

EXECUTIVE SUMMARY

CORPORATE LIABILITY ASSESSMENT

**Servus Credit Union Ltd.
Vs.
Squamish Joint Venture Ltd.**

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CORPORATE LIABILITY ASSESSMENT

The Servus Credit Union Ltd. Decision to Foreclose on the Squamish Joint Venture Hotel Project and its Repercussions

INTRODUCTION

The unfortunate reality in business is that too often organizations sustain damages due to inappropriate or unethical actions by employees, clients, legal representatives, accountants, partners, banks and others. Despite this venal certainty there are a number of reasons why successful business leaders are reticent to engage legal redress and civil court fact-finding as the appropriate venue to solve issues with business decisions, ethics or corporate wrongdoing.

The primary reason for businesses to avoid legal battles is that **the courts are an expensive and complicated venue to use for understanding and assessing whether corporations were:**

1. Engaged in “wrongdoing or self-interested behavior” outside of business norms;
2. Abused their authority (vicariously negligent) in performing their responsibilities;
3. Obtained “unfair financial advantage” through dishonest actions; and
4. Determine whether corporations made “reasonable decisions” based on existing critical economic market factors¹.

It is a more forthright task for individual business leaders and board members of corporations to conceptualize and apply a **“reasonable person standard”** rather than a **“legal standard”**.

To identify and correct issues of corporate wrongdoing, knowledge of prevailing norms and standards of care in the business world are essential. Notably, the nature of the evidence considered may differ substantially between business and non-business cases. For example, both the **quantity and the complexity of corporate protocols, legal requirements and industry economic data in business cases are likely to be much greater** than in criminal or ordinary tort cases.

To engage in determining corporate wrongdoing in a business case, it is important to distinguish between "primary" facts which are: historical facts, formal documents & technological facts; “behavioral” facts: corporate actions, mandates, policies; and "economic" facts which are: judgments of economic effects, often involving market performance, market value appraisals and statistical analysis.

Complicating the picture is the difficulty of evaluating individual and group responsibility and accountability for a harm (damages) and assigning corresponding culpability for each corporation’s actions. However, an independent assessment can be made by **reviewing pertinent business circumstances and associated formal documentation to establish a corporation’s intent** and determine what benefits and/or damages resulted, including any civil liability to the individual and/or corporate entity.

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¹ KPMG LLP (2011) Investigating and Preventing Fraud and Misconduct

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BACKGROUND

The current dispute resulting in court challenge(s) involve two corporations; one a financial institution, Servus Credit Union Ltd. (Servus); and the other, a corporate entity, Squamish Joint Venture Ltd. (SQ JV Ltd.) a group of investors; with regard to the funding of a new Hotel construction project in Squamish, British Columbia, Canada, started in 2008 and foreclosed on in 2010.

There are two main distinct systems in Servus' organization which are necessarily run by different people:

1. **Governance:** run by a Board of Directors who represents member-owners.

The Board is responsible for ensuring the credit union has strong, effective management, and that the credit union's strategic objectives are aligned with member-owner's best interests. They work with the Executive Leadership Team to set and monitor the credit union's performance and direction. **"More importantly they ensure our operations continue to reflect the values that our communities have come to associate with Servus²."**

2. **Operations:** run by an Executive Leadership Team, responsible for the day-to-day operations of Servus Credit Union.

The leadership team looks after all aspects of Servus' business – from financial performance and business processes (corporate culture) to member and employee experiences.

The Board is the independent intermediary (broker/referee) between Executive Leadership Team (Management) and its working level officers/representatives (agents); **the Board has the ultimate authority – and responsibility – to act in the broadest interests of the corporation³.**

The economic and corporate dilemmas facing the Board are; to direct the interests of leadership (executives in operations) and agents (working level employees and managers) to ensure that all aspects of operations reflect the public values of the organization. The "agency dilemma" is compounded by the fact that agents better understand and control almost all the information, this presents a problem for the Board. When agents use up resources on activities that are not aligned with the Board of Governors' and the organization's core values this results in "agency costs" that may manifest itself in a loss of confidence by member shareholders in the Board of Directors and loss of public confidence in the organization. Fortunately, every economic system is designed to address this imbalance, hence **the decision-making power and authority of the Board of Directors and corporations Executive Committees.**

For the Squamish Joint Venture Ltd. (Squamish JV Ltd.), group of investors, their collective business knowledge and decision matrices were diverse and varied, each with their own expertise and track record of success in their respective industry sectors. The Squamish JV Ltd. took the time to articulate their mandate and vision statements.

The purpose, nature and character of the business of the Joint Venture were clearly stated as:

² Servus Credit Union Ltd. (2014) <https://www.servus.ca/about-servus/our-organization/corporate-social-responsibility/Pages/csr-governance.aspx>
Governance

³ Canadian Federal Public Service, Treasury Board Secretariat (TBS) 2014 www.tbs.ca

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- (a) Develop, construct, own and operate the Hotel;
- (b) Develop and construct related enhancements to or improvements to the Hotels Lands;
- (c) Engage in such other activities incidental or ancillary the matters referred to in paragraph (a) and (b) above, including entering into agreements relating thereto and financing arrangements in respect thereof; and
- (d) Conduct such other business or undertake such other projects in respect of the Hotel or otherwise as approved ...

For the Squamish JV Ltd., the group heavily relied on the significant experience of their financial experts (Servus), legal experts (BDP) and industry experts (Hoteliers, with significant experience) for advice in making their business decisions. In this instance, the industry expertise for the Squamish JV Project was the project lead Brian Ostrander. His reputation of success in previous similar projects (several funded by Servus Credit Union Ltd.) was the motivating force for the investor and bank (Servus) confidence that the project would be successful. His achievements in the industry were well documented and recognized by Servus, and as a consequence, he was afforded the financial and management leeway to make autonomous decisions.

In interviewing Mr. Ostrander, he described the drastic changes in the prevailing market conditions; vis-à-vis the Global and Canadian economic downturn 2008 - 2009⁴ (during the construction of the Squamish JV project); initial and subsequent industry assessments and appraisals⁵; the objectives of each of the organizations involved and the overall connectivity of the projects; as his basis for financial and management decisions. For example, **decisions reflected the fact that the multiple projects central bank/mortgager was Servus and several of the investors also had crossover investments in the multiple project(s) under his responsibility.**

In the case of the Squamish JV Ltd. project, based on appraisals, it was reasonable to assign a projected value for the hotel from \$11,000,000 to \$13,000,000; it follows that at certain development stages of completion the real or actual market value would be reflected in a value proportionate to its level or state of completion – Mr. Ostrander as project lead – relied on these appraisal's to ensure the overall success of the Squamish and affiliated projects under mortgages from Servus.

Mr. Ostrander was able to control the financial outcome of two of the affiliated projects to the satisfaction of the investors and Servus by allocating funds among the different projects based on projected values and refinancing options as the economic downturn of 2008 to 2009 impacted the Canadian economy, specifically, financial institutions.

As project lead and personally responsible for the financial outcomes of the projects, Mr. Ostrander continued to use all options available to him to mitigate any losses on the projects under his control. However, due to the fragile national economy at that time and the untimely false disclosures by Servus' representatives about Mr. Ostrander as an undischarged bankrupt, he was unable to affect a proper outcome for the larger Squamish JV Ltd. Project. From an assessment of the information available it is evident that representatives at Servus breached Mr. Ostrander's privacy and defamed him in the eyes of investors. Furthermore, the Servus representatives continued to act outside their stated mandate and acted in bad faith with regard to the Squamish JV investors. This is supported by the

⁴ The Great Recession in Canada: Perception vs Reality (2011) Bank of Canada <http://www.bankofcanada.ca/2011/03/great-recession-canada-perception-reality/>; The Great Recession of 2008-2009: Causes, Consequences and Policy Changes, May 2010 <http://ftp.iza.org/dp4934.pdf>

⁵ Dec 21, 2007, Horwath Integris market value of Hotel (86 rooms) if completed July 1, 2009 at \$11,690,000
August 28, 2008, Horwath Integris updated estimate for nine (9) more rooms to the proposal (95 Room Hotel) market value of \$13,687,000
March 2010, Spiegel Skillen at the request of Servus estimates value of the Hotel at approx. \$13,000,000

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fact that in 2010 there was an offer for purchasers to acquire the Hotel at \$9,000,000 brought forward by Squamish JV investors to Servus.

Servus prevented that sale and caused the Hotel to be placed into receivership. Later that year (2010) Servus commenced action to cover the shortfall by seeking the full amount of the respective guarantees plus interest from the Squamish JV investors. The opportunity to bring the project to a conclusion without any financial losses was removed from Mr. Ostrander and an unintended consequence ensued, leaving guarantors and Servus in court battles.

CONSIDERTIONS

To independently review the Squamish JV Ltd. Project and the specific circumstances that led to the Servus' foreclosure action, a balanced and thorough approach was used. The business case (Squamish JV Project) was examined in its entirety based on a combination of publicly available information and interviews with stakeholders where practicable. The assessment of empirical evidence from the court documents including affidavits from Servus' key personnel serves to confirm the nature of the findings and mitigates the likelihood of fact-finding errors.

The issues to be considered are: the projects overall purpose; market and financial conditions at the time of the project affecting the local Squamish, BC areas hospitality industry; and each of the parties' conduct (behavior) during each phase of the project; to determine what issues influenced the decision makers of the Squamish JV Group and at Servus Credit Union Ltd. ultimately, resulting in foreclosure and current legal challenges. The current circumstances are a stark departure from the objectives of each organization as was originally intended.

Because a significant proportion of this assessment involves the litmus test of reasonable business actions, banking industry norms and legal liability, it is important to recognize the expertise of each of the proponents and their competence in each area under their responsibility.

This assessment finds a lack of justification for Servus to not consider options to avoid foreclosure and or other alternatives that could have yielded a market value for the completed project in the \$9M range in 2010. Values well below the 2010 market appraisal⁶ of a newly constructed hotel build with enough funds to cover all investor's guarantees and Servus' mortgage. A review of the access to information and privacy documents⁷ of Servus' representatives⁸, on their decision-making may in the future provide some pertinent insights.

The four primary issues that are addressed with regard to Servus' actions in this assessment are:

- (a) whether Servus Credit Union Ltd. had breached its fiduciary duty by not allowing the Squamish JV to purpose/seek alternative financial arrangements and, if so, whether the imposition of foreclosure actions was the appropriate remedy;
- (b) did Servus' untimely actions disclosing Mr. Ostrander as an undisclosed bankrupt (which was false) have a significant and/or material negative effect on the outcome of the Squamish JV project and, if so, was there a financial advantage for Servus and/or any other party in the false disclosure;

⁶ Servus Credit Union Ltd. commissioned agents Spiegel Skillen estimate value of the hotel in March 2010 at approx. \$13,000,000

⁷ In [Canadian constitutional law](#), the doctrine of **paramountcy** establishes that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law.

⁸ Freedom of Information and Protection of Privacy (FOIP) and Alberta's Personal Information Protection Act (PIPA) requests made – pending response from Servus (2014)

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- (c) were the actions of Servus' representatives conducted in a vicariously negligent manner and/or was there malicious intent, personal agendas (promotion, bonuses, financial advantage, etc.) and;
- (d) whether the final sale with deficiencies were arms-length dealings and/or influenced by the business merger of Servus Credit Union/Commonwealth Credit Union and Community Credit Union and/or other factors not related to normal ethical business practices.

With respect to (a) the Fiduciary Duty includes avoiding 'conflicts of interest'; a conflict of interest occurs when there is a substantial risk that the bank/administrator's fiduciary duties owed to the Squamish JV investors would be materially and adversely affected by the administrator's duties to the corporation. The Supreme Court of Canada (SCC) regularly rejects any "two hat" argument(s) which would effectively allow banks/company(s) to avoid considerations of conflict of interest while it was wearing its "corporate hat", and making decisions ostensibly for the benefit of the Squamish JV Ltd as their corporate client.

Servus Credit union breached its fiduciary duty to the Squamish JV Investors by taking actions, including supporting court ordered interim receivership protection (administered by Myers, Norris, Penny (MNP) and in seeking court approval for the forced sale of the Hotel, which had the potential to; and did adversely affect; the investors in the Squamish JV; and a continued damaging action ultimately imposed by the foreclosure and sale of Squamish JV assets. This is tantamount to 'capital punishment' in the context of the business world.

The representatives of Servus Credit Union ignored the obvious consequences to the Squamish JV investors - that not granting the Squamish JV priority consideration with regard to financial restructuring to avoid any loss or potential loss of investments frustrates the purpose of the objectives (purpose, nature and character of the business) of the Squamish JV which was in fact, to develop, construct, own and operate the Hotel⁹. A fact, well known to Servus and in fact, the very basis for the initial loan to finance the Hotel as a new build Hotel project for the benefit of the Community in Squamish and the surrounding area.

To that end, the Servus Credit Union representatives ostensibly incorrectly disclosed that Mr. Ostrander was an undischarged bankrupt – effectively destroying his credibility among his investors (business partners) and making it impossible for him to seek alternative funding and/or restructuring to ensure no business losses to Servus or the joint venture investors. Further to Servus' action was the more damaging effect, that such disclosure and action defamed Mr. Ostrander to the point that; as a real and negative consequence; prevented Mr. Ostrander for a number of years; from carrying on in his chosen profession of developing Hotel projects. His personal financial health was also under Servus' mortgage umbrella and as a consequence to the failed Squamish JV and the disclosure of Mr. Ostrander as an undischarged bankrupt, caused him to suffer significant personal financial damage and emotional distress to himself and family.

In fact, it is Mr. Ostrander's hotel expertise, business experience; integrity and past performance in refinancing and operating Hotels that was cited as the benchmark in Servus' decision to fund the project in the first place. In this instance it is that reputation and past success that could have been the main incentive for a lender's decision to finance an insolvent debtor who could have sought bankruptcy protection.

The disclosure of the devastating and false information that Mr. Ostrander was an undischarged bankrupt negatively affected any opportunity for Servus to consider other refinancing options, with the Squamish JV investors, wrongfully reinforcing their position that a foreclosure action was warranted. What needs explanation from officers of Servus is why they completely ignored the opportunity to allow restructuring and refinancing options knowing full-well that the projected appraisal value of this project if completed was projected at least \$11Million. The financial short fall for completion and franchise deficiencies was only \$300,000 which the Squamish JV Group could justifiably have been afforded such financing from Servus or other investors/lenders to restructure their affairs, thus avoiding resulting financial damage to the group, and potential job losses and other negative impacts on the local economy.

⁹ Squamish Joint Venture Agreement September 1, 2008. Page 6 article 2.3

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Servus relied on the strength of their loan guarantees (led by the knowledge that most of the investors were well-known businessman, with net worth in the millions \$ per year) to fulfill any financial short fall in the sale of the asset to their “preferred client” Sandman Hotels Group. **Servus’ reliance on the “individually and severally liable” clause in the loan agreement as a basis for their actions contradicts the spirit and intent of its corporate mandate and is an action that is completely without integrity.**

The only reasonable explanation for the quick “fire sale” action allowed by the courts based on recommendations by the interim receiver (MNP) and Servus; is that such a “good deal” would entice future business by the Sandman Group leading to a more enhanced financial advantage for Servus given the financial demise of the Ostrander led projects in Alberta. In this assessment, of note was the 2008 global economic downturn (which affected Canada). Despite that economic reality, it was Mr. Ostrander’s ability to make deals and use available funds among projects to avoid significant losses for the previous Ostrander led business entities: Strathmore, Alberta, Holiday Inn Hotel; High River Project; Buildings in Calgary; and the award winning Airdrie, Alberta, Holiday Inn Hotel.

Servus’ decision did not in any way consider options to mitigate the financial impact the foreclosure deficiency would have on the financial well-being of the guarantors (principles of the Squamish JV project) other than as a generic lender (**which is not how the organization distinguishes itself as a member-owner, community driven financial institution**). In this instance continued support for the project would have meant that other secured lenders could have considered the risk ranking behind Servus’ advanced credit for future value of a more secured portfolio even after the over budget project was completed. The \$300,000 to complete the project and deal with Holiday Inn identified franchise deficiencies was not cost prohibitive and could have resulted in a windfall in future value for the local community, Servus and the Squamish JV Group (including any new investors).

Servus should be concerned that there continues to be court applications (orders) necessary before their responsible officers/representatives will give full answers to questioning under oath. Servus’ legal team seems to be in direct conflict with the mandate of the organization. They continue to advocate “stonewalling” against prudent questions about the nature of the circumstances surrounding the Squamish JV Project, the motivations of their representatives and corporate officers. In several instances they contradict their own defense statements which at the very least is due to a poor assessment of the issues and/or deliberate attempt to mislead the court. (i.e. loan limits, due diligence with common loan documents and guarantees, statements about the loan review committee, exposed false disclosures and required court orders to compel complete answers to undertakings from Servus’ representatives).

In normal business proceedings, secured lenders, in this case Servus, should have noted that its obligation is to act as originally intended and must use its “best efforts” to fulfill its role as a financial institution/business partner with significant investment in the project and not simply rely on the personal guarantees of the investors. In these situations, even the **courts have described “best efforts” as a duty to “act in good faith and take all reasonable steps” and “to do all that is necessary” to ensure the success of the project and protect the financial well-being of the borrowers (Servus’ clients) and the Servus Member’s funds invested in the project for the benefit of their clients (Squamish JV investors) and the industry sector in the community.**

The Supreme Court of Canada has also held that most parties dealing in good faith should not find it too challenging to demonstrate the efforts they have made and the reasonable steps taken to ensure success of the project. I find no such evidence from Servus’ actions that demonstrates the effort required to fulfill that obligation in this matter.

In this instance initiating vicariously negligent disclosures, relying on allegations of intercompany transfers¹⁰ and constructive foreclosure action is not the remedy for Servus’ breach of fiduciary duties. Notably there was a forensic audit completed by the minority group of investors into the intercompany transfers and no criminality was found. What was glaringly apparent was the extraordinary actions of the projects’ lead, Brian Ostrander. Who managed to negotiate sale

¹⁰ TREK Financial & Valuation Advisors Ltd. forensic audit (2009) – results – funds redirected to other projects of which Servus was the mortgagager

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arrangements to ensure losses were minimized for all of the projects under his domain and limit Servus' exposure as main mortgager in all of the projects.

The one final project that could have mitigated all the cost overruns, funding transfer actions and loss of investor's equity - **could have been a restructured financial plan for the Squamish JV project and investors group and Servus**¹¹. This would have provided a positive outcome for the local contractors/suppliers and other community businesses. This opportunity to minimize losses falls squarely within the mandate of Servus and morally obligates the organization to consider such priority action.

In reviewing this issue, in Servus' case, merely seeking to exercise their rights as lenders without adequate consideration of the impact to the community and the investors did not constitute a breach of the fiduciary duty to the Squamish JV investors. The breach of fiduciary duty and conflict of interest arose when Servus did not consider the offers from the Squamish JV investors to allow completion of the project and realization of the subsequent assessed market value of \$9M. Instead Servus began to take actions and initiate court proceedings for foreclosure which adversely impacted the interests of the Squamish JV Investors and the local community.

Servus breached its own values and ethics statements because it did not: (i) give reasonable consideration to options of refinancing; (ii) take steps to ensure that the Squamish JV Investors, their clients, were properly represented in any decision or proceeding; (iii) consider options to minimize the impacts to the local economy (i.e. contractors, suppliers, etc.).

Servus' breach of its fiduciary duties was even more egregious as the foreclosure was supported by the false assertion that the project manager Brain Ostrander was an undischarged bankrupt and that foreclosure was not the appropriate remedy to this financial situation. A forced foreclosure and sale of the Hotel would have only been appropriate where there was wrongdoing and the wrongdoer's acts give rise to an identifiable asset that is directly related to the wrong committed or if the wrong can be traced to financial gains by an individual or a particular asset.

In this case Servus' breach resulted in the assets of the Squamish JV Investors the Hotel being placed in the hands of other Hotel competitors at a reduced cost. Thereby setting the groundwork for future business with the new owners and needlessly leaving the Squamish JV Investors liable for millions of dollars of financial deficiencies.

There can be some useful information garnered from reviewing the Servus loan agreement and the Squamish JV guarantor's contracts and the surrounding circumstances in their entirety. How could the parties have reasonably predicted the global economic downturn at the time of the project? Did the parties have the knowledge to deal with issues of alleged corporate wrongdoing associated with the project? It would be prudent to examine all the contract(s), their overall purpose, and each parties' conduct to determine what was truly intended.

This leads to the question: Was Servus' officials actions so far outside the typical lenders experience that each agent would regularly make simple mistakes or policy errors in processing common loan documents and guarantor certificates?¹² A comprehensive answer to this question would require thorough analyses of decision making policies and factors existing at Servus at the time the decisions were made because some types of business circumstance pose greater challenges to banking expertise (comprehension) than others. For example, knowledge of the business or industry sector (hospitality, financial/banking) might be critical to understanding key issues and actions in certain disputes between businesses but would be less germane to grasping central issues (breach of contract, abuse of authority, ignoring policies, wrongdoing, etc.) in disputes between banks and individuals/groups and other businesses as in this instance.

¹¹ Public Court Documents - pleadings indicate fundamental mistakes of a material nature on at least one of the documents forming part of the guarantee of the project

¹² IBID

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CONCLUSION

The government of Canada recognizes that 2008 to 2009 were extraordinary economic circumstance(s) that negatively affected the global economy and Canada; that we are still recovering from. Consequently, there has been a long-term shift in legislative reviews of legal rules and societal norms regarding the responsibility of financial institutions and large corporations to consider moral and ethical issues in business dealings. The current culture in Canada demands that corporations act responsibly and reasonably and as a corrective measure, compensate individuals who have suffered from business-related injuries.

The legal tenants in this particular circumstance are not clear as there were several material breaches from Servus Credit Union Ltd. before and during the projects construction phase. This gave rise to the legal challenges about the guarantees and the moral issues of the foreclosure actions given the alternative options that were available and mandates of the respective organizations. Having said that, the more compelling argument is – what was the intention of the parties at the time of the loan/investment - which can be determined from the stated objectives of each organization in connection with their conduct during the project period.

The Squamish JV Group has the same challenges with their legal representatives as does Servus – both organizations legal advisers seem bent on continuing litigation to the tune of hundreds of thousands of dollars. Servus' legal team argues that summary judgements are cut and dried based on common legal documents and processes and only takes three to six months to effect. This is not the circumstance that these two organizations find themselves. There are serious questions on how documentation was processed which is the business of Servus and within their expertise. There was no due diligence by Servus' representatives and as a consequence the actual guarantor documents lack rigor and are now an issue for the courts. In this case, Servus is the financial/bank expert and the bulk of the responsibility lies with them to effect legislative requirements and properly signed agreements.

In the absence of clear legal positions, the proponents on both sides should evoke their responsibilities to approach the situation from a business perspective – cost of litigation – chances of winning (RISK ASSESSMENT) – loss of reputation/goodwill factors that affect both sides – duty to tell the truth vs. legal maneuvering (not giving the full story or omitting material facts still constitutes a lie). Corporate social responsibility – demands forthright answers from representatives of the corporations on both sides.

The foreclosed Squamish Hotel currently operates at a profit and is a destination hotel for the area – however, this is under the Sandman Brand and demonstrates that the original intent and financial viability of the Squamish JV Project could have been successful if not for the actions of foreclosure from Servus' representatives.

The Servus Board of Governor's may not be fully aware of the risk to their public reputation in the current legal issues as there is difficulty attributed to the characteristically complex language in which legal opinions are written and the circumstances under which they are presented. However, they are able to exercise their authority to address this matter under the organizations mandate and settle the issues before any further statements and documents are presented in court where the final outcomes are riskier and subject to public interpretation.

In a negotiation (mediation) Servus' Board and the Squamish JV Group of investors have the opportunity to control the outcome and mitigate the possibility of any negative publicity that could ultimately further damage both group/organizations reputation and future business.

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ADDITIONAL NOTES

Recession of 2008-9 in the period following the recession of 2008-9, trust in the private sector collapsed. Many companies central to the global economy went bankrupt. Hat in hand, GM, Citigroup, AIG, RBS, Chrysler and a host of others went to government seeking bailouts. Other top multinationals were ensnared by operating failures – Toyota and the brake scandal, BP and the Gulf Oil Spill.

Obligation to tell the truth... is the lowest test of an organizations and their representative's integrity.

Facts when looked at in their entirety - offend the common sense of even the most casual observer it's either ethical, fair and transparent or it's not. – which is Less EGREGIOUS?

Allegations – standard of proof is 50% plus 1 - the complainant is responsible for directing the investigation - to produce information to support a balance of probabilities. Of 50% +1.

Culture is a hot topic. From banking scandals to hospitals not caring for their patients and large-scale industrial accidents, culture (business/social) has been cited for much of what goes wrong. Business values and ethics is now a key issue for regulators, particularly of financial services organizations.

Behavior is a useful term... public interest in behavior in organizations and what causes it. Seeks useful answers to questions such as what leads to **functional behavior** - behavior which contributes to the long-term success of the organization and the community around it and what leads to **dysfunctional behavior** - behavior which can damage the long term success of the organization and or the community.

Understanding behavior is just a means to an end, which should be to ensure that organizations are successful in achieving what they exist to do. Corporate governance practices, the way organizations are directed and controlled, provide the context and the framework for corporate behavior. This leads to clearly defined corporate social responsibilities.

Good corporate governance should enable organizations to create sustainable value over the long-term and be resilient.

The lesson learned and essential thing for business clients to be aware of, is that lenders (i.e. Banks) will only owe obligations that are specifically set out in legal clauses, regardless of how unfair the provisions may be when applied to non-generic circumstances. Given that the expectation is for everyone to act in good faith when entering agreements - financial arrangements despite the legal tenants can pose significant risk to the Banks and businesses.

Borrowers should consider negotiating all of their terms depending on what is significant to their operations; this ensures that there is clear understanding between both parties about their obligations, duty to act in a fair and transparent manner and to use all the resources at their disposal to facilitate positive outcomes for all stakeholders.