

Ethics and Professional Practice

Core Body of Knowledge for the
Generalist OHS Professional

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38.3



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Australian Institute
of Health & Safety



**Australian OHS Education
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Ethics and Professional Practice

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Ethics and Professional Practice

Abstract

Ethical decision-making is integral to the role and practice of occupational health and safety (OHS) professionals. This chapter focuses on the OHS professional as an 'ethical professional,' and foregrounds the complexity of ethics in OHS professional practice. It considers ethics in the context of the legal obligations of the OHS professional, introduces the concept of the OHS professional as 'moral agent,' and discusses ethical theory from a moral philosophy perspective as a basis for examining the role of formal codes of ethics and particular ethical challenges for OHS professionals. This is followed by discussion of individual and organisational ethical capability and practical approaches to ethical OHS decision-making, including consideration of 'speaking up' when the need arises. Appendices provide a summary of ethical theories and a compilation of OHS scenarios to prompt professional discourse.

Keywords

ethics, morality, code of ethics, ethical decision-making, professional behaviour, safety, OHS

Contextual reading

Readers should refer to *OHS Body of Knowledge* 1 Preliminaries for a full list of chapters and authors and a synopsis of the *OHS Body of Knowledge*. Chapter 2 Introduction describes the background and development process, and Chapter 3 The OHS Professional provides context by describing the role and professional environment.

Terminology

Depending on the jurisdiction and the organisation, terminology refers to 'Occupational Health and Safety' (OHS), 'Occupational Safety and Health' (OSH) or 'Work Health and Safety' (WHS). In line with international practice, this publication uses OHS with the exception of specific reference to the Australian Work Health and Safety (WHS) Act and related legislation.

Jurisdictional application

This chapter is the result of a joint project between the Australian Institute of Health & Safety and the Board of Canadian Registered Safety Professionals. As there will be some variance on legal structures and OHS practices across the two countries, OHS professionals should be cognisant of the particular legal, organisational and OHS cultural practices that set the context for their professional practice.

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Preface

Two case studies are provided to demonstrate the relevance of ethical decision-making to occupational health and safety (OHS).

The first case study, which focuses on Ford's 1970 introduction of a small car, is commonly referred to as 'The Pinto Case' (Gioia, 1992). This may be considered by some people to have occurred at a time when the principles and standards of practice were somewhat different. However, many reports in today's mainstream media suggest that, in some organisations, business decision-making not only suffers from a lack of ethical principles, but may be illegal and even corrupt.

The second case study – the 2005 refinery explosion and fire at BP Texas City (US Chemical Safety and Hazard Investigation Board, 2007) – provides an example of how organisational culture and business priorities can 'silently' impact the ethics of decision-making within an organisation. Also, the chapter draws on Hopkins' (2008) analysis of the organisational culture and decisions leading to the BP Texas City disaster to illustrate how ethical theory and OHS practice may play out in reality.



The Pinto Case (extract from Gioia, 1992, pp. 380-381)¹

In 1970 Ford introduced the Pinto, a small car that was intended to compete with the then current challenge from European cars and the ominous presence on the horizon of Japanese manufacturers. The Pinto was brought from inception to production in the record time of approximately 25 months (compared to the industry average of 43 months), a time frame that suggested the necessity for doing things expediently. In addition to the time pressure, the engineering and development teams were required to adhere to the production "limits of 2000" for the diminutive car: it was not to exceed either \$2000 in cost or 2000 pounds in weight. Any decisions that threatened these targets or the timing of the car's introduction were discouraged. Under normal conditions design, styling, product planning, engineering, etc., were completed prior to production tooling. Because of the foreshortened time frame, however, some of these usually sequential processes were executed in parallel.

As a consequence, tooling was already well under way (thus freezing the basic design) when routine crash testing revealed that the Pinto's fuel tank often ruptured when struck from the rear at a relatively low speed (31 mph in crash tests). Reports (revealed much later) showed that the fuel tank failures were the result of some rather marginal design features. The tank was positioned between the rear bumper and the rear axle (a standard industry practice for the time). During impact, however, several studs protruding from the rear of the axle housing would puncture holes in the tank; the fuel filler neck also was likely to rip away. Spilled gasoline then could be ignited by sparks. Ford had in fact crash-tested 11 vehicles; 8 of these cars suffered potentially catastrophic gas tank ruptures. The only 3 cars that survived intact had each been modified in some way to protect the tank.

These crash tests, however, were conducted under the guidelines of Federal Motor Vehicle Safety Standard 301 which had been proposed in 1968 and strenuously opposed by the auto industry. FMVSS 301 was not actually adopted until 1976; thus, at the time of the tests, Ford was not in violation of the law. There were several possibilities for fixing the problem, including the option of redesigning the tank and its location, which would have produced tank integrity in a high-speed crash. That solution, however, was not only time consuming and expensive, but also usurped trunk space, which was seen as a critical competitive sales factor. One of the production modifications to the tank, however, would have cost only \$11 to install, but given the tight margins and restrictions of the "limits of 2000," there was reluctance to make even this relatively minor change. There were other reasons for not approving the change, as well, including a widespread industry belief that all small cars were inherently unsafe solely because of their size and weight. Another more prominent reason was a corporate belief that "safety doesn't sell." This observation was attributed to Lee Iacocca and stemmed from Ford's earlier attempt to make safety a sales theme, an attempt that failed rather dismally in the marketplace.

Perhaps the most controversial reason for rejecting the production change to the gas tank, however, was Ford's use of cost-benefit analysis to justify the decision. The National Highway Traffic Safety Association (NHTSA, a federal agency) had approved the use of cost-benefit analysis as an appropriate means for establishing automotive safety design standards. The controversial aspect in making such calculations was that they required the assignment of some specific value for a human life. In 1970, that value was deemed to be approximately \$200,000 as a 'cost to society' for each fatality. Ford used NHTSA's figures in estimating the costs and benefits of altering the tank production design. An internal memo, later revealed in court, indicates the following tabulations concerning potential fires (Dowie, 1977):

Costs: \$137,000,000 (Estimated as the costs of a production fix to all similarly designed cars and trucks with the gas tank aft of the axle (12,500,000 vehicles X \$11/vehicle))

Benefits: \$49,530,000 (Estimated as the savings from preventing (180 projected deaths X \$200,000/ death) + (180 projected burn injuries X \$67,000/injury) + (2100 burned cars X \$700/car))

The cost-benefit decision was then construed as straightforward: No production fix would be undertaken. The philosophical and ethical implications of assigning a financial value for human life or disfigurement do not seem to have been a major consideration in reaching this decision.

¹ For the legal report on appeal proceedings, which provides interesting insight into the company approach, see *Grimshaw v. Ford Motor Company* (<https://caselaw.findlaw.com/ca-court-of-appeal/1835119.html>)

BP Texas City (extract from US Chemical Safety and Hazard Investigation Board, 2007, pp. 17, 21-22)

Incident synopsis

On March 23, 2005, at 1:20 p.m., the BP Texas City Refinery suffered one of the worst industrial disasters in recent U.S. history. Explosions and fires killed 15 people and injured another 180, alarmed the community, and resulted in financial losses exceeding \$1.5 billion. The incident occurred during the startup of an isomerization (ISOM) unit when a raffinate splitter tower was overfilled; pressure relief devices opened, resulting in a flammable liquid geyser from a blowdown stack that was not equipped with a flare. The release of flammables led to an explosion and fire. All of the fatalities occurred in or near office trailers located close to the blowdown drum. A shelter-in-place order was issued that required 43,000 people to remain indoors. Houses were damaged as far away as three-quarters of a mile from the refinery. ...

Incident description

On the morning of March 23, 2005, the raffinate splitter tower in the refinery's ISOM unit was restarted after a maintenance outage. During the startup, operations personnel pumped flammable liquid hydrocarbons into the tower for over three hours without any liquid being removed, which was contrary to startup procedure instructions. Critical alarms and control instrumentation provided false indications that failed to alert the operators of the high level in the tower. Consequently, unknown to the operations crew, the 170-foot (52-m) tall tower was overfilled and liquid overflowed into the overhead pipe at the top of the tower.

The overhead pipe ran down the side of the tower to pressure relief valves located 148 feet (45 m) below. As the pipe filled with liquid, the pressure at the bottom rose rapidly from about 21 pounds per square inch (psi) to about 64 psi. The three pressure relief valves opened for six minutes, discharging a large quantity of flammable liquid to a blowdown drum with a vent stack open to the atmosphere. The blowdown drum and stack overfilled with flammable liquid, which led to a geyser-like release out the 113-foot (34 m) tall stack. This blowdown system was an antiquated and unsafe design; it was originally installed in the 1950s, and had never been connected to a flare system to safely contain liquids and combust flammable vapors released from the process.

The released volatile liquid evaporated as it fell to the ground and formed a flammable vapor cloud. The most likely source of ignition for the vapor cloud was backfire from an idling diesel pickup truck located about 25 feet (7.6 m) from the blowdown drum. The 15 employees killed in the explosion were contractors working in and around temporary trailers that had been previously sited by BP as close as 121 feet (37 m) from the blowdown drum.

1 Introduction

The International Network of Safety and Health Practitioner Organisations (INSHPO) described the Occupational Health and Safety (OHS) profession and the role of the OHS professional in the following manner:

The OHS profession or role advises and supports management in its overall task of managing risks to prevent or mitigate work-related fatalities, injuries and illnesses... The OHS Professional is a key advisor, strategist and pilot to the organization's leadership in fully integrating the management of OHS risk into sustainable business practice at all levels. The OHS Practitioner implements strategy, notably at site level, with an emphasis on state-of-the-art-compliance. (INSHPO, 2017, p. 10)

According to Professions Australia (1997), a 'profession' is:

...a disciplined group of individuals **who adhere to ethical standards** and who hold themselves out as, and are accepted by the public as **possessing special knowledge and skills** in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others (emphasis added).

Having specialised knowledge gives professionals power. "Balancing the use of this power for individual and public good, while meeting their own needs, obliges professionals to behave ethically" (Beaton, 2010, p. 2) with ethics being "the very soul of professionalism" (Freidson as cited in Beaton, 2010, p. 5). Such ethical behavior is often considered to be captured in codes of ethics published by professional bodies; however, these codes are sometimes treated with cynicism by the public (Jamal & Bowie, 1995) and considered tokenism by the actual professionals. Ethical professional behaviour is much more than having a code of ethics.

It is worth differentiating between business ethics and professional ethics, particularly given that the public usually has higher behavioural expectations of professionals than of business persons (Jamal & Bowie, 1995). Business ethics encompass the moral rules that govern how businesses operate, how morally right business decisions are made and how people are treated by the business. While business ethics and the culture of an organisation can assist or obstruct a professional in their efforts to be ethical, professional ethics encompass issues of an ethical nature that arise between the professional and the client or employer, between professionals, between professionals and workers, between professionals and institutions (such as lawyers' duties to the court), and between professionals and third parties, including the community at large. Of relevance is the standard of care the professional is living up to regarding competence, conflicts of interest, honesty, respect and other values.

The concepts of ethics and morals relate to right and wrong behaviour. Solomon (1997, p. 116) defined ethics as “a matter of *ethos*, participation in a community, a practice, a way of life” and morality as “*doing right*.” Lavery (1989, p. 376) described morals as “basic beliefs about right and wrong, good and bad” and ethics as the behaviour that results from moral beliefs or “the way we practice our morals.” Many commentators treat morality and ethics as interchangeable concepts (e.g. Rachels, 1998; Grace & Cohen, 2013). For example, Jones and Ryan (1997, p. 664) considered the terms synonymous, defining “*morality or ethics* as a set of standards by which humans regulate their behaviour in order to achieve the purpose of life.” In reality, ethics and morals combine to determine professional behaviour and so, for the purposes of this chapter, the terms will be used interchangeably.

Ethical issues invariably arise in life generally and as a result of human interaction. When our actions are going to affect ourselves or others, now or in the future, we are dealing with ethical issues. Ethics and ethical decision-making are fundamental elements of OHS professional practice. Indeed, a study focused on defining the OHS professional identity found that a moral and ethical motivation for safety was one of five core elements in the professional identity of OHS professionals (Provan, Dekker & Rae, 2018).

In most countries OHS is highly regulated, with organisations required to control risk so as to ensure the health and safety of workers and others “so far as is reasonably practicable” (or similar wording depending on the jurisdiction). While the law may be considered a ‘rule,’ complying with such a rule requires balancing competing pressures, and often values, in situations where the information available may be equivocal. For example, determining the meaning of ‘reasonably practicable’ requires consideration of factors characterised by:

- *Uncertainty* as to the extent of severity of potential consequences, people who might be affected and the likelihood of the consequences occurring
- *Competing values* in determining whether the cost of control (borne by the organisation) is grossly disproportional considering risk (to workers and others).

While these considerations and decisions are made on behalf of an organisation, it is important to remember that they are made by people and that the decisions will impact people’s lives, including the lives of those who may not have been party to the considerations and decision-making. Such is the environment in which OHS professionals are required to be:

...designers of strategy relating to the organization and management of OHS within the wider context of business processes and external regulatory, market and societal influences... influential with senior management and...involved in problem solving and organizational review and change as advisors and consultants (INSHPO, 2017, p. 12).

This chapter focuses on the OHS professional as an 'ethical professional;' it does not address the broader issue of ethics of safety per se. The chapter takes the position that OHS professionals have an inbuilt desire to be ethical, and that awareness is the first requirement for decision-making and action in ethical professional practice.

Consultation with OHS professionals during the development of this chapter revealed intense interest in the topic coupled with desire to explore the 'grey' areas of ethical decision-making in OHS. The objective of this chapter is to create awareness of the complexity of ethics in OHS professional practice and to introduce ethical theory to inform professional discussion. It provides the foundation for a framework of ethical practice in OHS that will include commitment to a code of ethics that is endorsed, monitored and supported with development activities by a professional body.

In keeping with the objective of 'awareness,' section 2 focuses on knowing the limitations and characteristics of oneself as an ethical professional. This is followed by consideration of the legal obligations of the OHS professional and the overlap in moral/ethical and legal duties in section 3. Sections 4 to 7 introduce the OHS professional as a 'moral agent,' discuss ethical theory from a moral philosophy perspective, examine the role of formal codes of ethics, and consider ethical challenges of relevance for OHS professionals. Sections 8 and 9 discuss ethical capability for OHS professionals and the application of ethical theory to ethical dilemmas in OHS practice. A chapter summary is followed by two appendices, which provide, firstly, some detail on ethical theories and, secondly, a number of scenarios to prompt professional discussion and support mentoring. Provision of detailed guidance is not within the scope of this chapter. Such guidance is better placed accompanying the code of ethics/conduct of professional bodies.²

2 Know yourself

As this chapter will show, there are few absolutes in ethical professional practice or ethical decision-making. In very unusual circumstances, even an action that is illegal may be considered by some to be ethical or moral. Any person making a decision with ethical implications will consciously or unconsciously be influenced by their own individual system of ethics (Forsyth, 1980). Thus an important component of ethical professional practice is to understand one's own ethical precepts and position.

² For discussions of ethics as related to specific OHS activities, see *OHS BoK* chapters such as 11 OHS Performance Evaluation (in planning at time of writing), 12.6 Investigations (in planning at time of writing) and 31.2 Risk and Decision-making.

Fundamental to this understanding is accepting that as individuals we unconsciously favour a particular vision of ourselves as “more honest, trustworthy, ethical, and fair than others [and] give ourselves more credit for our good behaviours and take less responsibility for our moral lapses than others would be likely to do” (Chugh, Bazerman & Banaji, 2005, p. 81).

Also relevant to understanding our own personal beliefs and how these shape our approach to ethical decision-making, is Forsyth’s (1980) ‘taxonomy of ethical ideologies’ based on the extent to which one is relativist (skeptical about relying totally on moral rules, norms or principles when evaluating ethics) or idealist (risk averse when judging morality or ethics, preferring to refer to absolute principles) (Figure 1).

		Relativism	
		Low	High
Idealism	High	Absolutists Principled idealists who believe people should act in ways that are consistent with moral rules, for doing so will in most cases yield the best outcomes for all concerned.	Situationists³ Idealistic contextualists who urge acting in ways that will secure the best possible consequences for all concerned even if doing so will violate traditional rules that define what is right and what is wrong.
	Low	Exceptionists Principled pragmatists who endorse moral rules as guides for action, but do not believe that following rules will necessarily generate the best consequences for all concerned.	Subjectivists Pragmatic relativists who base their ethical choices on personal considerations, such as individualized values, moral emotions, or idiosyncratic moral philosophy.

Figure 1: Four ethical positions (Forsyth & O’Boyle, 2013, p. 223)

Forsyth (1980) developed an Ethics Position Questionnaire to evaluate the extent to which idealism and relativism determine a person’s ‘moral position’ and so where their thinking fits on the matrix. Before reading further, it could be informative to complete the questionnaire to

³ Forsyth’s (1980) situationism links with the ‘consequentialist’ moral theories discussed in later sections.

identify your own moral position.⁴ There is no right or wrong position; it is about developing a better understanding of what informs your approach to ethical situations.

Further self-awareness can be gained from understanding our biases and ethical blind spots (section 5.3).

3 Legal obligations of OHS professionals

OHS is highly regulated and some may consider that compliance with legislation equates to a sufficient standard of professional practice. Although laws may be based on ethical philosophy, law and ethics are different. Law is a set of mandatory documented rules that are enforced by an external authority, with penalties for breaking the rules. Ethics involve internal authority and are not mandatory (in the sense of the actor being externally accountable); they are guidelines that assist in decisions about how to behave. Law sets a minimum, mandatory standard imposed by an external agency; while ethics may be guided by external codes, they are internally based and applied more broadly.

Although law and ethics are not the same, OHS practice in countries that follow a British-style legal system is influenced by the philosophy underpinning the Robens-style legislation of a “consensual” approach, or desire to seek proactive cooperation between employers and workers” (Baldwin as cited in Sirrs, 2016, p. 68). This approach, which is embedded in Australia’s OHS legal system, is influential in OHS decision-making and in how OHS professionals frame their advice.

The law requires interpretation and this requires the application of ethics. While the exact terminology varies across legal jurisdictions, the core activity of the OHS professional is to provide advice such that the health and safety of workers and others impacted by the work is ensured ‘so far as is reasonably practicable.’ Whilst the OHS professional will endeavor to take an objective approach, there will always be an element of subjectivity.

⁴ The 20-question Ethics Position Questionnaire is detailed in Forsyth (1980); this and a more recently developed shorter version can be accessed at <https://donforsyth.wordpress.com/ethics/ethics-position-questionnaire/>.

Another way of looking at the difference between ethics and the law is to examine the legal obligations of OHS professionals under legislation and civil law.

OHS professionals may be employers, workers or sole practitioners providing advice in a consulting role. In each situation, they have a legal obligation to “take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons” (e.g. SWA, 2016, s 28).

As there is a moral duty to obey the law (with some rare caveats), an OHS professional who is in breach of the law is likely to be behaving unethically. The following four prosecutions in the UK provide examples of OHS professional practices that were both unethical and illegal under UK law.

R v Lockwood (2001), Crown Court (Stafford)

An occupational hygienist was held guilty of an offence because he negligently advised the employer that the level of airborne wood dust in a factory was within the statutory limits, when it exceeded them. Stephen Lockwood was prosecuted and eventually pleaded guilty to a charge under section 36.1 of the Health and Safety at Work Act 1974. The Health and Safety Executive (HSE) did not prosecute the employer as it had reasonably relied on the consultant’s advice

Fined £1000 plus £2000 costs. (OH Law Online, 2017)

Lincoln City Council v Charles Ian Helmrich (2003)

As part of an investigation into the death of a young worker by electrocution, the practice of the OHS professional was called into question. The OHS professional was found guilty of a failure to take reasonable care as evidenced by:

- Failure to implement adequate systems of risk assessment
- Failure to advise his employers of their legal obligations and specifically of the breaches of law apparent
- Failure to roll out the arrangements for preventing interference with the equipment.

Fined £3000 plus £3000 costs. (Cowley, 2005)

R v Hooper (2004)

An OHS consultant carried out an inadequate risk assessment of a woodworking machine that led to an employee losing part of a finger.

Fined £3000 plus £750 costs. (OH Law Online, 2017)

R v Sidebottom and Golding (2014)

A consultant OHS advisor was jailed for nine months following the death of a worker when carrying out basement excavation works. Richard Golding, a qualified health and safety advisor was sentenced to nine months in prison after being found guilty of exposing another to a risk of health and safety. Mr Golding was aware of the risks as he was responsible for drafting the method of work statement, which was found to be inadequate and had not been followed, despite also having the authority to stop dangerous works, which he failed to do. (The Health and Safety Service Limited, 2016).

A Canadian case raised questions about the scope of the role of the OHS professional as an employee and where the OHS professional may have to step outside the confines of their role to not only meet their legal obligation but also the requirements of ethical practice.

Della Valle, Nova Scotia, Canada

The OHS professional in question was the health and safety coordinator for the Cape Breton Island Housing Authority. He was found guilty of failing to ‘take every reasonable precaution’ to protect the safety of employees and tenants after tests showed that insulation used in housing unit attics contained asbestos. On receiving the results of the tests, Mr Della Valle informed two maintenance supervisors of the recommended remedial actions. In his decision, the judge argued that Mr Della Valle should have followed up on the work of the maintenance supervisors and, when it was apparent that the asbestos had not been removed, he should have circulated the test results more widely and “ensured that appropriate action of some sort was instigated.” His defence that “I went to the outer limits of my job and I did my job, and that should be enough” did not satisfy the court. (Johnson, 2012)

To date there have not been any prosecutions of Australian OHS professionals.

Obviously, one can be unethical without behaving illegally. Professional ethics encompass far more issues than the law. Many ethical issues are embedded in messy and complex factual situations, so they tend to be more ingrained in our interactions than legal issues. It is fair to say that the proliferation of legal rules in modern times reflects the complexity of ethical issues in the workplace. Whilst one is bound to obey the law and to consider the rights and values that the law is protecting, there are many more circumstances with

potential ethical considerations. The law lays down minimum standards that are feasible and possible to police. Ethics, especially professional ethics, can invoke much higher standards, calling on professionals to strive for excellence, integrity and expertise, and to do things that really make a difference.

Indeed, the intersecting moral, ethical and legal lines may appear blurry at times, not least because law and morality can run along consistent lines. For example, in Australia under harmonised legislation, successful prosecutions have been launched under the *Model Work Health and Safety Act* (SWA, 2016) for:

- Failing to notify the regulator of a notifiable incident (s 38)
- Failure to satisfy his or her duty as a worker (s 28)
- Threatening an inspector (s 190).

These provisions and prosecutions potentially raise questions for the OHS professional. For example, is it worth notifying the regulator or even reporting an incident at the workplace because the injury was minor and an ambulance was not called, or if the injured worker continued to work and then took themselves to the local doctor after work? Personal beliefs about seriousness are embedded in perceptions of triviality in the workplace that might be based on sociocultural attitudes (e.g. machismo, “it’ll be right mate, it’s just a nick on your arm, put a band aid on it”). The law and related advice (e.g. SWA, 2015) have taken much of the guess work out of these ethical or moral dilemmas.

In relation to section 190 of the *Model Work Health and Safety Act* and communications with inspectors, it may be easy to think of circumstances where a person may ‘lose their cool.’ Such interpersonal communications are traditionally regarded as business-ethics-related behaviours in the largely subjective realm of etiquette and courtesy – especially in the course of a business or undertaking. (For example, one only has to listen to the language on a construction site to appreciate different attitudes to what is acceptable language.) Despite this inherent subjectivity, the law has attempted to make objective some of these behaviours.

These basic examples highlight that ethical considerations, moral dilemmas, the OHS professional’s general attitudes and beliefs about what is right or wrong, and the fundamental principles surrounding moral and ethical judgment, are increasingly recognised according to law. The OHS professional should be fully aware of such legislative developments given the fact that ethical and moral dilemmas are not that clear-cut in daily work life. However, the law remains a ‘blunt instrument’ requiring codification, effective policing and governance regimes. Ethical decision-making can be more flexible and context-sensitive.

4 The OHS professional as a ‘moral agent’

A moral issue exists when “a person’s actions, when freely performed, may harm or benefit others” (Jones, 1991, p. 367). Individuals who can be held accountable for their moral actions are ‘moral agents.’ A moral agent is “a person who makes a moral decision, even though he or she may not recognize that moral issues are at stake” (Jones, 1991, p. 367). MacIntyre (1999, p. 312) explained that moral agents are commonly expected to act intentionally, to “be held responsible for incidental aspects of those actions of which they should have been aware [and] be justifiably held responsible for at least some of the reasonably predictable effects of their actions.” Unlike moral issues or moral choices where we can decide to do the right or wrong thing, moral dilemmas involve a moral agent who is morally required to do option A and option B, but they cannot do both A and B (e.g. McConnell, 2018).

OHS professionals are moral agents; they are expected to comply with legal obligations and to be ethical. In everyday practice they are personally and professionally responsible for their judgements and actions in tackling ethical choices and dilemmas, in their prioritisation of activities, in what they draw attention to, and in the advice they give. This applies irrespective of whether they recognise the moral issues in their actions.

This concept of the OHS professional as a moral agent is an important one because:

Safety professionals are strongly motivated by [a] moral motivation to prevent human suffering through safety incidents within their organizations. They see this as a reason, or even a necessity, to stand at odds with others who they believe have less moral motivation in their roles. ...

This moral motivation for their role has significant implications for safety professional practice within organizations. In a study of safety professional influence and practical agency, Daudigeos (2013) found that the ‘sense of moral duty to others in [safety] professionals’ has powerful implications for institutional processes as safety professionals often resort to unscrupulous and Machiavellian tactics in pursuit of their good intentions. (Provan et al., 2018, p. 29)

5 Ethical theory and ethical decision-making

Having identified OHS professionals as people who make moral decisions, even though they may not recognise that moral issues are at stake, it is important that we explore ethical theory to raise our awareness about ethical issues, to develop a framework for thinking and talking about ethical issues, and to understand the factors that impact how people respond to ethical issues.

5.1 Moral philosophy

In moral philosophy, theories can be categorised as prescriptive (*what should we do?*) and descriptive (*what do we do?*) (e.g. Grace & Cohen, 2013). This chapter focuses on prescriptive or normative ethics as informed by moral philosophy; it also considers theories of descriptive ethics, which draw on psychology, behavioural science and interdisciplinary business ethics research.

Prescriptive ethical theories can be divided to four broad categories:

- Rights-based theories
- Duty-based theories
- Consequence-based theories
- Virtue theories).

Theories in all four categories suffer from limitations; there is no one theory of ethics that provides perfect ethical solutions to ethical issues and dilemmas. However, they offer interesting lenses for considering and analysing ethical issues, and inform ethical decision-making models. Table 1 summarises the focus of each theory and identifies potential links with OHS professional practice, and Appendix 1 provides expanded descriptions.

Table 1: Ethical theories and OHS links

Ethical theory	Focus	Link with OHS	Potential conflict in OHS practice
Rights-based	Focus is on the recipients of the behaviour (moral subjects) and those people's rights. Assumes people have rights, including the right to engage in activities as long as they do not interfere with the rights of other people.	Underpins human rights legislation and covenants, including "the right to work in just and favourable conditions." ⁵ Some rights are enshrined in OHS law (e.g. right to know about hazards, right to refuse unsafe work).	Good of community may be sacrificed for the right of an individual.
Duty-based (Kantianism)	Focus is on the agent and prescribes fulfilling our duties and following the rules of ethics as a	OHS legislation is strongly based on the 'duties' of many parties. Trust and honesty could be considered to be part	Whether or not there is informed consent is not a factor in OHS decision-making.

⁵ For more information on human rights, see the United Nations website (<http://www.un.org/en/sections/issues-depth/human-rights/>).

	<p>way to behave in the right way.</p> <p>Assumes truth and honesty in actions and that informed consent plays a role in decision-making.</p> <p>Linked to rights-based theory as rights can be met by fulfilling a duty.</p>	<p>of the right to know as well as the OHS professional's obligation of objectivity and impartiality.</p>	<p>Working outside the 'rules' to achieve safety goals would be contrary to a Kantian approach, but would be in line with a consequentialist approach.</p> <p>When might trust and honesty create harm?</p>
<p>Consequence-based (of which Utilitarianism is a form)</p>	<p>Focuses not on the action itself, but on the consequences of the action.</p> <p>Considers all potential outcomes and judges on the greatest good (usually happiness and wellbeing) for the most people.</p>	<p>Links with risk-assessment and cost-benefit analysis.</p>	<p>Can be in conflict with rights of individuals and groups as well as legal and ethical 'duties.'</p> <p>Requires assessment of consequences such as pain, suffering and 'value' of a human life, which has ethical implications.</p>
<p>Virtue</p>	<p>Focuses not on the action, but on the actor. It is not about what the person should do, but about the kind of person they want to become through acting in accordance with virtues or values.</p>	<p>Professional codes of ethics and many companies espouse 'values.'</p> <p>In many ways, virtue ethics underpins OHS professional practice.</p>	<p>There is no universal list of virtues for a professional. Each individual needs to select virtues to help guide their decisions and actions.</p>

For more information on ethical theories refer to Appendix 1.

One of the facilitators of ethical decision-making is an awareness of the factors impacting our ability to identify ethical issues. The following sections discuss moral awareness, moral intensity and inhibitors of ethical decision-making.

5.2 Moral awareness and moral intensity

Of the various models of ethical decision-making, many build on Rest's (1986) seminal four-step process:

- 1) Recognition – The moral agent must first recognize the moral issue. An agent who does not recognize the moral aspects of an issue will certainly rely on "non-moral" criteria in making a decision.
- 2) Judgment – The agent must then engage in some form of moral reasoning to arrive at a moral judgment...
- 3) Intent – The moral agent then must establish moral intent. In so doing he/she places moral concerns ahead of other concerns and decides to take moral action.
- 4) Behavior – At this stage, the agent actually translates intent into moral behavior. He/she

overcomes all impediments internal and external, and carries out his/her intended moral action. (Rest as cited in Jones & Ryan, 1998, p. 432)

Breakey (2017) extended the four-step model to include 'achievement' and 'review;' this captures the professional qualities of reflective practice (Figure 2). This six-step model is used in this chapter to provide a structure for discussing the theory and practice of professional ethical decision-making.

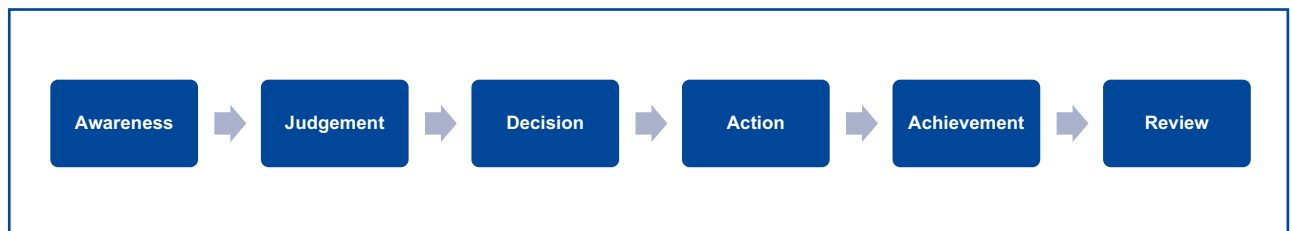


Figure 2: Six-stage process for individual ethical decision-making (after Breakey, 2017)

Recognition or **awareness** is the first step in making an ethical decision. It is the step where we recognise and appreciate the ethical aspects or content of a situation. Treviño, Weaver and Reynolds (2006, p. 953) explained that “This stage is considered critical, because identifying an issue as ethically significant presumably helps to initiate ethical decision-making and in turn makes ethical behavior more likely.” Ethical awareness requires individuals to recognise that an issue has a potential to benefit or to harm others or that it involves some duties or obligations we owe to others. Unfortunately, we do not always see issues that involve ethics with such clarity. “Moral issues rarely come equipped with ‘red flags’ identifying them as moral, and as a result the ethical component of a decision may not be apparent to the decision maker” (Butterfield, Treviño & Weaver, 2000, p. 984).

Gioia (1992), who was involved in the Pinto Case (see Preface) in which Ford calculated that it was more economical to pay for 180 people burning to death due to a car fault than to recall the cars to be fixed, argued that when we make decisions in and for organisations we are usually unaware of the ethical issues and may use familiar ‘scripts’ that “typically include no ethical component in their cognitive content” (p. 388). Remembering that lack of awareness of an ethical issue does not absolve us of moral responsibility and moral blame, we need to ensure that our ‘scripts’ contain ethical alarms and ethics-magnifying glasses that sensitise us to an ethical situation.

The Ford Pinto case illustrates the need to explicitly seek and consider the ethical content of an issue because focusing only on financial, efficiency and/or legal outcomes is inadequate. We need to keep this in mind every time we are asked to evaluate a proposal, create a business case or select alternatives.

Treviño and Nelson (2017) identified three factors likely to improve people's moral awareness:

- If we believe that our colleagues will see the issue as ethically problematic
- If moral language is used to present the situation to us
- If the decision is seen as having the potential to produce serious harm to others.

BP Texas City

Hopkins' (2008) analysis of the refinery explosion at BP Texas City reveals that not one of these three factors likely to improve moral awareness was present in the decision-making that led to the refinery explosion. Some examples of the situation at the Texas City refinery are provided in the exemplar comments in the following sections.

Moral language is an important enabler of ethical awareness. Gunia et al. (2012) found that moral contemplation and ethical conversations, as opposed to self-interested ones, increase ethical awareness. They suggest that when facing right-wrong decisions, we should take time, think twice and consult an ethical colleague as ethical awareness is not likely to be facilitated by rushed choices or self-interested conversations. Keeping in mind that professions and organisations develop their own languages and codes, it is important to examine how we talk about issues we face, whether we use moral or economic terms, and whether we take the time to consider, discuss and justify ethical reasoning. (The language of OHS and its impact on ethical decision-making is discussed in section 5.5.)

While simple models for ethical decision-making (such as Figure 2) provide insight into what happens at the individual level, ethical decisions are not made in isolation. Characteristics of who we are, where we are and the circumstances of an issue have been found to affect every step of the ethical decision-making process.

Developing consensus in the business ethics literature (e.g. Jones, 1991; Treviño, 1986) is that ethical decision-making is affected by:

- The person making the decision and their personal variables (values, character, personality, identity, etc.)
- The situation and situational variables (organisational culture, ethical climate, industry, etc.)

- Issue-related factors (**moral intensity**).

Individual factors identified as affecting ethical decision-making include:

- Machiavellianism (Giacalone & Knouse, 1990)
- Ethical ideology (Forsyth, 1992)
- Stage of cognitive moral development (Colby et al., 1987)
- Self-efficacy (Jensen & Wygant, 1990)
- Nationality (Small, 1992)
- Years of education (Jones and Gaultschi, 1988)
- Education in ethics (Kavathatzopoulos, 1993)
- Locus of control (Treviño, 1986).

In developing an 'ethical regime,' Breakey (2017) expanded his six-step model to include personal and professional attributes operating at each stage of individual decision-making (Figure 3).

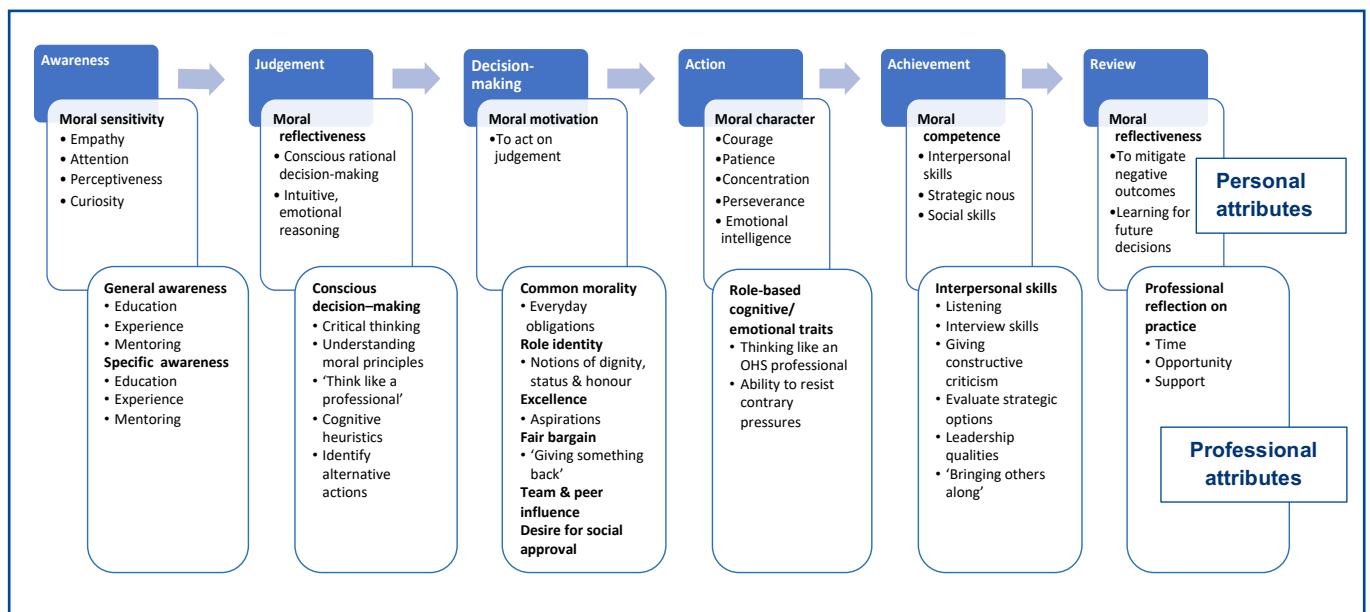


Figure 3: Personal and professional attributes impacting on individual ethical decision-making (after Breakey, 2017)

Situational factors identified as affecting ethical decision-making include:⁶

- Organisational culture (Schaubroeck et al., 2012)
- Ethical climate (Martin & Cullen, 2006)
- Organisational reward system (Treviño & Youngblood, 1990)
- Influence of superiors (Posner & Schmidt, 1992)
- Ethical leadership (Brown, Treviño & Harrison, 2005)
- Social networks and relationships among actors (Brass, Butterfield & Skaggs, 1998)
- Formal systems and ethics policy (Murphy, 1988)
- Informal systems (Falkenberg & Herremans, 1995).

BP Texas City (Hopkins, 2008)

Situational factors were important in influencing decision-making in BP in the lead-up to the Texas City Refinery explosion.

Ethical environment: In 2003, BP was fined for manipulating the US stock market and BP staff admitted manipulating the North American propane market in 2004 so as to create artificial gas shortages from which the company could then profit (p. 3).

Growth and acquisitions: BP had experienced phenomenal growth since 1995 when John Browne took over as CEO. A series of mergers and acquisitions saw the company grow to five times its former size, second only to Exxon Mobil in the oil and gas industry (p. 4).

Focus on cost cutting: BP had operated under a regime of cost cutting for many years (p. 73). Despite capital expenditure being steadily reduced, particularly for safety and maintenance, return on investment for the Texas City refinery was seen as unsatisfactory (pp. 74-75) and further cost cutting impacted on personnel levels and training (p. 76). The cost-cutting approach was reflected more broadly within BP. The structural collapse of the partially completed Thunder Horse oil production platform in the Gulf of Mexico (2005) and the leak from a corroded BP oil pipeline in Prudhoe Bay, Alaska (2006), were attributed to cost-cutting pressures (p. 3).

Leadership: John Browne, who had driven the cost cutting combined with the growth and acquisition agenda had been repeatedly chosen by his peers as Britain's most outstanding businessman (p. 4).

Inability to learn from previous events: Almost every aspect of what went wrong at Texas City had gone wrong before, either at Texas City or elsewhere yet BP had failed to learn from them. This inability to learn was attributed to the structure and functioning of the corporation as a whole (p. 4) including the remuneration system, relentless cost cutting and lack of attention by top leaders to safety (p. 7).

Moral intensity is “a construct that captures the extent of issue-related moral imperative in a situation” (Jones, 1991, p. 372). An issue's moral intensity has been found to affect each of the initial four steps in the ethical decision-making process – our ability to recognise a moral issue (awareness), our judgement, the decision and the action (Craft, 2013).

⁶ For reviews of research on ethical decision-making in organisations, see Craft, 2013; Ford & Richardson, 1994; Loe, Ferrell & Mansfield, 2000; Treviño, den Nieuwenboer & Kish-Gephart, 2014.

Six dimensions of moral intensity are described by Jones (1991):

Magnitude of consequences: “the sum of the harms (or benefits) done to victims (or beneficiaries) of the moral act in question” (p. 374)

Social consensus: “the degree of social agreement that a proposed act is evil (or good) (p. 375)

Probability of effect: “a joint function of the probability that the act in question will actually take place and the act in question will actually cause the harm (or benefit) predicted” (p. 375)

Temporal immediacy: “the length of time between the present and the onset of consequences of the moral act in question (shorter length of time implies greater immediacy)” (p. 376)

Proximity: “the feeling of nearness (social, cultural, psychological, or physical) that the moral agent has for victims (or beneficiaries) of the evil (or beneficial) act in question” (p. 376)

Concentration of effect: “an inverse function of the number of people affected by an act of given magnitude” (p. 377).

Interestingly, Australian research (Carpenter & James, 2017) suggested that for health and safety:

- “Perceptions of moral intensity are stronger for safety dilemmas than workplace health dilemmas” (p. 16)
- Moral intensity is influenced by “a strong perceived potential harm, especially when there are high levels of social consensus” (p. 19); this supports Jones’ (1991) ‘magnitude of consequences’ and ‘social consensus’ dimensions
- Proximity to those involved in the dilemma does not appear to impact moral intensity or decision-making; this is at variance with Jones (1991)
- “Concentration of effect has only a small influence” (p. 19)
- Overall, safety culture has only a small positive correlation with moral intensity.

BP Texas City

The dimensions of moral intensity can be identified in the issue-related factors in Hopkins’ (2008) analysis of the Texas City refinery explosion.

Blindness to major risk: BP appeared relatively unconcerned about hazards that had the potential to ‘blow the place apart’ (p. 51) and this lack of concern derived from the way safety was measured (p. 52). Despite a 52% increase in loss of containment incidents over the previous two years (p. 55) and three fatalities in 2004 (p. 53), an all-time low recordable injury rate was a matter for celebration and financial reward (p. 53).

Probability of effect: The probability of such an event occurring was not perceived by the those making decisions. Previous events both on-site [loss of containment incidents] (p. 55) as well as overfilling of the distillation column (p. 60)] and at other sites [Grangemouth (pp. 66-67)] did not lead

the HAZOP team to consider such a scenario as 'credible' and so were not included in the HAZOP study (p. 62).

Social consensus: An inability to learn from previous events is a major theme in the analysis of the Texas City Refinery explosion to the extent that the organisational culture is described as having "some kind of learning disability" (pp. 66, 72). Despite 'lessons' being available from other major incidents, both internationally and locally, managers seemed to have little time for reading about such incidents (p. 69) nor did they see the the relevance to their site or management actions.

Temporal immediacy: The cost-cutting regime linked to a management remuneration and recognition scheme had been in place for many years and while there had been other events such as the oil pipeline leak at Prudhoe Bay attributed in part to cost cutting, the link was not seen by senior management, who tended to be driven by short-term rewards. The focus on short-term outcomes was exacerbated at the Texas City site, which had eight managers in five years (p. 83).

(Lack of) proximity to victims: While the drive for cost cutting originated with senior management, the impact of the outcomes was felt not only at a lower level in the organisational hierarchy but in a different country on a different continent. Senior managers set a requirement that changes at site level required a risk assessment but they were exempt from such rules (p. 82). The decentralised management structure within BP also distanced senior management (and their decision-making) from frontline operations (p. 91).

5.3 Obstacles to ethical decision-making

While individual and organisational characteristics present a myriad of influences on ethical thinking and behaviour, recently more attention has been given to cognitive and behavioural influences and impacts. This section considers the impact of biases, ethical blind spots and moral disengagement on behaviour in a professional context.

5.3.1 Biases

While many ethical decision-making models are based on rational approaches to decision-making and ethical theories, research has demonstrated that we can be predictably irrational and unethical. Behavioural decision-making research, including work on heuristics and biases (Ariely & Jones, 2012; Tversky & Kahneman, 1986), has indicated that our rationality and ethicality are bounded. Chugh et al. (2005) explained that despite ample evidence that our perceptions and decisions are affected by biases and other shortcuts and the fact that many of them are unconscious, we continue to view ourselves as "more honest, trustworthy, ethical, and fair than others" (p. 81) or more than is warranted.⁷ Prentice (2004, 2013) summarised the main heuristics and biases and their application to ethical behavior,⁸ including:

- *Obedience to authority or following orders:* making people more inclined to do something unethical if someone in authority such as a manager urges them.
- *Social proof:* or 'everyone else is doing it'. There is ample evidence that our behaviour can be influenced by external situations as well as internally by our

⁷ It should be noted that we are often also operating off emotions and instincts when we make good ethical decisions (e.g. Haidt, 2012).

⁸ See also OHS BoK 8.1 People as Individuals and 8.2 People in Organisations.

disposition, even though we think of ourselves as objective and uninfluenced. Our desire to belong and to be accepted by the group leads us to accept or participate in unethical behaviours. An extension of this is the normalisation of deviance often discussed in health and safety where people within an organisation or social context become so accustomed to deviant behaviour that it comes accepted as 'normal.'

- *Over-optimism and overconfidence*: where we are irrationally overconfident and think that we are way better than average in everything, including ethics. Overconfidence and over-optimism limit our moral reflection and this limitation prevents us from paying adequate attention to ethical issues because we think that of course our judgements and actions will be ethical.⁹ Also, we tend to overestimate our ability to control situations and foresee problems. (So in reading this chapter, try not to think that this is written for others who are not as ethical and objective as you!)
- *Self-serving bias or self-interest*: trumps our objectivity and ethicality. Research shows that we focus on what supports our views; when the same document is given to people from opposing groups, each interprets it in a manner that supports their own view.
- *Framing*: is very important in ethical decision-making as our decisions are greatly affected by how issues and options are presented. For example, we may be more likely to buy a food item that is 70% fat free than one that is 30% fat. In the work context, many things are framed in a manner that excludes the human face and, in a sense, removes the person from the equation. When we talk of roles rather than persons and of dollars rather than responsibilities, we are less likely to trigger ethical thinking.

Other biases with a potential to impact ethical decision-making include:

- *Confirmation bias*: occurs when information that is consistent with one's beliefs is prioritised over other information. While often unintentional, it impacts ethical behaviour as decisions are based on biased information.
- *Cognitive dissonance*: occurs when a person experiences tension as a result of conflict between their beliefs and their actions and they need to minimise the 'dissonance.' This may be by changing behaviour or resisting change by trivialising the importance of a behaviour, selectively processing information to support earlier actions, or increasing commitment to a position (section 7.3.3).
- *Outcome bias*: occurs when, in comparing similar actions which have different outcomes, individuals judge behaviours associated with the more serious, negative outcomes as more blameworthy or unethical and punish them more harshly.

⁹ See, for example, Oliver's (2016) 'Overconfident CEOs are less socially responsible.'

5.3.2 Ethical blind spots

Ethical blind spots explain why people do not always recognise the ethical dimensions of issues (i.e. they are not morally aware), and why people can behave against their own ethical values. Sezer, Gino and Bazerman (2015) identified three sources of ethical blind spots:

- *Implicit biases* where unconscious attitudes affect our judgements and behaviours leading to discriminatory or self-interested decisions
- *Temporal lens* which shows that while we think we will behave in accordance with our values, when we are tempted with immediate gains we are likely to 'fade' the ethical implications of the decision. Research shows that we find ways to close the gap between our image of ourselves as moral, good objective people and our unethical behaviour
- *Failure to notice others' unethical behaviour*, particularly if it benefits oneself.

5.3.3 Moral disengagement

Moral disengagement explains how it is possible for good people to behave unethically and to be able to live with themselves without feeling discomfort or distress (Martin, Kish-Gephart, & Detert, 2014). Such disengagement can occur when people separate their everyday ethics from their professional role and achieve 'compartmentalisation' (Breakey, Cadman & Sampford, 2015).¹⁰ The way we see, process and use information influences our ethical behaviour. Increasingly, the role of cognitive processes in our ethical conduct is the subject of behavioural science research. The theory of moral disengagement was introduced by Albert Bandura (Martin et al., 2014; Moore et al., 2012), who proposed that moral disengagement occurs through eight interrelated mechanisms (Table 2).

Table 2: Moral disengagement mechanisms (Martin et al., 2014, p. 303)

Mechanism	Definition	Example
Moral justification	Individuals reconstrue harm to others in ways that appear morally justifiable	"It's for the greater good"; "We're actually doing them a favour"
Euphemistic language	Use of morally neutral language to make unethical conduct seem benign or less harmful	"I'm just borrowing it"; "Strategic omission is how we do it here"
Advantageous comparison	Comparison of unethical behavior with even worse behavior to make the original behavior seem acceptable	"At least we're not doing what those people are doing"; "It could be worse"
Distortion of consequences	Distorting or minimizing the consequences of unethical behavior in order to disconnect unethical actions and self-sanctions	"We're not harming anyone"; "It's not a big deal"

¹⁰ See, for example, section 5.4 and Hayne, 2019.

Mechanism	Definition	Example
Diffusion of responsibility	Placing responsibility for unethical behavior onto a group, thereby making one feel less responsible for a collective's unethical actions	"Everybody is doing it"; "We made this decision together"
Displacement of responsibility	Placing responsibility for unethical behavior onto an authority figure, thereby neutralizing personal responsibility	"I'm doing what I was told"; "I'm just following orders"
Attribution of blame (blaming the victim)	Placing the responsibility for unethical behavior onto the victim in order to exonerate one's self	"It's their own fault"; "They deserve it"
Dehumanization	Recasting victims of unethical behavior as "less than human," or unworthy of human treatment	"They are being treated like the animals they are"; "They're just cogs in a wheel"

According to Moore et al. (2012), research on contextual drivers of unethical behaviour is yet to fully explain the variance in organisational behaviour. However, "an individual's propensity to morally disengage – that is...to behave unethically without feeling distress" is an important variable in predicting unethical organisational behaviour (Moore et al., 2012, p. 2).

Treviño and Brown (2004) advised that:

The best way to manage ethical conduct is by aligning the multiple formal and informal cultural systems in support of doing the right thing. Cultural messages about the importance of trust and long-term relationships with multiple stakeholders must get at least as much attention as messages about the short-term bottom line, and employees must be held accountable for ethical conduct through performance management and reward systems. (p. 80)

The following section examines the role of organisational culture and leadership and the influence that these can exert on the ethical behaviour of OHS professionals and others.

5.4 Impact of organisational governance, culture and leadership on ethical decision-making¹¹

A number of scandals have focused attention on the ethical basis of business decision-making. Some of the more infamous examples include:

Enron (2001) fraudulently misstated company income and equity value by billions of dollars, and created bogus companies to hide debts and losses; this was enabled by complicit auditing and managerial attempts to cover up (NPR, n.d.).

Volkswagon (2015) installed software in millions of cars with the objective of tricking the environment protection regulators' emission testers into thinking that the cars were more environmentally friendly than they were (Parloff, 2018).

7Eleven and *Dominos Pizza* franchises (2015) were the first companies investigated by the Australian Fair Work Commission for systematic intentional underpayment of workers, with later investigations revealing widespread underpayment of workers particularly in the hospitality industry (Moore, 2018; Ferguson & Christodoulou, 2017).

The Australian *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Hayne, 2019) revealed breaches of regulation and unethical behaviour, including 'kickbacks' in commissions to financial advisors, fees charged to dead customers, fees for no services, lack of fee disclosure and tardy reporting to the regulator (Danckert, Yeates & Williams, 2018; Hayne, 2019).

As noted in the Australian Banking Royal Commission (Hayne, 2019), such behaviour draws attention to the organisational environment in which the behaviour has been able to occur. Examination of the impact of the organisational environment on ethical decision-making needs to consider both the corporate governance arrangements and the organisational culture.

Corporate governance "encompasses the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account" (GIA, 2019). However, even a supposedly rigorous corporate governance structure is subject to implementation by people.

Enron, for example, had a supposedly state-of-the-art ethics code, risk management capability, and board of directors oversight process, all of which formally conveyed the importance of ethical behaviour...[However,] Enron's culture overwhelmed whatever formal ethics and compliance measures that it had adopted. (Regan, 2008, p. 942)

¹¹ The impact of the organisational ethical climate on behavioural outcomes in the workplace is an area increasingly attracting research attention. For a summary of the recent research, see Newman, Round, Bhattacharya and Roy (2017).

The influence of the organisational environment, including its culture and leadership, on unethical behaviour is well established; increasingly, the focus is on the organisational environment rather than on the individual who behaved unethically. That is, in order to understand misbehaviour in organisations we need to move from blaming the bad apples to understanding the barrel. For example, Schrager and Short (1978) advocated that role fulfilment rather than individual pathology explains organisational criminal behaviour, while Treviño and Brown (2004, p. 72) stated that “most people are the product of the context they find themselves in. They tend to ‘look up and look around’ and they do what others around them do or expect them to do.” Consequently, most unethical actions at work are either encouraged or allowed to occur.

Frederick (1992) stated that to understand the discrepancy between people’s moral cognition and moral behaviour at work it may be more fruitful to focus “not so much in direct observation of the decision maker as in a firmer grasp of the decision maker’s environment” (p. 93).

When one links knowledge of moral reasoning, value preferences, ethical principles relied upon most frequently...with knowledge of an organization’s ethical climate, the dominant features of the firm’s culture, and the prevailing ethical traditions and practices of its industry, then a more reliable (if more complex) picture emerges of how cognition and behavior intersect and merge in everyday business life (Frederick, 1992, pp. 93-94).

The organisational culture and climate¹² can as easily induce unethical behaviour as ethical behaviour (Badaracco, 1995). However, although there is general support for the influence the organisational context has on the ethical behaviour of individuals at work, many organisations and the leaders and individual employees within them continue to focus on individual bad apples. It is important to remember that while individuals are influenced by their organisational environment, as moral agents they remain responsible and are held accountable for their behaviour.

In order to understand and not excuse individuals’ behaviour at work, we need greater insight into why people behave as they do and what we need to change in the organisational formal and informal systems to promote ethical behaviour.

But when we see the essence of a culture ... we are struck by how powerful our insight into that organization now is, and we can see instantly why certain things work the way they do, why certain proposals are never bought, why change is so difficult, why certain people leave, and so on (Schein, 1997, p. 222).

¹² See *OHS BoK* 10.2 Organisational Culture for a discussion of safety culture and safety climate.

OHS professionals are familiar with the concept of a 'just culture.' Reason (1997) emphasised that a just culture is about trust. Dekker (2017) examined various parameters of a just culture and their impact on trust and relationships, and so on OHS decision-making. He remarked on the tendency for people to 'blame the system' when things go wrong:

Of course we should look at the system in which people work, and improve it to the best of our ability. But safety critical work is ultimately challenged through relationships between human beings...or through direct contact of some people with the risky technology. (p. 131)

Dekker (2017, p. 131) identified the existence of "discretionary space into which no system improvement can completely reach" and noted that while the system will influence how people carry out their duties, it cannot be a substitute for the responsibility borne by individuals in that space. Thus, it is important to understand how the culture/system influences ethical decision-making by individuals, as well as the boundaries to discretionary decision-making and accountability within the discretionary space.

Badaracco (1992, p. 71) advocated that the 'tools of management', which include the measurement and reward systems, the organisational culture and the examples of peers and bosses, "exert enormous, cumulative pressures on employees and managers." The role of reward systems in encouraging ethical behaviour is supported by Treviño, Weaver, Gibson and Toffler (1999). Conversely, the role of reward and incentive systems in driving unethical behaviour has been identified by the Australian Banking Royal Commission (Hayne, 2019) and within Enron, where a "rank and yank" personnel evaluation process engendered brutal competition (Regan, 2008, p. 942).

In an analysis of the impact of executive remuneration and bonus systems on safety decision-making, Hopkins and Maslen (2015) considered both long- and short-term bonus systems. They found that long-term bonuses, which are usually paid in company shares to a small group of senior executives, focus on economic returns and, as most accidents have no discernible effect on profit:

... long-term bonuses provide no incentive to reduce the number of accidents. On the contrary, long-term bonuses provide an incentive to maximise profit at the expense of safety, if need be. (Hopkins & Maslen, 2015, p. 146)

Short-term bonuses, which are usually paid annually in cash to a wider range of managers and supervisors, often include safety performance criteria. However, they have little positive impact as they generally allocate a low weighting to safety, emphasise group or corporate outcomes over which most people have little control, and focus on measures such as injury rates or activities that may not necessarily lead to positive OHS outcomes.

Schein (1997) explained that leaders create organisational culture through:

- What they pay attention to, measure and control
- Their reactions to critical incidents and crises
- Criteria used to allocate resources, rewards and status
- Role modelling and coaching
- Criteria for recruitment, selection, promotion, excommunication
- Other factors such as formal statements, structure, systems, rites and rituals, creeds, processes, physical setting, stories, etc.

Brown and Treviño (2006) reviewed existing research on ethical leadership and concluded that:

...ethical leaders are characterized as honest, caring, and principled individuals who make fair and balanced decisions. Ethical leaders also frequently communicate with their followers about ethics, set clear ethical standards and use rewards and punishments to see that those standards are followed. Finally, ethical leaders do not just talk a good game – they practice what they preach and are proactive role models for ethical conduct. (p. 597)

All OHS professionals should consider such proactive behaviours part of their role and integral to their professional practice.

BP Texas City

Situational factors at BP Texas City that may have impacted the ethics of decision-making were noted in section 5.2. With reference to Hopkins (2008), BP Texas City is a source of examples of the impact of governance structures, culture, leadership and priorities set in remuneration and recognition criteria on moral disengagement of individuals.

Governance: BP operated under a decentralised management structure (p. 92) without established accountability processes. The BP Board delegated safety down to line management, but did not ensure that the delegation was properly carried out (p. 105). Line management was responsible for operations while standards were developed by 'functions' at the corporate level, but the functions were not responsible for ensuring standards were followed (p. 93). Lines of reporting at Texas City and within BP more broadly meant that there was no way for process safety concerns at the site level to be raised at higher levels (thus shielding senior managers) and there was no way for sites to influence standards setting (p. 95). The dichotomy between senior management and the sites was further evidenced in the management of change processes where sites were required to follow procedures, including risk assessments for small changes, while major corporate changes such as mergers and acquisitions were not subjected to such assessments and management processes (p. 105).

Culture: BP set an objective of becoming a High Reliability Organisation (HRO) and implemented a 'culture change' program to achieve the objective. The culture change program focused on changing the 'thinking' of frontline workers. This change program not only ignored the role of leadership by senior management and resourcing for an HRO, but also focused on attitudes rather than actions. The result was cynicism from the workers (pp. 146-147). Another perspective of the culture within BP is provided by the decision to sack a number of workers following the explosion. Despite a 'just culture policy' (p. 124), six frontline workers were sacked (p. 122) and four of five senior refinery managers were also terminated (pp. 127-128). The actions of the fifth manager (who reported to the CEO) were referred to the CEO for action. The actions of the CEO were not within the scope of the management review (p. 128).

Leadership: The BP leadership were said to have “not provided effective process safety leadership... they provided... a plethora of messages concerning many values and those tended to dilute the importance of the corporate vision...” (p. 107). The BP CEO was perceived to have little interest in safety (p. 108) with the BP senior management, and the CEO in particular, seen to only want to hear good news (pp. 108, 109), and there were no mechanisms for operational concerns to be heard at senior management level.

Remuneration and recognition: Remuneration for both site and senior managers was strongly skewed to reward cost cutting (pp. 83, 84), systematically diverting the attention of senior managers away from process safety to the extent that the interests of individuals were not aligned with the interests of the organisation.

5.5 Language and ethical decision-making

Language influences how we think about and perceive a situation and so how we might consider the ethical issues associated with a situation. The words we use will be influenced by the terminology of our discipline, the culture of the organisation, the context in which the situation occurs, the terminology used by others and our own background and experiences.

This is especially true in OHS. An analysis of accident investigation reports found that how we write about the detail of an incident can impact the attribution of causation and recommended actions; that is, language can determine how people are treated and the development of health and safety strategy (Heraghty, Dekker & Rae, 2018). Language that depersonalises the people involved tends to negatively impact ethical decision-making. The developing legislative trend to protection of privacy of personal details is exacerbating the depersonalisation in our communications. Where in the past incident and injury reports tended to include the names of people involved, some organisations are now referring to IP (injured person) in incident reports. Table 3 lists some common terms and practices used in OHS that may have ethical implications.

Table 3: Examples of depersonalising language and practices in OHS

Depersonalising terminology or practice	Alternative terminology or explanation
Fatality	Death
LTI	Injury
Incident	Word derives from ‘trivial’
Loss control	Health and safety
Assets, units of labour, human capital	People
Consequence categories in assessment of risk (e.g. not significant, minor, moderate, major, severe)	Consequences make little/no reference to the impact on people or number of people

Depersonalising terminology or practice	Alternative terminology or explanation
Probabilistic risk assessment	Reduces the likelihood of people being injured or becoming ill to a number that is often not well understood or estimated differently by different people
Cost Benefit Analysis	Places a \$ value on human life or health Equates people and health with \$
ROI (Return on Investment) PBP (Pay Back Period)	Equates people with \$ Time period can be manipulated to justify a decision
Commodification of people (retrenchment, labour hire)	People seen as disposable commodities

BP Texas City

Hopkins (2008) analysis of the context and culture within BP prior to the explosion identified aspects of the impact of 'language' on decision-making.

In one example, BP Texas City was described as having an 'appetite' for capital of 'more than its fair share,' with other (competitor) refineries in the US Gulf able to 'extract more value' (p. 74). The language implies that BP Texas City was some type of monster devouring capital and that if the monster cannot be slain then it must be constrained (p. 75).

As the core objective of this chapter is to create awareness of and 'sensitivity' to the existence of ethical issues in OHS practice, awareness of the impact of language on how people perceive situations, and so on their decision-making, is important. In practice, OHS professionals will recognise that the actual language used will depend on the context and purpose of the communication (e.g. investigation report for regulator, report for board of management, internal hazard alert, tool box talk).

6 Codes of ethics

Ethical standards for professions are usually expressed as codes of ethics or codes of conduct with some subtle differences between the two. "The code of ethics is an embodiment of core values, often with little direction,^[13] whereas a code of conduct is more regulative in its approach with rules or code points to adhere to" (Lundy, 2013, p. 39).

¹³ Codes of ethics are usually supported by operative principles that guide action; where such operative guidance is absent the codes are often ineffective.

Informed by a survey of members of professional groups, in 2007 the European Council of Liberal Professions (CEPLIS) compiled a list of values and attributes that should be exhibited by professionals:

- Confidentiality
- Participation in Continuous Professional Development
- Independence and Impartiality
- Honesty and Integrity
- Supervision of Support Staff
- Compliance with Codes of Conduct and Practice
- Professional Liability Insurance
- [Addressing] Conflict with Moral or Religious Beliefs (CEPLIS as cited in Lundy, 2013, p. 41).

Analysis of the codes of ethics/conduct for four OHS professional/certification bodies showed that, with the exception of addressing conflict with moral or religious values, there is strong alignment of OHS codes with the values listed by CEPLIS (Table 4). However, several additional attributes are included in the codes of ethics/conduct for OHS professionals.

Table 4: Identification of CEPLIS values/attributes (Lundy, 2013) in codes of ethics/conduct of four OHS professional certification bodies

Values/attributes listed by CEPLIS	Section of code referring to value /attribute				<i>Discussed as a challenge in chapter</i>
	Australian Institute of Health & Safety	Board of Canadian Registered Safety Professionals	Board of Certified Safety Professionals	Institution of Occupational Safety and Health	
	AIHS 2019	BCRSP 2016	BCSP 2013	IOSH 2017	
					Section No.
Confidentiality	1.5	5a		3.2	6.4.1
Participation in continuous professional development		4a	4	2.3	6.1.1
Independence / conflict of interest	1.4	2b, c	2, 6	1.4	6.3.2 and 6..3.3
Impartiality / objectivity	1.2	2a	2		6.3.3
Honesty	1.2	2a	2	1.1	6.3.2
Integrity	1.2	2a, 7b	2, 6	1	6.3.2
Supervision of support staff	1.1	1d		2.2	
Compliance with codes of conduct and practice	1.1	8a	6		

Section of code referring to value /attribute					
	Australian Institute of Health & Safety	Board of Canadian Registered Safety Professionals	Board of Certified Safety Professionals	Institution of Occupational Safety and Health	<i>Discussed as a challenge in chapter</i>
	AIHS 2019	BCRSP 2016	BCSP 2013	IOSH 2017	Section No.
Professional liability insurance				4.2	
[Addressing] Conflict with moral or religious beliefs					
Other value/attribute					
Representation		2d	5		6.1.2
Competence	1.3	1a, c, 2d, 4a, 6b	3, 4	2.1, 2.3, 2.4, 4.4	6.1
Disclosure	1.6	5a	6		9.9.2
Whistleblowing	1.6				9.9.2
Equity / diversity	1.2	3a, b	7		
[Addressing] Illegal or improper practice	1.1	6a	5		
Standing & reputation of profession/body	1.7	7a, 8c	2, 8		6.3

A code of ethics helps to clarify values and rules; it can strengthen group identity and collegiality, foster public confidence and be used as a framework for discipline. The audience for a code of ethics includes the public, employers, workers, clients and fellow professionals. A code of ethics should make it easier for the professional to resist pressure to be unethical by referring to the code as an authority.¹⁴ However, there can be overreliance on a code of ethics. It can instil complacency (“we’re ethical because we have a code of ethics”). If a code of ethics isn’t used or enforced, the suspicion might be that it is there simply as a ‘tick box’ for public image.

¹⁴ For a discussion of the application of a code of ethics as an authority, see Davis (1991), who considers professional ethics and (engineer’s) obligations of safety in the context of the NASA Challenger disaster.

The lack of an overarching, consistent code of ethics for professionals providing health and safety advice, support and services poses a challenge for the OHS profession. Both within countries and internationally, the standard to which each OHS professional body holds its members varies in terms of specific requirements, terminology and order of requirements.

Following a survey of its member organisations, the International Network of Safety and Health Professional Organisations (INSHPO, 2018) developed a set of minimum required commitments for the codes of conduct of its member organisations.

Primary duty/loyalty/Adherence to relevant laws: Make informed decisions in the performance of professional duties that adhere to all relevant laws, regulations, and recognized standards of practice.

Obligation to inform: Inform all appropriate parties when professional judgment indicates that there is an unacceptable level of risk of injury, illness, property damage, or environmental harm while protecting the confidentiality of all professionally acquired information and disclose such information only when properly authorized or when legally obligated to do so.

Integrity/Objectivity: Maintain honesty, integrity, and objectivity in all professional activities.

Conflict of Interest: Avoid all situations that create real or perceived conflicts of interest, and provide full disclosure of those conflicts to all potentially affected parties.

Reputation: Abstain from behavior that will unjustly cause harm to the reputation of INSHPO, its member/affiliate organizations, and the profession.¹⁵

Competency: Perform only those services that may be handled competently based on one's training and experience.

Maintenance of Knowledge/Continuing Education: Maintain and, where possible, develop professional competence through the professional development program as provided by relevant domestic professional association, or other training, education, networking, or work experience.

Confidentiality: Take all reasonable steps to preserve the confidentiality of information acquired through professional practice.

Misrepresentation of Qualifications: Do not falsely represent professional qualifications, including education, credentials, designations, affiliations, titles, and work experience. (INSHPO, 2018)

For examples of codes of ethics in practice, refer to Australian Institute of Health & Safety Code of Ethics (AIHS, n.d.) and the Board of Canadian Registered Safety Professionals (BCRSP, 2016).

¹⁵ There is concern that inclusion of such clauses in a code of ethics can sometimes be used to sanction whistleblowers or other professionals publicly raising concerns about standards and practices.

7 Ethical challenges for the OHS professional

Commitment to a code of ethics is part of being a member of a profession;¹⁶ however, acting in accordance with the code may, in some cases, present difficulties or dilemmas. All professionals face ethical challenges as part of their everyday practice, and OHS professionals have some challenges that are unique to their role.

Review of the requirements under various codes of ethics as discussed in the previous section together with consultation undertaken as part of developing this chapter reveal four main areas of potential ethical challenge in OHS practice – technical competence, reconciling risk, managing conflicts, and managing information – with a fifth set of obligations for OHS professionals practicing as consultants. Recognising and managing these ethical challenges are essential for professional capability. This section reviews these ethical challenges, section 8 addresses ethical capability, section 9 provides guidance for the OHS professional in ethical decision-making and speaking up. Appendix 2 provides some scenarios that put OHS ethical challenges into context.

7.1 Technical competence/capability

7.1.1 Education and experience

All codes of ethics published by OHS professional bodies refer to competence. While the wording of such content varies, the common intention is that OHS professionals limit their practice to areas in which they have competence, where competence is based on knowledge, skills and experience.

This may create an issue for new OHS graduates yet to develop expertise and for experienced OHS professionals wanting to expand the scope of their work. Many professions have formal graduate and mentoring programs, but such arrangements are not a feature of the OHS profession. It is incumbent on all OHS professionals – whether working in an OHS team encompassing a range of skills and expertise, or as a solo operator – to ensure they have access to support and mentoring to enable compliance with this aspect of ethical practice. Preferably such mentoring will be part of a formal organisational arrangement or a program conducted by a professional body (e.g. AIHS, 2019a).

¹⁶ See definition of a profession in section 1.

Continuing professional development (CPD) is a requirement for professional membership or certification by many professional bodies and is part of OHS professionals' responsibility to ensure ongoing capability and competence (e.g. AIHS, 2019b; BCRSP, 2019). OHS professionals must be aware that standards and legal and practical requirements are constantly changing. If they rest on their laurels they will become incompetent over time.

Ethical professionals will be diligent in reflecting on the currency of their knowledge and skills and will develop self-directed, structured development activities to address any gaps or areas that require enhancement.

7.1.2 Scope of practice and representation

Scope of practice in OHS is blurred compared with other professions. OHS professionals have a variety of backgrounds and experience, and their roles may vary in different organisations, within a single organisation and according to the OHS maturity of an organisation. Different individuals may have varying views of their role and status. Also, there is overlap with other OHS and related professional roles. It is symptomatic of these varying views and overlap that the introduction to the *Occupational Health and Safety Professional Capability Framework* (INSHPO, 2017) devotes five pages to clarifying the role of the generalist OHS professional and practitioner as a precursor to describing specific activities, knowledge and skills.

This general lack of clarity of the role of the OHS professional can be a source of ethical issues, including 'role creep.' An OHS professional is required to be familiar with ergonomic and industrial hygiene principles, but taking a few courses in these disciplines does not qualify a generalist OHS professional to claim to be an ergonomist or hygienist. Similarly, while an OHS professional's practice requires interpretation of OHS legislation, they are not qualified to give legal advice.

Another issue arising from the lack of role clarity, compounded by low uptake or demand for professional certification, is the potential for professional résumés and representation to have an element of 'imaginative' marketing of abilities. Ethical professionals will demonstrate their integrity and honesty (section 7.3.2) in how they represent themselves professionally, including how they present their qualifications, certification, experience, expertise, achievements and capabilities.

7.2 Reconciling risk

7.2.1 Concept of risk

Risk-related decisions will always have an ethical aspect as such decisions are made about situations where injury and ill health are possible and the decision-maker is not necessarily the same person as the at-risk person. The situation is further complicated as those who are at risk may not be personally known to the decision-maker.¹⁷

Risk is a complex concept; there are many interpretations of 'risk' and risk parameters.¹⁸ Decisions about risk are further complicated by the different ways in which experts and lay people view risk, and the role of emotion and cognition in perception of risk.¹⁹ Irrespective of the definition or interpretation, a consistent feature of risk is uncertainty – of outcomes, exposure, situation and event. This uncertainty, and how it is perceived, is at the core of issues in estimating risk and the associated ethical concerns.

Estimating the level of risk is usually considered to be a product of the severity of the consequence and the likelihood of that consequence occurring. However, this:

- Does not consider the uncertainty in the estimates of consequence and likelihood
- Assumes a single statement of consequence and likelihood can represent a risk
- Assumes that likelihood and consequence are of equal importance and are combined in a single product
- Does not take account of the difficulty people have in comprehending risk, especially for low likelihoods
- Assumes that a specified consequence has a unique value that is the same for all people.²⁰

Such uncertainty leaves the OHS professional open to pressure from a range of sources to modify a risk assessment to achieve a specified outcome.

¹⁷ OHS BoK 31.2 OHS Risk and Decision-making discusses ethical and legal issues in risk-related decisions from an organisational perspective, and factors impacting on individuals' perception of risk.

¹⁸ OHS BoK 31.1 Risk.

¹⁹ Slovic (1987) is considered the seminal work on risk perception.

²⁰ OHS BoK 31.1 Risk.

7.2.2 Determining reasonably practicable

In those jurisdictions with performance-based OHS legislation, the law rarely applies strict prohibitions or mandates specific measurable outcomes. These are not detailed (in the way that they are in corporations law or taxation law), leaving duty holders to make decisions and judgements regarding required standards for compliance. These decisions and judgements may vary depending on the jurisdiction in which the OHS professional practices. This is what makes the role of the OHS professional so important.

The key role of the OHS professional is to provide advice and support to ensure the health and safety of workers and others who may be impacted by the work “so far as is reasonably practicable” (or similar wording depending on the legal jurisdiction). Thus, just as ‘risk’ is associated with uncertainty of perception and estimation, ‘safety’ is not an absolute. The *OHS Body of Knowledge* chapter, 9.2 Work Health and Safety Law in Australia, discusses the definition and application of the ‘reasonably practicable’ requirement:

What is reasonably practicable must be identified in relation to the particular circumstances existing at the particular time. This must be done by assessing all relevant matters to determine what is reasonably able to be done. Matters that must be weighed up include:

- (a) the likelihood of the hazard or the risk concerned occurring; and
- (b) the degree of harm that might result from the hazard or the risk; and
- (c) what the person concerned knows, or ought reasonably to know, about:
 - (i) the hazard or the risk; and
 - (ii) ways of eliminating or minimising the risk; and
- (d) the availability and suitability of ways to eliminate or minimise the risk; and
- (e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk (WHS Act, s 18; see also OHS Act 2004 (Vic), s 20).

What is reasonably able to be done has two elements – what *can* be done and whether it is *reasonable* to do less (and if so, what) than that which will achieve the highest level of protection that is possible. Elements (a), (b) and (e) above relate to the question of reasonableness, while elements (c) and (d) relate to what can be done. Also, control is a factor relevant to determining what can be done by the duty holder. Consideration of cost is not limited to circumstances where the cost of achieving further minimisation of risk is grossly disproportionate to the risk. It also may be relevant to deciding between risk controls or combinations of controls that will achieve an equivalent level of risk minimisation.²¹

Determinations of reasonably practicable are often related to cost-benefit analyses.

It is common for OHS professionals to be encouraged to ‘operate in the world of business’ or to ‘speak the language of business’ with reference to decision-making strategies based on cost-benefit analysis (CBA), with measures such as net present value (NPV), rate of return on investment (ROI) and payback period (PBP). All cost-benefit analyses will include determinations of ‘so far as reasonably practicable’ and so will have an ethical element.

²¹ *OHS BoK 9.2 Work Health and Safety Law in Australia*, p. 14.

Ethical issues associated with cost-benefit analyses, and estimates of the value of a human life (or injury), are highlighted in the Ford Pinto example in the Preface.

The UK Health and Safety Executive (HSE, n.d.) and Safe Work Australia (ASCC, 2007) provided guidance on estimating costs and benefits as part of an OHS cost-benefit analysis. It is noteworthy that neither publication mentioned rate of return on investment or payback period as these measures are easily adjusted to argue against an investment and so introduce ethical issues. Also, the UK publication noted that “A CBA cannot be used to argue against the implementation of relevant good practice, unless the alternative measures are demonstrated unequivocally to be at least as effective” (HSE, n.d.).

7.3 Managing conflicts

OHS professionals manage conflicts and priorities as part of their daily practice as a result of competing duties and pressures from inside and outside the organisation, and their professional responsibility to the worker and the public interest. Reconciling some of these conflicts may be challenging for some OHS professionals but, as noted in section 5.2, awareness is an essential first step in ethical decision-making.

7.3.1 Reconciling competing duties

The concept of ethical practice is common to all professions. OHS professionals have particular challenges as they have responsibilities to several stakeholders (not necessarily in order of importance):

- The organisation employing/remunerating them
- Workers for whose safety they are advising and advocating
- Members of the public who may be impacted by the advice they give
- Other professionals and the profession in general, including their professional body.

These duties apply concurrently and may be in conflict, thus creating ethical dilemmas.

A fifth ‘duty’ can be considered, that is the professional’s self-interest in earning an income, getting a promotion or advancing other interests. The challenge to ethical decision-making presented by various manifestations of self-interest may be more appropriately termed ‘temptations’ than ethical dilemmas (Breakey & Sampford, 2017).

Do OHS professionals have a primary duty to any one party or should the focus be squarely on managing responsibilities to multiple stakeholders? Some professions stipulate a primary duty; for example, “Doctors have a duty to make the care of patients their first concern”

(Medical Board of Australia, 2017), and lawyers are expected to “primarily serve the interests of justice” (Law Society of Western Australia, 2014).

In examining the ethics of safety for safety engineers, Habli et al. (2015, p. 6), stated that safety engineers:

...not only owe a duty to support the interests of their employer, but any safety influence they have arises from meeting this duty. If a safety practitioner is not trusted to act in their employer's interest, and to act reasonably in balancing that interest with other concerns, they will not be able to meet their duty to the public safety.

Consultation during the development of this chapter revealed that there is no clear and consistent understanding among OHS professionals as to any primacy of duty to any particular group or to defining priorities for the range of stakeholders. The following sections briefly consider the duty of OHS professionals to their various stakeholders with a view to prompting discussion.

Duty to the organisation

A characteristic of a profession is acknowledgement that its members act in the public interest, not only to fulfil client or employer needs. Like all professionals, OHS professionals have a basic obligation to do what they were hired to do, provided of course that it is legal and reasonable. However, this obligation to the ‘organisation’ may become confused as a result of multiple views of the organisation's priorities; is it the priorities of the CEO, line management, the board or perhaps shareholders?

Breakey and Sampford (2017) identified as a source of tension the difference in prioritisation of values by an organisation and by a professional employed by the organisation.

Professional ethics typically foreground values of confidentiality, fiduciary obligations to clients, independence, autonomy, and collegiality. These values can clash with those of private enterprise, which are more likely to foreground profitability (including economic cost-benefit decision-making), efficiency, competitiveness and innovation...[P]rofessionals' values are found to centre on...rule-based principles...In contrast, business and corporate values are more likely to fit a more goal-oriented or utilitarian ethical climate. (pp. 273-274)

For OHS professionals, this complexity is exacerbated by the role-clarity issues discussed in sections 7.1 and 7.2. Provan, Rae and Dekker (2019) investigated the underlying objectives of OHS professionals' tasks, and identified the following themes:

1. Supporting the objectives and decisions of line management
2. Developing and implementing safety practices and processes
3. Supporting organisational safety needs (Demonstrated, Social and Administrative)
4. Utilizing industry and professional experience to determine safety direction (p. 285).

These themes raise a number of potential ethical challenges, not the least of which is that OHS professional work “is prioritised based on the wants and needs of management, not on the current risk faced by the front-line workforce” (Provan et al., 2019, p. 285). (The first theme may be in conflict with the others, particularly the fourth.) The duty to ‘the organisation’ can be further complicated in a contracting environment where there are overlapping duties for the principle contractor and subcontractors.²²

Duty to workers

The focus of OHS is the health and safety of workers, thus it would be assumed that the OHS professional has a primary duty to workers, and to advocate for workers. However, as reported by Provan et al. (2019, p. 285):

Management can be considered as the internal customer of the organisation's support functions...Safety professionals see themselves as a support role to management...There is an absence of safety professional work that supports and amplifies the voices and needs of the front-line worker...

It can be argued that management wants workers to be safe, so the role of safety professionals does already support workers. This argument is a gross oversimplification of work, hierarchy, relationships, and goal-conflict within an organisational system.

An example of a conflict that may arise concerns the right of workers to have information on hazards; what is the obligation of the OHS professional if a manager blocks the provision of such information? A further example concerns the OHS professional's role in managing workers' compensation claims on behalf of the organisation. In many countries the management of workers' compensation is an adversarial process, with the OHS professional tasked with minimising the cost of claims to the employer (and so minimising recompense to the injured worker) while facilitating return to work by the injured worker (which may require expenditure by the company).

Duty to the public

The definition of a profession includes the characteristic that professionals “are prepared to apply this knowledge and exercise these skills in the interest of others” (Professions Australia, 1997; section 1). Whilst acting in the public interest is a characteristic of every profession, public safety (‘outside the fence’) is usually considered to be part of the OHS professional's scope of practice. This inclusion of a duty to the public arises in two ways:

- Society at large has an interest in how well risks in the workplace are controlled. Almost everyone will be a worker at some point in their lives, and everyone has family members and/or close friends who are workers. The public may also include visitors to the site, workers of other employers and agencies such as regulators,

²² See *OHS BoK 12.2 OHS Management Systems* (in development at time of writing) for an outline of responsibilities in managing contractors.

representatives of the media, and members of the local community who may be impacted by the work of the business.

- A loss-control perspective considering the losses (both financial and non-financial) to the public that can flow from workplace accidents.

Also, the OHS professional may have other duties to the public such as:

- The duty to avoid discrimination
- The duty to speak up where they see an OHS risk to the workers or others.

There is a concern for the public good in the life of a professional that goes beyond the job: the professional is a good citizen. The definition of a profession implies that public interest has primacy in the priorities for professional practice. How might an OHS professional prioritise safety of the public (other than workers) while meeting obligations to other stakeholder groups?

Duty to other professionals and to the profession

'Other professionals' refers primarily to other OHS professionals, but may also include professionals from other disciplines within OHS (occupational/industrial hygienists, ergonomists, occupational health practitioners) as well as other professionals in general, such as engineers, lawyers and allied health practitioners.

OHS professionals should treat other professionals with 'professional courtesy,' that is, with respect, valuing others' time in terms of scheduling and appointments, extending trust and assistance and, within the limits of confidentiality, sharing relevant information.

The standing and reputation of OHS professionals and the profession as a whole are impacted by the behaviour of individual members of the profession. The profession will be negatively affected by OHS professionals who:

- Engage in conflicts of interest
- Are deceptive about their qualifications and experience
- Criticise the ability or integrity of others for their own gain, or due to other personal motives
- Handle data dishonestly, including fabricating data, holding back data or designing a sampling strategy to favour a specific outcome
- Plagiarise the work of others or fail to share credit on a report
- Breach employer or client confidentiality
- Engage in discriminatory behaviour, and so on.

Individual OHS professionals may be affected when another professional:

- Violates their intellectual property rights
- Fails to give credit for the contributions of others
- Denigrates the ability or integrity of a fellow OHS professional in order to win clients²³
- ‘Poaches’ clients
- Withholds needed information.

‘Duty’ to oneself

While we may consider ourselves altruistic and ethical, Australian research (Samson, 2017) indicated that the majority of employees put their own interest before that of their employer with the ‘trade-off’ based on a dollar value gain to the employer compared with that for the individual. While this research drew on responses of managers and not OHS professionals, when an OHS professional is put in a challenging situation and considering options for action there are likely to be discomfoting thoughts such as *What if I lose my job?*, *What might be the implications for my family?* and *Where should the line be drawn as to ‘do I walk away?’* The response to such challenges will depend on the moral intensity of the issue (section 5.2) and the individual’s values and personal situation.

7.3.2 Professional values

Honesty, integrity, objectivity, impartiality and independence are core professional values and generally cited in OHS codes of ethics. While these values should be straightforward for the OHS professional, the context of our practice presents potential conflicts.

Honesty may be defined as “adherence to the facts”²⁴ or free from fraud or deception. *Objectivity* is about action based on facts, not biased by a person’s interests, beliefs or feelings. While we strive for evidenced-based practice in OHS, the evidence or ‘facts’ may be variable in reliability or scope of application. One of the roles of the OHS professional is to collect and interpret information upon which OHS actions can be based. This collection and interpretation should be done with *objectivity*. Action based on the information should treat people equally (be *impartial*). All professionals are expected to practice with *integrity* (i.e. be incorruptible and adhere to a moral/ethical code).

²³ Such negative comments should be seen as being quite different to that of whistleblowers trying to raise the standards of a professional community.

²⁴ Merriam-Webster: <https://www.merriam-webster.com/dictionary/honesty>

Such qualities require that OHS professionals are not influenced by external sources such as their employing organisation and its management, or their own biases and attitudes. However, as noted in previous sections, issues for the OHS professional arise from competing duties, competing pressures and biases, and the independence of the OHS professional is challenged. Provan et al. (2019) asserted that the response from OHS professionals to the demand that they align with organisational management to demonstrate their value to the 'bottom line' has been to embed OHS in the management structure, citing management as the 'customer' of OHS. The biases and ethical blind spots (section 5.3) that consciously or unconsciously impact our decision-making also need to be recognised when considering our professional honesty, integrity, objectivity, impartiality and independence.

Thus, we should recognise the sometimes challenging nature of these values and our personal limitations. In making decisions as OHS professionals we should ensure that we act in ways that would generally pass the 'reasonable and informed third party test' considered appropriate for the circumstances, and in line with our professional standards and legal requirements.

7.3.3 Conflicts of interest

A conflict of interest may be defined in two ways, both of which have relevance to OHS professional practice:

1. A situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest or public interest.
2. A situation in which a party's responsibility to a second-party limits its ability to discharge its responsibility to a third-party.²⁵

While the first type of conflict is often seen in terms of financial gain, this is not always the case. The latter situation may arise from the competing duties of the OHS professional (section 7.3.1).

As identified in section 5.2, the first step in ethical decision-making is recognising that an ethical decision-making situation exists. Even then, people may fail to address a conflict of interest due to self-deception and rationalisation arising from self-interest, obedience to authority, conformity to the group and personal biases (section 5.3). According to Moore and Loewenstein (2004, pp. 190-191):

...when professional responsibilities clash with self-interest, the two motives tend to be processed differently: Self-interest exerts a more automatic influence than do professional responsibilities, which are more likely to be invoked through controlled processing. Since automatic processing tends to occur outside of conscious awareness, its influence on judgment and decision making is difficult to eliminate or completely correct. The consequence

²⁵ Business Dictionary: <http://www.businessdictionary.com/definition/conflict-of-interest.html>

of this differential processing is that self-interest often prevails, even when decision makers consciously attempt to comply with the ethical mandates of their profession.

Thus, Moore and Loewenstein (2004) suggested that we should eliminate conflicts of interest whenever possible, reduce the incentives for bias, and focus individual and societal mindsets on the common good, something that is particularly important for professionals whose primary responsibility is to act in the public interest.

Disclosure of a conflict of interest does not necessarily address its influence on us. On the contrary, it may make a morally perilous situation even worse. Cain, Loewenstein and Moore (2005) outlined two ways that can happen:

- The person who is conflicted may increase the skewness of the advice or position, that is “although disclosure might warn an audience to cover its ears, it also may encourage advisors to yell even louder” (p. 115).
- The person may be more biased after disclosing a conflict of interest due to moral licensing thus leading to more questionable behaviour.

7.4 Managing information

OHS professionals have access to a range of information that may be subject to confidentiality and privacy requirements. Also, they may be required to make public statements.

7.4.1 Confidentiality

Confidentiality is about the protection of a client's information. It is a core value in professional codes of ethics, and is often documented in employment or consulting contractual arrangements that may present a conflict between the legal obligation and ethical values. In discussing confidentiality, it is important to distinguish between different types of information or data, including:

- Medical information and personal details of individuals
- Non-OHS information (trade secrets, confidential business information, etc.)
- OHS information.

Confidentiality of personal and medical information is usually protected by legislation,²⁶ and a breach of confidentiality about non-OHS information of a ‘trade secret’ nature to an

²⁶ See *OHS BoK* 35 Mitigation: Health Impacts (section 7.5.4) for a discussion of retention and management of medical records.

employer's competitors is also likely to be illegal. Thus, for these two types of information, legality may be the primary issue, with confidentiality of OHS information having both legal and ethical implications.

The recipient of the information is also important. Breaches of confidentiality may carry varying legal and ethical obligations according to whether information passed to:

- Workers
- Fellow professionals
- A government inspector
- The public at large
- The employer's competitors.

OHS legislation in most jurisdictions includes the worker's right to know of matters impacting on their health and safety (e.g. SWA, 2016, s 48). This legal duty to tell workers eliminates the ethical question of confidentiality.

The OHS professional has a legal duty to answer a government inspector's questions when the inspector is exercising their ordinary warrantless powers to inspect; to do otherwise might count as an offence of obstruction. There is a common law right to refuse to answer any question, or produce any document, if the answer or document produced would tend to incriminate that person. However, in some jurisdictions this right is removed or reduced in workplace safety laws.

The public at large, or the local community, may have a right to information where the activities of a business pose a risk to their health and safety. However, it is difficult to envisage a situation where the sharing of information with a competitor would be appropriate.

7.4.2 Legal professional privilege (LPP)

In some cases, after an incident with the potential for prosecution or civil action, legal professional privilege (LPP) may be invoked in the course of obtaining legal advice. The rules of LPP vary across jurisdictions, but generally information obtained through a professionally privileged investigation is confidential between the client and the lawyer. To classify information as privileged, the *dominant* purpose of the information must be for the

provision and application of legal advice (e.g. in anticipation of court proceedings or litigation).²⁷

The purpose of LPP is to provide a level of assurance that a person may consult a legal practitioner without fear of disclosure. It is a fiduciary duty designed to facilitate trust in the client-lawyer relationship, and is essential for the administration of justice where an adversarial system prevails. While loss of privilege can occur through waiver, the purpose of LPP is to afford protection from being *forced* to provide information or to produce documentation that would disclose information deemed LPP.

Privilege might be overridden in certain cases involving accident investigations where information contains evidence that could be used for purposes other than client/lawyer privilege (e.g. if a report contains useful information for restoring services, for avoiding further delay, for understanding what caused an accident, or for preventing future or potential harm). Thus LPP may be an important factor, but it may not be the sole or dominant one.²⁸

LPP has evolved such that a balance must be struck between maintaining client confidentiality and ensuring the public interest for the purposes of administration of justice. Thus LPP comes with many legal and ethical issues, and the OHS professional involved in such situations should seek appropriate advice.²⁹

7.4.3 Making public statements

When OHS professionals are called upon to make a public statement, they have a professional obligation to be honest and objective, and to stay within the bounds of their areas of expertise. For example, they could be a regulator, an educator presenting at a conference or a company spokesperson in a time of crisis. Where facts are not known, and assumptions are being made, these assumptions should be made clear. Also, if the OHS professional does not have personal competence in the subject matter, but is referring to the opinion of a more specialised expert, that reference must be made clear.

²⁷ *Esso Australia Resources v Commissioner of Taxation* (1999) 201 CLR 49

²⁸ See *Sydney Airports Corporation Ltd v Singapore Airlines Ltd & Qantas Airways Ltd* [2005] NSWCA 47

²⁹ See McMeekin (2014) for an example of the implications of breaching legal professional privilege in an OHS prosecution.

It is helpful to consider the difference between descriptive language (the language of science and facts) and the language of prescription (the language of value, priority, emphasis, 'should' and 'ought'). This is not to say that the OHS professional should never say anything prescriptive in public, but problems with objectivity arise when prescription is mixed with what should be just description.

7.5 Operating as a consultant

An OHS professional acting as a consultant has additional legal, ethical and professional obligations. These obligations are established under a 'contract for service' as opposed to direct employment, which is a 'contract of service.' The prudent OHS consultant will ensure that their practice is informed by knowledge of their legal obligations in providing services, including standard of care, defamation and copyright. While a legal matter, the issue of breach of copyright has been the subject of several reports to ethical standards committees of OHS professional bodies. Breaches of copyright may include actions such as:

- Replication of text or diagrams from a copyrighted source used in training materials
- Replication of policies, statements of responsibility and program descriptions used in a company's OHS manual
- Provision of a package of inspection checklists to be used by a client where the checklists were taken from a number of unidentified sources.

Ethical issues most commonly related to the practice of consultants are an extension of the scope of practice discussion in section 7.1.2. Claims of qualifications not completed, positions not held or achievements listed without due acknowledgement of the role of others may clearly be misrepresentation. A more pervasive issue is that of consultants 'inflating' their capabilities to win jobs.

Consultant OHS professionals should be vigilant and self-aware to ensure that:

- Any agreement (i.e. contract) clearly states the scope of work to be undertaken
- Claims made in advertising (including LinkedIn skills and endorsements) regarding capability are accurate and appropriate
- The need for any disclaimer, including application of advice, is considered.

Collaboration with other consulting professionals could be considered as a way to deliver a combination of skills and experience while also providing an opportunity for the OHS professional to broaden their skills and experience.

8 Ethical capability

As noted by Habli et al. (2015, p. 2), ethical decision-making in safety is difficult as its “principles are stretched, challenged and sometimes directly threatened by contractual obligations, organisational capability, competing ethical concerns, and the uncertain nature of risk acceptability.” It is important to differentiate between ethical competence, which is the ability to identify and understand an ethical issue when it arises, and ethical capability, which is about the actual response. Ethical capability has been defined as:

...the ability to identify and respond effectively to ethical issues (Buller & McEvoy, 2000), by making, implementing and managing ethical decisions (particularly) when influenced, pressured or forced to do otherwise – either as an organisation (Smith & Perks, 2011; Petrick & Quinn, 2001) or as an individual (Stevens, 2012) (Neesham & Azim, 2017, pp. 7-8).

From the OHS professional’s perspective there are two components to ethical capability:

- Developing personal ethical capability
- Supporting the organisation to create an environment that facilitates ethical decision-making.

8.1 Individual ethical capability

OHS professionals, whether employees or external consultants, operate in an organisational context. Within this context, and susceptible to the ethical biases and blind spots discussed in section 5.3, they are expected to be ethical:

...designers of strategy relating to the organization and management of OHS within the wider context of business processes and external regulatory, market and societal influences...influential with senior management and...involved in problem solving and organizational review and change as advisers and consultants (INSHPO, 2017, p. 12).

OHS professionals require both technical knowledge and ethical competence, with reflection-on-practice being a key aspect of ethical capability. With continued reflection-on-practice, ethical capability for the experienced OHS professional will likely become knowing-in-action where, except in particularly challenging situations, the professional does not need to consciously think about what is right. While ethical competence may develop through experience, it usually requires some formal educational underpinning (Lundy, 2013).³⁰

³⁰ It is expected that ethical competence would be part of formal education for OHS professionals and practitioners as well as a required component of continuing professional education.

The Occupational Health and Safety Professional Capability Framework (INSHPO, 2017) described performance criteria for professional and ethical practice (Table 5). With emphasis on demonstrated action, it forms a basis for a capability assessments as part of self-assessment or a peer-review process.

Table 5: Performance criteria for professional and ethical practice (INSHPO, 2017, p. 42)

Professional practice	<u>Manages own activities</u> and is reliable with regard to agreed deliverables and timelines.
	<u>Undertakes</u> formal and informal CPD activity to ensure currency and capability.
	<u>Works</u> effectively as a leader or as part of a team while respecting differences and diversities.
	<u>Recognizes the value</u> of professional, enterprise and industry collaboration.
	<u>Consults</u> by seeking information or informed opinion from others as part of decision making.
	<u>Seeks further advice</u> within the OHS profession and across other professions and stakeholders as appropriate.
	<u>Engages</u> to establish a relationship with a higher-level/peer professional or other appropriate mentor as a basis for self-development.
	<u>Engages</u> in professional discussion with peers with a view to advance professional practice.
	<u>Engages</u> appropriately and effectively with technology to access information, collect and collate information, produce documents and engage with people in appropriate ways. This includes providing information, communicating as well as developing and delivering training.
	<u>Applies</u> formal and informal processes to reflect on current and past practice to identify areas for improvement or development.
Ethical Practice	<u>Recognizes the limits</u> of own knowledge, skills and experience.
	<u>Complies with</u> relevant codes of conduct and laws.
	<u>Treats</u> all individuals with respect and maintains confidentiality of personal and business-sensitive information.
	<u>Examines</u> critically the ethics of proposed courses of action.
	<u>Provides</u> unbiased and impartial advice.
	<u>Provides advice</u> informed by technical and conceptual knowledge.
	<u>Acts</u> with honesty and probity. Sets example of good OHS behavior.
	<u>Takes responsibility</u> for and demonstrates the conceptual and technical underpinning of own practice.
	<u>Recognizes</u> when disclosure and whistleblowing may be appropriate and takes action in an ethical manner.

When members of a profession develop ethical capability, their code of ethics moves “from being a passive reactive document to a living relevant document that is engaged with by professionals and truly represents the professional activity” (Lundy, 2013, p. 45). OHS

professional bodies have a responsibility to their members and to the public to augment their codes of ethics with support and activities that enable their members to not only develop ethical competence (i.e. the ability to identify and understand an ethical issue when it arises), but also to reflect on their practice to develop the knowing-in-action that is capability.

8.2 Organisational ethical capability

Organisational decisions are made by people, not by an amorphous being, 'the organisation.' However, as noted in sections 6.3 and 6.4, peoples' decisions are influenced by the social context, including the organisational culture. With one of the key roles of the OHS professional being to "Lead and support key influencers, including managers, on strategies to foster an organizational culture that prioritizes OHS" (INSHPO, 2017, p. 23), the OHS professional has an opportunity and, indeed, an obligation to develop the ethical capability of the organisation.

A familiar challenge for OHS professionals is the gradual normalisation of small deviations from what might be considered required behaviour. This phenomenon is known as 'drift;' that is, "Continuous organisational and operational adaptation around goal conflicts and uncertainty produces small step-wise normalisations of what was previously judged as deviant" (Dekker, 2011, p. 15). As OHS professionals need to be part of establishing organisational sensitivity to a 'drift into failure,' the associated processes and mindset can be equally applied to ethical decision-making at the organisational level.

Consultation with OHS professionals during the development of this chapter identified OHS governance and policy areas with potential to impact, positively or negatively, ethical decision-making. A few are listed below.

Lines of reporting and accountability: In an ethically capable organisation, clear transparent communication channels allow flow of information up to management and down to operational level.

Organisational and OHS budgeting: Although financial and other resources are finite, what are the ethical implications of budget allocations such as financing one site over another, safety hazards over health hazards, and one hazard more than another? The recognition of such issues and associated discussion is important.

Risk management arrangements: Risk assessments will often inform budget decisions. The OHS professional can promote organisational ethical capability by advising on the inclusion of ethical considerations in risk criteria, including in any risk matrices.

Response to incidents and 'mistakes': Organisations employing a 'just culture' – focused on what went wrong rather than who did something wrong – are more likely to have transparent reporting of incident, injury and illness that enables identification of system issues.

OHS performance measures: Performance measures tend to drive management attention, thus advice provided by the OHS professional on valid and appropriate performance measures should address both technical and ethical aspects.

Incentivisation of OHS performance: Incentives and performance measures are inextricably linked. The role of financial incentives in driving managers' behaviour is clearly evident in the BP Texas City analysis and incentives are sometimes also applied at the operational level. Relevant ethical issues include the level of control the person has over the performance measure and the impact of the incentivisation on priorities for management decision-making.

OHS assurance processes, including audits and inspections: While assurance processes are an integral component of all OHS management systems, they rely on the auditor's independence and ability to report deficiencies with impunity. The OHS professional has to take a professional approach to audit conduct and ensure that OHS assurance structures and processes provide for independence and valid reporting.

9 Ethics in practice

This chapter has explored some theory on ethics and ethical challenges specific to OHS practice. While integral to the professional role, application of ethical decision-making in professional practice can present many difficulties. It requires complex thinking and analysis, and also the will and skill to 'speak up.'

Consider this situation:

You are a relatively young OHS professional working in a medium-sized organisation in the construction industry, with the company structure based on major projects. You work within a project group with line reporting to the project manager, who is your direct supervisor and conducts your performance appraisal and would be required to provide a reference for you to get any promotion within the company.

Your role includes:

- Auditing the project for compliance with the company's standards, including the 'golden rules'
- Analysing hazard and incident/injury reports and assisting managers in investigating incidents (although the managers 'own' the investigation)
- Compiling a three-monthly report on audit outcomes, hazard reports actioned, incident and injury reports and proactive actions such as manager 'safety conversations.'

The project manager's bonus and, to some extent, the resources allocated to the project are dependent on the OHS targets being met.

You see your role as supporting the project manager in keeping the project safe. You would like to see your role as empowering managers and workers, but you seem to spend most of your time auditing (checking) or collating data.

You have just sent the latest quarterly report to your manager prior to it being forwarded to the CEO, the executive team and the board. The audit compliance has ‘taken a hit;’ the incident and injury data are up, and proactive actions such as ‘safety conversations’ have fallen off. You have been aware of this as there has been pressure on the project as completion targets have not been met due to equipment breakdowns and bad weather.

Your manager comes back with the report in his hand asking if you can ‘tweak’ the audit report and reclassify some of the incident and injury reports. Although he explains that he is concerned that the project will suffer as additional resources might not be forthcoming you know his bonus will be significantly affected. He also implies that if the additional resources are not forthcoming your job could be at risk.

And this situation:

You are an OHS professional working in a high-risk environment of chemical manufacture. Part of your role is auditing the hazard management and safety systems.

Your audits are coming up with alarming findings, such as the fact that some pressure vessels and other equipment are beyond their inspection dates by as much as 15 years. The operators of the pressure vessels believe that the company cannot afford financially to shut down the operation to carry out the necessary checks. You believe that this kind of information should be made available to the board, so it can evaluate the risk.

However, the head of the corporate audit group (a financial auditor) will not pass on these and other concerns you have to the board. On one occasion, the reason given for not passing on your findings was that the head of the business unit that you audited was making a presentation to the board about how well they were managing major hazard risk, and the head auditor did not want to undermine this presentation. More generally, it is the view of the head auditor that information should not go to the board unless it is ‘board-ready.’ There is concern that anything that goes to the board in writing might later be ‘discoverable’ if the company had a serious incident; the head auditor sees it as their job to protect board members from personal liability.

In short, you are being blocked from performing your safety-audit function by the actions of head auditor, who is a financial auditor with no background in safety.

Modified from Hopkins, 2019, pp. 86-87.

What would you do?

As a starting point, you might refer to your professional body’s code of ethics, and consider what your professional peers might do in a similar situation. You are likely to feel uncertain and perhaps uncomfortable. Being an OHS professional, you will consider the risks – the risk to workers as well as the risks associated with speaking up and with not speaking up. The following sections provide some guidance; firstly, for making a decision and, secondly, for speaking up should you chose that action.

9.1 An ethical decision-making process

Treviño and Nelson (2017) described an eight-step practical process (developed for a business context), which can assist OHS professionals in thinking about ethical problems. It is reproduced in Figure 4, with the addition of three steps – implement, record and review – and then the model stages are considered below from an OHS perspective. Importantly, in practice the model stages may be circuitous rather than sequential.

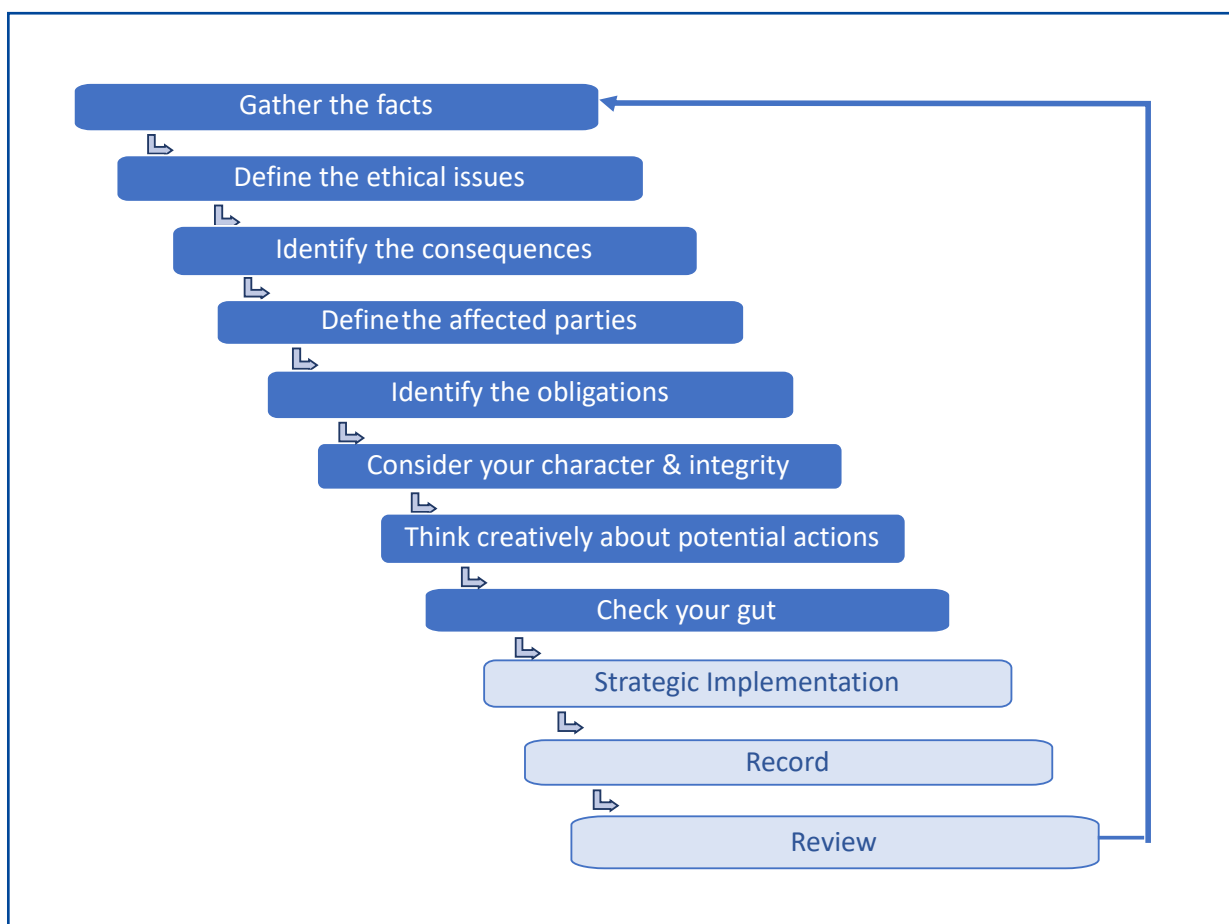


Figure 4: Ethical decision-making in practice (modified from Treviño & Nelson, 2017)

Gather the facts

How did the situation come about? Has a similar situation occurred in the past? Who was/is involved? Are pressures, self-interest, extraneous factors and obvious rationalisations clouding the picture? Are there laws, policies, expectations or agreements that might have to be considered? Are there organisational procedures relating to the situation? What don't we know? What are we uncertain about? Be sure to focus on facts, not emotions or opinions.

Define the ethical issues

In section 5.2 it was noted that moral awareness, or identifying that an ethical situation exists, is the first important step in ethical decision-making. It may be that you have an uncomfortable feeling; it may be the language used to describe the situation (e.g. depersonalisation or objectification of the situation rather than talking about people as people, or only discussing the situation in terms of economics). Are you being pressured to make a snap decision? There may be more than one ethical issue. Ethical issues may be complex and so it often helps to discuss a situation with a colleague and to benchmark against your professional code of ethics.

Identify the consequences

Consideration of consequences underpins some ethical theories (sections 5.1 and A1.1). Consequences are determinants of moral intensity, which impacts all stages of the ethical decision-making process (section 5.2).

It is not necessary or possible to identify all consequences; focus on those with high likelihood of occurrence and those of potential greatest severity, even if likelihood of occurrence is low. Consider both short- and long-term consequences. Also, it is important to consider the symbolic consequences: what might be the message sent by the situation as to how the organisation, and perhaps individual managers, value safety (or not)?

Define the affected parties

Who might be harmed by, or benefit from, the situation and how it is managed? Who might have their rights impacted and so who might have duties? Consider those inside and outside the organisation and in the community. Think both short- and long-term. Start with those most directly affected and move out in concentric circles to identify all who may be harmed or benefit. Brainstorming may be useful. Also, think about 'Bob in maintenance' rather than 'workers.' Having identified the affected parties, it may be necessary to revisit the consequence-identification stage.

Identify the obligations

While OHS legislation imposes legal obligations on many people (employers, workers, designers, manufacturers, suppliers) and defines specific rights, particularly for workers, this is about ethical duties and rights. Referring to the list of people affected, do some have a duty or obligation to others? Are people's rights being impacted? Does the impact on rights translate to a duty by others? Rights and duty-based ethical theory is discussed in sections 5.2 and A1.2.

Consider your character and integrity

This step brings in virtue ethics (section A1.3). It is about 'walking the talk.' How would other OHS professionals view the situation? How would you feel if this situation was aired on national news? Using such 'lenses' to view the situation helps to draw us out of our own subjectivity and guard against judgement clouded by self-interest. Also consider the biases or ethical blind spots that you or others might have (sections 5.3.1 and 5.3.2).

Think creatively about potential actions

If faced with an apparent choice between two desired paths or outcomes, is the choice really limited to those two? Are there other creative options that satisfy ethical principles and the valid needs/rights of the various stakeholders? Perhaps the choices can be satisfied sequentially where they cannot be done simultaneously? Will the interests of the parties in the situation change their interests or positions if offered other options? Brainstorming or workshop strategies may assist in developing options that meet the needs of all (or most) parties. Even after a decision has been made on an overall way forward, it is still important to develop sensible and workable implementation strategies (section 9.2.1).

Check your gut

The previous stages of this analysis are based on rational and structured thinking and action; however, intuition also has an important role in ethical decision-making. If your gut tells you that something is wrong, it probably is. Pay attention to your gut, but don't let it make the decision for you as rational decision-making is important. Talk with someone you respect and/or is more experienced to test your thinking or get another view.³¹

Implement, record and review

Having made your decision you now need to take action, which may involve constructive conversations or other actions, even perhaps whistleblowing. Formal documentation or informal 'diarising' to record your decisions and reasons for them, and evaluate how the results unfold and whether you might consider alternative actions next time are vital components of ethical practice.

9.2 Speaking up

The primary role of OHS professionals is seen as challenging assumptions, priorities and actions of management as they impact on the health and safety of workers and others, and having an ethical responsibility to speak up when they see the need. This role is reinforced by the findings of investigations into major safety disasters that conclude that the OHS professional either did not raise critical safety issues or was not heard (Rebbitt as cited in Provan, Dekker & Rae, 2017). This responsibility to speak up is relevant, for example, where an OHS professional may be under pressure to 'adjust' a risk assessment, to 'modify' a report to the regulator, to reconsider based on the economic climate (and perhaps the impact on people's jobs), or to be a good (management) team player.

³¹ The Ethics Centre, located in Sydney, operates Ethicall (<https://ethics.org.au/initiatives/ethicall/>), a free independent helpline available to all.

A major study involving 46 organisations and nearly 18,000 participants across Australia and New Zealand provided insights into speaking up and whistleblowing (Brown, 2018). The importance of speaking up was evident in the finding that employee reporting was ranked as the most important method of raising concerns by all cohorts, including managers (Table 6). Of special interest to OHS professionals is the lower ranking of 'Internal audits and reviews' and 'External investigations or audits' (Brown, Lawrence & Olsen, 2018).

Table 6: Importance of methods for identifying concerns (Brown et al., 2018, p. 32)

Methods of raising concern	Response
	1=not important; 2=a little important; 3=somewhat important; 4=important; 5=very important
Accidental discovery	3.78
External investigations or audits	4.04
Client, public or contractor complaints	4.05
Internal audits and reviews	4.15
Routine internal controls	4.18
Management observation	4.21
Reporting by employees	4.31

Of all types of wrongdoing reported in the survey, 13% were 'workplace health or safety breaches or risks' and 5.5% were 'dangers to public health, safety...' compared with 61% 'bullying or victimisation in the workplace' and 37% 'unfair employment practices' (Dozo, Brown & Lawrence, 2018). This finding raises the question of whether concerns regarding wrongdoing and ethical issues around health and safety have a low profile compared with other issues or are not being reported.

This section considers speaking up from the perspectives of promoting constructive conversations and whistleblowing.

9.2.1 Constructive conversations

A key function of OHS professionals is to "Lead and support key influencers, including managers, on strategies to foster an organizational culture that prioritizes OHS" (INSHPO, 2017, p. 23).

As discussed in section 5.4, organisational culture and leadership can influence ethical decision-making, and in section 8.2 we noted that OHS professionals have both an opportunity and an obligation to act in developing the ethical capability of the organisation.

Thus, an (initial) internal constructive approach to responding to ethical challenges is likely to be an appropriate path to positive outcomes.

Having made a decision and identified the need to speak up, what do such constructive, internal approaches look like and how can the OHS professional be empowered to take such actions? Gentile (2010) presented the following principles:

1. Accept that ethical issues or conflict in values will occur as part of professional practice and so we need strategies to deal with such conflict.
2. Effectively managing a conflict in values is not about fighting or preaching, but about influence.
3. Don't try to change people, focus on the situation and how we can influence and reshape the situation.
4. While there will be differences in goals, values and possibly cultures, identify shared values, goals and common ground.
5. Rather than condemning people or actions, or setting rules, propose options for action leaving open the opportunity for others to expand on or modify options.
6. Anticipate typical rationalisations for ethically questionable behaviour and identify counterarguments.
7. Practice is required to build the confidence to speak up in an influential way. A mentor can help in developing such confidence. Develop a 'script.'
8. Identify enablers and disablers to speaking up with influence. Enablers may be personal and different for different people and may be specific to the situation. Some common enablers are:
 - Allies with whom you can talk through the situation and explore possible actions/outcomes
 - An understanding of the motivators and pressures for the audience that you are trying to convince
 - Facts that can be used to develop and present a compelling story
 - Sequencing the audience, the method and the message, which may require a range of informal and formal, one-on-one and small group conversations before interacting with the decision-making group
 - Taking 'baby steps' as part of a journey to the desired outcome
 - Framing or reframing the situation to a win-win or at least a no-loss situation.
9. Accept that action is not without risk, but that risk needs to be weighed against the risk of not speaking up. It is not about whether to speak up, but how.

More broadly, Gentile (2010) highlighted the importance of practitioners proactively considering, ahead of time, how they might speak up for their values in an organisational environment. This 'envisaging' practice was found to be the most significant factor in whether professionals ultimately spoke up or not.

The objective of constructive conversations will be informed by the situation and the OHS professional's knowledge and experience. Richness of the conversations will be enhanced where the OHS professional has some knowledge of the concept of a 'just culture,' including the differences between retributive and restorative just cultures, and the principles of substantive and procedural justice (e.g. Dekker, 2017).

Definitions of ethics in section 1 referred to an 'ethos' or 'way of life.' As OHS professionals, we will be more capable of acting as ethical professionals if we have a clear understanding of our personal and professional objectives and the values that drive these objectives. It is helpful for all OHS professionals to articulate their goals and values as a personal reference or benchmark to refer to when faced with ethical challenges or conflicting values. It may be useful to:

Generate a "self-story" or personal narrative about the decision to voice and act on your values that is consistent with who you already are and builds on the strengths and preferences that you already recognize in yourself (Gentile, 2010, p. 108).

Gentile (2010) provided a checklist of questions to guide a self-assessment as part of developing such a personal narrative; these questions address:

- Defining a personal purpose
- Developing a personal risk profile
- Identifying preferred communication styles
- Clarifying self-image.

9.2.2 Whistleblowing

Whistleblowing can be defined as "the act of drawing public attention, or the attention of an authority figure, to perceived wrongdoing, misconduct, unethical activity within public, private or third-sector organisations" (HRZone, n.d.).

Whistleblowing is usually an action of last resort when all other strategies to gain attention or action have not resulted in a satisfactory outcome. Whistleblowing often comes with significant negative outcomes for the whistleblower.³² For this reason, some ethicists argue that whistleblowing should not be seen as a normal duty, but rather as ethically exceptional; it goes beyond the risks and sacrifices that are usually imposed on people through their ethical obligations. Potential negative outcomes for the whistleblower were identified by Brown et al. (2018), who found that 45% of whistleblowing survey respondents were treated badly by management and/or colleagues (Table 7).

³² The ABC podcast 'Does workplace whistleblowing mean career death' (<https://radio.abc.net.au/programitem/peWDEn41O3?play=true>) discusses a whistleblowing experience.

Table 7: Treatment of employee reporters (Brown et al., 2018, p. 39)

Treatment	% of responses
Badly by both management & colleagues	13
Badly by management and well/neither/OK by colleagues	30
Badly by colleagues and well/neither/OK by management	2
Neither well or badly by management & colleagues	29
Well by management or colleagues and neither/OK for other	11
Well by both management & colleagues	15
	100

The most common repercussions were personal (stress related to reporting; reductions in work performance due to time and disruption) followed by isolation or harassment by colleagues and/or managers, and impact on job role (e.g. negative performance appraisal; denial of promotion; bonuses or training; reassignment; relocation or suspension) (Brown et al., 2018).

While some jurisdictions have legal protections for whistleblowers, such protection varies across public institutions and corporations, and according to nature of activity. Legal protections usually relate to whistleblowing for illegal activity, with whistleblowing for ethical issues that may not be clearly illegal being potentially problematic. Such legislation is unlikely to extend to OHS issues.

Also, official policies and procedures are often perceived as having little effect on whistleblower outcomes (Smith, 2018). Whistleblowing that is managed internally results in fewer negative repercussions for the whistleblower (Smith, 2018). The effectiveness of internal whistleblowing for health and safety will depend on the level of risk and the effectiveness of normal channels for resolving problems.³³ Some OHS regulators have arrangements for anonymous reporting of OHS breaches. Any OHS professional considering external whistleblowing would be well advised to seek peer and legal advice before taking action.

³³ For example, in Australia issue resolution processes are required by legislation (SWA, 2016, s 22).

Due to the potential ramifications of whistleblowing (internal or external), which in some cases can include little likelihood of significant change, an OHS professional may instead consider seeking a transfer or resigning.

OHS people may find themselves in relatively powerless positions and unable to prevent the company behaving dangerously. They need to be prepared to resign. That should not be seen as an admission of their failure, but the failure of the company to take safety seriously. I think this option of resignation should be recognised by OHS professionals facing such challenging situations. (Andrew Hopkins, personal communication, 22 May 2019)

BP Texas City (Hopkins, 2008)

The process safety engineer at the BP Texas City Refinery was well aware of the safety issues as he co-authored a paper on the lessons from Grangemouth (p. 95), but he was thwarted from raising his concerns with site managers due to structural reporting arrangements and workload.

Until a few months before the accident, the process safety engineer reported to a site services manager as process safety was seen as just one of a range 'services' (p. 94). The line of reporting was then changed so that the process safety manager reported to the site HSE manager who in turn reported to the refinery manager. The process safety manager was not part of the management team and was dependent on the HSE manager to represent his concerns at the senior management level. The site HSE manager knew little about process safety and had little interest in the area. He was therefore not in a position to represent the concerns of the process safety engineer to site management (p. 94).

Commensurate with this lowly status, the process safety engineer had staff of only four 'coordinators.' These people had an impossible workload and were incapable of carrying it out effectively (p. 94).

Given this situation, should the process safety engineer have become a whistleblower, sought a transfer or considered resignation? What might have been the implications of each option?

10 Summary

This chapter has introduced some ethical theory concepts relevant to OHS professionals, including:

- The OHS professional as a moral agent
- Moral awareness and moral intensity
- Inhibitors to ethical decision-making, including biases, ethical blind spots, moral disengagement and moral language
- The impact of organisational culture and leadership on ethical decision-making.

Examples of ethical challenges specific to the OHS professional include:

- Technical competence and scope of practice in an OHS context
- Reconciling risk
- Managing conflicts
- Management of information and confidentiality

- Some special issues facing the OHS consultant.

While codes of ethics are integral to all professions, they do not necessarily provide ready-made ethical solutions. To sustain the trust and respect of the public, codes of ethics require adoption and implementation by professionals and promotion by the professional body. Acting as an 'ethical professional' requires:

- Ethical decision-making
- Supporting development of ethical capability within the organisation
- Speaking up when the need arises.

Decision-making should be based on critical analysis. When a decision is made to speak up, the first step should be a planned approach to 'constructive conversations' within the organisation with whistleblowing (either internal or external) occurring only after other approaches have failed.

Being a 'professional' implies certain responsibilities in terms of ethical behaviour. When you are not under pressure, think about ethical situations that you have faced or might face. Consider formulating your own code of personal ethics that you feel you can live by in your daily professional practice and while engaging in discussions with your peers.

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Appendix 1: Ethical theory explained

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This appendix provides an explanation of four types of ethical theory with comment on their application in OHS: consequence-based theory, rights- and duties-based theories, virtue ethics, and natural law.

A1.1 Consequence-based theory

In utilitarianism – a moral theory that emphasises consequences³⁴ – the consequences of actions are important, rather than the actions themselves. Originally, utilitarian theorists focused on the individual's choice of what would lead to the greatest pleasure, and the utilitarian attempt to choose what leads to the greatest net sensual pleasure. This was viewed as rather crude. In what we now call 'act utilitarianism,' pleasure is upgraded to 'happiness' as the consequence to be maximised; happiness being understood as a more cerebral type of 'satisfaction.' The assumption is that a person can appreciate that others also desire happiness, and hence the aim should be to "choose the greatest happiness for the greatest number of people". As an act is right if it tends to result in the greatest net happiness, all acts are potentially permissible and, for example, killing an innocent person is not necessarily wrong. All persons count equally in the analysis, but it is possible that individuals may be sacrificed for the greater good. An obvious criticism is that repellent actions might be justified by this logic although utilitarians would argue that this rarely, if ever, occurs.

A proper utilitarian analysis involves anticipating all the positive and negative outcomes of all alternative actions, measuring them, and then choosing the path with the greatest positive net outcome for all. However, some reflection reveals that it is often impossible to anticipate and measure outcomes. Choosing between apples and oranges is difficult when converting to a common subjective currency such as 'happiness.'

Utilitarianism is an approach that can become atomistic or overly contextual and specific. For example: "I promise to pay an OHS consultant for his report, but upon receipt I determine that greater utility can be obtained by using the consultant's fee to pay for the recommended controls rather than paying the consultant." That is, keeping promises is not a

³⁴ Utilitarianism is associated with philosophers such as Jeremy Bentham, John Stuart Mill, Richard Brandt and Peter Singer.

general rule as one has to always ask “should I keep *this* promise?” To overcome the latter problem, a modern version of utilitarianism called ‘rule utilitarianism’ states that one should abide by a *rule* that generally leads to the greatest net happiness. Keeping promises generally leads to greater happiness in the community even though keeping *this* particular promise might have low utility. Richard Brandt is a modern and very practical rule utilitarian who says the list of such rules should be short and that they should be easily understood and remembered by ordinary people.

Utilitarianism is closely associated with modern techniques of risk or cost-benefit analysis. When an OHS professional recommends a plan that leads to the greatest net reduction in risk, or works out a solution that has the greatest net monetary gain, the OHS professional is practicing a type of utilitarian thinking. (Note, though, that most cost-benefit analyses are calculated in terms of a given organisation’s costs and benefits, and not the costs and benefits to everybody.) The 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. But when it comes to OHS, we end up having to measure human lives and we get troubling questions such as “what is a life worth in dollars?”, “how do you measure pain and suffering?” and even the more fundamental question of whether it is permissible to treat people in this calculating manner at all. That said, the reality is that at some point decisions have to be made that trade off risks to human life against the demanding, difficult and costly measures that would be required to bring those risks to zero. Utilitarianism is a controversial way of making that trade-off, but at least it understands that such trade-offs are necessary, and that risks to life cannot be completely neutralised.

A1.2 Rights- and duty-based theories

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

Duty-based theories are closely associated with rights-based theories because a right can usually be fulfilled 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 fulfills that person’s ‘right to know’). Duty-based theories are relatively easier to work with than rights-based theories, because they provide clarity about obligation and responsibility. Moral duties can be easily converted to legal duties. A duty-based moral theory considers the 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 (and that is the language Kant used), 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 contrasts with utilitarianism. An act is moral if it was done to fulfill a duty – just for the sake of the duty and not because the fulfilled duty brought the actor any benefits.

I have a duty not to steal, but if I do not steal only because I'm motivated by the good reputation I'll have, or even if I have the utilitarian idea that 'honesty is the best policy' (because we all benefit in the end), I am not, in the Kantian sense, behaving morally.

Reason alone tells us which principles are universal – they are right for everyone and can be followed without self-contradiction. You should not act on a principle that you would not be willing to have everyone act on. Kant called this obligation to act only on principles that everyone could in principle adopt the 'Categorical Imperative.' A rule or principle that passes the Categorical Imperative is morally permissible. Making promises you do not intend to keep is not permissible as you could not accept that everyone should act this way since the idea of a 'promise' would be meaningless. Kant's maxims are simple and broad. For example, under Kantianism one has a duty to always tell the truth, and taking an innocent human life is always wrong. A famous Kantian maxim is: "always treat others as ends in themselves and never as means solely." People are not objects or tools. Treat them as entities with their own agendas. Consent and agreement are important.

Kantianism is one of the key bases for our modern-day concern for human rights – respect for persons. Kantianism explains why a democratic majority must have its collective will thwarted by the courts if the majority tries to use the law or state power to violate a right or freedom in a constitutional statement of rights.

Often Kantianism and utilitarianism (especially rule-utilitarianism) will have similar outcomes because acts that treat people only as a means tend to be the type of acts that have disastrous social outcomes. However, the two theories can certainly give opposite decrees. The following scenario shows the two ethical theories in sharp contrast.

A hijacked airplane with 200 innocent people aboard is about to be flown into a large, crowded building. You are in your own personal fighter jet (to avoid the complications of 'virtue ethics' associated with military organisations) and you manage to reach the scene in time to decide whether to blow the airplane out of the sky or not. Do you kill 200 innocent people to save 10,000? A utilitarian will likely say yes whereas a Kantian will likely 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). Churchill knew innocent people would die if Coventry was bombed, but if he ordered an evacuation then the Nazis would know their code had been broken and the Allies would have suffered even greater losses in the years to follow. Coventry received no special warning. A Kantian could not necessarily assume that the residents of Coventry would consent as, unlike the hijacked passengers, they had four hours in which to escape. Churchill acted as a utilitarian would.

Kantianism, with its great emphasis on truth and honesty, would certainly cause discomfort in the workplace. “How did I find the meeting? I cannot tell a lie. It was ...” However, the Kantian prohibition against lying fits well with the OHS professional’s obligations to be competent, objective and honest when discussing risks in the workplace.

Certainly, OHS professionals are Kantian in their respect for each individual’s life and health. A utilitarian might say we are successful this year because we had fewer fatalities in the business (a net gain in happiness), whereas a Kantian would question whether any wrongs had been done to individuals. Had they given informed consent to the risks? Or had they been coerced or manipulated? Had the OHS professional been living up to the standards of the profession, or caved in to management pressure? In cases where no wrongs had been done, the Kantian would agree that a particular outcome was a grim one *but would not see it as any type of ethical failure*. This is an area where Kantianism departs sharply from utilitarianism. For the utilitarian, bad outcomes are always morally loaded. For the Kantian, if no wrongs were done, then a bad outcome has absolutely no moral loading. Kantianism fits with the human rights element of codes of professional ethics.

The major problem is the non-relevance of consequences of actions in determining what is right to do. This is partially resolved if we say that an exception to a rule is allowed if everyone in similar circumstances could adopt the exception. Lying is always wrong, except if a criminal is asking you for information with which he will do a terrible evil – if the exception can apply universally to anyone in your situation.

To treat employees as a Kantian would requires more transparency, honesty, information, delegation of authority, negotiation and consent on the part of senior management than many organisations would have seen in the past. Kantian respect for individuals requires us to cease thinking of employees as a ‘resource’ like materials, machinery or capital. When it comes to keeping information from workplace parties, the Kantian idea of respect for persons would almost always favour disclosure.

A1.3 Virtue ethics

Rather than addressing action directly, virtue ethics assumes a person of good character will choose the right action in the circumstances and act as a virtuous person. A virtue is a good character trait – benevolence, justice, loyalty, friendliness, courage, honesty, integrity – whereas a vice is a bad character trait. In 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.

Aristotle was the main proponent of virtue ethics. He held that virtues sit as a mean between two extremes. For example, a person who is too courageous is reckless, and one who is not courageous enough is timid. A person with the virtue of courage will assert themselves in the right ways at the right times. The insight here is that a person can easily stumble into unethical action when they think they are being virtuous by adopting an extreme position, rather than a balanced emotional response.

In modern times, virtue ethics is not deployed as much as it used to be. It is an approach that does not fit as easily with the use of law. But one can see that much of what we talk about in professional ethics relates 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.

A1.4 Natural law and natural rights

With its origins in classic Greek philosophy, natural law became associated with Catholic theology through the 13th century work of Thomas Aquinas, and now underpins much of western culture.³⁵ Human beings, by their very nature, sense that certain things are ‘good’ – life, health, knowledge, play, art and friendship. These goods 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.” This is observed in law when a judge says “the life of your dead child is priceless, but we will award you monetary damages anyway.” The good is also observed directly when a Charter or a Bill of Rights refers to the 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 in OHS when considering cost-benefit analysis and quantifying life. We can say that life and health are central values of OHS professional codes; protecting and promoting human life is what OHS is about. Moral dilemmas occur when we have to balance the risk to life and health against the value of equality in human rights cases.

³⁵ One of the leading natural law philosophers today is John Finnis.

Natural law philosophy has a long history of considering the nature and forms of fairness. Fairness takes some explaining. To be fair is to be just. It is common to speak of justice as fairness. Justice is a branch of morality. Whereas law is based on justice, justice covers a larger territory than law. Some laws, in fact, fail a 'justice test.' It is best to break down 'justice' into its classical forms. These forms of justice apply to many non-legal situations in the workplace (and beyond). All forms of justice involve a 'balancing' or 'weighing' and a conformance to a general standard. People can be said to have an innate 'sense of justice' that causes a feeling of outrage when one of the forms of justice is violated. While we all are capable of intuiting fairness and behaving fairly, we need to go beyond the feeling and clarify our reasons for fairness in order to solve ethical problems and more complex ethical questions.

Appendix 2: OHS scenarios as discussion starters for professional discourse

As part of OHS education and/or continuing professional development or mentoring relationships, it is useful to analyse situations and share views on how OHS professionals might respond in a range of circumstances. The following scenarios are provided to support such discussion. OHS professionals will have other examples that could be the basis for professional discussion.

In discussing scenarios, it is useful to:

- Review the code of ethics for your professional body
- Identify the OHS ethical challenges (section 7)
- Consider the biases or ethical blind spots that might exist or that you might apply in your response (section 5.3)
- Consider how the language, communications or context might impact how you and others perceive and respond to the situation.

Critical risk, cost-benefit analysis and conflicting duties

You are the OHS Advisor within a major manufacturing organisation. The organisation has recently acquired a small factory in a rural town through a series of takeovers. The factory only employs 35 people and is of marginal profitability, but it is highly significant within the local community. An employee representative at the factory has expressed concern about a frequent task that involves working at height. The Production Manager has reviewed the task and agrees that there is some risk. However, the task has been undertaken for many years without incident and considerable expense will be involved in remedying the situation. The employee representative is threatening to take the matter further. The Production Manager has approached you to advise on the matter of the working-at-height task.

On investigation, you find that:

- The task is very high risk with potential fatal consequence
- The expenditure required to adequately control the risk cannot be justified on the old production equipment and your organisation would use the opportunity to close the factory
- Factory closure would have a devastating effect on the local economy and would seal the fate of the struggling community.

Would your response be any different if you are a consultant?

Would your response be different if your brother ran the general store in the town?

Confidentiality, privacy and trust

You have received a report from an employee that he is being bullied by his supervisor. The person reporting the issue has requested that you do not escalate this report as he is aware that others have previously reported similar situations and there was no apparent action taken by the company to deal with the supervisor's behaviour. The employee knows that his issue is unique enough that disclosing the supervisor's actions would identify him as the person reporting the bullying. The employee has concerns about reprisals from that supervisor. You know that reporting this issue would breach trust with the employee, but you are concerned that if this situation goes unreported other employees may be at risk.

Consultant: Information management and communications

You are a consultant OHS professional in negotiation to provide health and safety services to a large manufacturing company. This contract would bring the consulting company much needed income now and possibly into the future should the project go well. The initial contract was for a thorough review of the company's health and safety system and included a physical conditions assessment in each of ten locations. The scope of work and the pricing was finalised by both parties and there was also agreement that the manufacturing company would create the contract to be signed.

Upon receipt of the contract you discover that you are contracting with the manufacturer's law firm, not directly with the company. You know that the company is having some issues with workers related to the current working conditions and you are now concerned that the company may be insulating itself from the results of the final report and you think that the company may use solicitor-client privilege to withhold negative results from the workforce. The contract would need to be signed prior to any work commencing.

Consultant: Capability and scope of practice

You have opened your own consulting practice. You knew building your own client base would be a challenge, but it has turned out that business is considerably slower than expected. Your main contract is to provide hazard assessments for a small retail chain. This one customer will provide enough income to keep your business viable for the next six months. You have completed the first store assessment and presented the findings and recommendations to the retail chain's General Manager. The findings included two contentious recommendations: first, a recommendation for ergonomic assessments for store clerks as there was a high incidence of strain injuries; and, second, a recommendation for a machine guarding assessment of the trash compactor as there were exposed moving parts and it appeared that there may have been some tampering to a safety proximity switch.

The General Manager is concerned about the risks to workers, but is confused by both recommendations. The General Manager's position was that the contract was for a hazard assessment and because both of these issues were hazards, the two additional assessments needed to be included in the price of the contract.

You realise that both parties should have clarified the scope of the contract prior to agreeing to the terms. You do have some knowledge of both ergonomic and machine safety domains, but you are unsure as to whether you have sufficient expertise to complete a detailed assessment of either issue. You definitely cannot afford to contract for the services of another person.

OHS manager in global role

You are an OHS professional in a large international company. You operate at the senior executive level, and report through the CEO to the Board. Your company has operations across several countries, including in Asia and Africa. The in-country legislation, OHS standards and working conditions vary significantly across the countries of operation. While your operations meet the legal requirements in each country, you are concerned that the working conditions and OHS practices within your organisation vary across the countries of operation. At some significantly substandard sites, workers face higher critical risks and health hazards and there have been some fatalities. Profits are quite strong from these sites. Controls implemented in other parts of the organisation have not been implemented where they are not required by legislation. The CEO and the Board do not see this as an issue as they have 'legal compliance.'

Consultant: Representation, conflicting duties, legal obligation

You are working with a partner. The two of you do technical safety assessments for companies for a specific type of hazard. There are many potentially adequate control devices that a company could purchase if you determine a problem exists. Your partner, who is a little stronger than you on the technical aspects, always recommends a product from a particular supplier. You trust your partner's judgement. The two of you have had many clients over the past several years who have purchased the product on your joint recommendation (you both sign the report). Now your partner has revealed that he has been receiving a benefit from the supplier of the product as a commission. He says he's been struggling with his conscience and he's come to the conclusion that it's only fair to split the commission with you. He hands you a cheque for 'this year's work.' A quick glance reveals it is a hefty sum. Should you take it? Should you end your relationship with your partner? Should you say anything to all your past clients?

Is the main issue here really an ethical one? Or is it a legal one? In most jurisdictions what your partner has been doing would be called an illegal secret commission or a kickback. Isn't your real problem now to ensure that you do not get accused as a party to the crime?

Assuming you end the partnership, what is your ethical duty to your clients? Suppose there is no economic cost to them of having bought this product. It was a little cheaper anyway. It may be impossible for you to rectify the situation by rebating anything to the customers. If the product was more expensive, is the excess something you should return? But in terms of corrective justice, the wrong-doer should pay, not you. If your ex-partner will not rebate the clients, should you? There may be some potential legal liability on your part solely as a partner.

Does it make any difference if you have been receiving some complaints from clients about the product being inadequate and posing some risk to their employees? Perhaps a failure of the product will cause an environmental disaster. Do you now have a clear duty to warn? Should you send a 'hazard notice' to all your clients? Should you tell them about your partner's behaviour? Again, this may revert to a legal case with you and your clients seeking redress from your ex-partner.

Junior OHS role: representation of information and data, conflicting duties

You are a relatively junior OHS professional working for a senior OHS professional. The senior professional has sent a report to top management about hazard X, stating that the risk involved is negligible. You have access to the original data and can see that the senior professional's conclusions do not match the data. Moreover, the data doesn't look right; it may have been arbitrarily 'adjusted' or 'smoothed.' Some critical information in the raw data is simply unaddressed in the report.

You were hired by the senior professional, who has always been a great boss and a good mentor, and has stood up for you during some battles involving office politics. You feel very loyal to the senior professional, who has the authority to terminate your employment or to give you a raise in pay and responsibility. What should you do?

Is the situation any different if, as far as you can make out, the risk is critical, and the senior manager is out of the country and hard to reach? Do you have a professional duty to warn those exposed to hazard X?

You raise the issue with the senior professional, who responds badly, angrily denying that the data have been tampered with or ignored, but does not review the data, or the handling of the data, with you. The senior professional expresses disappointment with your loyalty, tells you that you are "on probation" and says that your discretion (silence) is going to be the test for further employment. Assuming the risk is critical, how should you proceed?

Consultant: Representation, plagiarism

You are a consultant OHS professional. You have submitted a proposal to a potential client to do some OHS training. Your client-contact person tells you they would like to engage you, but she wants to discuss a few issues. At your meeting, she hands you a detailed proposal from a competing OHS professional. The proposal has the training materials your competitor is proposing to use attached. A quick glance tells you the materials are excellent. Your contact asks you to take away the materials and review them and to incorporate any good points into your own training materials. Your contact says "don't copy them of course, just use them for inspiration." You hesitate, and she says they have several consultants in mind, who "are all about the same" in terms of cost. She says the competitor with the materials she is offering you was four times as expensive as anyone else and "obviously doesn't really want the business, which is a shame." She adds, "we do this all the time, to help contractors improve – it's a quality thing." What will you say?

Does it make any difference if you know the competitor and you're pretty sure they would use your materials if positions were reversed? Is your behaviour contingent on what the competitor's behaviour would be or is it independent? Suppose the competitor has cheated you in the past and now is your chance for some 'justice'? Is that what commutative justice requires?

Does it make any difference if your contact person tells you the competitor handed out materials to participants at a conference workshop last month? The materials are "in the public domain" she says. At this point do you believe her? Consultants sometimes share material on the basis that others do not use it in competition.

Reporting and analysis of data, pressure to adjust results, sharing of information

You are an OHS professional employed in a large company. The HR Executive asked you to conduct an OHS perception survey. It involved interviewing hundreds of employees at all levels and administering questionnaires to everyone. You have produced a big, data-packed report. It reveals weaknesses about ownership of OHS, communication and trust issues, leadership problems and so on. It is not a technical report about the company's hazards and controls; it's about the human element in OHS. You've found many problems of a management nature; partly personnel issues, partly problems of policy, process and training. These problems no doubt indirectly affect risk, but there is nothing in the report about direct risks.

The HR Executive isn't happy with the report as it reveals some weakness on their part. There are certain other individuals and groups who will also be very unhappy with the report. While doing the interviews and administering the questionnaires, people asked if the report would be available when completed and you said 'yes' because the HR Executive, who was present the first time the question was asked, had nodded agreement. Now the HR Executive has asked you not to deliver hard copies to anyone. They have your report digitally and say they will distribute a synopsis to various people in the company, but not the whole report "because it is too big and complicated." They are vague as to when this will be done and evade the question of whether they will send you an advance draft of the synopsis. The union representative calls you directly and asks for a copy of the report. You decline to send a copy at this time, and the union representative ends the call by saying "you promised."

Suppose that one of your questions asked if the respondent had knowledge of any serious, life-threatening hazards, with room to write in details. There was thus a key chapter in the report that listed and classified the hazard comments. You expedited the report largely because of these comments and in fact called the HR Executive to mention several of them while writing the report. (You received no feedback from HR on these calls.) Does this make a difference in how you should proceed?
