

Professional Ethics

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Professional ethics has become more important over the years. As we become more specialized in our occupation, the issues become that much more complex – and hard. Professional bodies have increasingly been at work developing, revising and refining professional codes of ethics. Professionals themselves ask for more detailed codes so as to have greater guidance. There is no longer a deference to the authority of experts on the part of the public or of the client group. The standards for professional conduct keep drifting higher. Where safety and health are at issue, the regulators are under more pressure to act when professional groups do not act. Frankly, it is a sign of maturity, and of professional pride, when a professional group is operating under a code of ethics.

What do we mean by professional ethics? What sorts of issues are likely to come up during the career of an OHS professional? How does one resolve ethical dilemmas? How should one use a professional code of ethics?

Professional ethics helps a professional choose what to do when faced with a problem at work that raises a moral issue. One can certainly study what professionals do when faced with such problems, and confine the enquiry to the description. Our concern here, however, is to assist with making choices – an approach called *prescriptive professional ethics*.

By an “occupational health and safety (*OHS*) *professional*” we mean someone who is engaged in providing OHS services either as an OHS co-ordinator or manager (the range of job titles is enormous) and would include people who serve as consultants or as government regulators. However, such a person would also have to belong to a formal group, as discussed below. A narrow definition of “*professional*” is a self-regulating occupational group capable of legally prohibiting others from practising. A broader view of a profession, as described by Brincat & Wilke¹, would possess the following elements:

- group identity
- shared education, training (requirements for admission)
- special, uncommon knowledge
- knowledge used in the service of others (positive social need)
- involves individual judgement, some autonomy in decision making
- adherence to certain values
- penalties for substandard performance

To meet this description, you are not a professional until you are a member of a group of colleagues who have articulated a set of standards and values and can enforce them, at the very least, by exclusion from the group. OHS practitioners are not true professionals in the narrow sense unless they are also members of a statutorily protected group such as nurses, engineers, lawyers or physicians, who can use the courts to prevent people from engaging in their practice areas. But OHS practitioners are certainly professionals in the broader sense if they have been accepted into one of a half dozen or so OHS organizations that enforce a code of ethics. We are taking the broader view here. Will there ever be a full OHS profession in Canada operating under a monopoly-granting statute? Time will tell – and there are pros and cons – but the practical barrier remains the wide diversity of OHS practitioners and the overlap between what different groups do.

Canadian OHS professional groups do not have a lot of formal ethics cases in front of their disciplinary committees. This doesn't mean there aren't problems. There is likely a reluctance to report issues. A recent study of ethical misconduct among industrial hygienists in the UK by Burgess and Mullen² found that 77% of respondents had witnessed activities of potential ethical misconduct by their peers over a 5 year period. The list below starts with the most commonly reported behaviours, ending with least common:

- C Plagiarism
- C Failure to protect confidential data
- C Failure to share credit on a report
- C Fabrication of data
- C Criticize the ability/integrity of colleague for own gain
- C Holding back or disguising data
- C Design of sampling strategy to favour a specific outcome
- C Destruction of data that contradicts desired outcome
- C Deliberately not reporting an incident

By far, the most frequently cited reason for the misbehaviour was “economic pressure”. Patricia Logan, in interviews with American industrial hygienists, found some other factors causing pressure:³

- C Increased pressure when hygienists become consultants rather than in-house staff due to restructuring
- C Working in foreign countries where local standards are lower than in the US
- C Increased pressure to win contracts, causing OHS issues to fall by the wayside
- C Lack of legal standards thus leaving hygienists to argue about the “rightness of doing something” rather than an argument based on compliance
- C Working on a contingency basis
- C Decrease in job security dampening outspokenness.

What is the relationship between professional ethics and the law? As there is a moral duty to obey the law (with some rare caveats), we can say that an OHS professional who is in breach of the law is likely to be behaving unethically. It certainly raises the question whether a convicted OHS professional should be examined by the governing professional body's discipline committee. But such cases are very rare (but not non-existent).

Obviously one can be unethical without behaving illegally. It is a common rationalization of unethical behaviour to say “well, it wasn’t illegal, so who cares?”. It is perhaps the major point of professional ethics, though, to deal with scenarios that do not involve illegality. Professional ethics covers far more issues than the law does. Many of the issues are imbedded in messy and complex factual situations, so ethical issues tend to be harder to identify than legal issues. We should have more sympathy when someone says they were confused or ignorant or thoughtless about a moral issue, as opposed to a legal problem.

How does one recognize a moral problem within professional ethics? Is the issue one of “right” or “wrong” action? Is the issue one of “good” or “bad” motives, methods or goals? Is there a “value” at stake? Is the terminology not descriptive, but prescriptive, involving words like “should”, “ought to”? We do a much better job of identifying issues in professional ethics if we are sensitive to the principles and values set out in our professional codes of ethics (that is one of their benefits – an educational function). It helps to have lists of issues available to contemplate.

It is a curse of the twentieth century to speak of ethics as being subjective or relative – “it’s all a matter of personal opinion”. Moral relativism is ultimately futile and nihilistic. There can be no real debate, guidance, judgement or resolution. Those claiming relativism are usually in a position of self-rationalization. Moral absolutism is not a tenable position either, as it leads to inflexibility and a harshness that creates its own injustices. “Objectivity” in professional ethics means that there are principles and values outside of oneself that the members of the community share and can discuss, and that individuals will be measured against.

In OHS we are all familiar with the concept of “reasonableness” imbedded in due diligence. Samuel Johnson said that thinking reasonably is thinking morally. The objectivity in professional ethics comes when we ask what the reasonable peer would do in the circumstances with the ethical problem. The reasonable peer is a hypothetical standard – a person who is well-informed, well-intentioned, open-minded, calm, detached but empathetic, unbiased, sane, sober – a condition we are capable of even though we all lack consistency. We can solve problems in professional ethics (and all of ethics) only when we can put ourselves into such a state of mind. Members of discipline committees must be keenly mindful of this when deliberating.

Many codes of ethics require that the professional be “objective” in his or her work. Thus, not only does the concept of the reasonable peer apply in the objectivity of ethical thinking, it also applies in the giving of professional advice.

How should we think about moral problems? We are aiming for a *moral decision*; one that is prescriptive; one that resolves the issue in terms of what we *ought* to do. We can only legitimately arrive at a moral decision if we have an explanation for the decision that is a *moral explanation*. An explanation is only a moral explanation if at least one (preferably more) of the reasons within the explanation is a *moral reason*, as opposed to some other type of reason. If we only have one explanation leading to one decision, we do not have a dilemma (let alone a moral dilemma). We only have difficulty if we are faced with two or more explanations leading to two or more different decisions – then we have a dilemma. Still, the dilemma may not be a moral dilemma.

For example, I promised to write an article to meet a deadline. I also want to abandon my task and go and smoke a cigar, drink some scotch and watch a Star Trek re-run. What to do, what to do? This is not a moral dilemma. Finishing the article involves universalizable, non-selfish

moral values – integrity, responsibility, promises, and so on. Watching Star Trek instead involves mere pleasure and selfishness. This non-moral dilemma can be easily resolved *morally* because it's no contest. (To convert the example to one of professional ethics, assume you have to choose between short-changing a professional report in favour of leaving for a party.) Many of the issues that people describe as moral dilemmas turn out on examination not to be. They may be hard, painful and make you unhappy, but they are not moral dilemmas. When you have to choose between doing something professionally that reduces risk in the workplace, and doing something else that involves merely making money, aggrandizing yourself, pleasing yourself, putting someone else down, gaining a new office fixture, etc., etc., you may have a hard choice on your hands, but not a moral dilemma. This assumes that hedonism and selfishness are neither moral principles nor moral values. Some people disagree, but there is no room here to persuade otherwise.

We are faced with a moral dilemma when we have two moral explanations leading to conflicting moral decisions. The three common ways out of such moral dilemmas are:

1. come up with a creative third alternative that satisfies both moral outcomes;
2. if possible, act sequentially on each to satisfy both; or
3. evaluation will show which is the strongest moral explanation and decision.

Strong moral reasons are those that are relevant to the decision, are concerned with the person most affected by the decision and are focused on values of central importance. Weak moral reasons are the opposite. Strong moral explanations use several different *moral perspectives* (consequences, motives, rights, virtues, etc.), consider all persons affected, and deploy many values. Weak moral explanations are the opposite.

By “moral perspectives”, we mean *moral theories*. Moral theories help us decide which element of a moral problem is the most important – (is it the consequences, a particular right or value?). Moral theories help us to resolve conflicts between rules and conflicts between values. We all possess moral theories, whether we're fully aware of them or not. We get them from family upbringing, religion, culture, reflection and education. There are two broad categories of moral theories. There are action theories (“what course of action should I take?”) – these are concerned with consequences for the community, and the rights and duties of individuals. Second, there are status (“being”) theories (“what kind of person should I be?”). These involve virtues, character and relationships.

An important moral theory is “*natural law*”, which has its origins in classic Greek philosophy and which subsequently became associated with Catholic theology. Whether you are a Catholic or not, if you are a participant in western cultures you are likely to identify with central elements of natural law. Human beings, by their very nature sense that certain things are “good” – life, health, knowledge, play, art, and friendship. They are worth engaging in or protecting “in and of themselves”, not because they are means to some other end. Human life is not measurable in its value – “life is priceless”. In law we observe this in the breach when a judge says “the life of your dead child is priceless, but we will award you monetary damages anyway”. We observe the good directly in law when a Charter or a Bill of Rights states that we have a right to “life, liberty and security of the person”, or a “right to life, liberty and the pursuit of happiness”. This moral perspective leads to dilemmas when we engage in cost benefit analysis and quantify life. We can say that life and health are central values of OHS professional codes – protecting and promoting

human life is what we do. Moral dilemmas occur when we have to balance the risk to life and health against the value of equality in human rights cases.

Another moral theory that emphasizes consequences is "*utilitarianism*". We are all familiar with the utilitarian principle "choose the greatest good for the greatest number". An act is right only if it tends to result in the greatest net good. All acts are potentially permissible; it all depends on the consequences. Killing an innocent person is not necessarily wrong. All persons count equally in the analysis, but it's possible that individuals may be sacrificed for the greater good. A natural law adherent will say that abortion is always wrong; a utilitarian will say that "it depends". Utilitarianism is closely associated with modern techniques of risk or cost benefit analysis. Our legal system in a democracy is based in part on the notion that legislators will pass laws that result in the greatest good for the greatest number.

In rights based theories, a right is a justified claim on someone. An act is morally right if it respects and upholds rights. This approach emphasizes respect for persons, the bearers of rights. The good of the community may be sacrificed for the right of an individual. We may have difficulties clearly identifying rights and deciding which rights are more fundamental or pressing in the circumstances. In OHS we talk about a right to life and health, or a right to refuse unsafe work, or a right to know.

Duty based theories are closely associated with rights based theories, because a right can be enforced by enforcing a duty, e.g.: a "duty to tell" about a hazard someone faces that you know about and which you have control over. Duty based theories are relatively easier to work with than some others. Duty is about obligation and responsibility. Moral duties can be easily converted to legal duties. A duty based moral theory considers motive or intention of the decision-maker as well as the nature of the act and its consequences (although consequences are of lesser importance).

Kantianism, named after the philosopher Immanuel Kant, is often viewed as a duty based theory, but can be expressed in a rights form. Rights emerge from the duty to treat others with respect. Under *Kantianism*, one decides if an act is right or wrong without looking at the consequences – so it is an approach that is in contrast to utilitarianism. Reason alone tells us which principles are universal – they are always right and can be followed without self-contradiction. Under Kantianism one has a duty to always tell the truth. Taking an innocent life is always wrong. A famous Kantian maxim is: "always treat others as ends in themselves and never as means solely." People aren't objects or tools. Treat them as entities with their own agendas. Consent and agreement are important. I could use someone as a tool – their body as a bridge for me to cross a mud puddle, as long as the person gave free and informed consent. Kantianism is at the basis of our modern day concern for human rights – respect for persons. Kantianism explains why a democratic majority must have their will thwarted by the courts if the majority tries to use the law or state power to violate a right or freedom in a Charter of Rights.

To show two perspectives in sharp contrast ... a hijacked airplane with 200 innocent people aboard is being about to be flown into the World Trade Center. You are in the fighter jet and managed to reach the scene in time to decide whether to blow the airplane out of the sky. Do you kill 200 innocent people to save thousands? A utilitarian will say "yes", a Kantian will say "no". What do *you* choose? A Kantian might resolve the matter by assuming that the passengers would have given their informed consent to be killed if they were asked, just as we treat unconscious accident victims without actual consent (although one can argue that the cases are not truly

analogous).

A *virtue* based theory requires that one act for the sake of virtue, or as a virtuous person would. A virtue is a good character trait – benevolence, justice, loyalty, friendliness, courage, honesty, integrity. A vice is a bad character trait. In the particular circumstances some virtues may be more important than others. The more people positively affected by the exercise of the virtue the better and the more virtues called into play, the better. Virtue ethics is not deployed in modern times as much as it used to be. It's an approach that doesn't fit as easily with the use of law. But one can see that much of what we talk about in professional ethics is related to virtue. Professional codes of ethics specifically refer to virtues. If you are a professional you are a particular kind of person because you must nurture certain virtues more carefully than a non-professional.

A moral philosopher make seek to persuade you to adopt a particular moral theory as your sole perspective. In reality, it is extraordinarily difficult to be a purist. Most of us are bearers of all western moral traditions in varying degrees, and we tend to shift from one perspective to another depending on the circumstances. When it comes to professional ethics, we find that the cases are so messy, idiosyncratic and fact based, that the proper approach tends to emerge “bottom up” – from the case – rather than “top down” – from theory. Following Brincat and Wike, a good moral framework to use is to:

- C appeal to a rule (rightness and wrongness)
- C using a moral theory (a perspective), while
- C applying a value

... so as to construct an moral explanation for a decision. We are using rules, theory and values to come up with a number of reasons supporting the explanation. If more rules support the explanation than less, if several moral theories point in the same direction rather than just one, if more values or virtues can be promoted than fewer ... you have a stronger set of moral reasons for your decision, and a better decision. Process helps considerably. Debate and analysis lead to better decisions. Canvassing those who are affected, listening to several sides to a dispute, keeping an open mind, ... all lead to better decisions than when one contemplates what to do in isolation.

Indeed, part of professional ethics has to do with the fairness with which issues are handled and cases are decided. Professionals have a duty to report colleagues' wrong-doing, and disciplinary measure may have to be taken. Procedural fairness is part of ethics, and so there must be adequate warnings, notice, a hearing of all sides and an even-handed and consistency in the sanctions taken. Like cases must be treated alike.

What is the role of a professional code of ethics? It helps clarify values and rules, it strengthens group identity and collegiality, it fosters public confidence, and it can be used as a framework for discipline. The “audience” is the public, employers, clients, and fellow professionals. A code of ethics can be inspirational, educational, a tool for decision-making and a reference point. One can also criticize over reliance on a code of ethics. It can instil complacency (“we're ethical because we have a code of ethics”). If it isn't used or enforced, the suspicion may be it's there simply to polish the group's public image or to bolster a professional monopoly. It must be said that a code of ethics doesn't create ethics and it is not really possible to completely codify ethics. Collateral education is necessary to bring a code of ethics alive.

Most professional ethics cases have to do with conflicts. A moral dilemma is a conflict. We may have a clash between risk to human life and property interests, or a clash between risk to human life and risk to the environment. However, a common type of conflict is a “conflict of interest”. This usually refers to a conflict between one’s professional duties and one’s personal interests. As mentioned above, these cases may not be true moral dilemmas, although they may be painful to resolve. A “bad faith” decision by a professional can involve the use of one’s position or powers to obtain a personal benefit – the powers or position have been used for a purpose other than for which they were granted. Sometimes there is an overlap with the law. It is a criminal offence to receive a “secret commission”. An OHS manager who gets a week long holiday in the sun because he or she has given a safety supply contract to an overly grateful acquaintance would be an example.

The protection of property is often denigrated as a value. It compares poorly with “human life”. We have already seen in the Burgess and Mullen study that “economic pressure” was the most common reason for ethical misbehaviour. It is an issue that the professional must guard against in his/her own decision making, as well as an issue to watch for in others. An OHS professional may be convinced that a certain course of action is right because of the decrease in risk to life or health. Others will not go along because of the cost (a property interest). When risk to life is high, there is little doubt which way we should go. Where there is resistance, the professional has a duty to be honest and forceful and not to “go along”. Someone else may have the authority to make the decision and they then assume the liability, ethically and legally. Where the person in authority is unreasonable and dishonest, the situation may cry out for “whistle-blowing” on the part of the professional. This should first take the form of “internal whistle-blowing” as in an obvious case, some other senior person will see the light. On occasion, the external authorities must be called. A professional has less job security than a non-professional, and it is self-imposed. The right thing to do is to withdraw services, but such cases should be very rare.

High risk cases are relatively easy. The weight of reasons is heavy. The low risk cases are murkier. Some risk is inevitable if any work is to be done. Is the risk as low as is reasonable in the circumstances? One sees the overlap with the concept of due diligence (a concept which professionals must have a refined sense about).

Many codes of ethics refer to relations with colleagues. It is useful to distinguish between duties to the profession as an institution and duties to professional colleagues. They are not the same. What does it mean to say that the professional will not bring the profession into disrepute? As mentioned earlier, it is in the nature of a profession, as opposed to an occupational lobby group, that public service is a central element. For the OHS professional, the protection of workers and the public is key. If the efforts of colleagues will be undermined by a general loss of reputation and credibility resulting from personal misconduct of an individual, the wrong-doer may be doing far more harm indirectly than directly. The issue is not, as some might believe, a loss of income, prestige or position of colleagues, it is a reduction in the protection to the client group or public that is the harm done. Professionals must be vigilant that they are not protecting their self-interest when the profession is attacked or its reputation impugned, but are protecting the interests of others.

As for relations with colleagues on an individual basis, a professional is required to be cooperative, respectful, supportive, helpful, open-minded as well as open, and without blatant or crude competition. Competition is good, but it must be meritocratic and honest. And it is of the

essence of professionalism that discipline is maintained. As seen above by Patricia Logan, competition can induce the OHS professional to recommend cheaper but less effective measures in order to win further contracts away from colleagues.

The OHS professional should follow recognized scientific principles when practicing and should perform services only in the areas of their competence. A form of dishonesty in competition is to hold out to others that one has expertise that one lacks. Serious harm can result when one undertakes a project that one has little ability to fulfill properly. Because OHS practice involves so many sub-specialties, this is a source of many problems for the OHS generalist. A Canadian Registered Safety Professional (CRSP) is required to be familiar with ergonomic and industrial hygiene principles, but there are many activities in these two subject areas that the CRSP should not undertake unless he or she is actually an ergonomist or a hygienist. Another problem area is legal interpretation. Most OHS professionals are called upon to assist with regulatory compliance. Many provide training services in which due diligence is discussed. While much of this activity is surely legitimate by virtue of necessity, it is sometimes overlooked that it is both illegal and unethical to give a legal opinion professionally unless one is a lawyer. There is a line that should not be crossed. For example, a “system audit” performed by an OHS professional that guarantees the client that there is “legal compliance” has probably crossed the line. Training generally about due diligence is OK; telling someone conclusively that they are duly diligent in a specific situation is not OK.

It is an essential element of professionalism, and it is often referred to directly in codes of ethics, that one must engage in professional development throughout one’s career. The idea of continuous improvement in professional knowledge and skills is actually implicit in the standard of the reasonable peer. There is a duty to take courses, read the literature, attend conferences, and so on. Many professional groups encourage (if not enforce) this through mandatory “maintenance points” – you can lose your designation if you cannot show upgrading over time.

Respecting confidences is another idea expressed in codes of ethics. An OHS professional learns many things by virtue of his or her work. Medical or health information about individuals is a special case, and there are many legal duties regarding this issue. In addition, however, there is confidential business information that cannot be divulged to others – business plans, customers’ names, secret formulae, and so on. Sometimes forgotten is that personal use of the information is also a breach of confidence. The OHS professional comes into a company to perform a certain task, but discovers the company has an excellent program, procedure or policy in some other OHS area, and the consultant expropriates it for inclusion in services to other clients. Consent of the client would legitimate this use, but remember that sometimes the desired material is not within the ability of the client to give away – it may belong to a fellow OHS consultant. One annoying (and unethical) practice of some clients is to reveal the consulting materials of one consultant to another. “You’ve won the contract, but how about including these features of your competitor’s work into your services.” It is unethical to go along with this practice; you are aiding in the breach of confidentiality by the client.

Many codes refer to “integrity” as a value – “maintain the highest standards of integrity”. It seems vague at first. Integrity means a consistency in commitment to moral commitments. Still vague? Commitment to commitments means one’s moral character must be consistent, whole and integrated. You don’t have “integrity” if you are committed to conflicting standards or values. Your behaviour would become erratic and inconsistent. Integrity is related to other values, such as honesty. To be true to a system of values, one must be honest. A person with integrity will admit errors, refrain from false pretenses and advise clients truthfully. Integrity is related to promise keeping – one must follow through on promises. A professional should be careful about what is promised. If you can’t deliver on your promises, your integrity is said to be jeopardized. Integrity is also related to loyalty – loyalty to one’s

profession, the goals of the profession, loyalty to the employer's goals. Loyalty should not be blind, however, and so other values may be in conflict with loyalty if the employer's goals are not in themselves worthy in the circumstances.

If your background is in science or engineering as is the case for many OHS professionals, you may find the contemplation of professional ethics to be somewhat frustrating. Keep in mind that ethics, as a subject matter, is in a different realm than science, and its methods are not the same.

Solving problems in professional ethics can be very difficult. OHS professional groups should be encouraged by their members to continue their work in developing and revising codes of professional ethics, and to set up fair processes for dealing with cases. It goes without saying that education is necessary to supplement professional codes of ethics.

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1. C. A. Brincat and V.S. Wike, *Morality and the Professional Life: Values at Work*. Prentice Hall Inc., (2000). The ideas in this book were very helpful in the preparation of this article.
 2. G. L. Burgess and D. Mullen, "Observations of ethical misconduct among industrial hygienists in England", *AIHA Journal* 63:151-155 (2002).
 3. P. Logan, "Industrial hygienists face many ethical dilemmas", *The Synergist*, 12(11): 17-19 (2001).