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THE CHANGING LANDSCAPE OF CORPORATE LEGAL PRACTICE: AN EMPIRICAL STUDY OF LAWYERS IN LARGE CORPORATE LAW FIRMS

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The authors of this study interviewed over 100 lawyers carrying on corporate practice in large Canadian law firms. The study examined how certain trends in law practice – increased competition, the goal of being "businesslike" and the decline in life-long partnership tenure – influence the ethical decision-making of lawyers. The study also explored how influence and pressure from clients, and from the lawyers in their firms responsible for managing relationships with those clients, affects the ethical choices made by lawyers. A further object of the study was to identify the resources lawyers draw on – the law, ethical frameworks, their own judgments or the judgments of others – in resolving ethical dilemmas.

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Les auteurs de cette étude ont mené des entrevues auprès de plus de 100 avocats et avocates exerçant le droit des sociétés dans de grands cabinets canadiens. L'étude analysait l'influence de certaines tendances dans la pratique du droit, à savoir, la concurrence accrue, l'objectif de mener ses activités « à la manière d'une entreprise » et la baisse du nombre de juristes qui occupent le rang d'associé tout au long de leur carrière, sur le caractère déontologique des décisions prises par les avocats. L'étude examinait également l'incidence de l'influence et des pressions exercées par les clients, ainsi que par les collègues responsables de la gestion des relations avec les clients du cabinet, sur les choix d'ordre éthique des avocats. En outre, l'étude visait à identifier les ressources auxquelles font appel les avocats dans le cadre de la résolution d'un problème de nature déontologique : le droit, les cadres d'éthique, leur propre jugement ou bien le jugement des autres.

1. Introduction

In 2008, Adam Dodek explored what he described as the new wave of legal ethics scholars and scholarship in Canada.[1] In the same year, in this journal, Jocelyn Downie and Richard Devlin made the clear case for mandatory continuing legal ethics education for Canadian lawyers.[2] Entirely coincidentally, also in 2008, we made a request of various Canadian law foundations for funding in support of an empirical study that might address at least some of the issues of interest and concern to these authors. The following year we received very generous grants from the Law Foundation of Ontario and the Alberta Law Foundation to fund our study of ethical decision making among corporate lawyers in Canada. This paper summarizes the key findings from our study.[3]

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1 Adam M Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46:1 Osgoode Hall LJ 1.

2 Jocelyn Downie and Richard Devlin, "Fitness for Purpose: Mandatory Continuing Legal Ethics Education for Lawyers" (2009) 87:3 Can Bar Rev 773.

3 The main academic findings for our work can be found in more detail in a series of three articles: Ronit Dinovitzer, Hugh P Gunz and Sally P Gunz, "Reconsidering Lawyer Autonomy: The Nexus Between Firm, Lawyer, and Client in Large Commercial Practice" (2014) 51:3 Am Bus LJ 661 [Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy"]; Ronit Dinovitzer, Hugh P Gunz and Sally P Gunz, "Unpacking Client Capture: Evidence From Corporate Law Firms" (2014) 1:2 J Professions & Organizations 99 [H Gunz and S Gunz, "Client Capture"]; Ronit Dinovitzer, Hugh P Gunz and Sally P Gunz, "Corporate Lawyers and Their Clients: Walking the Line Between Law and Business", online: (2014) Intl J Leg Profession <www.tandfonline .com/doi/full/10.1080/09695958.2014.977792> [Dinovitzer, H Gunz and S Gunz, "Walking the Line"]; Hugh Gunz and Sally Gunz, "Hired Professional to Hired Gun: An

Broadly speaking, our interest focuses on how professionals – here lawyers – make ethical decisions. More specifically, we explore what factors might influence ethical decision making since lawyers have been implicated in some of the most high profile corporate scandals. In earlier work we considered these issues from a theoretical perspective. For example, we studied independence and conflicts of interest in professions[4] and modelled possible reactions to ethical conflict.[5] These works led to empirical studies. Using corporate counsel as our subjects, we examined the relationship between the obligation to retain professional independence and the need to retain an appropriate degree of loyalty to the employer.[6]

The study of corporate counsel yielded a number of results, but of most relevance for present purposes was the discovery that an individual's ethical decision making was in fact impacted by their own identity as well as further factors such as position and role in the organization.[7] By "identity" we here refer to a "relatively stable and enduring constellation of attributes, beliefs, values, motives, and experiences in terms of which people define themselves in a professional role."[8] Most people will have more than one identity that varies in relative salience from time to time; by salience is meant "the probability that an identity will be invoked… ."[9] In our study we found corporate counsel exhibiting one of two identities that we called "organizational" and "professional," the former meaning more akin to that of management and the latter to that of lawyers.[10] Without re-presenting our earlier work, what we found was interesting:

Identity Theory Approach to Understanding the Ethical Behaviour of Professionals in Non-professional Organizations" (2007) 60:6 Human Relations 851.

4 See e.g. Sally Gunz and Marianne M Jennings, "A Proactive Proposal for Self-Regulation of the Actuarial Profession: A Means of Avoiding the Audit Profession's Post-Enron Regulatory Fate" (2011) 48:4 Am Bus LJ 641.

5 Hugh Gunz and Sally Gunz, "Ethical Implications of the Employment Relationship for Professional Lawyers" (1994) 28:1 UBC L Rev 123.

6 Hugh Gunz and Sarah Gunz, "Professional/Organizational Commitment and Job Satisfaction for Employed Lawyers" (1994) 47:7 Human Relations 801. These findings were consistent with a prior, well-known study of employed accountants; see Nissim Aranya and Kenneth R Ferris, "A Reexamination of Accountants' Organizational-Professional Conflict" (1984) 59:1 Accounting Rev 1.

7 H Gunz and S Gunz, "Hired Gun," *supra* note 3.

8 Herminia Ibarra, "Provisional Selves: Experimenting with Image and Identity in Professional Adaptation" (1999) 44:4 Administrative Science Q 764 at 764–65.

9 Sheldon Stryker and Peter J Burke, "The Past, Present, and Future of an Identity Theory" (2000) 63:4 Social Psychology Q 284 at 286.

10 Note all remained in legal functions within the organization and would have exhibited a lawyerly identity to some extent. Here the issue was, of the two identities, which was more salient at least as we studied them resolving ethical decisions.

> The significance of these identities was demonstrated when counsel responded to ethical vignettes, and these responses were in turn found to be influenced by several organizational factors such as the proximity to the strategic decision making of the corporation. Very generally, the more counsel were involved in strategic decision making and the more they exhibited the organizational identity, the more likely they were to resolve the dilemma as a manager might.[11]

The focus on employed professionals and, here, corporate counsel often originates with the contrast with those working in private practice where it has been traditionally thought that autonomy is a key attribute of the practice environment. Further, since the professional service firm provides an environment in which professionals work with and manage other professionals, some have suggested that ethical decision-making will thus be aligned with a strong professional identity that is consistent with the dictates of the profession itself.[12]

The above distinction (contrast) is convenient but also undoubtedly naïve. The experience of the audit profession in the early twenty-first century and the example of the Arthur Andersen firm in particular suggests that both private practice firms and the individuals within them may be exposed to serious economic pressure from those for whom they provide service. While Enron may not have been of major economic significance to Arthur Andersen the firm, it was everything to the success of David Duncan, the managing partner for the audit.[13] The fallout of the Enron bankruptcy and the report of Batson clearly identified similar concerns for the key private law firms advising Enron as for the audit firm, Arthur Andersen.[14]

Returning to the legal profession in Canada, Dodek (referencing Allan Hutchinson) has observed that although Canada has experienced ethical failures in the legal profession, unlike other countries and the United States in particular, it has not experienced the "lawyergate" that might be described as a "single defining cultural event" that would either capture

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11 Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3 at 683.

12 James R Faulconbridge and Daniel Muzio, "Organizational Professionalism in Globalizing Law Firms" (2008) 22:1 Work, Employment & Society 7; H Gunz and S Gunz, "Client Capture," *supra* note 3

13 See Jeffrey N Gordon, "What Enron Means for the Management and Control of the Modern Business Corporation: Some Initial Reflections" (2002) 69:3 U Chicago L Rev 1233 at 1239.

14 United States Bankruptcy Court, Southern District of New York, *Final Report of Neal Batson, Court-Appointed Examiner* (Case No 01-16034 (AJG)) (2003), online: In re: Enron Corp, Appendix C <bkinformation.com/docs/enron/Final_Examiner_Report/App_C.pdf > [*Batson Report*] (examining the role of "in-house" attorneys and two of its outside law firms (Vinson & Elkins and Andrews & Kurth)).

public imagination or encourage a regulatory reaction.[15] This may have bought the profession time. For example, even when Canadian regulation was becoming more rigorous, the legal profession was able to withstand the obligations to report violations externally[16] that were imposed in the United States by the *Sarbanes-Oxley Act.*[17] It has been argued[18] that this does not mean the *status quo* does not require examination. It merely means the profession has the luxury of exploring its current practices without the pressure of public scrutiny.

There is a last thread in the academic literature that needs inclusion in this introduction since it relates to our broad interest in what impacts ethical decision-making. For some time there has been discussion of a phenomenon known as "client capture," which is a concept that aptly describes the economic pressure experienced by the professionals at Arthur Andersen that we referenced above. Client capture is generally defined as a situation in which a client's economic power is so strong that the professional's independent decision-making – here ethical decision-making – is usurped or captured by the client.[19] Kevin Leicht and Mary Fennell[20] first adopted this expression and in our pilot work to this project we began exploring this phenomenon amongst lawyers in large commercial practice. It was clear that it had resonance amongst our subjects.[21] They recognized the pressures clients exert and the potential for ethical decisions in particular to be reached that align more with the interests of the client than with their professional responsibilities.

Our study focuses upon the above issues surrounding ethical decision-making in the context of client-lawyer relationships in large commercial law firms in Canada. It is a qualitative study; namely one in which participants are asked to respond to a series of semi-structured questions in an interview context. In our case we interviewed over a hundred lawyers of all levels of experience in major commercial firms across four cities. Their responses, by definition, allow us limited opportunity to draw

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15 Dodek, *supra* note 1 at 20.

16 For the final rule text see US, Securities and Exchange Commission, *Final Rule: Implementation of Standards of Professional Conduct for Attorneys* (Washington, DC: The Commission, 2003), online: Securities and Exchange Commission <www.sec.gov/rules/final/33-8185.htm>.

17 *Sarbanes-Oxley Act of 2002*, Pub L No 107-204, 116 Stat 745 (codified in scattered sections of 15 & 18 USC).

18 See e.g. Leslie C Levin and Lynn Mather, eds, *Lawyers in Practice: Ethical Decision Making in Context* (Chicago: University of Chicago Press, 2012).

19 See generally H Gunz and S Gunz, "Client Capture," *supra* note 3.

20 Kevin T Leicht and Mary L Fennell, *Professional Work: A Sociological Approach* (Hoboken, NJ: Wiley-Blackwell, 2001).

21 H Gunz and S Gunz, "Client Capture," *supra* note 3.

conclusions about Canadian practice in general since our small sample size restricts the opportunity for statistical analysis. However that was not the purpose of the exercise. Rather, the interviews provide insight into the world of practice and allow us to identify issues that should be of interest to practitioners and those who manage within law firms.

In the next section of this paper we discuss the issues of interest to us from a theoretical perspective. This leads to a short summary of how we designed and applied our study which in turn will lead to a summary of our key findings. Throughout we are mindful of the need to avoid replicating what is published in more detail elsewhere about this study. We will, however, ensure readers are provided adequate reference to those other works should they be so interested to read further. We conclude with our thoughts on what this project means for Canadian practitioners.

2. Ethical Decision-Making and the Professional Service Law Firm

The concern that client pressures imposed on individual lawyer decision-making may lead to negative consequences is not new. Here our focus is on lawyers in law firms and large law firms in particular. If we present the issue in its broadest terms, namely what is the impact of the client on ethical decision-making, we find historically two broad schools of thought. In 1964, Erwin Smigel argued that the firm itself provides the moral framework (or bureaucracy) that empowers individual lawyers to resist improper client pressure.[22] Here Smigel points to the shared professional values alluded to earlier in this present discussion. It is the collectivity of the professional identity and "shared commitment to professional values"[23] that can be relied upon to protect the firm from individuals bowing to improper client demands. The alternative position comes from the work of John Heinz and Edward Laumann in 1982[24] and 2005.[25] They find that "lawyers servicing big business have less autonomy than do lawyers serving personal clients, and that [the] corporate lawyers' structural position makes them vulnerable to client influence."[26]

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22 Erwin O Smigel, *The Wall Street Lawyer: Professional Organization Man?* (Bloomington, IN: Indiana University Press,1964) at 342.

23 *Ibid*.

24 John P Heinz and Edward O Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Evanston, IL: Northwestern University Press, 1982).

25 John P Heinz *at al*, *Urban Lawyers: The New Social Structure of the Bar* (Chicago: University of Chicago Press, 2005).

26 H Gunz and S Gunz, "Client Capture," *supra* note 3.

We have taken the position[27] that the world of the large commercial law firm is more complex than either of these positions would suggest and that it is more useful to consider how individual lawyers interact with clients and how the different elements of practice impact decision-making. On this basis we would expect – and indeed found – that "lawyers vary in systematic ways in terms of their perceived independence and the extent to which legal rules guide their actions."[28] This is not dissimilar to the work of Robert Nelson and Laura Nielsen relating to corporate counsel, and their identification of three alternate roles: cops, counsel and entrepreneurs.[29] It also reflects the position that at least among large firms, the firm itself is highly significant in terms of how individuals learn values and approach decision-making.[30] Further:

> Office size can affect the ways in which lawyers are socialized to the norms of the profession and influence the availability of internal monitoring and ethical support. It is also associated with major differences in the economics of law practice, which in turn affects incentives and constraints on attorneys.[31]

If we accept that ethical decision-making in general is influenced by the context in which issues arise,[32] we first need to get past the notion that formal systems and codes should be the focus for understanding what will lead to "good" ethical behaviour, which is the very point made by Dodek when he stated "… legal ethics consists of much more than 'the law governing lawyers.'"[33] These formal structures fail to address the far more subtle and troubling issues such as those described in the Enron bankruptcy report where "Many times Enron officers appear to have obtained opinions or advice from professionals [here lawyers] merely as a necessary step to justify questionable decisions rather than as a tool to assist them in reaching a considered business decision… ."[34] In this case lawyers were said to have been used as a critical tool by Enron management for achieving compliance with the required accounting

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27 This is presented primarily in Dinovitzer, H Gunz and S Gunz, "Walking the Line," *supra* note 3.

28 *Ibid*.

29 Robert L Nelson and Laura Bush Nielsen, "Cops, Counsel, and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations" (2000) 34:2 Law & Soc'y Rev 457.

30 Levin and Mather, *supra* note 18 at 16.

31 *Ibid* at 8.

32 See Linda KlebeTreviño and Michael E Brown, "Managing to be Ethical: Debunking Five Business Ethics Myths" (2004) 18:2 Academy of Management Executive 69 at 72.

33 Dodek, *supra* note 1 at 6.

34 *Batson Report*, *supra* note 18 at 99.

treatment for what were known as Special Purpose Entities which were a vital element in moving debt off the Enron balance sheet.[35]

Many scholars have written about the pressures lawyers in large professional firms face today.[36] Most obviously, competition has been increasing throughout this century and especially since the financial crises around 2008. Sometimes these pressures are framed in the context of the role of corporate counsel in allocating work;[37] sometimes in terms of the degree of specialization within the firms themselves.[38] But always the consequence is seen to be growing pressure to meet client needs which include reducing costs, faster and faster delivery of service, and something generally known as "businesslike" practices.[39] Added to the mix are two other well-documented trends. First, there is an increasing willingness of senior lawyers (post partnership) to move laterally between law firms, which contrasts with the traditional stability of legal careers. With mobility comes the assumption that clients may well move with a partner. Second, partners can no longer assume they will be retained within the firm for the duration of their career. Partners who fail to deliver economically may well either be asked to leave or be moved to what is presumably a less lucrative, non-equity position.[40] Combined, these elements describe a world in which the influence of the client over the economic well-being of the individual lawyer is potentially significant.

While it would be naïve to suggest clients were not influential over lawyers' success in the past – this is a fee for service environment and law firms are not charitable organizations – it is the extent to which they may define an individual lawyer's success that has increased and which, in turn, is relevant to the issues addressed in this paper.

3. Our Study

The study reported in this paper is based on interviews of 106 lawyers in large commercial firms in Toronto, Montreal, Calgary and Vancouver. The number of subjects in each city was generally proportionate to the size of

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35 Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3 at 668-69: "… the law firms elected to comply with a request to provide a 'True issuance' opinion in the knowledge that it was a 'true sale' opinion that was critical to satisfying the requirements of Financial Accounting Standard Number 140 (FAS 140)."

36 See e.g. Marc Galanter and William D Henderson, "The Elastic Tournament: The Second Transformation of the Big Law Firm" (2008) 60:6 Stan L Rev 1867.

37 David B Wilkins, "Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship" (2010) 78:5 Fordham L Rev 2067 at 2082, 2084–2105.

38 Levin and Mather, *supra* note 18 at 10.

39 Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3 at 678-80.

40 *Ibid*.

the commercial bar in each city. The study was preceded by an earlier pilot project.[41] Throughout both stages of the project(s) we were supported by a small team of senior lawyers (the "advisory group").

The first stage in the study design was firm selection. Here we were guided by our advisory group and we selected two firms that operated in all four cities and, in addition, individual offices of national firms and/or offices of regional firms. The initial request was made by a member of our advisory group. Here the managing partner was asked if they would be prepared to notify firm members that we, the researchers, might approach individuals and that the firm supported our initiative. Critical was the notion that at no time would the managing partner, or anyone else in the firm, be advised of whom we would approach and who might then agree to participate in our study. Assurances of confidentiality were paramount throughout the project. Almost all managing partners approached provided the consent of their firm for us to proceed and then distributed a letter to all lawyers in commercial practice advising them of our project and their consent to participation.

Once a firm consented, we then selected potential participants based on information from the firm's website. We selected lawyers within a firm's "commercial" practice, which we defined based on our earlier work and the advice of our advisory group. Specifically, we did not include lawyers listed on firm websites as litigators. The rationale generally was that the client/lawyer interactions were sufficiently different from other forms of commercial practice to suggest it was inappropriate to have them included. It was important to our project that we interviewed lawyers across all experience levels. Our earlier pilot had suggested that relatively new associates and relatively new partners were the two groups we would not approach. New associates tended to lack the experience to be comfortable providing very useful insight. Very new partners again lacked sufficient experience of the partner position and their responses were not adequately distinguishable from senior associates. Otherwise, we sought associates with a minimum of three years of experience, partners with at least five years of experience, partners who currently had or had had experience at a senior management level (for national firms, at the national level) in the firm, and partners with more than 25 years of experience.[42]

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[41] This involved interviews with 30 lawyers and was reported in H Gunz and S Gunz, "Client Capture," *supra* note 3.

[42] We were constrained in two respects: law firm websites typically state year of call to the bar but not the year in which a lawyer was made partner. For these reasons we were forced to estimate years of experience as partner based on year called to the bar. These approximations were not always accurate and as we reviewed out data we would sometimes need to "re-categorize" our responses. Ultimately we also made a further

Once a lawyer had consented to an interview one of the three researchers (current authors) would attend a location of the lawyer's choosing, usually their office or a meeting room, and conduct the interviews based on a semi-structured script, with main questions defined along with optional follow-ups and variants. Participants were also asked to reason through a fact situation or vignette in which ethical issues were embedded. The vignette was based on fact situations provided by lawyers in the earlier pilot. Interview questions and the vignette were approved by our advisory group and were tested through a series of small pilot studies. The questions were the same for all participants with one exception. There was a separate vignette for associates as the fact situation had to be adapted to avoid the associate reporting they would by-pass any decision-making by referring the problem to a partner. The basic issue was the same in both forms but the task itself varied for this reason. The interview was taped with the consent of the participant and typically lasted from 30 to 60 minutes. The recording was subsequently transcribed.

The analysis of the transcripts followed standard protocols for qualitative research. Analysis and coding was conducted using Atlas.ti software. Several graduate students as well as the three researchers were involved in the multiple stages and appropriate verifications and reconciliations of coding that took place.

The study provided us with a large and rich data set. The one obvious weakness was in terms of gender representation. In the earlier pilot we had had participation from female lawyers in proportion to their representation at different levels of seniority in the profession. For reasons that are simply unknown to us, women were under-represented in the final study despite similar approaches and considerable efforts to recruit. The basic demographics can be found in Table 1.

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distinction within our group of non-senior and non-management partners: we split this set between those we called "junior mid-level" partner and "senior mid-level" partners or partners with five to ten years' experience and partners with eleven to twenty years' experience. Partners with more than twenty years' experience were "senior" partners. The partners with senior management experience we labeled "executive."

Table 1. Sample Demographics		
	Count	**Column N %**
Gender		
Female	18	16.98%
Male	88	83.02%
Rank		
Associate	14	13.33%
Junior mid-level partner	22	20.95%
Senior mid-level partner	23	21.90%
Senior partner	26	24.76%
Executive	6	5.71%
Tax	14	13.33%
Location of Firm		
Toronto	66	62.26%
Vancouver	10	9.43%
Calgary	10	9.43%
Montreal	20	18.87%
Total	**106**	**100.00%**

4. Results[43]

As we noted in our introduction, heightened concern regarding client capture is based on the widely-held perception of the changing context of corporate legal work. Our interviews provided tangible insight into this matter, and thus we first present insight on some trends in legal practice highlighted in our interviews and which are described in greater detail in the article, *Reconsidering Lawyer Autonomy*.[44] Then we focus on two issues that emerge from these findings: how is pressure from clients experienced in corporate practice and what does the study tell us about the different approaches that our interviewees adopt in their dealings with their clients?

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[43] When we quote directly from participants we alternate the use of gender related pronouns in order to enhance confidentiality.

[44] Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3.

A) Trends in Legal Practice[45]

Our results highlighted four important trends that clearly are impacting legal practice and client-lawyer relations in particular. These are:

1) Increased Competition

Many participants in our study referenced increased competition in practice Senior lawyers in particular were worried about the implications of the pressure to retain clients in an aggressively competitive world for legal services and how that might affect the way younger lawyers, still defining their position in firms, might react. For the younger lawyers, the most frequently expressed concern was for life style and the sense that sooner or later "something will have to give." For example:

> It's become enormously competitive … We've done well from a practice point of view. We've got major clients … but … so we don't see those pressures, but I see when I go down a level in our firm to the people who are ten years below me who … or fifteen years below me, and you see them and they have so much more pressure on them to get their own client base, to be perceived to be paid top dollar, both within the firm and externally … how does that work with the clients…
>
> Subject 97, Senior Partner

Alternatively:

> [Y]ou're tired, you're stressed and you're not who you are as a person. You know, if I find I'm losing myself as a person because I'm just working too hard, that might be something I would … at some point say, you know what, I'm going to die and don't know how many years do I really want to be that person I've become. So if I find that I've become someone else than I think I am …
>
> Subject 25, Senior Mid-level Partner

And the competition is recognized not only as coming from within Canada or their particular city, but globally:

> I'm bidding against firms in other countries to get that, so that skill of talking, selling what you have to do to get the file. We don't have many doers as it used to be years and years ago when it was institutional clients that used to stay at the same law firm. Bills weren't that contested from what I hear of … it's tougher now…
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> Subject 45, Junior Midlevel Partner

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45 *Ibid.*

2) The Goal of Being "Businesslike"

We frequently heard the expression "businesslike" in reference to the delivery of legal services in our interviews. We were particularly interested in what this meant in the context of professional practice. While no one would propose a world in which lawyers deliver elegant legal opinions that are of limited relevance to the client,[46] this is a professional service that is being provided and the lawyer retains professional obligations that must be independently maintained, whatever the business interests of the client.

In one respect there is little concern. Many of our subjects were describing a need to understand the business and, hence, the motivations of the clients in making the requests for legal services that they do. In other respects warning flags are raised. In particular, some lawyers clearly see themselves not only as legal advisor but also business advisor and, indeed at times friend or partner. For example:

> You know, we provide a lot of advice to clients that's not pure legal advice, you know, in terms of … because we deal with, you know, small and medium-size businesses. Most of the people we deal with aren't general counsel. You know, in companies they're the actual business people, and so we tend to get … you know, they tend to look to us for more than just pure legal advice.
>
> Subject 55, Senior Midlevel Partner

or:

> But it is … yeah, that part is kind of fun. I think of that as the trusted advisor role with the client where you know them well enough that they want … . [T]hey consider you as part of their team. They know you're thinking about it. They know you're caring.
>
> Subject 4, Senior Midlevel Partner

or

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46 In our earlier we worked we explained this concept thus:

"Businesslike" is presumably meant as an approach that is timely and somewhat pragmatic; sensitive to the needs of business rather than with a focus on an elegant exposition of legal principles. This trend is closely linked to another felt by most professions, namely, the demand from clients that they respond to client requests at an ever-increasing pace and at all times of the day and all days of the week.

See Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3 at 680-81.

> [M]y approach to the practice of law is to be part of the management team, be an advisor like, and outside and in-house counsel, okay? So I focus very much on personal relationships.
>
> Subject 41, Senior Partner

The risk this approach to the client relationship carries is that the lawyer can subtly become more aligned with business than professional interests. And when that happens, the potential exists for lawyers to overlook their professional responsibilities.

The other risk factors that were evident in interviews were how "businesslike" translated into actual ways of conducting the practice. Most obviously this appears as the need to respond quickly and the requirement of being available 24/7. Clearly electronic communications compound these problems. We asked our participants what it took to be a successful lawyer these days and here was a typical response, in this case from an associate:

> So being there with them 24/7—you know, the BlackBerry, the access all the time, the feeling that you're with them, it's huge; and if you can't get that part of it, it's getting to be very hard to get a client's trust, you know.
>
> Subject 17

This same associate explained another level at which this arises. For associates it is the partners who first test them in terms of availability and responsiveness to see whether they are ready for direct client contact: "if they can get it with me, then I feel like I can let them communicate directly with clients because at that point I can see the way they respond and they deal with things. So it's a skill set."

Others have described the risks these pressures bring.[47] Obviously they impact quality of life and even health. For the purposes of the issues raised in this paper the pressures may give rise to additional concerns. The risk of these extraordinary pressures is not only that a person will not deliberate with sufficient care. They may simply fail to recognize there is a dilemma there at all.

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47 Bruce A Green, "Professional Challenges in Large Firm Practice" (2005) 33:1 Fordham Urb LJ 7 at 9.

3) Decline in Life-Long Partnership Tenure

The traditional model of a law firm partnership was very much one of life-long tenure unless the firm was taken over/merged with another. On this basis the notion of trust between partners is built. Moreover partners are selected from amongst a group of associates who also have worked at the firm for many years. As a result, lawyers know each other well, have observed each other's practices over time, and trust that each practices in a manner that is in the best interests of the firm and the profession.[48]

There are two obvious changes to this traditional model today. First, there is an increase in lateral hires – that is partners hired from another firm where they were also partner. Second, there is no longer a sense of career tenure and partners may be asked to leave a partnership or moved to a non-equity role, most commonly because of reduced economic contribution to the firm.

In our study we found clear evidence of both of these trends, and these are discussed in detail elsewhere.[49] For present purposes we simply make the following observations:

a) Generally when partners move as laterals it is assumed that part of their attractiveness to the new firm is the clients they bring with them. As one subject observed: "As long as you have some clients and the ability to attract more clients, you'll always be somewhat flexible to move." (Subject 47, Senior Mid-level Partner).

b) For those who move laterally there is, perhaps not surprisingly, a particular interest in maintaining close relationships with clients. For example,

> As a lateral hire, as they would call me … I mean, I've learned my lesson – [clients] are your most important asset, and it's incumbent on you to make sure that you keep close to those clients so that nobody else really takes over that client.
>
> Subject 41, Senior Partner

c) Others within the firm may have a certain discomfort with laterals as they do not feel they know them as well as those partners with whom the working relationship has been longstanding. For

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48 It is from these qualities that Smigel argued the institutional structure of the firm provides the guidance for professional decision-making; see Smigel, *supra* note 26.

49 Dinovitzer, H Gunz and S Gunz, "Lawyer Autonomy," *supra* note 3 at 698-704.

example, one described the lateral hires in their firm as "greater risk-takers"[50] and another described an unfortunate relationship and made a point of identifying the person as a "lateral."

d) The chance of being asked to leave was real for at least some of our subjects and the trend in general was commented on by a number. One partner, for example, stated:

> So, as you get more senior, you know, you get more anxious about how things will play out; and if I were to be quiet for three years, you know, as a fifty-something partner I would feel vulnerable, even though this firm is highly successful.
>
> Subject 7, Senior Partner

To conclude, mobility, whether voluntary or otherwise, has direct consequence for the lawyer-client relationship. If lawyers view their clients as part of their worth to other firms, it stands to reason that they will be particularly interested in maintaining strong client relations if mobility is one of their career goals. If lawyers are afraid for their future in their firm, the threat of the loss of a client will be particularly, personally threatening. This is not to say that lawyers in either category are more likely than others to compromise their professional values to keep a client. It is simply one more factor in the changing world of practice that must be taken into account when we explore these issues.

We now turn to the two issues that emerge from this context of legal practice: the ways in which lawyers experience pressure from their clients and the different approaches that the lawyers appear to adopt in their work with their clients.

B) Client Influence[51]

With increased competition, increasing pressures to be businesslike, and with greater career instability characterizing modern corporate legal practice, one of the key areas of concern is the client-lawyer interaction and whether client influence might lead to lawyers reaching questionable ethical decisions.

The expression "client capture" that we referenced earlier in this paper describes a reasonably straightforward scenario: Client C is very valuable to Lawyer L; C wants L to provide an assurance that under normal

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50 Subject 99 (Executive).

51 Dinovitzer, H Gunz & S Gunz, "Walking the Line," *supra* note 3.

circumstances would make L uncomfortable for a number of reasons; because L is concerned about losing the good favour of C, she provides the assurance requested. L is thus "captured" by client C. Not surprisingly, it is this very direct form of client capture that is in fact difficult to observe in a hypothetical setting by direct questioning of past actual experience. Participants are willing to speculate about its potential but few are willing to admit that they have actually directly taken action that falls within this definition. In a research setting, it is more likely to be observed when subjects respond to a vignette such as the one designed for this study (see Appendix A).

As we reviewed the transcripts of our interviewees' comments on the vignette (in which they were in effect asked how they would respond in the kind of situation described in the previous paragraph) it became evident that our singular definition of client capture overlooked other sources of interpersonal pressure on lawyers' decision-making that are equally problematic. It was clear that lawyers identified strong direct *client* pressure as an issue of concern and that in both their responses to our interview questions and to the vignette that the manner in which they were prepared to resolve ethical issues was, at times influenced by client related interests. But at the same time their responses led us to identify other ways in which client pressure is exerted, but perhaps more *indirectly*. This led us to identify four distinct types of client capture that better describe how clients influence lawyer decision-making in practice. These are:[52]

a) *Direct client capture*: where the client directly exerts influence on the lawyer.

b) *Indirect client capture*: others in the firm exert influence on the lawyer to meet the client requests. "Others" might include the relationship partner or others who have a direct economic interest in retaining the client with the firm.

c) *Serial client capture*: this describes a more indirect relationship than b) above. Here the lawyer does not deal directly with the client at all but in fact receives the instructions via another in the firm who has the direct contact. Information may be filtered through that other firm member who has the direct economic interest in retaining the client.

d) *Misdirected client capture*: this describes the scenario that Batson found in the Enron report. In this case the lawyer conflates the

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52 See *ibid* for detail.

> interests of the manager briefing them with the interests of the client itself for whom the manager works.

Before providing further details on our findings, we must first provide some context regarding the limitation of our approach. Simply put, our data may be subject to "social desirability bias," which means that people who are asked to participate in studies of any kind, are inclined to respond to questions in a manner that tends to put them in the best light.[53] This is, not surprisingly, a common problem for ethics research and it is compounded by the fact that researchers cannot typically sit alongside subjects and watch them make ethical decisions in real life as they might in, say, a medical clinical trial. Most serious ethical dilemmas fortunately occur infrequently in the life of the average professional making the viability of such observational work improbable. We are therefore placed in the position of asking subjects to respond to hypothetical situations under conditions that best mirror real life and while we always report this as a limitation to our work, it remains a credible approach.[54]

We found evidence of all four forms of client capture in our study where subjects were asked to resolve an ethical dilemma in which pressure was exerted both from the external manager at the client firm and others within the law firm. There were a number of interesting features in the responses. Specifically:

a) *Direct client capture*. Lawyers whose answers reflected a willingness to take a course of action that was consistent with client wishes in our vignette (that is, action that was consistent

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[53] See generally Douglas P Crowne and David Marlowe, "A New Scale of Social Desirability Independent of Psychopathology" (1960) 24:4 J Consulting Psychology 394; see also Allen L Edwards, "The Relationship Between the Judged Desirability of a Trait and the Probability that the Trait Will Be Endorsed" (1953) 37:2 J Applied Psychology 90 at 92-93 (study indicating that the probability of endorsement of personality trait items increases with the social desirability of the items). *C.f.* Andrew Crane, "Are You Ethical? Please Tick Yes? or No?: On Researching Ethics in Business Organizations" (1999) 20:3 J Business Ethics 237 at 243–46 (discussing the general issue of social desirability bias in business ethics research).

[54] See e.g. Kenneth D Butterfield, Linda Klebe Treviño and Gary R Weaver, "Moral Awareness in Business Organizations: Influences of Issue-Related and Social Context Factors" (2000) 53:7 Human Relations 981; Gerald F Cavanagh and David J Fritzsche, "Using vignettes in business ethics research" in Lee E Preston, ed, *Research in Corporate Social Performance and Policy*, vol 7 (Greenwich, CT: JAI Press, 1985) 279; Michael J O'Fallon & Kenneth D Butterfield, "A Review of The Empirical Ethical Decision-Making Literature: 1996–2003" (2005) 59:4 J Business Ethics 375; James Weber, "Scenarios in Business Ethics Research: Review, Critical Assessment, and Recommendations" (1992) 2:2 Business Ethics Q 137.

with the traditional definition of client capture) often spent a good deal of time discussing the commercial pressures of legal practice as was discussed in section A) above. These were the lawyers who tended to explain the importance of businesslike practices and strong relations with clients. For example, one senior partner remarked "… practically all of my clients are my friends, and we do business together, and I also do law." (Subject 92). Another, an executive (a member of the senior management team) at their firm, commented on obvious changes to the practice of law:

> Well, I think that the profession is changing, and I'm not sure 'profession' is necessarily the right word for it anymore. It's becoming more and more of a business and, you know, law firms are struggling, I think, to be more businesslike …. People are so much more worried about the prospects of losing a client …
>
> Subject 102

b) *Indirect client capture*. Our vignette allowed for indirect client capture through pressure from, in that fact scenario, the relationship partner. There was no doubt that while many subjects were willing to reach a decision independently of this pressure, others showed every indication of following the directive of the relationship partner. One senior mid-level partner was quite explicit in his response: "… it would be difficult, and I think probably dishonest, to say your decision-making wouldn't be affected by … Smith [the relationship partner] in that circumstance." (Subject 3).

c) *Serial client capture*. Most accounts of capture assume that the professional has some direct contact with the client. Yet lawyers, and even lawyers with considerable experience, may well have no or very limited direct client contact. They often offer specialized advice and are brought into a transaction for a very specific and quite limited purpose, with their "client" in a sense being another partner in the firm. Tax specialists will at times find themselves in this role. Our results demonstrated that what we have described as serial client capture was very much alive and well amongst our subjects and certainly amongst those who are tax practitioners. Of more significance was the observation from two of our participants that pressure from colleagues in the firm can be a powerful influence over their decision-making. One senior partner provided the following description: "You're only working for that one or

two lawyers … it's a profit centre, and that lawyer wants you to do something and you don't do it, you're gone." (Subject 23).

d) *Misdirected client capture*. Of all the forms of client capture identified in our study this, perhaps, is the most interesting. Quite inadvertently we presented our participants with a vignette that was similar to that of the Enron dilemma critiqued by Batson. Most clients of corporate law practitioners are, virtually by definition, corporations. Obviously the lawyer's contacts within the client corporation, and those who hire the lawyer, are real people (agents of the corporation). The interests of the two – corporation and employee/manager – may diverge as they possibly did in fact in our example and they certainly did with Enron. It is the professional responsibility of the lawyer or auditor to maintain an awareness of this potential with a consequence of elevating issues up the chain in the client organization should that be necessary and even though it can have obviously costly personal consequences in terms of client retention.

The majority of our respondents appeared to treat the contact manager and not the firm itself as client. This does not necessarily mean they would do what that manager wished, but only about a quarter of our subjects identified a need to elevate the issue within the organization. We note that most of our subjects found the issue in the vignette difficult to resolve. Answers were varied and often reflective of real uncertainty as to the appropriate course of action. What was significant was how few would even identify the possibility of elevating the decision and those who did were almost all relatively senior practitioners. Their responses indicated that this was a serious and not common step to take, but that it was one that should be considered. Independently of discussion of the vignette, a lawyer we defined as a member of her firm's "executive," made the following observation to us about client management:

> I mean, yes, practice is an act of juggling different priorities, different obligations—obligations to your partners, obligations to the firm; it's the same thing—obligations to clients— and there's so many layers too. I mean, there are obligations to the client in a theoretical sense, and then there are obligations to specific individuals in the client's organization because, you know, with these relationships that you form they become personal relationships, and the conflict that you haven't really even touched on is how you balance your duties to the individual with your duties to the client.
>
> Subject 90

C) Client Pressure[55]

As is evident thus far, our respondents provided us with incredible insight into broader changes in practice and into the ways in which they experience client pressure. The benefit of our qualitative interview approach was that we gained further insight into individual level perspectives and processes regarding how lawyers interact with their clients. While our discussion below draws on a wide range of data from the interviews, some key issues emerged from participants' responses to questions about how they dealt with a "pushy" client, how they would say no to an important client because of the advice they felt obliged to give them, including what factors weighed on their mind in deciding to say no, and to elaborate on what they think allowed them to say no (such as their position, reputation, someone else's authority within the firm). Our goal here is not to determine whether or not lawyers bend to the interests of their clients, but to examine the ways in which lawyers resist and respond to the demands of their clients.

Our analysis of these data is partially grounded in our earlier findings relating to corporate counsel in which we found that "identity" (with other factors) appears to influence the manner in which ethical decisions are resolved. No one would be surprised by the observation that lawyers in private practice differ from each other and in significant manners. Here our findings are important not because they disclosed differences but that these differences appeared in systematic manners across the full set of subjects interviewed. For reasons that go beyond the scope of this article, we adopt the language of "ideal types" or simply "typologies," rather than the nomenclature of "identity."

As we studied the transcripts of our interviews we found responses to key questions about lawyer-client relations framed by two separate dimensions. First, when subjects were describing client interactions, their responses were expressed along a continuum with the law at one end and experience and judgment at the other. While all subjects referenced the law to some extent — they are lawyers after all – what was noteworthy was the *extent* to which they tended to reference either the law or their judgment and prior experience to explain themselves or their decision-making. For example:

> I think the first thing that you do is you find the legal answers or the legal interpretation, and then you speak with the client, and your … you may offer them a range of options and allow them to choose where on that spectrum they need to be …

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55 For more explanation of the issues described in this section, see Dinovitzer, H Gunz and S Gunz, "Walking the Line," *supra* note 3.

> but I think you do the legal work first and you allow the client … you help the client to understand what their options are and let the client choose where they need to be.
>
> Subject 6, Junior Mid-level Partner

In contrast:

> I guess it's partly having run into these situations before and dealing with them and realizing after you've dealt with them, that was exactly the right thing to do; and, you know, as difficult as it was it was the right thing to do, and so you draw on that experience …
>
> Subject 26, Executive

The second dimension was the degree to which lawyers responded by referencing the collectivity of the firm (or others within the firm) in contrast to primarily themselves alone. This is particularly evident where lawyers were asked to describe how they tell clients things they might not want to hear – in particular that they cannot take certain action – and interestingly the contrast existed at all levels of experience. For example:

> This is my opinion based on, you know, what I've looked at, and this is what I think," so clients respect that and if … they've dealt with me for a while they know if you've come to that conclusion then that's the answer but … so that helps. I think also definitely that I come across confident in the decision I've made. Clients always respect that, and they don't like the waffling – you know, the wishy-washiness.
>
> Subject 35, Senior Associate

In contrast to:

> Like I think... again to protect our reputation is the main thing because I think clients trust us so they know if we're saying no, then there's a pretty good reason for saying no. We're not just being, you know, anal lawyers.
>
> Subject 55, Senior Mid-level Partner

Placing these two elements in a matrix led us to identify four distinct ideal types which are described in Table 2. We note at the outset that we are not making an argument that these types are fixed, or that they describe four different personalities. Instead, we identify these as four ways in which lawyers interact with their clients. It is likely that individuals draw on different resources and thus fall into different types in different situations. But when we analyzed all interview responses from the perspective of

these two continua, it remained the case that even with independent coding by the three researchers, all respondents could be classified primarily in terms of one of the four ideal types.

Table 2. Dimensions of Lawyer Ideal Types		
	Dependence on:	
Influenced by:	**The Law**	**Personal Experience**
The Collective (Others in firm/firm)	Team Lawyer	Team Player
Self	Lawyer's Lawyer	Lone Ranger

The importance of these four typologies[56] lies in how they allow us to examine the ways in which subjects resolve an ethical dilemma, akin to our earlier work for corporate counsel.[57] At this stage, with a limited number of subjects, our conclusions in this respect must be cautiously expressed. In general, however, we did find that those we classified as lawyers' lawyers (high on referencing law in contrast to judgment and experience and low on referring to the firm or others within it to explain their decisions), seemed most willing to resolve the ethical dilemma presented to them as the client would wish, thus overlooking the more complex ethical dimensions. This finding might seem counter-intuitive. Would not someone in this category, identifying strongly with the law itself, be more likely to follow professional dictates? The answer to this question comes from reviewing the responses in more detail. For those in this category there seems to be a willingness to make a clear distinction between legal and business issues. Legal issues are the responsibility of lawyers and business issues the responsibilities of the client. Once the lawyer is satisfied that there is nothing that violates legal prescripts, what happens next is entirely the responsibility of the client.

The question becomes, what are the risks of a lawyer adopting this position? In terms of legal issues alone, there likely is not extensive risk. We are not talking about legal issues here, however, but ethical issues. And it is important to emphasize that, despite the occasional Enron-scale scandal, we are considering ethical issues that can be described, for the most part, as low-intensity dilemmas,[58] the kind of minor issues that arise

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56 In this paper we focus the discussion only on one of the four typologies since this is the one that provides results that are of most immediate use here. For a full discussion of the four typologies, see Dinovitzer, H Gunz and S Gunz, "Walking the Line," *supra* note 3

57 H Gunz and S Gunz, "Hired Gun," *supra* note 3.

58 Dov Zohar, "Safety as a Marker of Corporate Ethics" (Lecture delivered at the Nova Scotia Safety Council Conference, Halifax, April 2005), online: <http://www.

on a routine, day-to-day basis. Yet while the issues may vary in intensity, they can share features with larger scale ethical violations. For example, while the issue that tripped up the Enron lawyers certainly would not fall within the definition of 'low-intensity', and while we did not design our vignette based on that example, there were some facts that mirrored our own vignette in key respects. For example Batson offered the following as an explanation for the failure of lawyers advising Enron to act in compliance with professional obligations in response to the Enron requests; these lawyers "saw their role in very narrow terms, as an implementer, not a counselor."[59] In that case, they never elevated the issue beyond the level of manager with whom they were working to more senior officers. This was the same oversight that our lawyers' lawyers were more inclined to commit than were lawyers who were categorized as one of the other three ideal types. And this may well have been a consequence of defining their role in relatively limited terms.

To summarize, the results are important because they identify four distinct ideal types, each describing the different sets of resources that lawyers draw on as they engage with their clients in difficult situations. Findings such as these are important beginning points for future work where researchers can explore further and with far larger samples the relationship between these ideal types and ethical decision-making. For now it is enough to note that they do appear, at least to a limited extent, to be related to different types of outcomes. In a world where codes of ethics and firm training protocols adopt a "one size fits all" approach, this alone should raise cautionary flags.

5. Conclusion

While concern over lawyers' ethics is not new, there have been renewed calls for a focus on ethics in Canada. Drawing on our interviews with over 100 lawyers in Canada, our findings are organized around three themes: 1) the shifting trends in corporate legal practice; 2) expanding our understanding of the ways in which lawyers experience "client capture;" and 3) providing insight into how the resources the lawyers draw on (identified through ideal types) might be related to ethical decision-making.

The lawyers in our sample described many of the same trends – increased competition, a need to be "business–like," and a decline in life-long partnership tenure – that have been noted by researchers and

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safetyservicesns.com/conference/presentations/SESSION%2012A%20Safety%20as%20a%20Marker%20for%20Corporate%20Ethics.pdf>.

[59] *Batson Report, supra* note 18 at 115.

observers alike. When combined, there is no doubt that these trends have resulted in a corporate practice of law that is increasingly demanding and competitive. Our respondents described increasing pressure and instability, with implications both personally and for their organizations, and with some noting that these pressures might affect their ability to respond to client pressure in a manner consistent with our expectations of the autonomous (independent) professional.

Within this context, we sought to understand how lawyers are indeed managing the competing pressures of law and business. Here our data provide two contributions. The first is that we must broaden our concept of "client capture." While traditional applications of client capture focus on the relationship between the lawyer and client, and the direct pressure that clients place on lawyers, our findings reveal that we must broaden this concept to allow for the complex relationships engendered by large firm law practice. Thus individual lawyers may be subject to pressure exerted not only directly by the client, but more subtly and indirectly from the relationship partner or other lawyers in the firm with whom they share client work (indirect client capture). Indeed, in some cases they might have no contact at all with a manager at the client but feel pressure indirectly through the member of the firm with client contact (serial client capture). Finally client capture also includes situations in which lawyers conflate the interests of the manager with that of the client, thus ignoring the possibility that the needs of the actual client, the corporation, were potentially different (misdirected client capture).

We also observed systematic differences in the resources lawyers said they mobilized as they interact with their clients. We classified these resources along two main axes. The first axis was that respondents were differentiated by the extent to which they referenced law versus experience. The second axis that differentiated respondents was the degree to which they referenced the collectivity of the firm (or others within the firm) or primarily themselves alone. These two axes when combined produce four "types" of lawyers. In the context of our focus on ethics, we found some early evidence that suggests a relationship between our typology and the ways in which lawyers resolve dilemmas. Specifically, those who we classified as lawyers' lawyers (those who reference and who do not strongly identify with the firm or others within), seemed most likely to overlook the complex ethical dimensions of the problem they were asked to resolve. While our work is still tentative, it points to the need to recognize the heterogeneity of approaches to client pressures, and provides further evidence that policies and practices that focus on identifying 'bad apples' are likely misguided.

Taken together, our empirical approach to understanding the context within which lawyers are interacting with their clients provides much food for thought as research and scholarship continues to grapple with ethical failures in organizations. Our focus on client capture highlights that our understanding of the sources of client pressure must be broadened to include organizational and peer pressures. Furthermore, by incorporating an understanding that interactions with clients are differentially influenced by a lawyers' identification with law and with his or her firm provides further tools with which to grapple with the question of ethics in the legal profession.

APPENDIX A

Vignette for Partners[60]

Your law firm has a large commercial practice, of which you are a partner. XYZ Corporation has been a major client for many years. In recent years XYZ has been expanding aggressively with considerable success. XYZ generates substantial work for several different practices within the firm. Smith is the principal 'contact' partner within your firm although XYZ managers often directly contact other partners and lawyers as needed.

You provide legal services to the commercial loans department of XYZ. You have been asked by the senior manager with whom you have a long-standing relationship, to give a legal interpretation and assurance about an undertaking being provided by one of its large clients. You have noticed a real change in the manager recently because of the pressure she is under and you know this is a very important client both to her and XYZ. She has stressed that the deal must be closed tomorrow. This is a major deal by XYZ's standards.

You have examined the undertaking thoroughly and believe that giving the requisite level of assurance would expose XYZ to an inappropriate risk exposure. While you understand that it is ultimately a matter of the client determining the amount of risk it wishes to assume, this issue is making you uncomfortable. Further, if you do not provide the assurance, the deal between XYZ and its customer will probably fall through. However, if you give the assurance, but the undertaking is not enforceable, you have no doubt XYZ will hold both you and your firm responsible for the failure.

You elect to follow normal practices and take the matter to Smith to discuss. You explain the legal concerns and the time pressures the manager faces. While you know Smith's primary concern is to maintain good client relations, his reaction is unusual. He is not concerned about the legal issue but stresses that it is critical to meet XYZ's time lines. He reminds you to protect yourself and the firm by writing a full note to file, and to advise the client that, while there are some risks associated with the undertaking, there is nothing at law that would suggest XYZ should not proceed.

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60 A variant of this vignette was used for associates although the underlying issue was the same.