

# Corporate Governance in Canada

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## Martindale-Hubbell's Counsel To Counsel 2002 Series Returns to Toronto for Best Practices Discussion

By STUART N. GOODMAN, J.D.

Corporate governance issues, such as the significant new compliance requirements imposed on corporate counsel by the implementation of the Sarbanes-Oxley Act of 2002, are making headlines every day in the U.S. In light of our common border and shared commerce, many observers have been eager to learn to what extent those same concerns are driving changes in Canada as well.



This issue was the focus of the most recent forum in Martindale-Hubbell's 2002 **Counsel To Counsel** series, a global initiative in which senior corporate counsel are invited to discuss best practices in delivering corporate legal services. The forum, held in Toronto, was attended by 18 high-level corporate counsel, along with four senior partners at major law firms. It was facilitated by Deborah McMurray, a law firm marketing consultant to ELD Project Marketing International, Inc.

Charles Alexander, general counsel for Citibank Canada, and Seymour Trachimovsky, general counsel for DuPont Canada, co-chaired the Martindale-Hubbell forum. They were joined by in-house counsel from companies such as Liberty Canada, Molson and Royal Bank of Canada. The event was co-hosted by the law firms Foley & Lardner and Miller Thomson LLP.

Participants shared a number of best practices and discussed a wide range of issues related to compliance, corporate governance and disclosure requirements in Canada. The following five major themes emerged from the discussion:

### **1 Clear corporate governance guidelines need to be established in Canada.**

There was a unanimous view that the Canadian government has not yet constructed a clear oversight process for corporate conduct. Indeed, some expressed the concern that since so much media coverage has focused on accounting scandals at U.S. companies, there may be a sense that Canadians are "clean" and immune to the problem of corporate governance. To the contrary, compliance issues are very serious in Canada and corporate counsel need to seize this opportunity to push for an effective oversight process before a similar crisis hits Canadian companies.

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## 2 Preventive compliance measures are the least costly approach in the long run.

One of the Toronto forum participants pointed out that when companies don't spend some money to handle a potential compliance issue upfront, it may cost them a million dollars in legal fees to fix it later if they end up in litigation. To that extent, it's important to think of corporate compliance programs as assets that protect the company's brand name, protect public and investor confidence, and protect the bottom line from substantial exposure by decreasing a risk that a problem will erupt. It was also discussed that compliance programs are not "one size fits all" and that it's important to tailor them to the specific needs of each unique organization.

## 3 Business managers and legal counsel should jointly approve new initiatives.

There was also some discussion about the idea of cultivating the proper culture within the executive team that brings together the professionals responsible for business development and those responsible for corporate compliance. One suggestion was to require the business manager and the corporate legal counsel to jointly sign off on all major new business initiatives in front of one another. This interaction promotes the idea that both professionals have their own jobs to do, but they must do them in concert in order for the company to be successful.

## 4 Slow down... and avoid rushed decisions.

In the Internet age, decisions are being made faster and faster. In some cases, an email that remains unanswered for 24 hours can stop a deal in its tracks. The corporate counsel at the Toronto forum agreed that senior executives and board members must be careful to avoid simply "rubber stamping" certain initiatives simply because there is no time for analysis and discussion. When it comes to serious matters such as compliance, governance and disclosures, it's more important to do things right and less important to do them at breakneck Internet speed – even if it means you have to learn to say "No" more often.

## 5 Establish global corporate values that apply to all business divisions.

One general counsel shared her company's experience with surveying its employees and conducting other market research to identify eight corporate values they wanted to permeate the entire organization. These values were used to create global business policies and corporate ethics standards that were approved by the board of directors and implemented across all divisions. This approach creates a "way of life" for all of the company's employees worldwide and leads to a blueprint for doing business with integrity – the best defense against compliance problems.

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## Counsel To Counsel

Martindale-Hubbell's objective in underwriting the **Counsel To Counsel** initiative is to facilitate a valuable dialogue between leading buyers and providers of legal services. **Counsel To Counsel** is organized in collaboration with ELD Project Marketing International, Inc. For more information about the Toronto forum, or to apply to participate in a forum in the Martindale-Hubbell **Counsel To Counsel** series for 2003, please go to <http://c2c.martindale.com>.

### About the Author

Stuart N. Goodman, J.D. is a Platinum Accounts Manager for New Providence, N.J.-based Martindale-Hubbell, the most frequently consulted resource for information about the worldwide legal profession. Martindale-Hubbell's **Counsel To Counsel** series consists of individual forums throughout the world where general counsel and select law firms share ideas on a variety of best practices in corporate legal services in an off-the-record exchange. For more information about this initiative, please visit <http://c2c.martindale.com>, or call Laura DiCosmo at (908) 771-8630.



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