the chief executive officer (CEO) and moving on to the board of directors if the CEO's reaction is unsatisfactory. If this still does not produce a positive result, the SEC proposed having the lawyer withdraw and report to outside authorities. A new SEC rule makes it unlawful to improperly pressure auditors, for lawyers and others. The SEC asked the law profession to change its ethics standards, to address these concerns.

In response, the American Bar Association (ABA), after a heated debate, amended its ethics rules to allow lawyers to be whistleblowers when the law is broken or planned to be broken by a client or officer of the firm. These changes make clear that a lawyer must act in the best interests of the company being represented, not its management. Similar proposed changes have been defeated in the past.

Once again, the bar has also clearly risen for the law profession and it has lost some power to the SEC, which could adopt tougher requirements than the ABA.

## Physicians and surgeons

Although not directly linked to the accounting, auditing and law professions' difficulties, the medical profession has recently faced ethical pressures of its own.

The College of Physicians and Surgeons of Ontario, the medical profession's regulatory body, has recently initiated a "disclosure of harm" policy. (Quebec and Saskatchewan had already done so.) Under this policy, a doctor must inform a patient, as soon as practical, when medical treatment has caused a problem unrelated to the original illness, which could harm the patient (e.g. a medical instrument left in the body after surgery).

Public pressure for open, fast disclosure resulted from reports that thousands of deaths are caused by medical errors annually. Not reporting or covering up these errors naturally increases the risk to the patient. But it also might appear to lessen the risk of lawsuits by patients. The Ontario Medical Association resisted the new policy on behalf of the doctors themselves.

The basic issue is disclosure of the full facts to patients, thus protecting their health as the primary priority, versus concerns for the economic well being of doctors.

A second, very different case involves Biovail Corp., a Canadian pharmaceutical company that is paying up to \$1,000 (U.S.) to doctors if they prescribe a new heart medication to at least 11 patients. The office manager gets \$150. If the patients do not renew, the doctor gets only \$250. The doctor has to fill out a form, answering a few questions, which is returned to Biovail. Though its sales force manages the program, it is referred to as research. However, Biovail has apparently told investment analysts that this is a sales program. There is no process for informing the patients about the income received by the doctor.

The Canadian Medical Association says the arrangement is fine, if the patients are informed, but American law makes kickbacks to doctors illegal and a new U.S. regulation outlaws using a pharmaceutical sales force to administer a research program.

The basic professional issue is conflict of interest, between making money on Biovail prescriptions or prescribing the best medication to patients. Health versus economic benefit again. Also involved is the question of whether disclosure is enough to resolve the issue. Public response to media coverage of this case sent a clear message that such a conflict of interest, whether real or perceived, does not meet the public's ethical expectations for the profession. The bar has risen again.

## Messages for engineering

Many of these issues in other professions are familiar to professional engineers, i.e. conflict of interest, disclosure, putting public welfare first.

It is clear that the public's expectations of acceptable professional ethics standards and performance are rising. It is expected that a true professional will avoid conflicts of interest, disclose the facts effectively to those impacted by them, and put public welfare first. If members of a profession and/or the profession itself are perceived as not complying with these standards, the profession is at serious risk of losing its self-regulatory privilege.

While a profession must regulate itself effectively to have and maintain effective standards, rules, regulations and discipline are not enough. Rules can never cover all possible ethical issues and can be followed to the letter, while evading their intent. A profession and its members must also instill and maintain an ethical culture. Only then will professionals know what is right and good and be committed to do it.

This combination of regulatory and proactive strategies will help any profession—including our own—to meet the public's and our own rising expectations of professional ethics. ◆

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