

The appearance standard: Criteria and remedies for when a mere appearance of unethical behavior is morally unacceptable

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Abstract

While there are companies whose codes of ethics state that mere appearance of unethical behavior by employees is morally unacceptable, this so-called appearance standard has hardly received any attention in the business ethics literature. Using corporate integrity theory, this article explores the criteria that may explain how mere appearances of unethical behavior can arise (i.e., the presence of conflicts of interests, the entanglement of these interests, a reputation for lack of integrity, and deviant outcomes) and those that may make such appearances morally unacceptable (i.e., foreseeability, avoidability, and seriousness). The article proposes remedies for preventing and resolving instances when mere appearance of unethical behavior is morally unacceptable.

1 | INTRODUCTION

“You must [...] avoid engaging in any activity that involves even the appearance of impropriety.” IBM includes this statement in its Code of Conduct and is not the only company that forbids both actual and apparent unethical behavior by its employees. Dell states in its Code of Conduct, “We avoid even the appearance of impropriety;” General Motors declares, “We expect all employees to avoid the appearance of or involvement in conflicts of interest;” and Nestlé stipulates, “Employees must refrain from any activity or behavior that could give rise to the appearance or suspicion of such conduct or the attempt thereof.” The codes of ethics of other large companies, like Walmart, AT&T, Apple, General Electric, and Exxon Mobil, also forbid employees from giving rise to the appearance of specific unethical behaviors or of unethical behavior in general. There is also some anecdotal evidence of the application of this so-called appearance standard (Thompson, 1992). For example, directors from the Bank of Hawaii (Engleman, 2005), Google (Paczkowski, 2009), Hulman & Co (Associated Press, 2012), Churchill Downs Incorporated (Menmuir, 2014), and Uber (Golson, 2016) had to resign either to prevent them from creating the appearance of unethical behavior or after they have created the appearance of unethical behavior.

The appearance standard—also called the double standard of behaving and appearing ethically (Gilman, 2003)—is neither new nor only typical in the business sector. As early as the first century, Saint Paul advised the Thessalonians to “abstain from all appearance of evil” (The King James Bible, 1 Thessalonians 5: 22). Several professional codes, for example, those of court judges, lawyers, auditors, doctors, and politicians, include the appearance standard. The first canon of the Model Code of Judicial Conduct of the American Bar Association (2011) is, “A judge [...] shall avoid impropriety and the appearance of impropriety.” The appearance standard does not seem unimportant either. The appearance of unethical behavior is seen to be almost as important (Luban, 2001) or just as important as actual unethical behavior (Abramson, 2000; Dopuch, King, Schwartz, & Zhang, 2003). For Gilman (2003), the appearance standard might be the most important standard by which to judge the actions of public officials. McKoski (2010) observes that people in all kinds of professional positions, from doctors to teachers, from sports figures to journalists, are often publicly judged by the appearance standard.

At first glance, the appearance standard is appealing. It is highly ambitious in that it goes further than prohibiting actual unethical behavior (Pingree, 2007), and it is a great catchall for improper behavior

because appearance encompasses many things (Abramson, 2000). The standard thus acts as a safety net because it catches behavior that would otherwise “slip through the cracks” of a code of ethics (McKoski, 2010, p. 1964), and as a tidewater mark because it is the leading edge of the organic expansion of ethics (Gilman, 2003). However, the appearance standard is a paradoxical norm in that, as Thompson (1992) argues, it forbids behavior that is in itself not wrong. As such, some scholars regard the appearance standard as controversial and contestable (Bauer, 2012; Gilman, 2003; Pingree, 2007; Samaha, 2012; Smith, 2011). For Luban (2001, p. 26), the problem is that appearance is a “conceptual accordion that can expand as widely as suits the eyes of the beholder” while the beholder has not analyzed the observed behavior properly. It is remarkable that while there is extensive debate about the appearance standard in different fields, for example, in the legal field (Abramson, 2000; Bassett & Perschbacher, 2013; Brewer, 2003; McKoski, 2010), the standard has hardly received any attention in the business (ethics) literature. An exception is the application of the appearance standard to auditors carried out by Collins and Schultz (1995), Spira (1999), and Page and Spira (2005).

The reference that companies make to the appearance standard and the ongoing debate about it outside the business (ethics) literature raise the question about the meaning and implications of the standard for the behavior of business employees (including directors and managers). For instance, should an employee not have a good friend who works with a competitor (even if the employee is able to completely separate friendship from business interests)? Should an employee not own any shares in another company that does business with his employer (even though the employee is not influenced by it in his work)? Should an employee not use in private life products of competitors (even if the employee is quite loyal to his work)? This article examines both the criteria for when mere appearance of unethical behavior by employees is morally unacceptable and the remedies for preventing and resolving such instances. We develop a model of both these criteria and remedies because as of yet, there is no such model, not even of the appearance standard in general. Our focus will be on the individual, as opposed to the organizational, level, and our approach is conceptual instead of empirical.

Before presenting the model, we first define the appearance standard and introduce the Corporate Integrity Theory (Kaptein & Wempe, 2002) that we employ to develop the model. We use this theory because it is a balanced approach that looks at how an employee's character, behaviors, and the consequences of those behaviors are related to each other to form a coherent whole. After describing the seven criteria, we introduce the corresponding remedies. We then discuss a real-life example to illustrate the applicability of the model. In general, the following are the contributions of this article: it focuses on a hardly examined but relevant question for the business ethics literature; it presents criteria that will help us ascertain when mere appearance of unethical behavior is morally unacceptable; it presents a coherent set of remedies; and it advances the debate about the appearance standard by using an integrity approach for understanding the standard.

2 | DEFINITION OF THE APPEARANCE STANDARD

Outside the business (ethics) literature, the appearance standard is largely discussed with reference to the appearance of impropriety (i.e., Abramson, 2000; Luban, 2001; McKoski, 2010). Other related terms used are the appearance of immoral behavior, corruption, and wrongdoing (Driver, 1992; Hellman, 2001; Levin, 2001). This article relates the appearance standard to unethical behavior and, following Gilman (2003), treats all of the above terms as synonymous. All these terms refer to inappropriate normative behavior understood as behavior that is disapproved by society in general or by codes of ethics in particular. This understanding follows Jones' (1991) definition of unethical behavior.

In the literature on the topic, appearance is also referred to as an impression, suspicion, belief, form, and mimetic (Carson, 1994; Driver, 1992; Gustafson, 1987; Samaha, 2012; Smith, 2011). In this article, there is no distinction made between these terms. Samaha (2012, p. 1570) argues that appearance is “an external show or the outward aspect of something based on sense impression, which can be processed into a belief about the world.” Something can appear or be perceived as something regardless of the ultimate factual accuracy of that perception (Bassett & Perschbacher, 2013). This is because appearance involves available information that might or might not accurately reflect reality, whereas reality refers to “things that are not illusory, that occur in fact, or that have an objective existence” (Samaha, 2012, p. 1571).

The appearance standard concerns the appearance of unethical behavior when unethical behavior is in fact absent (Thompson, 1992). The appearance standard is about behavior that is morally unacceptable only because of how it appears or is perceived. The idea behind the appearance standard is therefore not that actual unethical behavior is acceptable for as long as others are not aware of it (cf. Kolstad, 2016). This would be hypocritical, as Grant (1997) argues, or deceptive, as Provis (2010) claims. The key question regarding the appearance standard is when does someone who gives the appearance of engaging in an unethical behavior—while actual unethical behavior is absent—nevertheless behaves unethically simply because the appearance has been created. Therefore, the appearance standard is not about figuring out whether there is actual unethical behavior, because there is as a matter of fact no unethical behavior. Likewise, the appearances are not in themselves or intrinsically unethical because then they would already belong to the domain of unethical behavior.

3 | AN INTEGRITY APPROACH TO THE APPEARANCE STANDARD

So far, outside the business ethics literature, both a consequentialist and a deontological approach have been used to defend the moral appropriateness of the appearance standard. Driver (1992) can be seen as the founder and primary proponent of the consequentialist approach to the appearance standard. For her, appearing to behave unethically is morally unacceptable not because the behavior has negative consequences in and of itself but because,

due to resemblance, the behavior is misconstrued by others to be unethical. Driver identifies three negative potential consequences of such misconstruals: others are offended, the lives of others are made miserable, and the person setting a bad example corrupts himself (by developing “a taste for doing the real thing” (p. 333), thus breaking down the resistance to unethical behavior) and others (because observing apparent unethical behavior reduces the pressure to avoid these unethical behaviors themselves). Therefore, Driver argues, people should not give cause for such misinterpretations when they lead to such negative consequences.

Hellman (2001) presents a deontological approach to the appearance standard. She advances reasons why the appearance standard can be defended independent of, according to her, controversial, empirical claims about the consequences of the appearance. For Hellman, the responsibility to avoid appearing to behave unethically is based on the relationship between an actor and the observer. If an actor has a responsibility toward an observer, then the actor also has a moral obligation not to give the observer reasons to misinterpret his actions and distrust him. However, “without a relationship, there is no such obligation” (p. 666). Although observers may lack the ability to confirm or refute their suspicions, this does not preclude them from forming reasonable convictions about a behavior. Hellman concludes that an actor should therefore modify their behavior to accommodate the epistemic limitations of the relevant observers (i.e., with whom they have the right sort of relationship) whose suspicions are reasonable (albeit mistaken), even if no harm is caused.

Both Driver's and Hellman's approaches to the appearance standard may be useful for showing when mere appearance of unethical behavior by employees is morally unacceptable. In Driver's consequentialist approach, the mere appearance of unethical behavior involving employees may be morally unacceptable when the appearance has specific negative consequences, such as it offends one or more stakeholders, it damages stakeholder's interests, or it reduces the motivation of employees and other stakeholders to behave ethically. Hellman's deontological approach may be useful in that what counts as morally unacceptable does not depend on the actual expectations and reactions of stakeholders (the observers); otherwise, we run the risk that morality falls into the hands of the illogical and ill-informed. For this deontological approach, merely appearing to behave unethically is morally unacceptable when employees give stakeholders—that is, the observers with whom they have a relationship (thus not everyone in the world)—reason to misinterpret their actions.

Corporate Integrity Theory, as developed by Kaptein and Wempe (2002), does not adopt either a deontological or a consequentialist approach. The integrity approach holds that both deontological and consequentialist arguments are relevant in determining when behavior in the business context is morally acceptable or unacceptable, because both arguments “complement each other in many instances” (p. 83). According to Kaptein and Wempe, when we choose only one of these approaches, we do not do justice to the other one, and we are not in a good position to determine when behavior is morally unacceptable. In addition, following only one approach can lead to an impasse in a debate

about what counts as morally unacceptable behavior because one tries to convince with arguments from one's own approach and not from the other's.

The Corporate Integrity Theory also holds that in determining what is morally acceptable and unacceptable behavior, we should not only look at the behavior and its consequences but also at the actor's character. A person's character is the object of a virtue ethics approach, which is concerned with determining the virtues or the excellent traits of character that a person should possess (Hursthouse, 1999). Integrity is about how an actor's character and behaviors and their consequences are related to each other to form a coherent whole. The corporate integrity theory emphasizes the coherence between virtue, deontological, and consequentialist ethics (Kaptein & Wempe, 2002).

Although neither virtue ethics nor integrity theory has been explicitly related to the appearance standard, some scholars suggest that a violation of the appearance standard leads to undermining one or more virtues, such as credibility, objectivity, impartiality, and accountability (Abramson, 2000; Gray, 2005; Michaely & Womack, 1999; Thompson, 1993). Other scholars suggest that integrity is at stake when there is an appearance of unethical behavior. For example, Thompson (1992) is concerned that the integrity of someone who acts as the judge in their own court case is compromised, Flamm (1996) notes that judicial decisions that appear improper undermine the integrity of the courts, and Bauer (2012, p. 94) notes that financing political parties threatens the “integrity of the electoral process.” Gray (2005) argues that an employee who creates the impression of being involved in an unethical behavior may damage their own integrity and the confidence others have in their integrity. Moreover, as ambassadors and representatives of their company (Kaptein & Wempe, 2002), employees may then also damage corporate integrity.

An integrity approach may be useful in defining when mere appearance of unethical behavior by employees is morally unacceptable. It is a balanced approach, as suggested by Kaptein and Wempe (2002), in the sense that it takes into account character, behavior, and consequences. This balancing act is necessary to apply the appearance standard well, as Gilman (2003) posits. An integrity approach is also balanced in the sense that, on the one hand, it determines within concrete or specific situations when behavior is morally (un)acceptable. “The [integrity] approach takes seriously the whole: the individual, the context, and the past” (Kaptein & Wempe, 2002, p. 97). This renders the integrity approach pragmatic, flexible, and realistic (Kaptein & Wempe, 2002). On the other hand, this approach seeks to avoid lapsing into subjectivism and relativism by searching for moral criteria that apply to every situation.

4 | CRITERIA FOR EXPLAINING HOW MERE APPEARANCE OF UNETHICAL BEHAVIOR ARISES

We now discuss the criteria that explain why or how there can be mere appearances of unethical behavior. When we know what these criteria are, we can specify when such an appearance of unethical

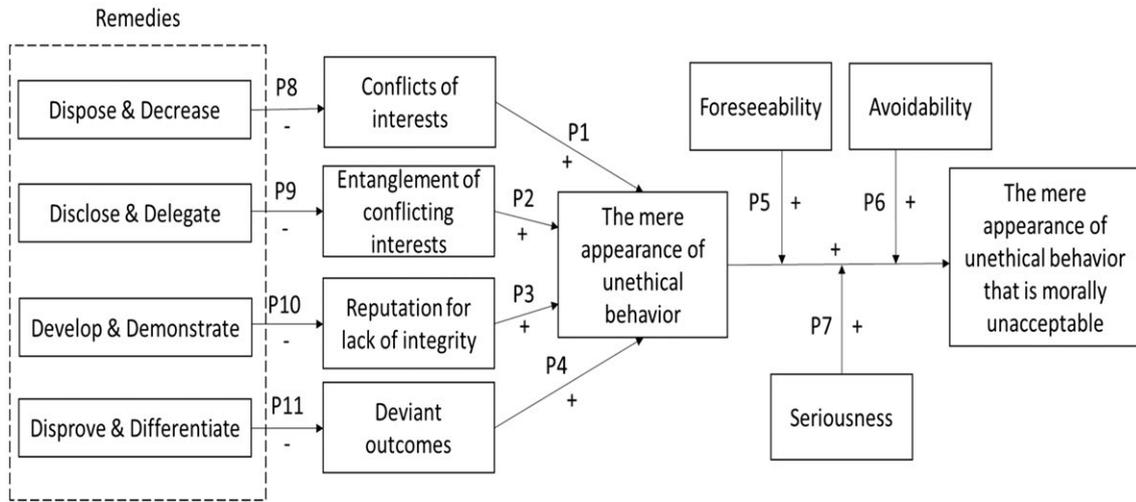


FIGURE 1 Criteria and remedies for when a mere appearance of unethical behavior is morally unacceptable

behavior becomes morally unacceptable and consequently, the possible remedies that would prevent or resolve them. With this definition, we build the model (see Figure 1) of the criteria for when there can be mere appearances of unethical behavior (propositions 1-4), the criteria for when such an appearance is morally unacceptable (propositions 5-7), and the remedies to prevent and resolve mere appearances of unethical behavior (propositions 8-11).

We propose here four criteria for how mere appearances of unethical behavior come about. We begin with the presence of conflicts of interests (whether there is any reason for the belief of unethical behavior), followed by the entanglement of these interests (concerns the extent to which it is difficult for the observer to find out whether the employee deals with the conflicts of interests in an ethical way), the employee's reputation for lack of integrity (that feeds the observer's impression about how the employee deals with the entangled conflicts of interests), and deviant outcomes (the extent to which there are indications that the entangled conflicts of interests are not dealt with in an ethical way). This approach agrees with Gray's (2005, p. 88) observation, made within the legal context, that "a finding of an appearance of impropriety is often based on a combination of factors and the cumulative effects of the circumstances." That these criteria explain why there can be mere appearances of unethical behavior does not preclude that they, especially the first two criteria, also explain actual unethical behavior. This is logical because the mere appearance is created by some combination of things (e.g., the individual, the context, and the past) that seem to lead to unethical behavior but, in fact, do not actually do in the particular case because there is no unethical behavior. At the same time, this does not imply that all criteria that explain actual unethical behavior are relevant for creating mere appearances of unethical behavior. The four criteria reflect what integrity stands for by involving aspects of the three main ethical theories. The criteria conflicts of interests and their entanglement refer to deontological ethics because they are about someone's behavior, that is, the position someone enters into and how transparently one behaves in that position. Reputation for lack of integrity refers to virtue ethics

because it concerns one's moral characteristics. Lastly, deviant outcomes refer to consequentialist ethics because this criterion concerns the consequences of the suggested unethical behavior. The extent to which these four criteria apply together gives rise to mere appearance of unethical behavior.

4.1 | Conflicts of interests

The first criterion that explains how there can be mere appearances of unethical behavior is the presence of conflicts of interests. Like Kaptein and Wempe (2002), who start their exposition of Corporate Integrity Theory by depicting companies in terms of conflicting interests, we also start here with conflict of interests because it is the ground of supposed unethical behavior. The standard conception of a conflict of interests, as advanced by Davis (2001) and elaborated by Coleman (2005), postulates that one person is in a relationship with another, which requires the person to exercise judgement on behalf of the other, and that the person has a (special) interest that tends to interfere with the proper exercise of judgement within that relationship, thereby making the person's judgement less reliable than it would normally be. According to this definition, a conflict of interests can arise when a person is required to exercise judgement on behalf of another. The conflicting interests are, what Thompson (1993) calls, the primary and secondary interests. Primary interests are determined by the professional duties of the person. They are the primary consideration in any professional decision that the person should make (Carson, 1994). Secondary interests are, as Thompson (1993) suggests, not wrong in themselves, but they become problematic when they are (believed to be) assigned more weight than primary interests. Hence, in a conflict of interests, a primary interest tends to be unduly influenced or even dominated (Thompson, 1993) by a secondary interest, which then renders the judgment of the person making the decision less reliable (Coleman, 2005). When there is a conflict of interests, there is "reason to worry" (Borden & Pritchard, 2001, p. 79) that the judgment and performance may be compromised, without suggesting or presuming that the decision is necessarily compromised.

Conflicts of interests are thus relevant for explaining the appearance of unethical behavior. For this reason, we expect that the more prevalent the conflicts of interests are, the more likely it is that the impression of unethical behavior will be created. Thompson (1993) proposes standards for assessing conflicts of interests. He identifies factors that make conflicts more or less problematic. The severity of a conflict of interests depends on, for example, the likelihood that professional judgment will be influenced or will appear to be influenced. In assessing such likelihood, Thompson assumes that, within a certain range, the greater the value of the secondary interest (e.g., the size of the financial gain), the more probable its influence. More precisely, the greater the weight of the secondary interest(s) compared to that of the primary interest(s) (i.e., the greater the negative difference in weight between the interests), the greater the chance that the secondary interests will be chosen over the primary interest; thus, that the person will behave unethically. A specific example comes from the study of Steinman, Shlipak, and McPhee (2001), where they show that physicians perceive a strong association between the value of a gift and its potential to influence physicians' prescribing practices. The scope of the conflict of interests also affects the likelihood of a mere appearance of unethical behavior, particularly the nature of the relationship that generates the conflict: longer and closer associations are more problematic (Thompson, 1993).

Proposition 1 *The greater the conflicts of interests, the greater the likelihood of a mere appearance of unethical behavior.*

4.2 | Entanglement of conflicting interests

A conflict of interests in itself does not create the impression of unethical behavior. What makes a conflict of interests problematic is when these interests are entangled. When interests are entangled, they are difficult or impossible to unravel, with the result that it is also difficult to determine whether they are weighted ethically (Kaptein & Wempe, 2002). The issue of appearing to behave unethically would not exist if others were fully informed and familiar with the relevant facts (Bassett & Perschbacher, 2013; McKoski, 2010). Both Driver (1992) and Hellman (2001) see the lack of transparency and information about someone's behavior as a condition for the appearance of impropriety. Thompson (1993) sees a lack of accountability, that is, the absence or insufficiency of scrutiny or review, as one of the factors that make conflicts of interests problematic. The more limited the accountability, the more serious the conflict of interests and the higher the risk of unethical behavior. In this respect, Fogel and Friedman (2008) explain that a court judge accepting a gift from a litigant is problematic because the judge becomes psychologically closer to the litigant, making it more difficult for the judge—as the conflicting interests become entangled—to prove that one's own objectivity is still intact.

Proposition 2 *The more entangled the conflicting interests, the greater the likelihood of a mere appearance of unethical behavior.*

4.3 | Reputation for lack of integrity

A conflict of interests and the entanglement of those interests are, however, not sufficient to create the appearance of unethical behavior. If people's integrity were wholly intact, they would always behave ethically and be able to resist the pressure or the temptation to opt for the secondary interest. There would be no reason to suspect unethical behavior because such behavior would not exist. However, the less integrity someone has, the more grounds there are to doubt their behavior. Some scholars argue that a person's virtues have a weak predictive power on behavior (Harman, 2009), whereas others argue that a person's virtues have a significant influence on behavior (Alzola, 2008, 2012). Hellman (2001) acknowledges that when others are not confident that someone's intentions are pure, this will foster the impression of unethical behavior. In assessing the appearance of independence and objectivity of auditors, Spira (1999) not only asked participants which factors undermine the appearance of auditors as being independent and objective, but also which personal qualities of an auditor would prevent giving rise to the impression that their integrity is compromised. What is relevant is not someone's actual integrity but only what is known about their integrity. It is this reputation for integrity that others (can) use in determining whether it is merely an appearance of unethical behavior or not.

Proposition 3 *The lower the reputation for integrity, the greater the likelihood of a mere appearance of unethical behavior.*

4.4 | Deviant outcomes

An appearance of unethical behavior is also fostered by symptoms of unethical behavior. The greater the number of deviant outcomes that indicate unethical behavior, the greater is the impression of unethical behavior. In the administration of law, this is referred to as the "smoking gun" (Cohan, 2002). Attribution Theory, as developed by Heider (1958), is useful for explaining how behavior is interpreted and attributed to a situation or person. According to Kelley's (1973) Covariation Model, in order to ascribe a behavior to a person rather than to the circumstances, the behavior must be compared with different situations and with the behavior of others. This determines the covariation of the behavior. For example, if the wife of a CEO buys shares in his company shortly before he makes a public announcement that increases the share price, the suspicion that the CEO told his wife about this announcement strengthens if his wife had never traded before and she was the only one who traded during the period in question. In this respect, Abramson (2000) argues that a judge should consider recusal when a party involved in the case gives him preferential treatment that is not granted to others.

Proposition 4 *The greater the deviant outcomes discerned, the greater the likelihood of a mere appearance of unethical behavior.*

5 | CRITERIA FOR WHEN A MERE APPEARANCE OF UNETHICAL BEHAVIOR IS MORALLY UNACCEPTABLE

It is not the individual criteria but their combination that gives rise to the mere appearance of unethical behavior. This is consistent with the view that a conflict of interests is not always wrong (Carson, 1994; Coleman, 2005; Davis, 2001). A conflict of interests does not necessarily create the appearance of unethical behavior because, for instance, a reputation for integrity can compensate for it.

To determine when a mere appearance of unethical behavior is morally unacceptable, we have to look at the criteria that would make an employee blameworthy for creating or causing such an appearance. The extent to which someone can be morally blamed for merely appearing to behave unethically depends on whether the appearance itself is foreseeable, avoidable, and serious. Each of these criteria primarily refer to different ethical theories: foreseeability is a virtue ethics criterion because it is about someone's ability to foresee possible future situations that create the appearance of unethical behavior; avoidability is a deontological criterion because it is about what someone could do to prevent the appearance of unethical behavior; and seriousness is a consequentialist criterion because it refers to the negative effects of the appearance of unethical behavior.

5.1 | Foreseeability

No one can be held morally responsible for things that could not have been foreseen or predicted by the actor at the moment of the action (Aristotle, 2012; Bovens, 1998). The same holds for appearing to behave unethically: how others will perceive an actor's behavior should be reasonably foreseeable. For example, it would be unreasonable to blame the purchaser who, during a flight, finds herself seated right next to the sales representative of a firm that just submitted a proposal over which the purchaser is the responsible decision maker. Driver (1992, p. 342) argues that someone is only responsible for the misconstruals of others if these could have been reasonably predicted: "The agent is, of course, not responsible for the odd irregularities of others, since she has no way of predicting them." In our model, the reasonableness depends on whether the four criteria mentioned above are foreseeable.

Proposition 5 *The more foreseeable a mere appearance of unethical behavior, the more morally unacceptable it is.*

5.2 | Avoidability

Together with the requirement that the appearance of unethical behavior should be foreseeable for it to be blameworthy, the appearance should also be reasonably avoidable. Of course, it is erroneous to believe that all conflicts of interests are avoidable (Davis, 2001). In many professions, situations can arise where a conflict of interests is unavoidable (Coleman, 2005). Moreover, people are always biased to some degree. For example, Bassett and Perschbacher (2013) observed that impartiality of judges is elusive. Carson (1994) thus argues that to claim that someone acted inappropriately requires being able to suggest some alternative course of action that the person should and could have taken: "ought not" implies "should do otherwise." This conforms with Bovens' (1998) argument that people can only be blamed when alternative forms of behavior, including not doing anything, are available. Cervantes and Hanson (2013) give the example of psychiatrists who have the dual responsibility of being both therapist and forensic evaluator for an inmate. They note that there may be smaller systems where in practice assuming this dual role may be unavoidable. Neither is it possible to check every flight to make sure there is no one on board with whom one might have conflict of interests. Therefore, in determining whether the appearance of unethical behavior is morally unacceptable, it is relevant to take into consideration the extent to which it could have been avoided (Gray, 2005). Particularly in cases where it could easily have been avoided, people can then be held responsible for creating the impression of unethical behavior. Smith (2011) also argues that judges should refrain from joining social networks because preserving their judicial integrity would be easier if they did not. Hence, the more care is taken to avoid any appearance of unethical behavior, the more consideration it demonstrates for one's own integrity and that of one's company. However, the more actively an appearance of unethical behavior was created (e.g., say, the purchaser asked the supplier when he would be traveling so they could be on the same flight), the more morally unacceptable it is.

Proposition 6 *The more avoidable a mere appearance of unethical behavior, the more morally unacceptable it is.*

5.3 | Seriousness

The blameworthiness of an appearance of unethical behavior does not only depend on whether merely appearing to behave unethically is foreseeable and avoidable, but also on how serious its consequences are. The seriousness of the harm or wrong that is likely to follow from the appearance of unethical behavior is an important criterion for how problematic conflicts of interests are (Thompson, 1993). One of the consequences Thompson discusses is the indirect harm caused by a loss of confidence in the judgment not only of the person who creates the impression of unethical behavior but also of their colleagues. The more harmful the consequences are, the more

problematic is the conflict. Furthermore, Thompson points out that the greater the value of the primary interest, the more important it is to protect it; hence, the more blameworthy is the person if this was not done. For Gray (2005), who makes a case for the relevance of the appearance standard for judges, it is the great power entrusted to judges that makes their responsibility to avoid any appearance of impropriety so great. Driver (1992) also emphasizes the seriousness of the consequences. She notes that the more an agent is in the public eye (that is, the larger their audience is), the more care he/she needs to take to avoid the appearance of immorality. This is because a “bad example can and will have a bad effect on others” (p. 341). Therefore, the more serious the potential consequences of the appearance of unethical behavior are, the greater is the expectation that these consequences should be prevented, and the more blameworthy are employees when they fail to do so. In this sense, the employee's position in the organizational structure may be relevant. For example, the behavior of front-office employees compared to that of back-office employees could have more impact on others because the former is more noticeable. The behavior of board members and senior managers are in general more visible than that of lower management and employees lower in the organization and therefore their consequences are potentially more serious.

Proposition 7 *The more serious the consequences of a mere appearance of unethical behavior, the more morally unacceptable it is.*

6 | REMEDIES

The extent to which mere appearances of unethical behavior can be avoided (second criterion for the moral unacceptability of such appearances) also depends on the available remedies for preventing them. Thus, the more remedies are available, the more easily avoidable and more blameworthy is the appearance. A mere appearance of unethical behavior is also more morally blameworthy when, once created, it continues or is prolonged rather than discontinued or resolved. The question therefore is what remedies are available for preventing and resolving such appearances of unethical behavior. There are different lists of remedies proposed (e.g., Boatright, 2001; Brooks, 2001; Coleman, 2005; Davis, 2001; Thompson, 1993). This section presents two specific remedies for each of the criteria for the mere appearance of unethical behavior.

6.1 | Dispose and decrease

To prevent an appearance of unethical behavior from being considered unethical, conflicts of interests could be disposed of. According to Coleman (2005), disposing is a usual method for dealing with a conflict of interests. Disposing of a conflict means that the conflict of interests is removed, eliminated, or, what Lemmens and Freedman (2000) suggest as the best option, avoided in the first place. In this

situation, someone escapes the conflict of interests by, for example, divesting and recusing themselves (Davis, 2001). Thompson (1993) suggests that removing the secondary interest allows refocusing on serving the primary interest. Sanatani (2015, p. 296) also suggests “doffing two hats for the sake of one.” This could mean refraining from personal trading in shares, changing or splitting a function, terminating business relationships with family members and close friends, and withdrawing or abstaining from making any decisions related to the matter that gave rise to the conflict of interests.

Another remedy is to ease the conflict of interests. In this case, the influence of the secondary interest is not removed but only decreased (Bell, Friedman, & Friedman, 2005; Fogel & Friedman, 2008). The aim of this remedy is to prevent the secondary interest from appearing to dominate the relevant primary interest by reducing the former to an acceptable level (Thompson, 1993). Examples include receiving gifts of limited value and restricting the number and type of sideline activities being engaged in and the amount of time spent on them. Increasing the value of the primary interest can also reduce the influence of the secondary interest. This can be achieved, for example, by increasing someone's salary so that they are less vulnerable to getting swept along by secondary interests that could threaten their job.

Proposition 8 *Disposing of and decreasing conflicts of interests help to prevent and resolve mere appearances of unethical behavior.*

6.2 | Disclose and delegate

Apart from disposing of or decreasing conflicts of interests, we can also disclose or delegate them should they be entangled. Disclosure or declaration is one of the usual methods for dealing with a conflict of interests (Coleman, 2005). Disclosure improves transparency, which eradicates the appearance of impropriety (Gilman, 2003). For example, by registering and publishing received gifts, sideline activities, reimbursed expenses, stocks, and debts others are informed. An advantage of disclosure is that it provides those who are potentially affected or those who are otherwise in a good position to assess the risks the information they need to make their own decisions (Thompson, 1993). If disclosure is sufficiently complete and understood, it prevents deception, gives others opportunity to give informed consent, and makes it possible to correct biases by discounting them (Davis, 2001). Disclosure also indicates a willingness to account for behavior and shows that there is nothing to hide. One way of achieving disclosure is by allowing someone to monitor behavior (cf. Davis, 2001) and giving them the appropriate oversight. Concrete examples include letting a compliance officer monitor one's personal transactions, letting an independent party evaluate decisions, and organizing meetings where one accounts to others. With regard to the latter, Alleyne, Devonish, and Alleyne (2006) found that the perception of an auditor's independence was enhanced by the auditor's attendance of company's annual general meetings.

Another remedy for reducing entanglement is delegation (Cohan, 2002). Delegation means that if a conflict of interests remains, then either the decision is made with someone else (the so-called four-eyes principle; Pörting & Vahlenkamp, 1998) or someone else makes the decisions (e.g., trading one's personal shares through a broker or escalating the decision to higher management). One can also ask for permission to make a decision (getting a waiver; Abramson, 2000) or ask for the consent of those involved (Zacharias, 1998). Consultation, where others give their opinions on the matter but one still makes the final decision, also belongs to this remedy. There is of course a risk when delegating a decision to someone lower in the hierarchy. Carson (1994) illustrates this point with the example of a corporate executive whose close friend's daughter applies for a position in his company. Because this constitutes a conflict of interests, the executive should ask a subordinate to make the hiring decision. However, the subordinate might feel pressured to hire the applicant if he is aware of the latter's connection with the executive; this also amounts to a conflict of interests. Carson's advice is for the executive to ask the subordinate to make the decision without revealing his connection with the applicant.

Proposition 9 Disclosing entangled conflicts of interests and delegating decisions help to prevent and resolve mere appearances of unethical behavior.

6.3 | Develop and demonstrate

Another remedy for preventing and resolving a mere appearance of unethical behavior concerns the development of one's reputation for integrity. Thompson (1993) views good character as a remedy. Integrity can be developed through education, training, and practice. Knowledge and awareness of conflicts of interests and of the relevant principles equip employees to better address the ethical issues that they confront (Fogel & Friedman, 2008). Education about the appearance standard is also useful both at the beginning and during the course of one's career (Thompson, 1992). Discussing dilemmas about the appearance of unethical behavior is one way of going about this (Cervantes & Hanson, 2013).

These activities to develop one's integrity are not only relevant for improving one's actual integrity but also for how others perceive one's integrity, that is, one's reputation for integrity. Pearson (1985) proposes some measures, such as auditor-administered educational programs, to enhance the perceived independence of auditors. Regular training on ethical issues, legal restrictions, and other regulations demonstrate that one takes seriously the responsibility to nurture and maintain one's integrity. Moreover, when someone's integrity is intact but others perceive it to be otherwise, they can try to improve their reputation for integrity (cf. Samaha, 2012) by demonstrating their integrity even more; for example, by informing others about the ethical principles they adhere to, the ethical decisions they make, and the ethical impact of their decisions.

An individual's reputation for integrity may also be influenced by the organization, the sector, or by the profession to which they belong. In the event that this association is or appears to be negative, the individual can try to improve the actual or perceived integrity of these institutions, for example, by taking the initiative to develop a new or improved code of ethics. Such a code can describe the desired level of integrity of the organization and employees, including their responsibility to prevent any appearance of unethical behavior. In this regard, Thompson (1993) suggests regulation by both professional and governmental bodies as remedy. In his view, regulation offers more assurance than individual discretion that conflicts of interests will be avoided. Brewer (2003), however, argues that the appearance standard is better adhered to in the legal profession through understanding it and making a commitment to uphold it, for example, through good discussions about its meaning, than by making detailed rules and enforcing them.

Proposition 10 Developing and demonstrating integrity help prevent and resolve mere appearances of unethical behavior.

6.4 | Disprove and differentiate

In the event that there are deviant outcomes or indications of unethical behavior despite the absence of actual unethical behavior, it is possible for someone to defend themselves to resolve the appearance of unethical behavior. Doing nothing could come across as being indifferent, which is likely to have a negative effect not only on the individual but also on the company's reputation for integrity. Behaving indifferently is harmful because it provides further fuel for continued allegations and suspicions. Disproving deviant outcomes is a means of defending oneself. Besides declaring or even swearing to one's innocence, one could provide additional information that supports one's claims, thus demonstrating that the suspicions and allegations are unfounded. Driver (1992) suggests that to avoid the appearance that one is wearing animal fur, one can wear a big button that says the fur is fake. One can also employ witnesses, experts, and auditors to demonstrate that the indications of unethical behavior are without substance.

Another remedy is differentiating. In this case, the cause of the appearance of unethical behavior is not refuted but put into perspective. The aim is to introduce nuance by showing that the person's intentions were sound but that it was a matter of bad luck, or a concurrence of events, or ignorance. For example, in the event that there is the appearance of a friend receiving preferential treatment, the individual can demonstrate that there were also instances when the friend was not chosen, say, as supplier. Instead of denying that one's partner made a large profit trading shares of a company about which one had confidential information, one could show that in the past, one's partner also regularly traded in the shares of companies one had inside knowledge of but that these transactions resulted in significant losses. Instead

of denying that the expenses one claimed were inflated, one could instead show that one did not submit claims for other expenses by producing the relevant receipts. These cases all employ the principles of Kelley's (1973) Covariation Model to counter the appearance of unethical behavior.

Proposition 11 *Disproving and differentiating deviant outcomes help prevent and resolve mere appearances of unethical behavior.*

7 | AN ILLUSTRATION: THE CASE OF BILL MORNEAU

To illustrate the various facets of our model, we now discuss an example from real life: the case of Bill Morneau.¹ Morneau was the CEO of Morneau Shepell Inc., a leading Canadian company that provides pensions, employee benefits, and employee assistance programs to more than 20,000 organizations that represent millions of Canadians. Morneau made the company grow from approximately 200 employees in 1992 to almost 4,000 in 2015. Morneau was depicted as a “fantastically successful businessman” and “an inspiration to all Canadian entrepreneurs” (Deltell, 2017). In 2015, he was nominated as a Liberal Party member of the Canadian Parliament. After he was elected, he was made Minister of Finance.

Having been elected, Morneau faced the question of how he should deal with his company's considerable assets (around \$30 million, via a numbered company). He therefore sought the advice of the Ethics Commissioner appointed by the Canadian Parliament. He followed the Commissioner's recommendation that the “best measure of compliance” was to set up a conflict-of-interest screen that would prevent Morneau from being involved in governmental discussions or decisions that would directly affect his company. Morneau was allowed to keep his shares in the numbered company because he did not directly possess his 2 million Morneau Shepell shares. After a year as Minister of Finance, Morneau introduced Bill C-27, a new legislation that allowed pension administrators to convert direct-benefit pension plans to targeted benefit plans. This was a change for which Morneau had lobbied when he was CEO of Morneau Shepell. The bill would boost Morneau Shepell because it would open up new business opportunities given that there were only four companies in Canada that administered these types of pensions. After the bill was tabled, the share price of his company indeed jumped, earning him some \$2 million in 5 days. When the opposition parties become aware of this, they accused Morneau in Parliament for egregious behavior and for creating the impression of misusing his function as Minister of Finance. This put everything

he did under a cloud of suspicion. Morneau however denied that he had done anything wrong because, according to him, he followed the advice of the Ethics Commissioner.

Our model helps explain, using available public information, how Morneau created the appearance of unethical behavior. We can state that all four criteria are met. There is a conflict of interests because his primary interest (to serve as minister of the country) tended to be unduly influenced by his secondary interest (to benefit from his company). This conflict of interests is also entangled despite the conflict-of-interest screen because, given his authority and autonomy, it was difficult or even impossible to prove to others that his decision as Minister was not unduly influenced by his secondary interest. Morneau did not have a solid reputation for integrity either because since he became Minister, he had been confronted with issues that were seemingly damaging to his integrity. For instance, he was fined for failing to disclose, for 2 years, to the Ethics Commissioner his ties to a private company that held a villa in France. The Ethics Commissioner investigated him for his possible involvement in a contract renewal between Morneau Shepell and the Bank of Canada to manage its employees' pension plans. He was also investigated for insider trading because at the end of 2015, he and his father sold 680,000 shares of Morneau Shepell just before the government's proposed tax changes would affect share prices. Furthermore, there are deviant outcomes. After Bill C-27 was tabled, Morneau privately earned \$2 million in just 5 days. In addition, while he would normally respond well to questions, in this particular situation, according to the opposition, Morneau walked away from any question. As a Conservative parliamentarian said, “The Minister of Finance has become an expert at avoiding giving answers to Canadians.”

More importantly, our model can be used to establish whether the mere appearance of unethical behavior involving Morneau is morally unacceptable. Again relying on publicly available information, the model's three criteria indicate that this is the case. The foreseeability criterion is satisfied because Morneau should have known that as the Minister of Finance, whose role is to establish the government's financial and tax policy, he would, sooner or later, create the appearance of unethical behavior because his company operates in the tax domain and that it would profit hugely from new legislations in this field. It was quite foreseeable that it would then be hard or impossible to show that his decision making as Minister of Finance was not influenced by his private interests and to expect that his reputation for integrity would not deteriorate in politics. The avoidability criterion is also satisfied because Morneau had available options to prevent any appearance of unethical behavior. For instance, there were the two measures he took after the pressure from the opposition mounted: selling all his Morneau Shepell shares and putting his remaining assets in a blind trust. The seriousness criterion is also satisfied. Morneau should have known that the mere appearance of unethical behavior on his part in this situation would lead to public outcry because he is a public figure, he has a big influence in the decision-making process of the Canadian government, and there was much at stake for Canadians (the bill represented a serious risk to their retirement security).

¹Data for this example has been collected by reading many newspaper articles about Bill Morneau (some of which are found on https://en.wikipedia.org/wiki/Bill_Morneau) and by analyzing the debates in the Canadian Parliament about Bill C-27, which are found on <https://openparliament.ca/bills/42-1/C-27/>.

We can also use our model to determine what Morneau could have done to prevent and resolve this situation. Because all the four criteria for the mere appearance of unethical behavior are satisfied, each of the corresponding sets of remedies in our model offers direction. Regarding the first set, *disposing* all his shares was one remedy, because this would have removed his personal financial interest in his company; while *decreasing*, in the sense of selling a part of his shares and keeping the rest, would not have been adequate because he could still earn a large amount of money. However, although Morneau decided afterward to donate to charity \$5 million in profits that he earned from his shares since he took office, he could have also promised to do this earlier on, before he took office. With regard to the second set of remedies, *disclosure* necessitated not only disclosing his financial situation to the Ethics Commissioner (which was what he did), but also, disclosing this in detail to the Parliament and to the general public (stakeholders). As one of the parliamentarians said: "He who has the most control over the nation's finances should have the most transparency over his interests." *Delegating* by putting his assets in a blind trust was also an option, but he only did this afterward. The third set of remedies—*develop* and *demonstrate*—necessitated that Morneau should have cared more about his reputation for integrity and should not have given cause for the two investigations into his behavior (even though he was cleared in both cases) and not hidden behind the advice given by the Ethics Commissioner. As Stark (2017) stated about the latter, this was Morneau's biggest failure because he could have easily answered the questions himself. Furthermore, it is crucial for newly appointed politicians coming from the business sector to know the moral standards in politics, to be trained in dealing with ethical issues, and to develop and communicate their views about their own integrity as a politician and as a private person. Morneau also admitted afterward that he was perhaps naive and that he should have done more to make sure that Canadians had absolute confidence in him and on his decisions. The fourth set of remedies relates to how Morneau could have acted after it became known that he profited from the new bill. He could have *disproved* the accusation by stating that he had always supported this bill and by proactively communicating the details of the situation instead of saying that he would only answer the questions of the Ethics Commissioner. That Morneau misled Parliament (i.e., that although he did state when he came into office that he had decided to sell all his shares in Morneau Shepell, he did not reveal that he put those shares in a numbered company he controlled) is not conclusive. The remedy to *differentiate* could have been applied by showing, only if indeed it was the case, that Morneau also had lost private money because of other bills he had introduced.

8 | DISCUSSION

One of the contributions of this article is that it focuses on a hardly examined but relevant issue in the business ethics literature, which will hopefully stimulate more research into the rationale, meaning, and implementation of the appearance standard in the

business context. Another contribution is that our model presents criteria for explaining when a mere appearance of unethical behavior involving employees is unethical and the remedies for preventing and resolving such a situation. The appearance standard and its application are thus made more concrete without making it too permissive. In this way, we address two common complaints against the standard, that is, its vagueness (Gray, 2005) and permissiveness (Bauer, 2012). A final contribution of this article is that it applies the integrity approach to the appearance standard, which is helpful in advancing the general debate about the latter. The proposed model of the criteria for when a mere appearance of unethical behavior by employees is morally unacceptable is composed primarily of a combination of elements of virtue ethics (reputation for lack of integrity and foreseeability of the appearance of unethical behavior), deontological ethics (entanglement of conflicts of interests and avoidability of the appearance of unethical behavior), and consequentialist ethics (deviant outcomes and seriousness of the appearance of unethical behavior). These elements, from what are usually competing ethical perspectives, are put together and work as a coherent whole. The model takes into consideration "the individual, the context, and the past" (Kaptein & Wempe, 2002, p. 97). To illustrate, the avoidability criterion addresses the context in which the behavior happened (the options available in the specific situation for preventing the appearance of unethical behavior); the conflicts of interests criterion addresses both the individual and the past (what someone has done to arrive at the current situation where the interests conflict); and the reputation for lack of integrity criterion addresses all three aspects because the reputation for integrity is about someone (the individual), it is a judgment formed by others (the context), and it has been developed in the course of time (the past). That the model takes into account the individual, the context, and the past renders the model (more) flexible, realistic, and pragmatic without lapsing into subjectivism and relativism. For example, the model does not suggest that all conflicts of interests should be removed, but only that this depends on the entanglement of these interests and someone's reputation for integrity. In this sense, the model also helps to identify when the mere appearance of unethical behavior is morally acceptable.

8.1 | Implications for research

This article has implications for future conceptual research in the field of business ethics. If the appearance standard is relevant for business practice, then business ethical theories, like the Integrative Social Contracts Theory of Donaldson and Dunfee (1999), should engage with the standard and develop rationales, guidelines, and norms to support employees so they avoid creating the impression of unethical behavior that can be deemed morally unacceptable. This also holds for the development of teaching materials, such as those presented by Maclagan (2012) and Singer (2013). To gain a better understanding of the implications of the proposed criteria for when the mere appearance of unethical behavior is morally unacceptable, future

research should work out these criteria in greater detail. It is also interesting to think about how the proposed remedies play a role in ascertaining when the mere appearance of unethical behavior is morally unacceptable. For example, the avoidability criterion involves the idea that the easier and better it is to prevent a mere appearance of unethical behavior (which can be easier and more useful as more remedies are possible), the more blameworthy is an employee for creating the appearance because the more morally unacceptable that appearance is. Another implication regarding the remedies is whether there are also specific remedies for the three criteria that determine when mere appearance of unethical behavior is morally unacceptable (i.e., foreseeability, avoidability, and seriousness). Furthermore, whereas this article focuses on the appearance standard at the individual level, there is a need to examine the extent to which the model presented here applies to the appearance standard at the organizational level. Organizations can appear to behave unethically by providing conflicting services; for example, accountancy firms that provide auditing and consulting services to the same client, or securities firms that provide investment banking and research services to the same client (Fogel & Friedman, 2008; Hayward & Boeker, 1998). Likewise, it would be useful to think more about how organizations can and should support its employees to conform to the appearance standard.

There are also implications for future empirical research. The propositions formulated in this article regarding the criteria and remedies require empirical testing. For example, cases of business employees who are blamed for merely appearing to have behaved unethically can be used in finding out whether and how our proposed criteria can be applied. Likewise, it is interesting to explore whether there are other relevant criteria and remedies. Future research could also investigate how bystanders and onlookers decide when a mere appearance of unethical behavior is morally unacceptable and to what extent this corresponds to our model. In a similar vein, it is relevant to examine whether and how companies define the appearance standard for their employees. Doing a more systematic analysis of business codes of ethics than the examples given in the introduction of this article would be a possibility. If the use of the appearance standard is widespread, then this is a strong motivation for further studying it. This also provides a starting point for studying how the appearance standard is implemented and used by companies both to prevent and deal with breaches of the standard. This is not only a usual question for the implementation of business codes of ethics (MacLean, Litzky, & Holderness, 2015), but given the unique character of the appearance standard (i.e., it is highly ambitious, a tidewater mark, and a safety net), it is especially interesting to learn how companies deal with it. From a behavioral business ethics point of view, it is relevant to examine how the appearance standard influences the behavior of employees and what its possible negative effects are. Some examples of negative effects are employees becoming reluctant to do what is ethical because they run the risk of appearing to behave unethically (McKoski, 2010), or employees giving actual unethical behaviors less attention because they are more focused on preventing giving the impression of behaving unethically (Morgan & Reynolds, 2002). It would also be

interesting to learn how the criteria discussed here will develop in the future and what the implications would be for the appearance standard itself. For example, Smith (2011) described how, with the rise of social media, it has become more difficult for court judges to avoid the appearance of impropriety. For businesses, the question is how this era of increasing conflicts of interests (Coleman, 2005), more transparency (Tapscott & Ticoll, 2003), low trust in the integrity of business (Edelman Trust Barometer, 2013), and high levels of observed unethical behavior in the workplace (KPMG, 2013) affect the importance of the appearance standard.

8.2 | Implications for practice

This article discussed the relevance of the appearance standard for business: companies that do not address the standard in their code of ethics should consider including it. Companies that address the appearance standard in their code can use the criteria proposed in this article as guidelines for explaining to their employees when the mere appearance of unethical behavior is morally unacceptable. Because the application of the criteria are context bound and specific to the individual, companies should make sure that their employees receive training to understand how to apply the criteria in practice. In this way, employees will develop their integrity, which is not only important for preventing morally unacceptable mere appearances of unethical behavior, but also for resolving them. This article also offers other remedies for companies and their employees. When it is known for a concrete situation which criterion explains the appearance of unethical behavior, our proposed model can help select the right remedies. This has been illustrated by the example of Bill Morneau. In this way, companies create a work environment where employees are stimulated to not behave unethically either actually or merely apparently.

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