

CEC Bulletin

(April, 2005)

The Corporate Social Responsibility Phenomenon: An Overview

• Part I •

Introduction

This article, divided into two parts, provides an introduction to corporate social responsibility (“CSR”) and codes of conduct, particularly for employers who may be faced with CSR issues in their workplaces.

Part I sets out the meaning of the term “CSR”, the types of codes of conduct, outlines the various international frameworks governing CSR regulation on an international level and presents an update on current CSR initiatives in Canada and internationally. Part II examines the elements of a code of conduct in greater detail and addresses the benefits and pitfalls associated with code of conduct adoption.

What is CSR?

The International Organization of Employers (the “IOE”) defines CSR as “initiatives by companies voluntarily integrating social and environmental concerns in their business operations and in their interaction with their stakeholders.”

This definition recognizes that CSR is voluntary corporate action and goes beyond simple legal compliance with domestic laws. CSR includes: (i) compliance with domestic laws, even if those laws are poorly enforced; (ii) adherence to international standards; and (iii) adoption of voluntary codes of conduct.

“Codes of conduct,” the primary instrument through which CSR is carried out, may be classified in a number of ways, but there are five main types:

- *Company Codes* are adopted voluntarily by companies and can relate to a company’s head office operations, or be applied specifically to the company’s suppliers.
- *Trade Association Codes* are adopted by associations of firms based in developing countries or by developing countries themselves.

- *Multi-stakeholder Codes* are adopted as a result of negotiations between several stakeholders, including firms or their industry representatives, non-governmental organizations (“NGOs”) and/or trade unions. Governments may also be involved in the development of such codes.
- *Model Codes* are designed to provide a benchmark of what a particular organization regards as good practice, and act as a guide for companies and trade associations that are contemplating adopting voluntary measures.
- *Intergovernmental Codes* are negotiated at an international level by national governments. They include the OECD Guidelines for Multinational Enterprises, the ILO’s Tripartite Declaration of Principles Concerning Multinational Enterprises, the UN Norms of Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights, and the Global Compact (all discussed below).

The Rise of CSR

In the mid-1970s, a number of developing countries passed legislation attempting to control transnational corporate activities within their borders. In addition, the UN and OECD adopted draft codes of conduct to ensure that developing countries would share in the gains from the growth of international corporate activity.

By the 1990’s, corporations began to adopt codes of conduct in ever increasing numbers as response to the concerted lobbying efforts by labour groups and NGOs for the creation of a global system of labour regulation at the WTO level, and the push for a social clause. Multi-National Enterprises (“MNEs”) are now aware, more than ever before, of the need to voluntarily account for their labour practices, if for no other reason than to prevent binding regulation from becoming a reality.

The Regulation of Corporate Social Responsibility

While MNEs are subject to national and regional regulation of CSR in some areas of the world (such as within the European Union), at an international level the OECD, the ILO and the UN have all attempted to create frameworks to regulate CSR.

- **The OECD Guidelines for Multinational Enterprises**

The OECD’s *Declaration on International Investment and Multinational Enterprises* (the “OECD Declaration”) promulgated in 1976, takes the form of a recommendation from OECD governments to MNEs to abide by a set of guidelines for multinational enterprises (the “Guidelines”) that are annexed to the OECD Declaration.

The OECD Declaration requires member countries, subject to some aspect of national interest and international law, to treat MNEs in ways “no less favourable than that accorded in like situations to domestic enterprises”. The OECD Guidelines state that “observance of the guidelines is voluntary and not legally enforceable.”

An OECD member country is required to establish a national contact point to promote the Guidelines, deal with inquiries and help to solve problems that might arise between business and labour. A complaints procedure exists through the Committee on International Investment and Multinational Enterprises, where disputes are usually dealt with through “clarifications” of the OECD Guidelines, not passing judgment on any specific conduct. This process acts as a severe limitation on the practical enforcement powers of the Committee. If a National Contact Point finds that a company has violated the OECD Guidelines and refuses to remedy the situation, the appellants and the Contact Point have no sanctioning power other than to publicize the violation.

- **The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**

The ILO adopted a *Tripartite Declaration of Principles Concerning MNEs and Social Policy* (the “ILO *Tripartite Declaration*”) in 1977, which was updated in 2000, to take into account the 1998 ILO *Declaration of Fundamental Principles and Rights at Work*. The ILO *Tripartite Declaration* focuses on the “social aspects of the activities of multinational enterprises, including employment creation in the developing countries.” Compliance with the ILO *Tripartite Declaration’s* guiding principles is on a voluntary basis, and is not intended to affect obligations arising from the ratification of ILO standards, rather, its aim is to “encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise”. Although the ILO Committee on Multinational Enterprises interprets the terms of the ILO *Tripartite Declaration* and receives reports from member countries on its application, it has no power to sanction a breach. Therefore, like the OECD Guidelines before it, the impact of the ILO *Tripartite Declaration* has been relatively limited.

- **The United Nations’ Global Compact**

At the *World Economic Forum* in 1999, Secretary General Kofi Annan proposed a “Global Compact” between the UN and the international business community to advance responsible corporate citizenship. The Global Compact challenges world business leaders to voluntarily “embrace and enact” within their sphere of influence ten core principles on human rights, labour, the environment and anticorruption. The Global Compact is now endorsed by most national governments, a variety of unions and NGOs, in addition to nearly 1,500 companies in 70 countries.

The Global Compact is not a binding set of regulations or a corporate code of conduct. Instead, the goal of the initiative is to advance the ten universal principles through the “self-enlightened engagement of its participants.”

On June 24, 2004, more than 500 CEOs, government officials and various heads of labour and civil society groups gathered at the first Global Compact Summit in New York. Some 20 major investment companies, including Credit Suisse Group, Deutsche Bank, Goldman Sachs, HSBC and Morgan Stanley, endorsed connecting financial markets to environmental, social and governance criteria and agreed to invite other actors in the financial world to make these factors standard components in the analysis of profitability and investment decision making.

The Shortcomings of CSR and the Threat of Binding International Regulation

- **The UN Draft Norms**

It was with great enthusiasm then that labour groups and NGOs welcomed the August 13, 2003 adoption of the Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights (the “UN Draft Norms”) by the United Nations Sub-Commission on the Promotion and Protection of Human Rights. The UN Draft Norms called on companies to “be subject to periodic monitoring and verification” by the UN or independent agencies, implying a level of enforcement that goes significantly further than the voluntary compliance and reporting encouraged by the Global Compact.

The proposed UN Draft Norms also went further than voluntary codes of conduct by stating that *all private businesses*, not just MNEs, should be legally required to comply with socially responsible standards. While, at that time, the UN Draft Norms were not legally enforceable, they could be adopted with binding force by individual nation states or used as a guide in drafting domestic legislation.

On April 16, 2004, the Commission on Human Rights affirmed that the UN Draft Norms have no legal standing, but requested that the High Commissioner of Human Rights compile a report setting out the scope and legal status of existing initiatives and standards relating to the responsibility of transnational corporations and related business enterprises with regard to human rights. The Commission also asked that the Office of the High Commissioner on Human Rights “consult with all relevant stakeholders in compiling the report, including States, transnational corporations, employers’ and employees’ associations, relevant intergovernmental organizations, non-governmental organizations and treaty bodies.”

Not surprisingly, the consultation process with stakeholders revealed that employer groups, many States and some businesses were critical of the Draft Norms, while NGOs, some states and businesses, as well as academics and consultants were supportive.

On February 15, 2005, the United Nations High Commissioner on Human Rights issued her long-awaited report on the Draft Norms. In this Report, the High Commissioner makes recommendations to the Commission to identify options for setting standards on businesses’ responsibility for human rights. The High Commissioner noted that the Draft Norms have the status of a draft proposal, meaning that they can be subject to review and consideration by the Commission. Notably, in the Report, the High Commissioner consistently refers to the standards that all businesses should respect. As a result, it appears that the proposed draft norms are still intended to apply to all business, not just MNEs.

The High Commissioner went on to point out that the European based Business Leaders’ Initiative on Human Rights, chaired by former Irish President Mary Robinson, is currently “road-testing” the Draft Norms with companies from different international business sectors with the objective of demonstrating ways of implementing its provisions. This process is intended to assist in determining what is “essential”, “expected” and “desirable” behaviour for all companies and will continue until December, 2006.

Other conclusions and recommendations made by the High Commissioner in her report include the following:

There is a growing interest in discussing further the possibility of establishing a UN statement of universal human rights standards applicable to business;

There is merit to identifying the useful elements of the Draft Norms and the Commission on Human Rights should maintain the Draft Norms with a view to their further consideration; and

Issues requiring separate study include the nature of positive responsibilities on business to “support” human rights, the human rights responsibilities of business in relation to their subsidiaries and supply chain and questions relating to jurisdiction and protection of human rights in situations where a State is unwilling or unable to protect human rights.

The Commission will consider the Report until April 22, 2005 and may request the continuation of consultations with stakeholders lead by the High Commissioner.

Other CSR Initiatives

In addition, two other CSR developments deserve further mention:

- **International Standards Organization’s Standard for Social Responsibility**

The International Standards Organization (the “ISO”), made of up of a network of international standards institutes of some 146 countries (most widely known for its ISO 9000 standard regarding quality management and ISO 14000 standard regarding environmental management) is developing an ISO standard in the field of social responsibility.

The objective is to produce “a guidance document” for use by business and other organizations, which is understandable and usable by non-specialists to assist organizations in effectively addressing their social responsibilities in various cultures, societies and environments. Importantly, the proposed standard, to be denominated ISO 26000, is not to be a specification document against which conformity can be assessed.

The proposal for the development of the social responsibility standard was presented by the ISO’s Technical Management Board to the ISO’s National Member Bodies in October 2004 and the Member Bodies voted to approve the proposal. The Canadian Member Body is the Standards Council of Canada (the “SCC”). Multi-stakeholder Working Groups from each Member Body will now begin the long process of developing the new ISO standard. The first meeting of the Working Group that will be responsible for the development of the standard took place in March 7-11, 2005 in Salvador, Brazil. The goal of the Working Group is to have a document prepared for distribution to all National Member Bodies for comment by April 2006. The SCC’s Canadian Advisory Committee (the “CAC”) will prepare a consensus Canadian position regarding the draft standard. Andrew Finlay and Brian Burkett, on behalf of the CEC, have been named as members of the CAC.

The IOE and ICC issued a joint view concerning the ISO's decision to proceed with the development of a social responsibility standard. They pointed out that social responsibility is not an alternative to national laws, that social responsibility is very complex and evolving, and that at the organizational levels, social responsibility challenges and opportunities are unique to each company and organization. As such, standardization at this point would not add value and would be counter-productive. The development of a guidance document on social responsibility could be pursued provided that i) the ISO recognizes that social responsibility is qualitatively different from the subjects and issues that have been traditionally dealt with by the ISO, ii) that it recognizes the role of governments and inter-governmental organizations in setting social obligations or expectations, and iii) that the ISO negotiates with the ILO on a Memorandum of Understanding to govern co-operation between the ILO and the ISO in the area of social responsibility.

- **NAALC Conference on Corporate Social Responsibility in North America**

As part of the multi-annual Cooperative Labour Activities Work Program under the North American Agreement on Labour Cooperation (the "NAALC"), Canada hosted a major tri-national conference on CSR on March 30-31, 2005 in Ottawa. The conference brought together government, business, non-governmental organization, academic and labour representatives from Canada, Mexico and the United States.

To set the stage for the proceedings, Martin Dumas (International Labour Advisor, Commission for Labour Cooperation), and Brian Burkett provided an overview of the labour dimensions of CSR in North America. Mr. Dumas noted the excitement surrounding the potential of CSR to promote social justice and labour peace. Brian provided a comprehensive overview of the growth of CSR, the various types of codes of conduct, the essential elements of an effective code, and discussed a number of benefits and barriers to effective CSR implementation. In Brian's view, the growing demand for international regulation of CSR will only abate if voluntary measures gain sufficient momentum to create real change. For voluntary measures to flourish, however, there must be a nexus between CSR implementation and improved corporate financial performance.

A variety of themes emerged from the six panel discussions which involved representatives of employers, worker organizations, government and international CSR initiatives. These themes included:

- A lack of consensus regarding the meaning of CSR, and the large number of overlapping regulatory and multi-stakeholder initiatives is counter-productive and may lead to a "fatigue" around the CSR concept;
- An overemphasis on monitoring and auditing is an ineffective method of protecting labour standards, since suppliers focus on passing the audit and not addressing underlying reasons for poor standards;
- Governments play a key role, not only in funding CSR initiatives, but in using their convening power to bring a variety of stakeholders together and helping foreign governments build their capacity to pass and enforce effective domestic labour laws;

- Regulating CSR is a controversial idea. To some, the idea of regulating CSR is counter-intuitive, since by definition CSR involves voluntary measures beyond minimum legal requirements. In addressing ethical sourcing issues, the primary focus should be on enforcing local laws, not on substituting CSR standards for those laws. It was also noted that imposing CSR requirements on the private sector may detrimentally affect small and medium-size businesses which do not have the resources to devote to CSR programs;
- Industry-specific CSR initiatives are an effective tool;
- Mobilizing institutional investors such as worker pension funds may be an effective approach to changing corporations' short-term profit mentality that excludes CSR considerations; and
- International initiatives such as the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the UN Global Compact are gaining profile. These multilateral approaches are a valuable tool for creating multi-stakeholder dialogue regarding CSR.

The National Administrative Offices of Mexico, Canada and the United States will be co-operating to produce a full report of the conference proceedings.

The International Organization of Employers (IOE)

In the CSR arena, the IOE has been very active in representing its members' interests in the consultations with the Commission on Human Rights with respect to the Draft Norms, the UN with respect to the Global Compact and the ISO with respect to the development of a guidance document on CSR.

The IOE has prepared a position paper entitled *Dividing the Line: How Business and their Organizations See the Role of Business Within Society*. This thoughtful position paper was drafted in response to the expectations of business and their associations as a result of the CSR debate and in order to clarify the different positions expressed by stakeholders in this debate. The IOE will convene a special session on CSR in June 2005 during the International Labour Conference of the ILO in order to further consult with members on this important issue.

The Canadian Employers Council (CEC) prepares and distributes the CEC Bulletin for its members' individual use only. This message is composed in MS Outlook and contains hyperlinks that require an HTML-enabled email program. For inquiries or comments, please contact Andrew Finlay of Scotiabank, Chair of the CEC, at andrew.finlay@scotiabank.com or Brian Burkett of Heenan Blaikie, Director and Counsel of the CEC, at bburkett@heenan.ca.
