

The Ethical Imperative for Board Decision-making Processes
Doctoral Research Project Summary for The Bertram Scholarship 2017
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1. Context: Are ethical decision-making processes effectively required?

Ensuring that officers and board members of private and public sector corporations, government-agencies, and not-for-profit organizations do not further their own private interests when participating in decision-making processes is one of the fundamental challenges of any good governance system. Decisions that re-direct resources toward serving board members' private interests can: decrease corporate revenues and share value (for a private or publicly traded corporation); waste the public's money (for a public sector corporation or government-agency), and; waste money that is difficult to raise (for a not-for-profit organization).

When officers and board members are exposed as having taken part in decisions in which they have a private interest, it can also undermine trust in private and public sector corporations (and sometimes also share value), and trust in agencies and not-for-profit organizations.

Officers and board members of all these entities are required by law to disclose conflicts of interest and recuse themselves from participating in decisions that affect their private interest(s).¹ However, the definition of what is a "conflict of interest" varies.

In addition, especially for private sector corporations and not-for-profit organizations, the conflict-of-interest rules are essentially self-regulating. Even in the public sector, no enforcement agency is actively checking to ensure officers and board members are not furthering their private interests (or the interests of others in return for some type of benefit).

2. Research Project: Model system for ethical decision-making processes

My doctoral research project addresses, in part, the question: What is the best-practice model system for ensuring officers and board members of private and public sector corporations, agencies, and not-for-profit organizations do not take part in decisions in which they have a private interest? Answering this question involves answering the following sub-questions:

1. What is the best-practice definition of "conflict of interest" for each entity?;
2. What are best-practice disclosure and recusal rules for each entity?
3. What is a best-practice enforcement system for the disclosure and recusal rules, including the penalties for violations of the rules, for each entity, and;
4. Should the rules and enforcement system address the phenomenon of "unconscious bias" in decision-making that has been raised by psychologists.²

I will use comparative methodology and examine domestic Canadian and international research by legal, political science and behavioural psychology scholars and practitioners to develop the model system of best-practice rules and enforcement measures. The enforcement measures will include incentives and disincentives based on the standard theory approach (chance of being caught x penalty = effective penalty), and also behavioural psychology approaches. The model system will be aimed at establishing a culture of ethical behaviour for each entity.

¹ For example, see: *Canada Business Corporations Act* (R.S.C., 1985, c. C-44), section 120; *Conflict of Interest Act* (S.C. 2006, c. 9, s. 2), sections 4 and 6, and; *Canada Not-for-profit Corporations Act* (S.C. 2009, c. 23), section 141.

² Dan Ariely, *The (Honest) Truth about Dishonesty: How We Lie to Everyone – Especially Ourselves* (HarperCollinsPublishers: London [2013]).