



Ethics and Integrity: In-House and Corporate Practice

Professor Paul Paton
Faculty of Law, Queen's University
Chief Justice of Ontario's Advisory Committee on Professionalism
Fifth Colloquium on the Legal Profession
Kingston, Ontario, October 15, 2005



Overview:

- Introduction: The Changing Face of In-House Counsel
- Unique Challenges:
 - The “Gatekeeper” role – Corporate Counsel as Moral Compass
 - “Up the Ladder” reporting requirements and S-Ox 307
 - Privilege and confidentiality
 - Maintaining Personal and Professional Independence



Enron and In-House Counsel:

- Kristina Mordaunt
- Enron junior attorneys and the internal response
- Government and regulatory reaction: gatekeeper expectations and Sarbanes-Oxley Section 307



The Gatekeeper Function and S-Ox 307: Climbing “Up the Ladder”

- What is a “gatekeeper”?
- ABA Task Force on Corporate Responsibility Reaction
- Sarbanes-Oxley 307:
 - 1) SEC to establish “minimum standards of professional conduct” for lawyers “appearing or practicing before the Commission”
 - 2) lawyers required to report evidence of material violations up the ladder to senior management and if necessary to board of directors
 - Application to foreign lawyers

S-Ox 307 and Up the Ladder Reporting

- SEC Proposal: “Noisy Withdrawal”
 - 1) withdrawal from representation
 - 2) notification of SEC of withdrawal
 - 3) disaffirming any SEC filing that the lawyer believes false or materially misleading
- The SEC retreat
- Canadian Bar Association:
 - *“it is unacceptable for any government agency to dictate ethical standards for Canadian lawyers.”*

Canadian and US Bar Reaction

- US Ethics 2000 recommendations – adopted August 2003
- Model Rule 1.13(b) [client as corporation], and 1.6(a) [crime-fraud exception to confidentiality]
- Law Society of Upper Canada:

Rule of Professional Conduct 2.03 Commentary
March 2004 Amendments



Other Issues: Privilege and Independence

Privilege and Confidentiality – who is my client?

Independence –

“moral interdependence”

“cognitive dissonance”

lawyer as “monitor” and “dealmaker”

Lawyer as “Corporate Conscience”



*Ethics and Integrity: In-House and Corporate
Practice*

Professor Paul Paton
Faculty of Law, Queen's University
Chief Justice of Ontario's Advisory Committee on Professionalism
Fifth Colloquium on the Legal Profession
Kingston, Ontario, October 15, 2005