

[CORPORATE GOVERNANCE NEW RULES OF THE ROAD]



Who's Driving?

The wisdom behind governance reforms taking place in Canada and other Organisation for Economic Co-operation and Development countries is neither new nor revolutionary. So it begs the question whether reforms such as the Sarbanes-Oxley Act (SOX) in the United States or Canada's new rules and proposed guidelines will really make a difference.

While there are clearly some companies making progress toward better governance practices, there are also

distinct grumblings of resentment that all corporations are being made to pay for the mistakes of a few unethical individuals, and that the added cost in time, effort and money is burdensome.

Anne Golden, president and CEO of the Conference Board of Canada, has heard it said, in some quarters, that "maybe the pendulum is swinging too far" toward governance reform. Claude Lamoureux, president and CEO of the Ontario Teachers' Pension Plan, sees it differently. "It's as if the recent governance, accounting and disclosure scandals never happened.



There is no voluntary groundswell of change in the boardrooms of North America," he says.

Was Conrad Black right when he dismissed corporate governance as a fad? Is the impact of corporate scandal and concern over investor confidence already fading? Organizations like the Conference Board, the Institute of Corporate Directors and the Canadian Coalition for Good Governance (CCGG) are doing their part to beat the drum for better governance—and so are Canada's securities regulators.

UNPRECEDENTED SCRUTINY

CCGG was forged in 2002 by Lamoureux and Stephen Jarislowsky of Jarislowsky Fraser Limited to act as a powerful motivating tool for better governance practices. The coalition now boasts over 30 Canadian pension and mutual fund companies that collectively manage \$550 billion dollars in assets, giving CCGG a lot of potential influence. The public, however, won't know how that influence is being wielded or against which boards. They aren't in the business of making headlines,

says CCGG chair Michael Wilson.

Headlines, however, are an important motivator for companies to follow the new rules of the road. Corporate scandals have become big news. It's not just that the "perp walk" makes for good television, or that high-profile corporate scandals from Martha Stewart to Ken Lay sell newspapers and magazines. The media seems to appreciate that their audiences have a vested interest in good corporate governance and is, for now, willing to devote resources to cover the issue.

This unprecedented scrutiny by the media and stakeholder organizations are two important safeguards against complacency in the boardroom. A third, and perhaps more important, factor is the new enforcement role of the Ontario Securities Commission (OSC) and other provincial regulators.

"Let's face it, expectations of directors are greater today than ever," says Susan Wolburgh Jenah, vice-chair of the OSC. "As regulators, we have to create an environment that is conducive to good governance practices and approaches."

GREATER TRANSPARENCY

Transparency through mandatory and continuous disclosure is a key component of the new governance environment.

Like SOX, the Canadian approach includes new laws that seek to boost investor confidence in financial reporting by defining the required level of independence, financial literacy and responsibilities of the audit committee. New rules also require CEOs and CFOs to certify financial statements, and auditors to participate in the oversight program of the Canadian Public Accountability Board.

In addition to new rules, Canada's securities regulators will rely heavily on the "comply or explain" approach, where best practices form the basis of recommended guidelines for boards and directors, and mandatory disclosure requirements are policed by regulators.

In January 2004, the OSC and other provincial regulators released the proposed guidelines and mandatory disclosure rules for comment. A decision is likely to be made in the fall of 2004 as to whether the guidelines will be adopted with minor changes

Getting Back to Business

A TIMELY CONFERENCE ON GOVERNANCE ISSUES

If you develop, monitor or promote corporate governance, consider attending the sixth annual Corporate Governance Conference of the Canadian Society of Corporate Secretaries (CSCS) being held this Sept. 30 and Oct. 1.

This year's event, "Getting Back to Business," will give Canadian companies important insights into implementing, evaluating and improving corporate governance programs.

Corporate secretaries, corporate counsel and other governance professionals will be able to compare compliance programs and exchange best practices. They'll also be able to discuss how their key executives and other professionals in corporate governance can assess their own roles as well as their success in applying the new guidelines and regulations.

The conference will focus on issues dominating the corporate governance agenda in Canada, including the new Ontario Securities Commission guidelines, audit committees, board assessment and the roles of directors. Other topics to be covered include shareholder activism, director recruitment and board succession-planning.

Despite an agenda that covers some serious topics, the conference won't be all work. 2004 is the 10th anniversary of CSCS, and they'll be celebrating with a gala dinner on Oct. 1 that will include special presentations, stand-up comedy and live classic rock.

CSCS is a not-for-profit corporation that provides members with the tools necessary to excel in corporate governance and shareholder communications. The organization also advances the profession and represents the interests of its members. Through alliances with similar international bodies, CSCS also gives members a global perspective on corporate governance.

CORPORATE GOVERNANCE

or, if substantial changes are called for, sent out for comment again. Another proposal, similar to Section 404 of SOX, requires management and auditors to report on the effectiveness of internal controls over financial reporting; however, this requirement is considered too costly by some organizations and Canadian regulators are currently grappling with the issue of whether the benefits outweigh costs.

MAKING IT WORK

Although Canadian companies listed in the U.S. have to comply with SOX anyway, the flexibility offered by “comply or explain” is considered to be better suited to meet not only the evolving standards of governance, but also the reality of Canada’s smaller markets, smaller companies and larger proportion of companies with significant shareholders. A “one size does not fit all” approach allows a company

to determine the most effective and appropriate governance practice based on its resources and particular circumstances. A company might not comply with all the provisions of every guideline, but it must explain what it is doing instead.

“We will be monitoring the disclosures very vigorously, and we will be looking at what companies are saying and how they are saying it,” says Wolburgh Jenah. “This provides a good environment to move forward in. If we find that, in the future, there are areas where we feel companies are falling short of the mark and we have to hardwire some of these requirements, then our options are open to do that.”

The OSC’s proposed guidelines, similar to the TSX guidelines they will replace, include the following:

- Boards should have a majority of independent directors, and these directors should meet regularly with management.

- The board must be satisfied as to the integrity of the CEO.
- All directors should be provided the opportunity to upgrade their skills.
- A written code of conduct and ethics should be adopted, and compliance monitored.
- Compensation committees should be composed of independent directors.
- Position descriptions for the chair, directors and committee chairs should be developed.

Given the increased demands of implementing and administering the new governance regime effectively, the Canadian Society of Corporate Secretaries has further recommended that the OSC guidelines include a strong recommendation that “issuers designate an appropriate senior manager in their organization as chief governance officer” and that “the corporate secretary might be ideally suited and positioned to assume such a key leadership role.”

Director Education

According to Anne Golden, president and CEO of the Conference Board of Canada, the time is right for comprehensive programs aimed at sitting and would-be directors. “There are people who are now willing to take serious courses in governance, not just half-day courses,” she notes.

THE DIRECTORS COLLEGE

WWW.THEDIRECTORSCOLLEGE.COM

The Directors College holds its sessions in Niagara-on-the-Lake, Ont. Over the course of five modules, each two days in length, the curriculum covers subjects such as governance best practices, strategic thinking, conflict and risk management, compliance, ethics, financial control, executive compensation, organizational behaviour and corporate social responsibility. Cost per individual per module is \$4,000, which includes copies of prepared handouts, available texts, all meals and accommodation.

“We are Canada’s first and only university-accredited, TSX-sponsored director certification program,” says Chris Bart, pro-

fessor of business strategy and governance at McMaster University and lead professor at the Directors College. “We represent the gold standard.”

THE ICD CORPORATE GOVERNANCE COLLEGE

WWW.ICD.CA/EDUCATION/COLLEGE.ASPX

The ICD Corporate Governance College’s Director Education Program consists of four three-day training modules at partner universities in Vancouver, Calgary, Toronto and Montreal. Topics covered include strategy formulation, risks, duties and responsibilities, effectiveness, financial strategy, audit committees, board-management relations and compensation policies. The program fee is \$12,000, and includes the cost of tuition, all program materials and meals. Installment payments can be made at \$3,100 per module.

“Even seasoned directors have told me that they are amazed at the new perspectives they are able to bring to governance situations,” says Bev Topping, president and CEO of the Institute of Corporate Directors. “After they’ve been through the program, the road of knowledge looks like a six-lane highway.”

Focus on Directors

WANTED: QUALITY AND QUANTITY

Not so long ago, becoming a director used to be more about whom you knew than what you could contribute. Candidates were traditionally selected from the proverbial old boys' network. Choosing directors wasn't necessarily about finding the best people; in fact, there was a notion that you couldn't teach people how to be good directors—either they "got it" or they didn't.

Today, with governance top of mind for the public, the media, watchdog organizations, shareholders, regulators and more, directors are subject to far more demanding standards. As if this weren't trying enough for companies trying to build strong boards, there's currently a shortage of individuals qualified to step in and fill these

challenging roles. By some estimates, as many as 60 percent of today's corporate directors will retire in the next five years.

In November 2003, two new Canadian colleges came charging to the rescue, offering new programs to meet the demand for more and better-qualified directors. The Conference Board of Canada and the Michael G. DeGroot School of Business created the Directors College, while the Institute of Corporate Directors (ICD) partnered with the Rotman School of Management to create the ICD Corporate Governance College, which launched the Directors Education Program (DEP) in Toronto. (Beginning this fall, DEP will also be offered through the University of Calgary and McGill University; the Montreal program will be the only such North

American program offered in French.)

Both colleges have an impressive array of institutional sponsors and boast top-notch experts from the academic and business worlds to lead their courses. Both attract a mixture of students; most are sitting directors, while others are aspiring directors or are in governance-related professions.

NEW STANDARDS OF PROFESSIONALISM

The two colleges emphasize a need to treat directors as a new professional class.

While participants at the Directors College have the option of pursuing professional development opportunities that do not lead to a designation, the college offers Chartered Director (C.Dir.) certification to graduates through McMaster University. This certification is contingent on fulfilling

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certain requirements, such as a commitment to continuing professional education and maintaining a code of conduct. It also requires graduates to undergo a professional review period and pass an exam. The program's first group will take the exam this fall.

The ICD College's accreditation (ICD.D), offered through ICD, has similar requirements, with the exception of the formal exam, and is expected to accredit over 30 directors by mid-September.

"These programs would not have been possible three years ago," says Susan Wolburgh Jenah, vice-chair of the Ontario Securities Commission, who recently completed the ICD College program. "Demand is very high because expectations of directors are greater today than ever."

"The job of being a director has

become a lot more complex," says Fred Biro, chair of the Ontario Municipal Employees Retirement System and a student at the Directors College. "This level of education has been extremely helpful in identifying the core competencies needed for the job and how they factor into the equation."

"We strongly support the development of formal director education, and we endorse the work that is being done by the new directors' colleges," says Lynn Beauregard, executive director of the Canadian Society of Corporate Secretaries. "Given that corporate secretaries play a critical role in ensuring the quality of governance within their organizations, and that they liaise between the board and management and play an essential part in bridging the knowledge gap that often exists, it seems reasonable

that organizations should also ensure that these individuals meet a professional standard, such as the international designation offered by Chartered Secretaries Canada."

Build a Better Board

DIVERSITY MATTERS

We've all heard the argument that the police force and other public organizations serve their communities better when they reflect those communities' ethnic composition. Respected sources say that a similar case can be made for the composition of boards—that boards can make better decisions when there is a diversity of perspectives and experiences sitting around the table.

"If you can get senior people with different life experiences, you get dif-

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ferent questions at the board table, and you'll probably have a more capable board," says David Beatty, managing director of the Canadian Coalition for Good Governance (CCGG) and professor of strategic management at the Rotman School of Management, who is currently completing a study on how Canadian directors have been selected.

President and CEO of the Conference Board of Canada Anne Golden agrees, especially on the importance of having a better gender balance on boards. "In spite of the fact that there is a correspondence between companies that do well and companies with more women on their boards, there are fewer women than ever on boards," she says, referring to the Conference Board's report *Not Just the Right Thing...but the "Bright" Thing*.

FINDING QUALIFIED CANDIDATES

That diversity isn't always there, partly because of the legacy process of identifying prospective directors by networking, which often created and drew from "the old boys club."

"Perhaps because of the equal opportunity environment in the United States, minority representation on boards there is about 12 or 14 percent," explains Beatty. "In Canada, we're lucky if that number is one percent. The problem has always been how to find qualified people who also represent the diversity of the country. On the other hand, if you're a visible minority who is business-savvy and competent but perhaps not a CEO, how do you get discovered as a potential director for a large company?"

While organizations such as Catalyst provide a great service to this

cause by identifying qualified women candidates for boards of directors, much more help is needed to help ensure that boards are made up not only of experienced, ethical individuals, but that these individuals also reflect the cultural diversity that can inform sound collective business judgment.

In this new governance environment, the concern for both quality and quantity of directors holds an opportunity to build better boards in every sense. What's more, the introduction of professional certification opportunities at the ICD Corporate Governance College and the Directors College will provide a potential stepping-stone for many more qualified individuals to gain recognition as candidates for boards, regardless of gender or ethnic background. ■■■

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