Wacky Leaks:
The Looming Confidentiality Crisis

New cult of openness threatens boards' assumption
that some secrets are worth keeping

BY JIM BROWN AND JIM CARROLL

OVER THE LAST FEW MONTHS, THE ISSUE of confidentiality of information has risen to the forefront in the news media, with a constant barrage of stories concerning the intentional or unintentional leaking of previously private information. The most obvious case – WikiLeaks – has challenged many long-standing traditions with respect to the sanctity of privileged communications. But WikiLeaks is only the tip of the iceberg in what is a new cultural demand for transparency, and a challenge to longstanding traditions of confidentiality.

This drift threatens boards at every level. If unchecked, it could compromise even the most scrupulous of companies and undermine every corporation's rights to hold sensitive information in private.

Last year we saw a situation in which a Toronto municipal councilor, who is now the mayor of Canada's largest city, criticized council's own in-camera meetings, stating, "there's more corruption and skullduggery going on in there than I've ever seen in my life. I wish I could tell you the stuff that happens behind closed doors." A natural inference would be that any time a group of people meets in private, something nefarious must be going on.

Late in 2010, we had the case in which an aide to a Conservative member of Parliament released private budget consultations to various lobbyists – with the e-mail to one stating, "Thought you might want a peek at this in its infancy" – even though the document was listed as "confidential."

These are only a few examples of what is emerging as a major cultural shift; our traditional notions of confidentiality face new challenges every day. In late 2010, Yahoo! announced at a private meeting of staff that a series of layoffs was coming; within seconds this information was being transmitted and shared on social networks such as Twitter. So much for privacy!

What's going on here, and what does it mean for corporate directors? Clearly, many in the younger generation seem to have entirely different attitudes when it comes to the privacy of information. Raised in a maelstrom of connectivity, they live in a world in which they are fully prepared to share each and every moment of their daily lives.

In the same way that those who lived through the Great Depression developed an ingrained sense of thrift, the generation that has lived through the early years of Facebook, Twitter and social networking sites might emerge with a built-in inclination to unfettered openness and sharing. A survey by the Washington-based Pew Research Center, "Future of Millennials," released in November 2010, examined what members of that demographic group think their behavior might look like in 2020.

Sixty-seven percent agreed with the statement predicting that "Millennials will continue to broadcast personal information online 'in order to stay connected and take advantage of social, economic, and political opportunities, even as they get older and have more responsibility,'" according to an article in *Information Today*.

A culture of information sharing can present a corporation with a number of risks, including damage to the company's reputation, disclosure of trade or other secrets, and inappropriate release of financial or other key operating information which could impact market perception. With more than 50% of Canadians

now using Facebook on a regular basis, and most using email as part of their daily activities, it's all too easy for information to get loose.

But that's not all. Many states in the U.S. have imposed "sunshine laws" requiring that all meetings of public decision-making government bodies be open for anyone to attend. Some states have extended the constraints to the point of forbidding individuals on any such boards (such as schools, hospitals and municipal councils) from meeting together outside of a formally convened meeting of the board. They're not even allowed to have supper together. This arose from a growing paranoia that subgroups may be conniving together, campaigning for alignment on issues, and subverting democracy. Apparently the potential risks of such activity outweigh any benefits that may arise from social connections by board members. The general public was so alarmed by some cases of manipulation that it eagerly endorsed the restrictions that now make it awkward and costly to develop rapport between board members.

The patterns we have discussed illustrate that a shocking shift is happening. As a result, we may be less than a generation away from the general public imposing "transparency" upon corporate boards.

Some organizations have chosen to combat these risks by attempting to restrict access to Facebook and other social-networking sites from corporate locations. This might be a short-term fix, but it will do nothing as this generation of digital denizens begins to take over the corner office and seats at board tables.

So what should you do as a corporate director? There are probably two key areas to focus on: ensuring that management has established an appropriate information privacy policy, and ensuring this policy is regularly reinforced throughout the employee hiring and evaluation process. A variety of ongoing educational efforts will be important to reinforcing the message that some secrets are necessary.

It shouldn't stop there, however. Many organizations are adopting far more specific policies to inform and remind employees of their responsibilities when using social networks. Toronto law firm Blake Cassels & Graydon LLP has published a paper, "Employee Use of Social Media - Addressing the Risks," which contains

a good summary of what should be found in such a policy, including:

- explaining what social media is, and what the policy covers;
- reminding employees about the nature of social media and the risks it can entail;
- noting that the policy covers social media use outside of work when it comes to employees' confidentiality obligations;
- ensuring that employees know that the violation of employer policies is prohibited when using social media.

In addition to ensuring that company management is addressing the new challenges of social networking and cultural privacy, now is also a good time to re-emphasize among all your fellow board members the necessity for respect of the privacy inherent in the board process.

And as demographic change results in a flow of fresh new faces to the board, corporate board privacy policy will have to become a far more important part of all orientation programs for new board members. This would include guidance similar to that advocated by Blake Cassels above. (The report is available at *http://www.blakes.com/BWC/html/article.asp?article=910*.)

Clearly, we are in the midst of a significant cultural shift in the attitudes of employees and board members towards privacy. At the same time, boards must work within specific privacy constraints in order to function properly. Going forward, these two distinct realities will have to be carefully balanced.

Jim Brown is the author of The Imperfect Board Member and a principal of Strive!, a governance consulting firm. He can be reached at 519-766-9033 or at jim@strive.com. See www.strive.com for more information.

Jim Carroll is a futurist and recent graduate of the ICD-Rotman Directors Education Program at the Rotman School of Management. He can be reached at 905-855-2950 or at jcarroll@jimcarroll.com.