Ethical dilemmas of corporate secretaries

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Ethical Dilemmas of Corporate Secretaries

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Corporate Integrity, Professional Ethics, Responsible Corporate Governance, Responsible Leadership

Introduction

In the aftermath of a number of scandals, such as Guinness, Maxwell, WorldCom, and Enron, business conduct has generally become governed by statutes, codes of conduct, and regulatory authorities while trust and generally accepted principles of proper conduct have disappeared. Although there have been many cases of disgraced directors and accountants, there have been none involving a chartered secretary, which may be seen as the result of an effective code of professional ethics. A code of ethics outlining the responsibilities of and best practice for an individual or organization has become one of the mandatory disciplines of a professional body. Codes of ethics, ethical policies, or codes of conduct can be a means for establishing and articulating the values, responsibilities, obligations, and ambitions of an organization or profession (Fisher and Lovell, 2006).

In reference to ethical conduct, Kakabadse et al. (2002) highlighted the incongruency between the desired values of the individual and the contextual realities of the organization, raising the paradox of what one should do and what one ought to do. Personal experience and the professional journals suggest that many professionals in senior administrative positions have, at some point in their careers, encountered such a paradox, causing a conflict between their professional training and the needs of the business or the instructions of the board. The crucial point here is that although business ethics comprises principles and standards that guide behavior in the business world, occupants of corporate secretary roles experience ethical dilemmas. In their daily work they need to discern what is right (or good) and what is wrong (or bad).

Fisher and Lovell (2006, p. 226) defined a dilemma as a “perplexing state involving difficult or unpleasant choices” and Ferrell et al. (2002) explained an ethical dilemma as a problem or situation that requires a choice between actions that require evaluation as ethical or unethical. Whether a specific required behavior is acceptable is usually determined by the business stakeholders and, although these may not necessarily be "right," their judgment will tend to influence society's acceptance or rejection of a business and its activities. A business ethical dilemma would, therefore, be a problem or situation that requires the business or the employee to choose between a number of actions that must be evaluated with regard to the needs and requirements of the stakeholders and the community.

Typical examples of ethical dilemmas can be seen with respect to secretaries who come to know of accounting fraud or corruption involving senior executives with whom they used to work closely. Other examples are not that easy to identify as unethical practices, especially when they comply with existing laws and regulations. Further, a new category of importance in the future is artificial intelligence (AI)-related ethics; a field currently evolving though largely yet untouched by laws.

The Role of Corporate Secretaries in Corporate Governance

Governance has been described as the mortar holding together the brickwork of society. It stretches from local town or boroughs through to national and even international levels. Corporate governance is often described as a system by which all organizations are directed. However, there have been many definitions of the meaning of corporate governance. These range from ideas of the processes by which companies are run to systems by which companies are directed and controlled. Perhaps the most generalist view is from Bain and Band (1997), who suggest that it is the relationship between various participants in determining the direction and performance of organizations. Overall, corporate governance can be viewed as the system by which all organizations are directed and controlled, and is the upper level in the process that should ensure an organization achieves openness and integrity; it involves the rules, responsibilities, and accountability of senior management.

While in the USA corporate secretaries are exclusively lawyers, the UK Companies Act 2006 requires a corporate secretary to be a lawyer, a qualified accountant, or a chartered secretary. The practice of dual role of general counsel (GC) and company secretary has a potential for conflict of interest (Kakabadse et al., 2014). A dual role offers an opportunity for the GC to attend board meetings. However, a GC would attend those meetings in a different capacity to the company secretary and may be privy to discussions that conflict with the interests of the company. The GC usually reports to the chief executive and represents the company rather than the board, whereas the company secretary reports to the chairman and servs the board.

In the UK all chartered secretaries, irrespective of country of residence, are members of the Institute of Chartered Secretaries and Administrators (ICSA), an international professional body with a Royal Charter. “They are high ranking professionals who are trained to uphold the highest standards of corporate governance, effective operations, compliance and administration” (ICSA, 2006, p. 1). The corporate secretary in the UK is, by law, a servant of the company and of the board of directors and, as such, is answerable to the chairperson; however, the secretary also has to report to the managing director or another senior official of the company, usually as a result of a term in the contract of employment. He/she is criminally liable for defaults committed by the company; for example, failure to file any change in the details of the company's directors and secretary and the company's annual return within the time allowed. Secretaries have always been the only persons to lose their appointment by law if the company appoints a liquidator.

The Companies Act 1985 imposed a number of duties on the secretary, which include the completion and signing of the annual return of the company, the signing of the director’s report in the company’s annual accounts, the completion and signing of various statutory forms, and the making of various applications and statutory declarations on behalf of the company. There are also the generally accepted normal duties of arranging, attending, and minuting meetings and maintaining the statutory registers. Company secretaries are the primary source of advice on the conduct of business particularly for a newly appointed director. The advice may vary from legal advice on conflicts of interest, through accounting advice, to the development of strategy/corporate compliance, and advice on environmental, social, and corporate governance (ESG) and sustainability aspects.

Codes and Principles of Ethics

Although many, especially those in the medical profession, would cite the Hippocratic Oath as the first code for a professional body, the best preserved early written code of conduct, the Codex Hammurabi created by King Hammurabi of ancient Mesopotamia, actually dates from 1760 BC. Codes provide the members of the profession with guidelines for maintaining a professional attitude and a means of conducting themselves in a manner that will enhance their professional status. They provide guidance to members on how to handle situations that pose a dilemma between alternative courses of action. Just having a code, however, is not enough. It can only be effective when it influences everyday behavior, and this requires committed dissemination, implementation, and monitoring, which professional bodies continue to promote.

A survey by the accountants KPMG conducted in the USA in 2002 revealed that three-quarters of the respondents reported that they had witnessed violations of the law or of ethical standards at work in the previous year (Fischer and Lovell, 2003). This would be an endorsement of Tamminen and Leskinen’s (1996) review, which showed that accounting is not only ethically loaded, but that there is an abundance of ethical problems associated with accounting, partly because the population that they studied showed little concern for people outside the firm. Although there has been no similar review in connection with secretaryship, the similarity between the professions would allow one to assume the same influences.

The generalistic training of a chartered secretary has always been along deontological lines, following the belief that moral reasoning and action should always be guided by universal principles that hold true irrespective of the context in which an ethical dilemma might exist (Fisher and Lovell, 2003). In the UK, this general training came into conflict with Thatcherism, which propounded a form of business natural selection or Darwinism with a laissez-faire approach, with everything being unrestricted and markets self-correcting in the long run (Daly and Mattila, 2000).

Despite the fact that the secretaries of the companies involved in the various scandals exemplified by Guinness and Enron were never chartered secretaries, the profession came under the same increased pressure and scrutiny that was applied to other professions. Moreover, with changing business environments and technological advancements, the nature and controllability of new ethical dilemmas represent challenges for the corporate secretary.

Varieties of Ethical Dilemmas

Coping with ethical dilemmas can be considered a key characteristic of the corporate secretary's function, involving a mix of commercial, regulatory, pragmatic, legal, and ethical decisions to be made (Kakabadse et al., 2014). The nature of the function involves the development of trusting personal relationships with the board, but at the same time, the demonstration of impartial judgment. The closeness to the chairman and other senior executives can cause a dilemma for the secretary, especially in a dependency relationship; that is, when those in power can influence a secretary's employment conditions. In cases of non-compliance, misconduct, fraud, or when corruption and bribery are involved, it is a secretary's duty to take action. Cases are known in which company secretaries have ignored such misconduct and chosen not to speak out against it or be actively involved in it (CSJ, 2017).

While the nature of ethical dilemma cases varies, typical cases in which company secretaries have failed their function involve corruption and fraud, as reported by the Hong Kong Institute of Chartered Secretaries. An entrepreneur and an accountant, for instance, with the help of a corporate secretary, offered bribes to acquire a share of the chairman's holding of a Hong Kong stock exchange-listed company. In return, the chairman agreed to acquire a mainland plantation project from an offshore firm owned by the entrepreneur (CSJ, 2017). While this case is representative of an ethical dilemma that is rather easy to judge as it purposefully breaks laws and regulations, and applies practices that undoubtedly can be regarded as unethical, other cases are not that easy to classify. Examples of the latter category relate to the debate about genetically modified crops and the Levi-Strauss Corporation's reaction to finding out that its jeans were being manufactured by underage Bangladeshi workers (Fisher and Lovell, 2003). Genetically modified crops are subject to an ongoing debate with currently no consensus research among stakeholders involved, like consumers, businesses, farmers, and policymakers. Despite that fact, food containing modified genes is already on sale in the United States. One camp argues that genetically modified crops help to solve food shortages, while the other camp asserts there are risks to food security. Moreover, planting genetically modified crops could potentially harm biodiversity, increase antibiotic resistance or allergies, to name a few concerns. Although a promising area, in the absence of longitudinal studies, it cannot be claimed for certain that genetically modified crops are free of any risks to health and environment. The latter dilemma of exploiting work conditions abroad is trickier to solve as multinational corporations (MNCs) have usually complied with local laws. Such laws, however, often lower standards to a level that workers are potentially exposed to situations dangerous to their health and lives. The dilemma can be seen, simplified, in the inability of hesitant local governments to impose laws protecting workers' safety, therewith raising costs for MNCs, and the standpoint of MNCs that this is solely a government task. However, since the MNC is in principle able to assess the risks and compare them with risks to workers' health in other (western) locations within its corporate network, corporate boards are in principle aware of and able to decide upon what level of safety standards they want to implement independent of how high (or low) governments set the bar. For the individual in the role of corporate secretary, an ethical dilemma may involve the need for "truth-telling" and suggesting unpopular approaches that may conflict with loyalty to the company or cause rising costs to the firm and, therefore, lower profit margins. Besides the aforementioned examples, there is a third category of ethical dilemmas evolving AI-related ethics.

Future Challenges for the Corporate Secretary

Machines making decisions that affect our lives is a new area which, at the same time, represents a new category of ethical dilemmas. We currently see this type of ethical dilemma evolving in the area of AI. In this field, it is no longer humans who make decisions but algorithms. AI technologies are developing rapidly and, with this development, questions arise about how machines will make ethical decisions. As ethical misconduct and dilemmas of the past have taught us, ethical dilemmas relevant to firms have two principal dimensions: the legal and the societal. Actions need to comply with laws as well as with societal expectations.

As algorithms, especially self-learning ones, have (likely) no conscience, how can they make ethical decisions? Who can be legally prosecuted in case of misconduct and how can laws be made effective to control behavior when they target machines that make their own decisions based on self-learning algorithms? These questions are relevant to the automotive industry today. The automotive industry is currently experiencing paradigmatic changes. Both auto makers and policymakers are struggling with how to cope with the ethical dilemmas caused by autonomous vehicles. What would be an ethical decision by an autonomous vehicle about to crash in deciding who to save? A kid crossing the street while the lights are red or the two elderly drivers of the vehicles? Autonomous vehicles will have to decide who deserves to live and to die if a solution to save everyone is out of the question (Awad et al., 2018). While it will take some time before autonomous vehicles and related industries achieve commercial success, it is likely that legislation will develop in parallel to technological advancement and societal consensus on what is ethically acceptable and what is not. As companies need to balance profitable opportunities with harm to society, company secretaries dealing with phases of technological and societal transitions can hardly rely on laws alone.

There is a further challenge related to AI for the company secretary which relates to the position of the company secretary itself. While it is currently unclear exactly which jobs will be taken over by AI/ digitalization, it is likely that "AI will abolish the repetitive and administrative tasks, which still form part of the corporate secretary's role" (CSSA, 2018, p. 6). While this may reduce the workload of the company secretary, the function would still be needed to oversee and correct the work of an AI-operated system. The latter should not be seen as a threat but rather as an opportunity to further develop the role of the corporate secretary. With potentially fewer tasks, the role of the corporate secretary can include a stronger focus on ethical conduct within the board and beyond. Closer ties to external stakeholders can be developed which focus on a firm's social responsibility. Closer ties can also be developed to the human resource (HR) function by mutually developing HR policies and guidelines for ethical conduct and responsible leadership development. Though technologies may change the role of the corporate secretary, it will remain of central importance in corporate governance.

Cross References

- Accounting Practices Ethics
- Codes of Conduct/Codes of Ethics
- Conflict of Interest
- Corporate Governance
- Corporate Integrity
- Ethical Dilemmas

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