3

ETHICS OF THE FIRM'S RELATIONSHIP WITH ITS EMPLOYEES

This chapter explores the range of moral obligations that exist between an employer and employee. At one moral extreme, the relationship could be viewed as nothing more than an arm's-length market transaction, in which employees sell their services to the employer at the market rate, and the employer pays for the services, thereby meeting all obligations. The classical legal and economic analysis of employee relations is based on agency theory, in which an employee has a duty to work to achieve the goals of the firm, and the firm's only obligation is to provide compensation in exchange for its employees' services. In practice, of course, the relationship is far more complex. Employers are organizations, not markets, and the employment relationship creates a variety of legal and moral long-term obligations on both sides. Many aspects of the employee-employer relationship—confidentiality, working conditions, hiring and layoff rights, for example—are prescribed in legislation, but as is usually the case, legislation leaves plenty to management discretion.

For example, collective agreements often stipulate that employees must be permitted to return to their previous job, even after a long sick leave. In Matt Moreau's Dilemma, however, a newly appointed manager of customer services for a department store must decide whether to offer a job to an employee who was recovering from a serious illness. The employee might experience a relapse of her illness if she took on this high-stress position. Another case that introduces stress in the workplace is Coastal Uniforms, which provides an interesting chronicle of one company's attempt to improve shareholder profitability by setting higher performance targets. It permits discussion of both the rights of shareholders as covered in Chapter 2, the utility and effectiveness of very stressful performance targets, and the limits on the moral rights of an employer to require them.

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The CXP Publishing Inc. series of cases deal with a sensitive issue—the potential conflict of interest created by personal relationships in the workplace. The newly promoted director of sales and marketing at CXP has just inherited an employee conduct issue. In her previous position, she became aware that a sales representative was having sexual relations with the company's clients, but the company's president was dealing with the issue. In her new role, she discovers that issue persists, and this employee now reports to her. She realizes that this was a "hot issue" and needed to determine the best way to handle the situation. There was more to consider than just dealing with the employee because she did not want to put the company's relationship with the client in jeopardy.

The digital revolution has transformed workplaces and created a number of ethical issues, including pornography on the Internet. The Canadian Imperial Bank of Commerce: Digital Employee Privacy case explores a closely related ethical issue—the justification under which an employer is entitled to read employee e-mail. What rights do an employer and employee have in this situation? If the employer discovers personal or private information on e-mail, what are the rights and responsibilities of the two parties, given that everyone knows that e-mail is not secure and therefore, to some extent, in the public domain? The Canadian Imperial Bank of Commerce (CIBC) had implemented word recognition software, Assentor, in its U.S. brokerage arm to ensure that its employees were not acting inappropriately in their dealings with customers and to protect company systems from viruses. This software scans e-mails for flagged "business words" and archives the e-mails in a central database. The manager of compliance at CIBC's head office in Toronto found that the decision to implement the Assentor software was much easier than deciding what to do in the event the software found something improper. Issues related to company ethics and employee privacy were raised. Acknowledging that occasional personal e-mails would be sent and received, he wondered what the legal ramifications would be if a manager found out about a private situation because Assentor had found a flagged word in a personal e-mail. He felt that clear communication with and upfront understanding from employees would help prevent negative impressions of this process, so he had to determine the best way to inform employees about the e-mail scanning while enforcing CIBC's e-mail policy.

Maintaining an ethical workplace is difficult enough, but the practice of management provides more challenges than merely maintaining a healthy corporate culture. For example, an important managerial skill is the ability to manage the communications process between the firm and the media. These often arrive in a phone call from a well-informed and aggressive media correspondent, with no warning. The Stamford Machine Corporation: Allegations of Racism case provides an opportunity for a class to address some of these communications challenges in respect of accusations of unethical behavior. Stamford Machine Corporation is a market leader in the manufacturing of photocopiers and office equipment. The director of corporate business ethics and compliance has been notified that the company is being served with a discrimination lawsuit. A newspaper announcement was released to the public outlining details of the charges, but before the director could leave his office, he receives a call from a journalist asking for the company's comments. He must determine if there has been a breach in the company's policy on discrimination and plan how the company will deal with the media.

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MATT MOREAU'S DILEMMA

Jeffrey Gandz

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Matt Moreau, newly appointed manager, customer services for Bantings department stores, picked up the telephone:

> We think we have the perfect person for you, Matt. She's a manager in one of the medium-sized suburban stores—been with the company for 15 years, ambitious, smart, on-the-ball and, what's more, I think that she'd jump at the chance of moving into the head office environment.

CUSTOMER SERVICE DEPARTMENT

The voice on the other end of the phone was that of Steven Judson, corporate personnel manager. Moreau had asked him to help in the staffing of his newly created department. It had been set up to improve the quality of customer service, developing new programs that would have organization-wide impact on how stores were designed and laid out, how staff were trained, and how customer satisfaction could be measured and factored into the company's merchandising and marketing programs.

The task that lay ahead for Moreau was a difficult and demanding one. The stores were managed through a strong line operations department which reported up to the president of the corporation. His department would be 'staff'—hopefully well-respected and influential, but with very little real power or authority. It was critical for him to get good people, preferably those with some line management experience who had developed credibility with the operations types.

SALLY ARMITAGE

Moreau asked Judson to tell him a little more about his 'find':

Judson: Well, I've just been through her personnel records—by the way, her name is Sally Armitage. She's been with the company a number of years, always had good or excellent performance appraisals. She started fresh out of high school as a clerk but, after a couple of years, started bugging her manager to be put onto the management development program. As you know, we usually just put university and college grads on that program, but in this case we made an exception. I think that her manager really went to bat for her on this one.

Worked out great! She completed the program and then went into the Thunder Bay store as assistant manager in the white goods department. Rotated through a number of departments, then . . . let me see . . . Oh yes, she moved to the Toronto region as assistant manager of the Eastland Mall store—one of the biggest and, at that time, the worst performer. Well, she and Tony Abbott turned the thing around and I have a note attached to a performance appraisal from Tony which gives her much of the credit.

Two years ago we gave her the Chute Hill store—it's small but she's doing a good job of enlarging it and also increasing profitability. As you know, Tony Abbott is the regional manager out there and I know he thinks the world of her. In fact, he'd be hopping mad if he even knew I was talking to you about her.

Moreau: Why are you talking to me, Steve? What makes you think that she's the least bit interested in moving into a head office job?

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Judson: Well, I was just looking over the results of her last performance appraisal and see that she indicated that she'd like to get some head office experience. And when Chuck Mackness (the president of Bantings) was on his last field visit, he called on her store and she mentioned to him that she saw her career at Bantings benefiting from some head office experience. He mentioned it to me and so I got out her file. So there it is, I think she's well worth looking at.

Moreau: What's the next step, Steve?

Judson: You should contact Tony Abbott and get a first-hand impression from him. He'll not be pleased but he's always been a booster of Armitage. Try not to tell him you heard of her through me!!

Discussion with Tony Abbott

The following day Matt Moreau called Tony Abbott and told him over the telephone that he was interested in talking with him about any personnel in his region who might be candidates for a position in the newly formed customer service group. He arranged to meet with Tony early the following week at the regional office.

"I bet that it's Sally you're interested in," were the first words that greeted Moreau after he sat down in Abbott's office. "The ungrateful, ambitious, disloyal . . . highly competent, superachiever," he added with a grin. "How I'd hate to lose her."

Abbott and Moreau talked for about 30 minutes about Sally Armitage and during the conversation Moreau outlined some of the challenges that lay ahead for his group.

> As you know, Tony, we have our work cut out for us. The public are getting pretty annoyed with the kind of service they've been getting at all department stores and ours is now better than most of the others. We have to improve. The president has detached me from my normal function to get this things done and he wants to see results by Christmas. We can do it, but it's going to take maximum effort. Late nights, lots of tension and stress, tough decisions, meetings, travel—a lot of old-fashioned blood, sweat and tears.

As he went through this, Moreau noticed some worry on Abbott's face. He asked,

Abbott: How much do you know about Sally's background? Do you know much about her personal circumstances?

Moreau: No, at least no more than appears in her personnel file. Apart from some fairly extensive absences about three years ago—for medical reasons I think—it seems to point to a first-class person.

Abbott: Let me give you some additional background. The absences that Sally had a few years ago were serious—not many people know this but she had cancer, I think it was cancer of the lymph glands. She was off work for several weeks and then went for chemotherapy for over two years. I don't know how she managed it . . . for a couple of days after the treatments she looked like the walking dead. But she seemed to bounce back okay. She still goes in once every three months or so for regular check-ups.

In her current position I think she can cope with the situation. She lives with her teenage daughter—she was divorced about six years ago—just about 10 minutes away from the Chute Hill store. She's got a good staff and on those days when she's not feeling 100 per cent, she can coast a little bit.

The job that you could offer her would change all that. First, she'd have a long commute into the city to work—maybe an hour each way unless she moved much closer to downtown and I doubt you guys would pay her that much extra to make that affordable. Second, it looks as if the job is very high stress and will require all sorts of extra work. I'm not sure Sally is up to that, that it wouldn't cause her

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condition to deteriorate. Oh, you'd never know it. Sally is just one of those people who always looks cheerful, never lets on that anything is wrong.

By the way, I'm sure that if you offered her the job—even if you explained the situation to her, really pointed out all the problems and difficulties—she'd take it. One of the ways she has coped with her illness is to push even harder, show herself that she can do anything. This would be another challenge for her.

But I wonder if it's the right thing to offer it to her. What if she took it and it did cause her situation to deteriorate? What good would that have done her? Or you, for that matter. Could you afford to have someone with a health problem on your staff, especially now? It's not like you're running a store where you can get someone else to fill in when a manager or employee is off ill. You know what it's like with cancer—it can recur any time.

The Dilemma

As he rode back to head office, Moreau mulled over this conversation. What options did he have? Should he even pursue the possibility with Armitage? Should she be given the option, knowing how tough things would likely be? Should he take the risk of promoting an employee who—despite high performance and apparent good health—had such a medical history? How would he explain his decision—no matter what it was—to Tony Abbott? To Steven Judson? To Chuck Mackness?

Coastal Uniforms

Ken Mark

David Sharp

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Introduction

Andrew Vilas was thinking about his next moves at Coastal Uniforms (Coastal). It was April 3, 2002 and Vilas was concerned about the way the company was being managed. On a cool day in Boston, Massachusetts, Vilas reviewed the sequence of events that had led to the degradation of ethics at his company.

Coastal Uniforms

Boston-based Coastal Uniforms was a publicly traded U.S. company, with $200 million in sales and 2,000 employees. Until 1999, Coastal had achieved steady growth for the past 22 straight years. During this period, its sales had grown at a compound rate of 21 per cent and its profit had grown at a rate of 25 per cent. On several occasions, it was named one of Massachusetts's best employers by leading local business magazines. While working at the company, many of its shareholding employees had become quite wealthy through share price increases.

Coastal had a dozen locations in Massachusetts, New Hampshire and Rhode Island. It provided work uniforms and uniform cleaning services to manufacturing and services industries. Many of its clients were sheet metal fabrication plants, automobile repair shops, and tool and die firms. It recently launched new

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initiatives, including a Flame-Resistant Clothing Division, a First Aid Supplies Division and the Custom Uniform Apparel Division, to cater to high-end hotels and casinos.

1999: Signs of Trouble

Coastal's issues started in 1999 when several small competitors, through skillful negotiation, wrested a handful of key contracts from Coastal. These companies, previously dismissed by Coastal management as being serious competitors, because they were perceived as being unorganized and somewhat incompetent, surprised Coastal with their renewed sense of purpose. Coastal management soon found out that a new crop of leaders were at the helm of these enterprises and were driving sales at a furious pace.

In 1999, for the first time in Coastal's history, sales and profit were flat versus 1998; and even then, preventing a decline from occurring required a huge effort from Coastal's sales and operations teams.

Coastal had been focused on hitting pre-established profit and growth levels at each location. Its management had ingrained a concept termed "Rule 35," which stipulated that profit and revenue growth increases had to add up to 35. For example, if revenue grew by 20 per cent, profit had to grow by 15 per cent; if revenue grew by five per cent, profit had to grow by 30 per cent. General managers of each location were heavily rewarded to achieve these levels, even forming discussion groups to share revenue- and profit-growth ideas with each other. It was no surprise that 1999's zero-profit growth and zero-revenue growth was of huge concern—none of the general managers received any bonus for that year. Typically, a bonus constituted up to 40 per cent of a general manager's total compensation.

Management was not looking forward to 2000, as they knew that they would have to redouble their efforts. Amidst this chaos, several key managers left the company to start ventures in unrelated businesses.

2000: The Beginning of the Decline

During the first nationwide sales representatives meeting, the 12 general managers collectively pressured the sales representatives to beat their previously established sales targets by 20 per cent. Despite outward signs of discontent, not one salesperson objected. After the meeting, two general managers tacked on new tasks for their delivery personnel: Instead of just delivering cleaned uniforms and new uniform sales to customers, delivery personnel in these two locations would have to sell catalog items to the customers on their route. Although the target was small ($300 a week in sales), delivery reps that did not meet this target would be dismissed.

Products were re-examined for cost savings. In addition to ordering lower quality cotton and polyester uniforms (while keeping the price to customers the same), Coastal management decided to reduce what they believed to be unnecessary features on uniforms, in order to save costs. Extra buttons were taken off; coveralls were ordered without snaps on the cuffs, name patches were sewn on with wider stitches. In addition, during a gasoline price increase in 2000, the company added a "delivery surcharge," about $15 on top of a $300 weekly contract, to the bottom of the invoice. Only a dozen out of 300 customers called to complain, at which point the surcharge was removed for those that called. When gasoline prices dropped in late 2000, the surcharge remained unchanged.

As a result of these initiatives, profit and revenue growth resumed, with the former growing 10 per cent and the latter growing 10 per cent. Once again, the general managers did not receive their bonus.

2001: More Initiatives Are Put in Place

At the start of 2001, the sales quotas for delivery personnel were increased from $300 a week to $800 a week. In addition, the other 10 locations adopted this "best practice" after the two general managers who instituted it shared the idea with

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their colleagues midway through the fiscal year. Sales quotas for salespeople remained very aggressive, and turnover in sales staff increased to 20 per cent. Fortunately, due to the amount of goodwill the company had built up in its community, recruiting efforts more than made up for the attrition; overall company employee strength increased by 10 per cent. An unexpected gain for the general managers was the fact that these new sales recruits eagerly accepted the aggressive sales targets—they appeared eager to please. In addition, the new recruits were half the cost of experienced sales people.

During the first quarter of 2001, an environmental charge was added to invoices. In an explanation to customers, the environmental fee contributed to the cost of cleaning the garments in an environmentally friendly fashion. In reality, no change to the cleaning process was made.

Again, only a small subset of customers, about six to 10 out of every 300, would complain. Dutifully, the complaints were noted, and the charges were dropped for those customers.

In mid-2001, a Hazardous Analysis Critical Control Points (HACCP) charge was added to all invoices going to customers in the food industry. HACCP was a set of regulations in the food-processing industry that required industry participants to adhere to certain sanitation standards. Although Coastal Uniforms had no special method of washing food-processing garments (generally, soiled garments from the food industry were washed along with the rest of the soiled garments), an HACCP charge of $30 per $300 weekly invoice was added. Few customers complained. For several customers, this additional charge amounted to $500 a week for essentially the same service.

These initiatives, implemented by the general managers, were communicated to the rest of the company to be "steering mechanisms" to guide locations to their "correct" profit and revenue growth targets.

For the first time since 1999, the company hit its "35" target. This target was reached despite the slowdown in industry that occurred in late 2001 as a result of the terrorist attacks in the United States. After much celebration, most employees breathed a sigh of relief, thinking that 2002 would be an easier year.

Unfortunately for Coastal, the start of 2002 was heralded by the departure of another five key customers, who had suddenly discovered an extra thousand dollars a week of extra charges on their invoices. Furious and unwilling to accept an "apology" from Coastal, these customers had voiced their complaints in public forums—at the Better Business Bureau office, at City Council business meetings and to any journalist willing to listen. All of a sudden, an easy 2002 seemed impossible.

2002: More Efforts to Drive Revenue and Profits

The general managers assured anxious Coastal employees that these clients were mistaken and that their company was, as always, doing the right thing. During the national sales meeting, sales targets were set, and an additional challenge was put to sales reps: Lose any customer you signed and you lose your entire bonus for the year. To delivery reps, sales targets were increased, yet again, to $1,200 a week.

The number of customers calling to complain that deliveries were late, product was missing, improper sizes were delivered, etc. was increasing. Up to 25 per cent of customers were "dissatisfied" or "somewhat dissatisfied" with Coastal's service.

Many delivery reps confided to their sales counterparts that, in order to meet their weekly targets, they had resorted to leaving product at the client's location (without the client's knowledge) and charging them for it. So far, this indiscretion had gone unnoticed.

Andrew Vilas's Decisions

Vilas was one of the sales reps in whom the delivery reps confided. He was not surprised to hear of their practices. After all, many of these reps were

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in their mid-stage of life and had families to take care of. None could risk losing a job at this stage of their career. Vilas was feeling tremendous pressure too. He had been able to hit 50 per cent of his targets during the past few years. He noticed himself beginning to get visibly angry with prospective clients (if they were too slow to sign up for contracts). Due to the publicity Coastal's practices had received, old customers were calling Vilas to cancel contracts signed just months before. Although Vilas was owed a bonus of $20,000 for 2001, he had not received it. His general manager had even expressed surprise that a bonus was owed to Vilas. Vilas suspected that this reaction was a ploy to either delay or cancel the bonus owed to him.

Vilas considered legal action but wondered about the effects it would have on his career in the uniform business. If he were labeled a pariah, he would never find work. He wondered about quitting his job, but with the purchase of a new house and car, he was stretched to the limits with regard to finances. He really had been counting on that bonus.

To make matters worse, a recession was hitting Massachusetts, and the effects were amplified in Boston, where many of the factories saw huge drops in customer orders. Companies large and small were laying off workers, and economic recovery was not thought to be around the corner, at least not in the next 12 months.

Vilas wondered what he should do.

CXP Publishing Inc. (A)

Ken Mark

Lyn Purdy

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Introduction

"Do her sexual activities affect our business or is this matter personal?" Helen Tilmant, newly promoted director, sales and marketing, of CXP knew she had to handle the employee conduct issue she had just inherited. It was mid-October at the head office of CXP Publishing Inc., and Tilmant, the centre of senior management's attention, sensed that she had a hot issue on her hands.

Background

Founded in 1975, CXP Publishing had grown from its home base into a number of regional offices, employing nearly 100 personnel. Unionized since 1990, the company was a publisher of advertising inserts. An advertising insert was a four-color set of stapled advertisements, containing mostly local, targeted advertisements. These inserts were delivered to households by CXP's network of delivery persons. CXP did not have significant competitors in the advertising insert business as it had been able to out-compete or acquire its major competitors in its market area. It was estimated that CXP captured 80 per cent of the market share allocated for insert advertising.

The Issue

In July, the president of CXP approached the marketing director, Mark Biel, and requested that Biel followup on a rumor that the president had heard at a golf tournament the weekend before. At the informal monthly peer group meeting held between Biel and his management team (the directors for business development, finance, systems, marketing, customer services,

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as well as the production managers and the vice-president of directory services) to discuss issues faced by their business units, Biel recounted;

> The president just walked up to me and blurted out that he was concerned about a sales representative having intimate relations with one of her customers, who was married with a wife and two children. He even named the employee, Sheila McMaster, who was in charge of northern region sales. I felt a bit uncomfortable, and my immediate reaction was that it was none of our business.

"I'm glad that it's not my responsibility," thought Tilmant, silently. "I already have enough to deal with in my current job as sales manager." She did not attempt to counsel Biel, saying that she wanted to put more thought into the matter. During the following peer group meeting in August, Biel announced to the group that he had decided to leave the matter alone and inform the president only if the issue arose again. Before long, the story had leaked out to the rest of the employees from their friends in the business community. There was a range of emotion expressed amongst employees: some were angry, some disappointed, some embarrassed, others thought it was a joke, and some were thinking "Thank God it's not my problem."

In mid-October, CXP announced a reorganization of its senior management ranks and promoted Tilmant to director of sales and marketing, with new responsibilities for northern sales. Shortly thereafter, Biel, the incumbent, left CXP to pursue other professional opportunities.

Helen Tilmant

In her new role, Tilmant would manage all aspects of the sales process, including researching targeted revenue objectives, the 'paper flow' of sales documentation, profit and loss, and the management of customer relations. In addition to the change, CXP hired two extra sales representatives, who also reported to Tilmant, to manage the southern markets. Tilmant reported to the vice-president of directory services who in turn reported to the president. In addition to her sales team, she had two marketing managers involved with advertising communication and product development.

Tilmant preferred to have an 'open door policy' when dealing with her employees. She enjoyed working in a team environment that emphasized collaboration. Before giving her opinion on business matters, Tilmant listened and observed the situation, looking for a rationale as to what action to take, and how the action could be implemented. Typically, she would ask her subordinates for their recommendations for a course of action. Similarly, if Tilmant's subordinates were involved in a conflict, she would discuss the issues with the parties involved, find out the needs of the employees, and then prompt them to resolve the issues on their own. Tilmant explained;

> For problem employees, for example, I would ask, 'What is it you want out of this job, and how would you get it?' If the current job was not what they were looking for, I would say 'Obviously you need to see if your values meet the values of this company.' I'd get them to buy in, to realize the situation they're in, and that helps to move the discussion in the right direction.

Upon realizing that the McMaster issue was hers to resolve, Tilmant's initial reaction was, "The business community is small, and this could have potentially adverse effects if the relationship turned sour. But then again, this issue is personal. Should I get involved?"

Sheila McMaster

McMaster started with CXP as a telemarketer seven years ago. She had been promoted three times and was currently in the position of northern sales representative. Despite these promotions, McMaster's job performance had not always been excellent. Her first manager, Allan Souris, had noted in her employee record that she had been on sick leave three times in her first year of employment, due to stress on the job. It was also noted that she had been warned about her confrontations with fellow employees when she was refused support from CXP's

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in-house creative and production department—the department that designed and produced the advertising inserts. This department worked on a set schedule to meet its delivery deadlines. Occasionally, it was possible to circumvent this schedule in order to accommodate a special client request; however, it was generally accepted that the department would provide this 'rush' service only if timing and resources existed. Souris also noted in his remarks that McMaster performed "the minimum amount of work possible, sometimes meeting, sometimes not meeting expectations, but never exceeding expectations."

When the "major accounts" position became available five years after her initial hiring, McMaster was the employee next in line for promotion, based on her seniority. In assessing McMaster's performance, her current manager noted that McMaster "was unprofessional, and known to have high and low emotional points, and was very aggressive, even towards people in her support team. McMaster was not a model employee." There were three documented incidents of conflict between McMaster and her women colleagues disputing allocation of company time resources. In addition, McMaster had filed two grievances with the union, alleging that her performance as an employee was incorrectly assessed. Despite these issues, McMaster received the promotion because of her seniority.

When the position of northern sales representative became open earlier in this year, it was filled by an employee from the external relations department. Not satisfied by this decision, McMaster filed a grievance with the union, arguing that because of seniority, she should be given the post. The union sided with her demand and ordered CXP to promote McMaster, reversing the previous decision. In this new role of selling advertising space to clients in the northern region, she reported to the director of marketing, Biel. Biel noted that McMaster could not be counted upon to deliver 'paper flow,' the record of advertising and administrative contracts between CXP and its advertisers. Fortunately, noted Biel, McMaster had good rapport with both her male and female advertising clients.

The Current Situation

Now that Tilmant had taken over the position of director of sales and marketing, she had to decide what to do about the McMaster situation. Tilmant had just finished reading McMaster's work history. Before she had a chance to conclude if the issue should be best left alone, Biel walked into her office. "Helen, I want you to know about the latest rumor in town. McMaster is now sleeping with *two* of her clients."

Canadian Imperial Bank of Commerce: Digital Employee Privacy

Ken Mark

Mike Wade

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Introduction

"We could have a lively situation on our hands if some of these e-mail privacy scenarios come true," remarked Bob Jones, manager, Compliance at Canadian Imperial Bank of Commerce (CIBC). It was May 16, 2000, and Jones was aware that Toronto-based CIBC had implemented word

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recognition software in its U.S. broker to comb e-mail messages sent by employees for specified business words. What if these routine searches flagged an e-mail message that also contained personal information about an employee? In the wake of an e-mail "worm" that crippled corporate networks in the first week of May 2000, use of e-mail at work was a hot topic of discussion in management circles.

Canadian Imperial Bank of Commerce

As of May 2000, Canadian Imperial Bank of Commerce had 45,000 employees worldwide serving six million individual customers, 350,000 small businesses, and 7,000 corporate and investment banking customers. The bank had total assets of $250 billion, and a net income of $1.029 billion in 1999.

Formed out of a 1961 merger between The Canadian Bank of Commerce and Imperial Bank of Canada, CIBC was one of North America's leading financial institutions offering retail and wholesale products and services through its electronic banking network, branches and offices around the world.

Customer Privacy in the Banking Industry: The Tournier Case

Privacy practices in the banking industry could be traced back to the landmark 1924 "Tournier Case" (Tournier vs. the National Provincial and Union Bank of England). Common law and guidelines resulted from that decision, and thus the case had become necessary background for management employees in the banking industry.

The Tournier Case concerned a bank customer with a £10 overdraft, who, having no fixed address, gave his bank branch manager the name and address of his new employers. When he defaulted on repayments, the branch manager telephoned those employers to ask if they knew his customer's address. In the course of doing so he disclosed the overdraft and default, and expressed his opinion that his customer was betting heavily. As a result, Tournier lost his job, sued the bank, and won his case upon appeal.

What came out of the decision was a set of four exceptions on the banker's contractual duty of confidentiality where customer information could be disclosed without their consent:

a. Where disclosure is under compulsion by law;
b. Where there is a duty to the public to disclose;
c. Where the interests of the bank require disclosure;
d. Where the disclosure is made by the express or implied consent of the customer.

Since the Tournier decision, banks have become extremely sensitive about protecting customer information. Strict privacy policies have been put in place, and systems containing personal information have been protected from unauthorized use and manipulation. Recent advances in security and encryption technology allowed banking customers to access their accounts and conduct simple transactions though online and telephone banking systems.

Employee Privacy in the Banking Industry

Employee privacy was somewhat different than customer privacy. By design, in most banks, customers were provided with the best level of privacy protection available. However, there were legitimate reasons why banks might want to monitor what employees were doing on company time and with company equipment.

For banks like CIBC, providing employees with access to company e-mail had become a strategic necessity. However, with e-mail access came the possibility of unwittingly receiving or transmitting an e-mail worm or virus, much like the ones which swept across the world in early 2000. (For an explanation of worms and viruses, see Exhibit 1.) Computer Economics Inc., a research firm based in Carlsbad, California, reported that the ILOVEYOU virus alone had infected three million computers around the world, causing US$2 billion in direct economic losses and a further US$6.7 billion in

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VIRUSES

A virus is a piece of programming code usually disguised as something else that causes some unexpected (and often undesirable) event, and which can automatically spread to other computer users. Viruses can be transmitted by diskette or CD, by sending them as attachments to an e-mail message or by downloading infected programming from the Internet. The source of the e-mail note, downloaded file, or diskette is often unaware of the virus. Some viruses wreak their effect as soon as their code is executed; other viruses lie dormant until circumstances cause their code to be executed by the computer. Some viruses are playful in intent and effect, while others can be harmful.

Generally, there are four main classes of viruses.

File infectors

Some file infector viruses attach themselves to program files, usually selected COM or .EXE files. Some can infect any program for which execution is requested, including SYS, .OVL, .PRG, and .MNU files. When the program is loaded, the virus is loaded as well. Other file infector viruses arrive as wholly contained programs or scripts sent as an attachment to an e-mail note.

System or boot-record infectors

These viruses infect executable code found in certain system areas on a disk. They attach to the DOS boot sector on diskettes or the Master Boot Record on hard disks. A typical scenario is to receive a diskette from an innocent source that contains a boot disk virus.

Macro viruses

Macro viruses are the most common form of viruses. Each macro virus can only be spread through a specific program. Most common types are Microsoft Word and Excel viruses. These programs contain "auto open macros" and "global macro templates." Virus writers recognize that any macros stored in the global file will automatically execute whenever something is opened. Macro viruses exploit these two aspects to enable themselves to replicate.

WORMS

A worm is a special type of virus that transfers itself from one computer to another via a network. Worms can replicate themselves very quickly (often through e-mail address books) and thus carry the potential to overload host systems. Normally, worms cannot attach themselves to other programs, and thus do not pose a threat to files or data.

Exhibit 1 Explanation of Worms and Virus

lost productivity. Insurer Lloyd's of London announced on May 8, 2000, that computer viruses would prove to be the biggest insurance risk in upcoming years, prompting business analysts to call for a widespread change in company e-mail policies.

In addition to protecting company systems from viruses, employers like CIBC had obligations to ensure that employees were not acting illegally, for example in perpetrating frauds, or immorally. E-mail could be used by employees to make inappropriate or defamatory comments. It could also be used to transmit sensitive corporate information, without appropriate security.

CIBC's Electronic Communication Policy

E-mail and voice mail were both included in Section 4.6 of CIBC's *Principles of Business Conduct*. CIBC recognized that occasional personal use could not be avoided.

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> E-mail and voice mail are essential ways to communicate with employees, customers, suppliers, and other parties. Although all e-mail and voice mail facilities supplied by CIBC are its property, CIBC recognizes that incidental or occasional personal use of both is unavoidable.

CIBC reserved the right to access and monitor both internal and external e-mail and voice mail, including stored messages, and to restrict the use of both, without prior notice. The company also reserved the right to produce all office communications in legal proceedings.

Assentor Software

To ensure that its brokerage employees were not acting inappropriately in their dealings with customers through e-mail communications, CIBC relied on software to screen and archive e-mail messages in a central database. The software had the ability not only to screen key words, but combinations of words and sentences (so called natural language technology). The software allowed CIBC to "flag" and hold potentially inappropriate e-mail communications, such as high pressure sales tactics, insider information, as well as other potentially litigious issues, such as sexual harassment. These flagged e-mails were then held for human analysis and review before being sent.

The market for e-mail screening software was worth $17 million in 1999, and was growing at a rate of 45 per cent per year. According to a report by the Tower Group (www.towergroup.com), natural language technology was a significant improvement in screening technology allowing for more flexible and accurate monitoring than keyword or phrase search alone.

An excerpt from a news release from SRA International Inc. (which markets Assentor e-mail screening software), dated Feb. 22, 1999, read:

> (Tower Group) predicts that natural language functionality will become the technology of choice for e-mail compliance tools. . . . Securities firms of all sizes are using Assentor to apply technology to the compliance review process and take advantage of the many benefits of e-mail technology for communicating with their clients. Assentor uses a sophisticated, linguistics-based natural language pattern matching engine and highly refined compliance patterns developed closely with securities industry associations, compliance experts, and major broker/dealers to ensure that the technology is effective for all types of compliance requirements.

Companies in the financial services industry which used Assentor included CIBC, A.G. Edwards, BancBoston, Southwest Securities, and the National Association of Securities Dealers. Many others used other, mostly less powerful, e-mail screening methods.

Call centers typically tape conversations for quality control, and most organizations announce to the customer at the beginning of the call that the conversation will be taped. Employees working at call centers knew when they arrived at work that their conversations would be taped due to the possibility of disputes—for example, replaying a taped call would confirm if the customer requested a "buy order" of 500 shares instead of a "sell order" for 5,000 shares of the same stock. It was much easier, on the other hand, to forget that e-mail use could be monitored.

CIBC had recently developed an "Electronic Mail Policy," which went into more detail than the previous entry in its *Principles of Business Conduct* document. This policy outlined appropriate and inappropriate use of this company resource. A short summary of the policy read:

> Electronic mail (e-mail) systems, provided by the CIBC Group of Companies (CIBC Group) are its property. Employees are to use these systems for company business primarily within the boundaries of this policy and its standards. Business information, and the ability to freely communicate it, are valuable assets that play a significant role in CIBC's success. The protection and appropriate use of these assets is everyone's responsibility.
>
> All messages sent or received by electronic mail are CIBC records and must be handled in a manner consistent with CIBC record management policies and practices. Caution and discretion should be used in the nature and content of all messages sent, stored or distributed.

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> CIBC recognizes that incidental or occasional use of e-mail for personal communications is unavoidable. However, all users with access to CIBC e-mail systems should be aware that the CIBC reserves the right to access, to monitor and to archive all e-mail messages, transmitted, received or stored on its systems, without further prior notice.

"E-mail use is often similar to casual conversations rather than formal written communications" stated Jones "because employees forget that it is recorded and can be monitored." Jones went on to stress that e-mail is a business resource covered by a separate e-mail policy. He concluded by asking "how should employees be discouraged from inappropriate language, content and usage?"

Jones knew that these were not easy questions to answer. Recent articles in newspapers and trade journals on e-mail privacy, such as the following excerpt, had brought the issue to CIBC's attention once more.

"Prying Times: Those Bawdy E-Mails Were Good For A Laugh—Until The Ax Fell," *The Wall Street Journal,* Feb. 4, 2000.

> In the course of their inquiry, workers say, managers found a number of potentially offensive e-mails, some of which had been sent by or forwarded to other employees in the office. That led to a wider investigation, and ended Nov. 30th 1999 when the Times fired 22 people in Norfolk, plus one in New York. Roughly 20 more workers, who the company determined had received offensive messages but didn't forward them to others, got warning letters. Most of the fired employees were otherwise in good standing; one had just received a promotion, and another had recently been commended as "employee of the quarter."

Some corporations, like CIBC, used e-mail screening to catch e-mail misuse, but since these filters tended to slow down network traffic, the practice was not universal. A second option, according to Jordan Worth, an Internet Analyst with International Data Corporation, an Internet research firm, was to put in place policies that banned certain "types" of attachments. A third approach was to archive e-mail, but only access it in the event of a complaint.

WHAT SHOULD CIBC DO?

Jones found that taking the decision to implement the Assentor software was a lot easier than deciding what to do in the event that the software found something improper.

"What if an employee sends a personal message using a business 'word' flagged by Assentor and his or her direct manager finds out about a private situation?" wondered Jones. "What are the legal ramifications if the employee is reassigned or fired and subsequently claims bias on the part of the manager? What about the question of company ethics? Should we be reading personal e-mail from employees?"

Jones was wondering how to best reinforce its e-mail policy at CIBC.

> The employee should know that e-mail is a business resource that *could* be monitored by the employer. But how would we enforce it?
>
> If we were to cease monitoring e-mail, it might seem to be a viable solution, but remember that we have a responsibility to our customers, shareholders, and the regulatory agencies to ensure proper records are kept and to monitor business e-mail use. It is also a regulatory requirement in the securities industry. Should we consider taking that risk and not having an e-mail screen? Probably not. There are things that an employee legally can't say, and some things they shouldn't say. Assentor "sniffs" this out for us and our employees should understand this.
>
> I believe it is all about how we present it to our employees. To best implement our Principles of Business Conduct, clear communication and upfront understanding from our employees will go far to prevent negative impressions. We want to be as upfront and clear as possible to them. How best, then, to do that?
>
> Should we inform our employees once? Inform them once per year? Have them sign a code of conduct? Or inform the employee every time he or she logs on to a company computer?

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STAMFORD MACHINE CORPORATION: ALLEGATIONS OF RACISM

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INTRODUCTION

It was May 2001, and Allen Douglas, director of corporate business ethics and compliance of Connecticut-based Stamford Machine Corporation (SMC), received a call from Michael Weisberg, senior partner in New York law firm Weisberg Coltin. Douglas was advised that SMC was being served with a racial discrimination lawsuit from current and former black sales representatives.

The lawsuit was filed on behalf of six salespeople from California, Georgia, New York and Texas, and alleged that white sales managers would routinely exclude black salespeople from opportunities that would allow them to earn higher commissions and promotions. Douglas requested full details from Weisberg, and then sat down to chart a course of action. He knew that Weisberg's next call was to the press.

STAMFORD MACHINE CORPORATION

Founded in 1925, Stamford Machine Corporation had a long history of prevailing against seemingly impossible odds in the office products market: surviving the Great Depression, technology change, entrance and dominance of Japanese and Taiwanese competitors.

SMC designed, manufactured and marketed a range of typewriters, photocopiers and overhead projectors to businesses. With sales approaching US$1 billion in 2000, Stamford senior management believed it had achieved a major milestone. In the 1980s, Asian competitors had entered the fray, changing the sedentary pace of the industry almost overnight. Faced with year after year of large losses, Stamford knew it had to reorganize its business practices.

Throughout the 1990s, Stamford embarked on an ambitious program to overhaul its sales force, rewarding successful salespeople with increasingly larger territories, and transferring or dismissing poor performers. The company avoided its competitor's strategies of promoting successful salespeople into management positions, where they were often ineffective. Rather, Stamford chose to richly compensate salespeople, keeping them in their preferred environment.

The program bore fruit in late 1999, when Stamford became the market leader in the U.S. copier market. With high positive cash flow and growth, Stamford looked poised to remain the leader for years to come.

THE PUBLIC ANNOUNCEMENT BY WEISBERG COLTIN

Weisberg announced in a press release:

> Our clients have described a system where Stamford Machine routinely assigns white salespeople to profitable territories and expeditiously promotes them through ranks, while assigning minority salespeople to traditionally less profitable territories. Our clients charge, furthermore, that no matter how well minority salespeople perform in their territories, Stamford Machine rarely, if ever, promotes them to more profitable positions and territories.

In a press interview, another attorney in the case, James Fulton, continued:

> Basically, the company would send white salespeople to Wall Street and all the black salespeople to Harlem or the Bronx. The whites would sell 30 copiers at Morgan Stanley, and the black salesman was lucky if he sold one machine at a little mom-and-pop business. There was racial steering here, and there was an incredible difference in pay.

Before Douglas could even leave his office, the telephone rang again. It was the state newspaper's business affairs journalist, asking for comment. The journalist, who did not give his name, alluded to the fact that several employees had already voiced their opinion in separate interviews. Douglas was furious but tried not to show it. He calmly reserved comment and thanked the journalist for his interest. Out of concern, he asked the journalist what the employees had told him in their interviews:

- Cory Jameson, who sold for SMC in Atlanta, charged that the company took away his most lucrative accounts in late 1999 as part of a reorganization, giving the accounts to white salespeople. Jameson claimed that many of the representatives who gained control of his accounts not only had less tenure at SMC but also received commissions on several sales that were pending at the time. Jameson had filed charges with the Equal Employment Opportunity Commission in 1998 and received a notice from the commission earlier in 2001 that said he had enough of a case to sue.
- Ferran Ferguson, another black salesperson, said he was assigned a territory in the Bronx, New York, that required a car. When Ferguson notified the company that the territory would be hard for him to cover because he did not have a car, Ferguson alleges that a vice-president told him he was assigned to the Bronx because "blacks and the Bronx go hand-in-hand."

Douglas thanked the journalist again and sat down.