

## COVID, Hockey Canada and the Toxic Workplace

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1. CPA Code of Professional Conduct (Ontario), 2016 edition

<https://assets.cpaontario.ca/members/regulations-guidance/pdfs/CPA-Ontario-Code-of-professional-conduct.pdf>

2. A timeline of Hockey Canada's current scandals

<https://www.complex.com/sports/hockey-canada-sexual-misconduct-scandal-explained/>

<https://theaquinian.net/a-timeline-of-hockey-canada-sexual-assault-allegations/>

June 19, 2018 An anonymous woman's stepfather claimed the woman was sexually assaulted by eight men after leaving a Hockey Canada Foundation Gala and Golf event in London, Ont. Hockey Canada claimed it spoke with its insurance provider and informed the London Police Service of what happened. London police opened an investigation into the allegation. Hockey Canada also claimed to have opened an internal investigation with criminal defence firm Henein Hutchison LLP.

February 2019 Hockey Canada claimed that the London Police Service closed its investigation and that the woman declined to speak to neither the police nor Hockey Canada about the allegations.

September 2020 Hockey Canada said it closed its internal investigation because the eight players could not be identified and because the woman would not identify them.

April 2022 The woman filed a \$3.55 million lawsuit against Hockey Canada. The lawsuit restated that eight men assaulted her in a London, Ont. hotel room after the event on June 19, 2018.

May 2022 TSN reported Hockey Canada's board of directors agreed to settle her \$3.55 million lawsuit in Ontario Superior Court in May for an undisclosed amount, and as part of the settlement, she likely signed a non-disclosure agreement. In her statement of claim, she alleged Hockey Canada was made aware of the incident and failed to investigate or sanction the players.

June 20, 2022 Then-CEO of Hockey Canada Tom Renney and then-President Scott Smith testified before parliament at a meeting about Hockey Canada's handling of the sexual assault allegations. Smith and Renney explained that the 19 players who were present in London in June 2018 were "strongly encouraged" to meet with external investigators, but the players' participation was not mandatory. Smith says that Hockey Canada has reported three allegations of sexual assault in recent years, adding to the 2018 assault claim.

July 14, 2022 Hockey Canada announced it would reopen a third-party investigation into the alleged 2018 assault after pressure from the government, sponsors and the public. Participation in this investigation would be mandatory and anyone who declined to participate would be banned from all events associated with Hockey Canada.

July 18 to 19, 2022 The Canadian Press reported that Hockey Canada had a "National Equity Fund" that uses minor hockey membership fees to pay for uninsured liabilities, which would include legal fees for sexual assault cases. These fees were hidden in the detailed cost given to families and players. Hockey Canada confirmed this to be true.

July 22, 2022 The 2003 World Juniors team is being investigated for a group sexual assault. Hockey Canada said it reached out to the Halifax Regional Police, as Halifax co-hosted the WJC that year.

September 2022 An anonymous agent told TSN his client was invited to the hotel room on the night in question in 2018 and left not knowing "if this was consensual group sex or if it was a sexual assault." The agent said the player was in the room for 10 minutes.

3. Hillebrandt, Barclay, *How COVID-19 can promote workplace cheating behavior via employee anxiety and self-interest – And how prosocial messages may overcome this effect*, Journal of Organizational Behavior Feb 2022

<https://onlinelibrary.wiley.com/doi/full/10.1002/job.2612>

The COVID-19 pandemic has created significant ethical challenges for organizations. For example, a global integrity report from Ernst and Young (2020) indicated that 90% of companies report that COVID-19 poses a risk to ethical conduct in the workplace. Similarly, the popular press has highlighted the ethical toll of the pandemic with headlines such as “COVID-19 accelerates unethical behavior” (National Herald, 2020). Indeed, a survey conducted during the COVID-19 pandemic indicated that many employees are willing to engage in unethical behavior, including falsifying customer records (32%) or providing false information to management (29%) (Bhattacharyya, 2020). This raises important questions related to *why* unethical behavior is a prevalent issue during the COVID-19 pandemic and *how* these effects can be mitigated.

### Vignettes

- 1> Janet is an independent auditor who often uses the services of Avraham's valuation practice to appraise shares and businesses. Janet eventually realizes that Avraham's billings to his clients (although not to her) are fraudulently inaccurate. Is Janet obligated to tell Avraham he is acting inappropriately?
- 2> Janet speaks with Avraham, but he brushes it off and warns Janet to keep quiet about what she has discovered. Will Jewish law allow Janet to take her concerns to regulatory authorities?
- 3> Susan, the CEO of a non-profit, learns that Richard, the Director of Fundraising, has been directing contributions into his own pocket. The organization has never experienced anything like this, and Richard had no record of such activity in the past – but it does appear that the leadership missed clear warning signs as Richard provided incomplete financial information at meetings over the past year. Susan wants to issue a full, transparent apology, but she is concerned about potential legal fallout from admitting guilt. What advice can counsel give regarding apologies, from secular and Jewish perspectives?
- 4> Studies show that unethical behaviour in the workplace increased during the COVID pandemic. What might have caused this phenomenon, and what could Judaism recommend in order to deal with it?

### Vignette 1: Rebuking a business associate

4. Chartered Professional Accountants of Ontario, CPA Code of Professional Conduct (2016), Rule 406.2

*A member or firm engaged in a practice of public accounting to which another business or practice is related, or engaged in such related business or practice, shall be responsible to CPA Ontario for any failure of a non-member who is associated with such related business or practice and who is under the member's or firm's management or supervision or with whom the member or firm shares proprietary or other interest in such related business or practice to comply with the CPA Code.*

5. Vayikra 19:17

Do not hate your brother in your heart. Rebuke your friend, and do not bear sin for him.

6. Talmud, Erchin 16b

תניא, א"ר טרפון: תמה אני אם יש בדור הזה שמקבל תוכחה, אם אמר לו טול קיסם מבין עיניך, אמר לו טול קורה מבין עיניך. אמר רבי אלעזר בן עזריה: תמיהני אם יש בדור הזה שיודע להוכיח...

Rabbi Tarfon said: I would be stunned if anyone in this generation would accept rebuke. If one would say, 'Take a splinter from between your eyes,' he would reply, 'Take a beam from between your eyes.'

Rabbi Elazar ben Azaryah said: I would be stunned if anyone in this generation would know how to rebuke.

7. Rabbi Moshe Sofer (18<sup>th</sup>-19<sup>th</sup> century Hungary), Chatam Sofer Yoreh Deah 19

דוקא לישראל מצוה להפרישו מאיסורא דכל ישראל ערבי זה בזה משא"כ לנכרי אפי' מאי דאסור נמי לדדהו מ"מ אין כאן ערבו' היכי דלא שייך לפני עור אין מצוה להפרישם

One is specifically instructed to keep a Jew from sinning, for all Israel are responsible for each other, but not regarding non-Jews – even for their prohibitions. There is no joint responsibility, and so one need not separate them from it unless there were an issue of causing the blind to stumble.

8. Rabbi Avraham Shemuel Binyamin Wolf Sofer (19<sup>th</sup> century Hungary), Ktav Sofer Yoreh Deah 93

ולדעתי דבר זה דאורייתא הוא מהוכח תוכיח... היכא שישמעו צריך להגיד כדי לאפרושי מאיסור שוגג

In my view this is biblical, from "You shall rebuke"... Where they will listen one must tell, to keep them from accidental error.

9. Rabbi Aryeh Leib Ginsburg (18<sup>th</sup> century Lithuania), Turei Even (Avnei Miluim) to Chagigah 13a כ"ב

ודאי כל ישראל מצווין להפריש עוברי עבירה מן העבירה בדאפשר מש"ה מחויבים להפריש קטן... כיון דאפשר להפרישו, אבל הכא עסקינן בדלא אפשר

Certainly, all Israel must keep sinners from sinning where possible, and so we must separate minors from prohibitions... since we can keep them from sin. Here, though, it was not possible.

10. Tosafot (13<sup>th</sup> century France/Germany) Shabbat 55a ואע"ג

היינו היכא דספק אי מקבלי כדאמר בסמוך לפניהם מי גלוי אבל היכא דודאי לא מקבלי הנח להם מוטב שיהו שוגגין ואל יהיו מזידין

This is where one does not know whether they will accept; as the Talmud says, "Is it obvious to them [that others won't listen]?" But where they definitely will not accept, leave them; better for them to sin accidentally than intentionally.

11. Rabbi Yosef Ibn Habib (15<sup>th</sup> century Spain), Nimukei Yosef to Yevamot 21b

שהיה מכיר בהם שלא ישמעו ומשום דאולי ישמעו או משום שלא יהיה להם פתחון פה היה חייב להוכיח לפחות פעם אחת

He knew they would not listen. But in case they might listen, or to avoid leaving them an opening for challenge, he should have rebuked them at least once.

12. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Code of Jewish Law, Yoreh Deah 157:1

מכל מקום בדבר שיש חשש סכנה אין צריך להוציא ממונו על זה

Still, where there is concern for danger one need not spend for the purpose of rebuke.

13. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Code of Jewish Law, Yoreh Deah 334:48

אף על פי שחייב אדם למחות בעוברי עבירה... מכל מקום אין אדם חייב להוציא ממונו על זה. ולכן נהגו להקל מלמחות בעוברי עבירה, שיש לחוש שיהיו עומדין על גופנו ומאודנו

Although one must protest to transgressors... still, one need not spend money for this. Therefore the practice is to be lenient regarding protesting to transgressors, out of concern lest they attack our bodies and our possessions.

14. Divrei haYamim II 20:35-37

Afterward Yehoshaphat, king of Judea, joined Achaziah, king of Israel, who committed evil. They partnered to make boats to travel to Tarsus; they made the boats in Etzion Gever. Eliezer, son of Dodavahu of Mareishah prophesied upon Yehoshaphat, "When you joined with Achaziah, Gd destroyed your deeds." The ships were smashed...

15. Pirkei Avot 1:7

הרחק משכן רע ואל תתחבר לרשע ואל תתיאש מן הפורענות

Distance yourself from a bad neighbour; do not join with a wicked person; do not abandon hope of punishment.

#### Vignette 2: Reporting Avraham to regulatory authorities

16. Chartered Professional Accountants of Ontario, CPA Code of Professional Conduct (2016), Rule 211.1

*A member or firm shall promptly report to CPA Ontario any information concerning an apparent breach of this CPA Code or any information raising doubt as to the competence, integrity or capacity to practise of another member or firm, unless such disclosure would result in:*

*(a) the breach of a statutory duty not to disclose;*

*(b) the reporting of information by a member or firm exempted from this rule for the purpose and to the extent specified by Council;*

*(c) the loss of solicitor-client privilege;*

*(d) the reporting of a matter that has already been reported; or*

*(e) the reporting of a trivial matter*

17. Reporting Child Abuse (2016)

<https://www.yutorah.org/lectures/lecture.cfm/863352/>

18. Rambam (12<sup>th</sup> century Egypt), Laws of One who Wounds and Damages 8:9

אסור למסור ישראל ביד גוים בין בגופו בין בממונו, ואפילו היה רשע ובעל עבירות ואפילו היה מיצר לו ומצער, וכל המוסר ישראל ביד גוים בין בגופו בין בממונו אין לו חלק לעולם הבא.

One may not hand a Jew to the control of the nations, whether physically or financially, even where he is wicked and a sinner, and even where he causes him trouble and pain. Anyone who gives a Jew to the nations, whether physically or financially, has no share in the next world.

19. Talmud, Bava Kama 116b

ההוא גברא דאחוי אכריא דחטי דבי ריש גלותא אתא לקמיה דרב נחמן חייביה רב נחמן לשלומי.

Someone showed [to bandits] the bale of wheat of the Exilarch. [The Exilarch] came before Rav Nachman, and Rav Nachman required him to pay.

20. Talmud, Bava Kama 117a

ההוא גברא דהוה בעי אחוויי אתיבנא דחבריה, אתא לקמיה דרב א"ל: לא תחוי ולא תחוי. א"ל: מחוינא ומחוינא. יתיב רב כהנא קמיה דרב, שמטיה לקועיה מיניה. קרי רב עילויה "בניך עולפו שכבו בראש כל חוצות כתוא מכמר" - מה תוא זה כיון שנפל במכמר אין מרחמין עליו, אף ממון של ישראל כיון שנפל ביד עובדי כוכבים אין מרחמין עליו.

Someone tried to show another person's straw [to bandits]. He came to Rav, who said to him, "Don't show it, don't show it." He replied, "I will show it, I will show it." Rav Kahana was sitting before Rav; he broke the man's neck. Rav cited Yeshayahu 51:20 about him, "Your sons have fainted, they lie at the head of every street, like an antelope in a trap." Just as this antelope, once it falls in the trap no one has mercy upon it, so the property of Israel, once it falls into the hands of idolaters, they don't have mercy upon it/him.

21. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Code of Jewish Law, Choshen Mishpat 388:12

מי שרוצה לברוח ולא לשלם לעובדי כוכבים מה שחייב, ואחד גילה הדבר, אין לו דין מסור, שהרי לא הפסידו רק שהוצרך לשלם מה שחייב...  
When someone wishes to flee and not pay idolaters what he owes, and someone else reveals it, he does not have the status of a *moseir*, for he only cost this person what he was obligated to pay...

22. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Poland), Aruch haShulchan Choshen Mishpat 388:7-8

ידוע לכל קוראי הדורות שבזמן הקדמון במדינות הרחוקות לא היה לאיש בטחון בגופו וממונו מפני השודדים והאנסים אף שנשאו עליהם שם משרה, כידוע גם היום מאיזה מדינות מאפריקה השוד והחמס שפחות הממשלה עושים. ועל טוב יזכרו מלכי איירופא וביחוד אדונינו הקיר"ה מרוסא ואבותיו הקיסרים ומלכי בריטניא שפרשו כנפי ממשלתם בארצות הרחוקות למען יהי לכל איש ואיש בטחון על גופו וממונו באופן שהעשירים לא יצטרכו להסתיר עצמם שלא ישללו ממונם ויהרגו אותם. ועל זה טובב הולך כל דיני מסור ומלשין שבש"ס ופוסקים...

It is known to all who read history that in earlier times, in distant lands, people lacked financial and personal security from bandits, even though they carried a title of authority, as is known even today from some African lands, the theft that the rulers practice. The European kings should be mentioned for the good, and especially our master the Czar of Russia and his fathers, the Caesars and kings of Britain, who spread the wings of their reign in distant lands in order for each person to have personal and financial security, such that wealthy people need not hide themselves to avoid despoiling of their assets and being killed. Upon this point turn all of the laws of the *moseir* and *malshin* in the Talmud and halachic authorities...

Vignette #3: The Public Apology

23. Ethical and Efficient Crisis Management (2022)

<https://www.yutorah.org/lectures/lecture.cfm/1037599/>

24. Rehm and Beatty, *Legal Consequences of Apologizing*, Journal of Dispute Resolution 1 (1996)

<https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1313&context=jdr>

An apology, properly given and accepted, diffuses anger and helps avoid litigation.<sup>18</sup> Sometimes obtaining an apology is an object of litigation.

<sup>18</sup> Daniel W. Shuman, *The Psychology of Compensation in Tort Law*, 43 KAN. L REV. 39, 68 (1994). It has been found in the medical malpractice arena that when physicians are honest about what has happened and accept responsibility, patients are less likely to sue.

25. Rambam (12<sup>th</sup> century Egypt), *Mishneh Torah*, *Hilchot Teshuvah* 1:1

כל מצות שבתורה בין עשה בין לא תעשה אם עבר אדם על אחת מהן בין בזדון בין בשגגה כשיעשה תשובה וישוב מחטאו חייב להתודות לפני הקל ברוך הוא שנאמר "איש או אשה כי יעשו וגו' והתודו את חטאתם אשר עשו" זה וידוי דברים, וידוי זה מצות עשה.

Regarding every biblical mitzvah, commandment as well as prohibition: When one violates any of them, whether intentionally or in error, and he performs teshuvah and returns from his sin, he is obligated to admit it before Gd. It is written, "When a man or woman performs... And they shall admit the sin they performed." This is verbal admission, and this verbal admission fulfills a commandment.

26. Rambam (12<sup>th</sup> century Egypt), *Mishneh Torah*, *Hilchot Teshuvah* 2:9

עבירות שבין אדם לחבירו כגון החובל את חבירו או המקלל חבירו או גוזלו וכיוצא בהן אינו נמחל לו לעולם עד שיתן לחבירו מה שהוא חייב לו וירצהו

Social transgressions, like wounding another, cursing him, stealing from him and the like, are never forgiven [by Gd] until he gives the other what he owes, and he appeases him.

27. Rambam (12<sup>th</sup> century Egypt), *Mishneh Torah*, *Hilchot Chovel* 5:9

אינו דומה מזיק חבירו בגופו למזיק ממונו, שהמזיק ממון חבירו כיון ששלם מה שהוא חייב לשלם נתכפר לו אבל חובל בחבירו אף על פי שנתן לו חמשה דברים אין מתכפר לו ואפילו הקריב כל אילי נביות אין מתכפר לו ולא נמחל עונו עד שיבקש מן הנחבל וימחול לו.

Harming a person's body is not the same as harming his property. One who harms another person's property, having paid what he must, has now atoned. But one who wounds another, even having paid the five forms of payment, has not atoned. Even if he brings all of the rams of Nevayot [as ritual sacrifices] (Isaiah 60:7), he has not atoned and his guilt is not forgiven until he seeks [forgiveness] from the victim, who forgives him.

28. Talmud, *Sanhedrin* 9b

אדם קרוב אצל עצמו, אין אדם משים עצמו רשע

One is considered a relative to himself, and one cannot identify himself as wicked.

29. Talmud, *Gittin* 40b

הודאת בעל דין כמאה עדים דמי

Admission by a litigant is like one hundred witnesses.

30. Talmud, *Sanhedrin* 7a

דאזיל מבי דינא שקל גלימא, ליזמר זמר, וליזיל באורחא.

One who leaves the court bereft of his cloak should sing as he walks.

31. Apology Act, 2009, S.O. 2009, c. 3 <https://www.ontario.ca/laws/statute/09a03>

2. (3) Despite any other Act or law, evidence of an apology made by or on behalf of a person in connection with any matter is not admissible in any civil proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

(4) However, if a person makes an apology while testifying at a civil proceeding, including while testifying at an out of court examination in the context of the civil proceeding, at an administrative proceeding or at an arbitration, this section does not apply to the apology for the purposes of that proceeding or arbitration.

3. Nothing in this Act affects,

(a) the admissibility of any evidence in,

(i) a criminal proceeding, including a prosecution for perjury, or

(ii) a proceeding under the *Provincial Offences Act*; or

(b) the use that may be made in the proceedings referred to in subsection 2 (3) of a conviction for a criminal or provincial offence.

Vignette #4: Workplace factors that lead to impropriety

32. Hillebrandt, Barclay, *How COVID-19 can promote workplace cheating behavior via employee anxiety and self-interest – And how prosocial messages may overcome this effect*, Journal of Organizational Behavior Feb 2022

Given that COVID-19 has sparked a global pandemic, we argue that individuals are likely to appraise this environmental factor to determine whether it is threatening (i.e., personally relevant with the possibility of harm). For example, individuals may evaluate to what extent COVID-19 has the potential to harm their physical health or that of close others (e.g., their children or elderly parents) and/or threaten their financial well-being (e.g., by jeopardizing their job security)... Given that threat appraisals of COVID-19 indicate that one has evaluated the situation as having the potential for future harm, we propose that this is likely to elicit anxiety.

33. Kouchaki, Desai, *Anxious, Threatened, and Also Unethical: How Anxiety Makes Individuals Feel Threatened and Commit Unethical Acts*, Journal of Applied Psychology 100:2 (2015)

[https://www.researchgate.net/profile/Sreedhari-](https://www.researchgate.net/profile/Sreedhari-Desai/publication/266028255_Anxious_Threatened_and_Also_Unethical_How_Anxiety_Makes_Individuals_Feel_Threatened_and_Commit_Unethical_Acts/)

[Desai/publication/266028255\\_Anxious\\_Threatened\\_and\\_Also\\_Unethical\\_How\\_Anxiety\\_Makes\\_Individuals\\_Feel\\_Threatened\\_and\\_Commit\\_Unethical\\_Acts/](https://www.researchgate.net/profile/Sreedhari-Desai/publication/266028255_Anxious_Threatened_and_Also_Unethical_How_Anxiety_Makes_Individuals_Feel_Threatened_and_Commit_Unethical_Acts/)

We suggest that people experiencing anxiety are likely to behave selfishly and possibly even engage in self-interested unethical acts in an effort to restore the threatened self. Specifically, we expect individuals experiencing anxiety to focus inward and acquire resources (e.g., money) as a means of mitigating feelings of anxiety.

34. Shemuel I 16:14

And the spirit of Gd left Saul, and a harmful spirit frightened him, from Gd.

35. Shemuel I – The decline of King Saul

Chapter 18               Marrying off his daughter to David in order to make him a target

Chapter 19               Raiding his daughter's home to capture David

Chapter 22               Wiping out the city of Nov for their alleged support of David

Chapters 23-26        Bringing thousands of soldiers to attack David, despite David's demonstrations of innocence

Chapter 28               Pursues necromancy to learn what will happen in a battle