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Playing The Global Game: Managing The Legal Function Across Borders

By Derek Benton

As companies cross borders to tap new market opportunities, corporate counsel must develop efficient and effective ways to provide the legal support required. Different time zones and cultures comprise merely the first layer of the many issues corporate counsel must reconcile in creating a global legal function.

Corporate counsel from 12 different companies delved into these challenges at the most recent forum in LexisNexis Martindale-Hubbell's 2004 **Counsel to Counsel** series, a global initiative in which senior corporate counsel are invited to discuss best practices in delivering legal services. The forum, "Playing the Global Game: Managing the Legal Function Across Borders," was held in Montreal in September and was facilitated by Derek Benton, Martindale-Hubbell's director-International Operations.

The forum was co-chaired by Daniel Desjardins, senior vice president and general counsel, and Guy Dionne, senior director, corporate legal affairs, Bombardier, along with Pierre Gagnon, gen-

London-based Derek Benton is director-International Operations for LexisNexis 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.



From left: Steve Levin, Partner, Davies Ward Phillips & Vineberg LLP; Stéphanie Couture, Director of Legal Department & Corporate Secretary, Tarkett, Inc.; and Hartland Paterson, Vice President, Legal & General Counsel, CAE Inc.

eral counsel of Hydro-Québec. They were joined by in-house counsel from companies such as Abitibi-Consolidated Inc., BCE Inc., and Caisse de dépôt et placement du Québec. The event was co-hosted by the law firms Blake, Cassels & Graydon LLP, Davies Ward Phillips & Vineberg LLP and Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Naturally, the dialogue quickly zeroed in on the best departmental structure to establish for efficient cross-border management. The debate centered on centralized versus decentralized with pros and cons on both sides. At Bombardier, where roughly 70 percent of the legal work is international in nature, the legal function is currently decentralized, with lawyers on site in 15 locations. Co-chair Guy Dionne

provided two key tips to make this approach work successfully: 1) Make certain to have senior management buy in on the "value added" of the legal function and keep your lawyers in continuous contact with them; and 2) Empower the local lawyers to make decisions, yet make clear the issues that need to be raised with the corporate office either for information or approval. "Open-door communication also is critical," said Dionne, who keeps in regular contact with the legal team and business units to provide the support they need.

At Hydro-Québec, General Counsel Pierre Gagnon has worked on aligning his team of 32 lawyers with the business units to mirror the structure of the company. Previously, the legal department was structured along areas of law. Now lawyers are part of practice groups that provide services to specific divisions and clients, thus allowing legal services to be provided in a more proactive manner.

Not surprisingly, demands for the lawyers to be detached from the central legal department and formally integrated into the operational divisions have increased. Because Hydro-Québec is a publicly owned utility controlled by strict regulations, the decision was made that this "outsourcing" approach was not in the business's best interest. Yet some lawyers have started to work out of their client's premises on prescheduled days. "We have found that proximity with clients, coupled with a permanent seat on management committees, allows us to better understand the business of our clients and provide services proactively. At the same time, the formal reporting to the legal affairs group as a corporate function provides professionals a channel to raise concerns where the legal aspect may conflict with the business objective," said Gagnon.

CAE Inc. opted for a centralized structure. Until 2001, when Hartland Paterson, current vice president, legal and general counsel, was brought on board, the company had nine lawyers across three countries, and external firms were hired by and reported to local managers, and there had never been a general counsel. Now CAE's lawyers, still across four countries, report directly to Paterson. He coordinates the department's efforts through a weekly teleconference and also requires all lawyers to provide brief written weekly reports to their colleagues. Legal must sign off on all contracts of a certain level and be involved in all external law firm retainer agreements.

Constant Communications Become Critical

Every company must find its own approach to building open and smooth communications, whether lawyers are all in the same office or in multiple time zones. A regularly scheduled teleconference appears to be the main vehicle used, often at one end or the other of the day to accommodate colleagues in Asia. Additionally annual gatherings of the full legal team for one day or more have proved to be a good way to build stronger relationships and air and resolve concerns.

Participants also embrace technology to help build cohesiveness, establishing global document repositories to both communicate on current projects and to gather knowledge so as to prevent the need to re-create the wheel in the future.

Pop The Question When Hiring Foreign Counsel

Concerns regarding the hiring of outside counsel multiply exponentially when seeking lawyers in other countries. A number of participants advocated the use of questionnaires to assist in the decision-making process, with the caveat that counsel must know what questions to ask to get the information they are seeking. At BCE Inc., the company starts its search by compiling a short list of recommended law firms, to which it may send a questionnaire asking them specific questions about the matters to be worked on. The manner in which the firms answer

these questions – accuracy, responding within the deadline, in proper English – helps guide the selection process, said Mark Hounsell, assistant general counsel. Steve Levin, a partner in the New York office of Davies Ward Phillips & Vineberg LLP, recommends that counsel send a questionnaire to those on the short list to make a second assessment. By asking questions relevant to the project at hand, such as “Must there be local ownership of real property?,” “Are covenants not to compete enforceable?,” and “Are there a minimum number of shareholders and must a certain number be citizens of the country?,” counsel can learn more about the law firms and finalize their decision.

Sunny Handa, a partner at Blakes Casells & Graydon LLP, uses a similar approach when asked to work with local counsel. He sends a client-vetted long form of questions to local counsel and follows up with a phone call to get a preliminary response. He then makes certain that the advice is confirmed in writing. Counsel around the table agreed that it is crucial to have the foreign lawyer put his advice in writing to make certain that everyone understands what needs to be done and the steps to get there.

Build Strong Relationships

When working with foreign firms, counsel can take a number of steps to make certain the relationship runs as efficiently and smoothly as possible. Andrew Foley, a partner with co-host firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, noted in his best practice that all parties should be comfortable accepting some “blurred lines” in the relationship. For example, specific tasks will be assigned to the most efficient provider so drafting may clearly be someone's responsibility. Yet the comment and review process will involve more participation to provide for input and identify critical issues. The goal for in-house counsel is to manage input but avoid needless duplication.

Streamlining Global Compliance

When any lawyers have gathered over the past few years, the topic of Sarbanes-

Oxley and compliance inevitably enters the conversation. The Montreal lawyers shared best practices more specifically on establishing a process in support of the CEO/CFO certification required under Canada's equivalent law Policy 52-109.

Dionne at Bombardier established an intricate system where a number of executives worldwide sign a certificate in support of the CEO/CFO certification. In their certifications, the executives confirm that financial and disclosure issues are adequately documented. To achieve a similar program, Dionne advised counsel to:

- Prepare a Q&A answering such questions as “Why are you asking me to sign a certificate?” “Am I obliged to do so?” “Who should I contact if I want to raise an issue or concern?”
- Establish a centralized database and reporting formats to document certification findings.
- Ensure that normal processes and communication channels are not bypassed.
- Empower key business units (trust but verify).
- Get local senior management buy-in. A good way to do this is by participation in the Certification Committee.
- Limit the number of certifiers and establish a cascading system.

Launch this new process with an overall message on the importance of governance, strong values and ethics.

LexisNexis Martindale-Hubbell facilitates a valuable dialogue between leading buyers and providers of legal services through its underwriting of the *Counsel to Counsel* initiative. *Counsel to Counsel* is organized in collaboration with ELD Project Marketing International, Inc.

For more information about the Montreal forum, or to apply to participate in a Martindale-Hubbell *Counsel to Counsel* forum, such as the upcoming session in **New York City on November 16, “Reducing Risk, Realizing Value: Compliance Risk Management in a Post-SOX World,”** please go to <http://c2c.martindale.com>.