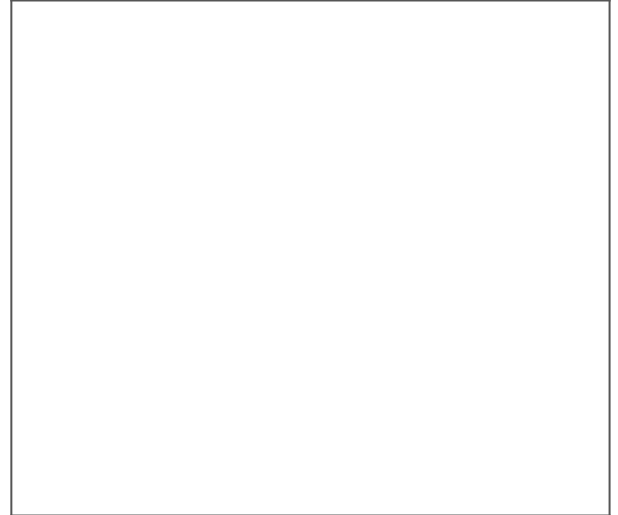


Are Morality Clauses Becoming Standard Fare?

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Newspapers have been full of stories about naming rights and sponsorships gone wrong. The Aquarium of the Pacific in Long Beach, California had to decide this week whether to proceed with the opening of the BP Sea Otter Habitat or return BP's \$1 million donation, following BP's oil rig spill in the Gulf of Mexico. The Aquarium chose to proceed, but BP officials did not attend the opening. And, of course, there's the Tiger Woods scandal, which resulted in Mr. Woods being dropped as a spokesperson by more than one sponsor. Closer to home, the National Post has reported that a Chair funded in 1999 in Conrad Black's name at Toronto's University of St. Michaels' College remains unfilled, and in 2005 Queen's University chose to return a \$900,000 donation to David Radler (Mr. Black's former colleague at Hollinger) and to remove Mr. Radler's name from its School of Business.



What happens in these circumstances, when the commitment already has been made? For example, can the owner who granted the naming rights simply, and unilaterally, unwind the agreement?

Many types of agreements (naming rights, sponsorship, and certain kinds of employment agreements, to name a few) will contain a so-called "morality clause", granting the company the right to terminate the agreement if the clause is breached. Morality clauses prohibit certain types of behaviour by a company or individual. The scope of prohibited conduct can vary significantly. Older agreements tend to have very specific morality clause provisions; for example, being charged with a criminal offence. More recently, however, morality clauses tend to be general, requiring the person or company to refrain from conduct that would bring him, her or it into public disrepute.

The challenge with negotiating morality clauses into agreements typically has been one of leverage. The higher the profile of the spokesperson or the amount of the donation, the greater leverage that party has for refusing to sign an agreement with a broadly-drafted morality clause. But in the wake of some of the recent scandals, most significantly Tiger Woods, whose reputation before the scandal was considered beyond reproach, going forward

I think we are going to see broadly-worded morality clauses as standard fare in these type of contracts. I suspect no one, not even a charity receiving a large gift with associated naming rights, is going to be shy in asking, in fact, demanding, a broadly-drafted morality clause in its agreement. Call it the Tiger Wood legacy.

As a side-note, not surprisingly, given the large amounts of money that can be involved in these types of agreements, so-called “death and disgrace insurance” now is available to protect a company’s investment.

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