



ACC'S CLO THINKTANK SERIES 2006

**The CLO's Role in Government Relations and External
Affairs- Canada**

Hosted by Martine Turcotte, CLO of BCE, Inc.

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10:00 a.m. – 2:00 p.m.

Sofitel Montreal- Montreal, Quebec

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Participants' Briefing Materials

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SUMMARY/OUTLINE OF DISCUSSION TOPICS

CLO's Role in Government Relations & External Affairs

The following outline is intended to provide a short overview of some of the issues at the heart of this discussion topic. There may be other issues we've not identified or perspectives on the identified issues that are not adequately represented in the outline: you should feel free to raise these additional thoughts, as you like. *The outline is merely intended as a starting point to help you identify discussion topics and tee up your conversation.*

A. Organizational Issues/ Functional Responsibilities

1. **Law Department & Governmental Relations/Public Affairs:** What is the organizational relationship between the governmental relations/public affairs group, the risk management group and the law department? Do these groups report organizationally into the law department or are they separate business or functional groups without any reporting relationship to the law department? What are the pros and cons of having an organizational reporting nexus between the law department and these groups?
2. **Law department and Public Relations:** What is your role/role of in-house lawyers as spokesperson(s) for the company and when do lawyers advise Public Relations and executive management on public statements? What value does legal offer to Public Relations in connection with external communications and reputation-management for the company? Are lawyers too conservative to perform this function? What is the role of the media in how the company is viewed? Has the media's role changed in recent years with all of the attention on corporate management and dealings?
3. **Chief Legal Officer (CLO) and Chief Risk Officer (CRO):** Does your organization have a CRO? Is the CLO the CRO? If not, what is the organizational reporting relationship (if any) between the CLO and CRO? Is the CRO a relatively new position (e.g., within the past 5 years)? What are the key responsibilities of the CRO? How have the key roles and responsibility scope for this position changed (if at all) during recent years? What are the pros and cons of having the CLO as CRO? If you're the CRO, who provides legal advice to you when you are providing services in your CRO capacity?
4. **Reputational Risk/Disclosure Committees/Public Policy:** Has your organization created executive-level committees for handling policy and strategic issues relating to organizational reputation and public disclosure issues? What is your role as CLO on these committees? Who chairs these committees? Are you a working member of the committee or an advisor to the committee? What is the scope of responsibilities/charter for these committees?
5. **Board's Role:** How does the Board view its role in crisis management/risk management/public policy? Does your Board have a public policy committee and what are the key focus areas for this committee? Who is on point to brief the Board on issues in these areas? Who provides legal guidance to the Board on crisis management,

organizational reputation issues, and/or strategic public policy initiatives—you as CLO, other in-house lawyers, or independent outside counsel? Are there ‘filters’ or policies outlining the types of matters that need to be brought to the attention of the Board (and corresponding time frames)?

- 6. Role of the Law Department in Corporate Community Service/Corporate Responsibility Initiatives:** What role does your law department play with regard to these types of external initiatives? Are there company-wide programs that the law department provides counsel on/participates in? Is the law department a leader in blazing the trail for these types of initiatives? Does your law department implement separate external programs for lawyers (such as pro bono, diversity, service on charitable boards, etc..) or is the lawyer’s primary role function to help management understand how to best place and market the company as a valuable and responsible member of society and community?

B. Crisis Management: CLO’s role in developing and implementing crisis management and response plans

- 1. Crisis Policies, teams & training:** Does your organization have a crisis management policy? Is there a cross-functional multi-disciplinary team on point for responding to crisis situations? Are you as CLO/ in-house lawyers part of the team? What training is provided to team members and how often? What training programs have you supported to ensure appropriate company-wide response, in the event of crisis? Does your company perform table-top exercises and/or formal scenario drills as part of this training? Do you involve outside governmental agencies in this training? What role does outside counsel play?
- 2. Identifying risks & developing response plans:** What are the key problem areas for in-house counsel in protecting against crises? Do you have separate protocols for handling crises depending upon the nature of the situation? How does your legal department help the company identify points of vulnerability? What was the process for assessing the key risk areas to develop crisis management and response protocols? Do your greatest concerns relate to high-profile litigation, governmental investigations, product or facility defects or problems, financial practices and reporting, natural disaster or force majeure-type events, other? What steps do you take to manage company response, communication and potential liability?
- 3. Proactive and preventive practices:** What types of practices do you implement to help prevent crises and stay ahead of the damage? Have you developed channels or processes for receiving information on practices or questions or concern and what types of communications channels are available for bringing this information to the attention of organizational management or the Board? How has your legal department prepared to respond to the company’s various constituencies and the myriad of ways information is distributed, including via the Internet?
- 4. Internal notifications:** Do you have protocols for internal notifications and notifications to the Board? What is the role of the CLO/in-house lawyers? How can you ensure that in-house counsel at all levels feel comfortable raising potential issues before they become

crises? How does your legal department ensure that the company may be alert to developing issues or problems, and that the executives are prepared, ready and focused?

5. **Business continuity/disaster recovery:** What kinds of business continuity/disaster recovery measures have been instituted for the company including operations outside company headquarters? Do you have a business continuity plan for the law department?
6. **Internal investigations/root cause analysis/after-action plans:** What processes does your company implement to perform internal investigations and root cause analyses? What role do lawyers play in these investigations and evaluations? Does your organization have formal processes for after action reviews? What best practices have you seen in these areas?
7. **Media contacts and role of law department:** What is the role of the law department in responding to the media when there is a crisis situation? Do you provide advice to Public Relations and/or executive management on what to say and not to say? Has the law department developed guidelines for responding to media in a crisis situation? In what situations might you as CLO be the spokesperson? What are the pros and cons of having a lawyer be the spokesperson? (See also Section D below on Media Relations)
8. **Role of Lawyers:** What role do in-house and outside lawyers play in crisis prevention and response? Are certain types of crises better suited for handling by in-house or outside counsel? How do you ensure that messages coming from in-house and outside counsel are consistent? When a crisis is unfolding, how have you found in-house or outside lawyers to be most valuable?

Links to Resources:

6 Principles For Successful Crisis Management And Resolution

<http://www.acc.com/resource/v8351>

Damage Control, Corporate Counsel's Role In Containing And Resolving Corporate Crises

<http://www.acc.com/resource/v8350>

6 Key Stages In Preparing And Executing An Action Plan

<http://www.acc.com/resource/v8349>

Crisis Management and the Role of In-house Lawyers

<http://www.acca.com/resource/v5908>

Business Continuity And Disaster Response Planning: What Companies Are Doing

<http://www.acca.com/resource/v7152>

C. Reputational Risk Management

1. **Policy and organizational structure:** Does your organization have a reputational risk policy? Is there a committee or multi-disciplinary team on point for evaluating reputational risks? Who are the key players? What role does the Board play in assessing and responding to matters involving reputational risk? What filters do you use to determine when to escalate matters involving reputational risk? What is your role as CLO in assessing and advising on reputational risk?
2. **Trends:** Have there been recent changes to the scope of responsibilities of the organizational groups on point for evaluating and responding to reputational risk issues?

- 3. Practices:** What types of practices has your organization implemented in this area that you would consider to be leading or best practices? What types of practices have you seen other organizations implement that you would consider to be leading or best practices? What types of practices or responses have you seen or heard of that you consider problematic?

D. Media Relations- Role of CLO

- 1. Media Relations Policy:** Does your organization have a media relations policy/set of processes for identifying who may be a spokesperson for the company and expectations on processes for handling media inquiries? Was the law department involved in helping to develop the policy? In your view, what are key features any policy should have? Do these policies extend to outside counsel?
- 2. Role of the Law Department/ CLO:** What role does the law department play in media relations? Does the law department review all press releases before they're made? Only some? Are lawyers external media spokespersons for the organization? In what circumstances would you as CLO expect to be the spokesperson? Does outside counsel have a role in media relations strategies?
- 3. Challenges re: Information Release:** What are the most typical challenges you/law department faces in connection with providing information to the media? What types of processes have you implemented to help ensure accuracy of information provided? How does the law department work with the organization's public affairs/media function to navigate issues such as scope and timing of information release?
- 4. Impacts on Potential Litigation and External Investigations:** What types of processes does your law department implement regarding publicizing to the media information that may relate to potential litigation or government investigations? Where are the greatest challenges? Who makes the final determination on the scope and timing of information release (CLO, CEO, Head of Public Affairs, other?)?
- 5. Proactive Approach:** Do you implement practices to use the media in a positive way to impact your company's reputation? How is the law department involved in these types of strategic initiatives? Have you seen/implemented best practices in this area?

E. Government Relations and the Role of the CLO: Dealing with Regulators, Legislators, & Law Enforcement Agencies

- 1. Legislative initiatives:** Do you as CLO/does your law department advise the company's regulatory or public affairs functions on strategic issues and policies regarding legislative developments? What do lawyers working in the public policy realm have to offer – why are they good team members with lobbyists? What kinds of legislative initiatives are of common concern to the legal team? How has work in this field changed your legal and management roles? Has your role changed in recent years? What practices have you implemented to help ensure company strategies have the benefit of legal counsel? Is this an area where your company prefers to work through organizations or industry associations?

2. **Regulatory change initiatives:** What is your leadership role in going out to regulatory agencies to promote changes or reforms that will benefit the company's business interests? Is this an area where your company prefers to work through coalitions or industry associations?
3. **Regulatory enforcement context:** What is your role as CLO in connection with high-profile/high stakes enforcement matters? Are you on point to advise the Board? How do you manage multiple, multi-jurisdictional or cross-border investigations and the corresponding expectations of different regulators and law enforcement agencies? Under what circumstances would you choose to meet personally and/or be the point legal person for discussions with government regulators on enforcement investigations and cases?
4. **Public disclosure of an investigation:** – When does the existence of an investigation trigger a disclosure obligation and what is your role as CLO? The Ontario Securities Commission (OSC) has guidelines for when it will disclose an investigation (*OSC Guidelines for Staff Disclosure of Investigation*). At the same time, the Ontario Securities Act includes provisions prohibiting a company from disclosing an investigation (sections 11-18 of the Ontario Securities Act). What standards has your law department implemented to evaluate when disclosure is appropriate? What are the key challenges in making these determinations? What role do you play as CLO? Is your company's Board involved? Who can be told within a company (or at the Board level) about a section 11 OSC investigation or a section 13 summons?¹

Links to Resources

Dealing With The Media, Corporate Counsel's Role In Containing And Resolving Corporate Crises

<http://www.acc.com/resource/v8354>

002 Dealing with the Media: Right, Wrong, & Otherwise

<http://www.acc.com/resource/v6831>

F. Class Action Response- Strategic Role of CLO

1. **Recent trends and developments in class actions in Canada:** What are the biggest emerging issues in successful management of class actions in Canada? How is the US experience and the development of class action focus in Europe impacting Canadian law and public/plaintiff expectations?

¹ The Securities and Exchange Commission has issued professional conduct standards for in-house lawyers with regard to internal, up-the-ladder reporting for certain matters. Many law departments have developed internal, up-the-ladder reporting policies. In addition, outside law firms providing legal advice to companies have developed their own internal reporting policies. There are a number of issues associated with these policies that impact interactions among business clients and lawyers, the role of in-house lawyers (gatekeeper, advisor, other, etc.), communications with outside law firms, privilege, and interactions among business clients and in-house and outside lawyers; however, given that these issues relate primarily to internal reporting and practices rather than external relations, we've included a resource in the binder but have not emphasized these discussion points in the outline.

- 2. Successful response strategies/ key considerations for coordinating multi-jurisdictional class actions** (See Ogilvy Renault summary of response strategy considerations at Tab 3): Geographic realities can increase costs and have an important impact on the CLO's budget. They can also influence the steps to be taken before a litigation even starts and the choice of counsel. And, differences in the substantive law can make a defense strategy that is good for one jurisdiction, a source of problems in another. Some key considerations include: cost regimes, pre-certification strategies, constitutionality of national classes/overlapping classes, language considerations-bilingualism, local expertise, different discovery and other rules (such as privilege, insurance requirements, apportionment, private international rules, etc.), separate judicial systems, etc..

How have you successfully managed these issues for your company? Which considerations are most problematic/present the greatest challenges for you? Have you implemented best practices in this area? How do you manage the media attention with regard to class action developments? Is this an area that requires managing external relationships with auditors and the information they request relating to potential or probable litigation?

- 3. Role of the CLO before the litigation starts (document retention, communications with clients or consumers etc.)** : Does your law department have centralized reporting requirements for every law suit or class action proceeding that is not purely local in nature? What processes have you implemented to help ensure you receive immediate notification of an action (or threat of an action) which could be the precursor to similar proceedings in other jurisdictions? What processes does your law department follow to determine whether an issue is a potential single or multiple jurisdiction problem? How does your office help ensure that there are no inadvertent waivers of local jurisdictional challenges and that an appropriate media response is provided? Does your law department help implement/support practices to help stave off class action suits by solving problems before plaintiff's counsel is retained? How do you work with senior management to determine potential exposure and define reporting and responsibilities? How early in the process does this occur?
- 4. Building a legal team; ensuring coordination** : When do you retain local counsel (stand-by basis)? Do your strategies include designating coordinating counsel for all litigation to act as a central repository of evidence, experts and other litigation related matters? Do you regularly schedule reporting and brainstorming sessions? Who is included in these sessions? How important are models and standardized repetitive tasks for local counsel (for example, guidelines for examinations on discovery of Plaintiffs in each of the provinces)?
- 5. Litigation tracking systems/evidence databases** : What types of litigation tracking systems/evidence does your law department use? Who updates these systems? Who has access? What are the consequences of giving access to each local counsel (impacts of disclosure obligations in certain jurisdictions)? Do you use collaboration and knowledge management software to enable secure access to a central defence team file via the internet?

6. **Public relations practices :** Is having a single public relations consultant to answer inquiries part of your law department's strategy or does your company prefer that its 'voice' be made heard via in-house lawyers or business personnel rather than an outside consultant?
7. **Cross-border considerations :** How do cross-border considerations influence case management and selection of co-ordinating counsel?

Links to Resources

Ontario Securities Commission Staff Notice 15-703, Guidelines For Staff Disclosure Of Investigations

http://www.osc.gov.on.ca/Regulation/Rulemaking/Current/Part1/sn_20041015_15-703_disclosure-investigations.jsp

Part VI, Investigations And Examinations

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90s05_e.htm#BK28

Sarbox 307 Up-The-Ladder Reporting and Attorney Professional Conduct Programs

<http://www.acca.com/resource/v6328>

Class Action Response Strategies, Recent Trends And Developments In Class Actions In Canada

<http://www.acc.com/resource/getfile.php?id=8357>

Class Action Response Strategies

<http://www.acc.com/resource/v8353>

A Gentle Reminder That Traditional Class Action Principles Are Not Passe

<http://www.acc.com/resource/v8346>

Quebec Court of Appeal Provides Guidance on Conditions for Authorization of Class Action

<http://www.ogilvyrenault.com/en/ResourceCenter/ResourceCenterDetails.aspx?id=1132&pId=7>

The Approval Of Cross-Jurisdictional Settlements For National And International Class Actions

<http://www.acc.com/resource/v8356>

Securities Class Actions In Canada, The Dawn Of A New Era

<http://www.acc.com/resource/v8352>

Managing The Geographic Realities Of A Mass Tort Claim

<http://www.acc.com/resource/v8347>

G. The CLO/law department as a leader at the Bar and in public service: pro bono, diversity, bar leadership, outside counsel direction, etc.

1. **CLO as change agent at the Bar:** How do you view the CLOs' role in helping to move the Bar's focus towards client-related services (rather than viewing the Bar as a guild for lawyers)? How do you help ensure that the Bar regulates lawyers and develops professional legal skills programs that are meaningful for in-house counsel (e.g., more on preventive and less on remedial services)? Are there opportunities to use participation in Bars a means to help enhance outside counsel relationships, including gaining a better understanding of corporate client service objectives? Is there someone on point within your law department to help track initiatives undertaken by the Bar regarding regulations that may impact the in-house practice?

- 2. Diversity and the law department:** What does diversity mean within your law department (e.g., race, gender, sexual orientation, language ethnicity, economic, religious, cultural, etc.)? Within your company? Does the CLO have a role or wish to assume a role in promoting diversity? Is there a business benefit from greater diversity within the company, its suppliers, the legal profession? What does diversity offer to business thinking and team building? Does your company look at diversity as an issue in your expansion to reach new markets, and if so, how does legal department and law firm diversity serve those goals? Does your law department have a diversity policy geared specifically towards practices implemented within the law department? Does the policy extend to outside counsel or vendor relationships? Does your law department have a diversity council or committee? What is your role as CLO with regard to these initiatives?
- 3. Pro Bono and the external corporate image:** What is your role as CLO in connection with pro bono? Have your law department's pro bono programs and services enhanced your law department's/company's visibility among local community leaders also engaged in non-profit and charitable activities? Does your law department have a pro bono policy?
- a). National community service profile – how has pro bono helped with:
- Corporate “good citizen” marketing
 - Developing credibility with governmental decision makers
 - Developing credibility with industry regulators
- b) Pro Bono and internal corporate benefits
- Skills development within the law department
 - Development of law department's profile within the corporation
 - Team building
 - Employee morale and job satisfaction
 - Employee diversity
 - Observation of external counsel outside of normal practice environment
- c). Pro Bono Areas of Opportunity
- Pro Bono Ontario (<http://www.pblo.org/>)
 - Pro Bono Quebec
 - Pro Bono British Columbia (<http://probononet.bc.ca/>)

- Pro Bono Alberta
(<http://www.lawsocietyalberta.com/resources/probono.cfm>)
- Ad-hoc Pro Bono Activities
- CPBO – A joint project of ACC and the Pro Bono Institute that provides technical assistance to departments worldwide, focusing increasing attention on how to help departments with lawyers in multiple jurisdictions work on commonly shared projects

d). Administration of Pro-Bono Activities

- *Selection and distribution of pro bono assignments-* What types of practices does your law department implement to select and distribute pro bono assignments? Do you have a pro bono committee? Does your law department partner with select organizations for pro bono?
- *Legal staff participation-* Can everyone in your law department (e.g., lawyers, paralegals, legal assistants, etc.) participate in pro bono activities? Can legal staff participate in pro bono during regular work hours? Are there limits on the amount of time staff may spend on pro bono? Do you team with outside counsel or create legal teams within your department to help staff pro bono matters? What types of training do you offer for law department staff interested in participating in pro bono?
- *Recognition of pro-bono activity within the organization-* How do you recognize pro bono activities, successes, and contributions within the broader law department and company? How has this impacted the reputation of the law department and company with regard to community service initiatives and corporate responsibility?
- *Recording and supervision of pro bono activity-* Who is on point to track pro bono activities? Who supervises?
- *Insurance/liability-* What practices has your law department implemented with regard to insurance or other coverage or protections for legal staff participating in pro bono services?

Links to Resources:

Leading Practices In Law Department Diversity Initiatives: What Companies Are Doing

<http://www.acc.com/resource/v5898>

Achieving Diversity in Law Departments

<http://www.acc.com/infopaks/diversity.php>

Minority Corporate Counsel Association

<http://www.mcca.com/>

The Business Case for In-house Pro Bono

<http://www.acc.com/resource/v7718>

Six Key Principles for Creating an Effective and Sustainable Pro Bono Program: Insights from Ken Handal, Executive Vice President, CA, Inc.

<http://www.acca.com/news/clo/cakenhandal.pdf>



Best Practices & Pro Bono

http://www.cba.org/BC/cba_publications/bartalk_08_03/guest_doyle.aspx

Pro Bono Initiatives in Alberta

<http://www.lawsocietyalberta.com/files/reports/FederationProbonoprovidersfinalAug2005.pdf>