

## ACC's CLO THINKTANK EXECUTIVE REPORT

### “THE CLO’S ROLE IN GOVERNMENT RELATIONS AND EXTERNAL AFFAIRS”

This Executive Report provides an overview of discussion results from ACC’s CLO ThinkTank session titled “The CLO’s Role in Government Relations and External Affairs” held in Montreal on December 8, 2006. ACC’s CLO ThinkTank sessions are designed to provide a forum for CLOs who wish to exert greater leadership in their companies, at the bar, in the courts, and in the halls of government on emerging issues of greatest concern. Following is summary information on key topics and takeaways, discussion point highlights, and follow-up initiatives identified by these CLO thought leaders.

ThinkTank participants included the following legal leaders:

- Claude Bergeron, Vice President, Legal and General Counsel, Caisse de depot et placement du Quebec
- Brigitte Catellier, Vice President, Legal Affairs and Secretary, Astral Media Inc.
- Mark Hounsell, General Counsel and Vice President, Legal Services, Aeroplan
- Gwen Klees, General Counsel, Group Laperriere & Verreault
- Don McCarty, Vice President, Law-General Counsel and Secretary, Imperial Tobacco Canada Limited
- Hartland Paterson, Vice President Legal, General Counsel and Corporate Secretary, CAE, Inc.
- Eric Paul-Hus, Chief Legal Officer and Corporate Secretary, Bell Nordiq Group Inc.
- Francois Ramsay, Vice President, General Counsel and Secretary, Yellow Pages Group Company
- Martine Turcotte, Chief Legal Officer, BCE Inc.

### KEY TOPICS

Below is a list of key topics selected by the CLOs present as most interesting and discussed during this CLO ThinkTank session:

- **Disclosure Process**
- **Records Management**
- **Media Relations**
- **Crisis Management**
- **Blogging**
- **Government Relations & Lobbying**

- **Risk Management**

## **KEY TAKEAWAYS**

Thought leaders participating in this session described a number of ideas and practices. Listed below are some top themes and takeaways. Ideas on additional issues are described in the Discussion Highlights section below.

- **CLOs play an important role in the Disclosure Process.** CLOs are members of company Disclosure Committees and play an important role in the company's disclosure process. As part of this role, some CLOs are considered de facto committee chair, and others play leading roles in making materiality determinations. CLOs also describe providing certifications in support of disclosures and/or the disclosure process.
- **Working proactively with the media adds value.** CLOs add value in media relations by helping to develop key messages and supporting approaches that include proactively getting company messages out in crisis situations. When a crisis or reputational event occurs, the media will get a story out, and taking the initiative to work with the media helps to get accurate corporate messages out early.
- **Minutes focus on process.** Most of the participants do not maintain minutes of Disclosure Committee meetings and those who do develop minutes of the process and maintain them at a high level documenting information sufficient to show that issues were considered.
- **Reputational risk management requires judgment beyond the bright line legality test.** Reputational risk assessments present great challenges since it's often not possible to predict the impacts of certain practices or issues. Companies often use a 'headline' or 'front page' test in determining how to approach matters involving reputational risk since even those practices that are completely within the law may have reputational risk implications and require evaluation or action.

## **DISCUSSION HIGHLIGHTS**

### **DISCLOSURE PROCESS**

Disclosure Process/ Disclosure Committee: Participants described having Disclosure Committees and various compositional structures. For one company, the CFO is officially the Committee Chair, the CLO's role effectively (and unofficially) includes chairing the committee. Also on the committee for this company are representatives from Tax, HR, Investor Relations, Controller and Internal Audit. Asked about independence concerns with Internal Audit represented, the CLO noted that it is positive for them to be there to ask questions and to ensure that they are not themselves aware of any omission of material information or misleading information. In addition to having the Committee representatives present in person for meetings, the process also includes scheduling conference calls with the head of the company's business units and their respective controllers and lead lawyers.

Disclosure Process/ Materiality: One participant shared a process that includes having each business unit determine what is material to that unit, and then having the CLO and the CFO decide whether that matter is material to the company as a whole. For the latter determination, that company uses benchmarks on

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dollars, reputational risk considerations, trends, and earnings. The dollar figure for materiality was vetted with the company's auditors and was not set as a percentage of assets or revenue but instead set by looking to see if the amount could impact the value of the company's stock.

Disclosure Process/Approach: Participants discussed whether disclosure committee meets to comment on early draft(s) of the disclosure document and noted that the disclosure committee meetings shouldn't be a drafting session. On timing and role of the audit committee, some participants described processes that include providing the press release to the audit committee the day before or afternoon of the audit committee meeting on the disclosure, and then announcing the release the following morning or day.

Disclosure Process/Certifications: Participants discussed who certifies disclosure statements. One participant described a process that includes having all of the committee members (CLO, CFO, Controller, and heads of Tax, HR, Investor Relations and Internal Audit) sign a certification with language qualified 'to their knowledge.' Another participant described how the Controller's group manages internal certifications and a tiered approach for providing certifications (e.g., first tier is the VPs, then the CFO, CLO and Controller for their functions, and then business unit directors certify according to their field of work and level of awareness/knowledge, etc..).

Disclosure Process/External Audit or Outside Counsel Participation: One participant shared that neither outside counsel or external audit participate in the Disclosure Committee meetings. For this company, external auditors are provided a copy of the disclosure statement and an opportunity to ask questions following the Disclosure Committee process and prior to the disclosure statement being forwarded to the audit committee of the Board.

#### RECORDS MANAGEMENT

Records Management/Disclosure Process; Minutes and Records: Participants asked whether companies create minutes of disclosure committee meetings. One participant described that did not involve taking minutes of the Disclosure Committee meetings, but instead includes developing a list of issues reviewed by the committee. Records associated with these meetings would then include the meeting notice, agenda and list of issues. Participants discussed concerns with creating lists and whether this approach might result in highlighting omissions if there are any. Most of the participants do not maintain minutes of Disclosure Committee meetings and those who do develop minutes of the process and maintain them at a high level documenting information sufficient to show that issues were considered. One participant described an approach that includes assuming that any disclosures can be on the front page, and never including disclosure information in an email or even in writing if it can be discussed verbally.

Records Management/Education on Creating Documents: One participant described educating business personnel on how to write documents via sessions and lectures.

Records Management/Electronic Communications and Retention: Participants discussed challenges associated with electronic communications and setting and implementing retention approaches and schedules. One participant's approach includes designating the creator of the document as the responsible person for managing the record. That company's approach includes a set schedule for email and electronic document retention and destruction. In addition, in-house lawyers regularly do sweeps and collect documents.

Records Management/Global Approach: Participants discussed how standards may vary from country-to-country. One participant described implementing global best practices and minimum standards. That company's approach includes having internal audit annually review implementation of its policy.

Records Management/Government Inquiries: Participants discussed the importance of proper preparation in the event of "unexpected visits" by government officials or law enforcement officers and the importance of being able to establish privilege over the entire law department >(

#### MEDIA RELATIONS

Media Relations/Educating the Media: One participant described educating the media via a 'media kit' that includes a statement of the issues, a Q&A document and information with basic facts on the company. That participant described taking a proactive approach and contacting reporters with information to put the first story out. Participants discussed views on having issues addressed inside the courtroom yet also acknowledge that the media is there and want to cover a story and the importance of developing an effective approach for working with the media.

Media Relations/Spokesperson: Participants described organizational responsibility for being the spokesperson. They also note challenges in having the CLO as the spokesperson—public relations representatives can say that they don't have information when questions stray from key messages that have been developed; however, it's harder for CLOs who might have more information. One approach noted is that when CLOs are the spokesperson it can be appropriate to say that they are unable to comment on a particular issue that is before the court. Although PR personnel may technically be on point as spokespersons for the company, participants noted an increasing role for CLOs and in-house counsel in being spokespersons and helping to get the company's key messages out.

Media Relations/ Press Scrums vs Live Coverage: Participants discussed challenges associated with speaking to the press in different contexts. One participant described how 'press scrums' where a group of reporters are all firing questions can be challenging yet offer the opportunity to say at some point that you'll take one more question. Live coverage forums where the spokesperson's face is on a television screen can be more stressful since it's live and immediate and one-on-one.

Media Relations/Strategic Planning: One participant described using a process that included working with retired judges and performing moot presentations to ask what the retired judges thought about speaking with the media as an effective strategy. Participants also discussed using the media in a positive way rather than working with the media in a reactive mode. Several of the CLOs have had media training.

Media Relations/Getting the Message Out; In-House and Outside Counsel Perspectives: Participants discussed how outside counsel and in-house counsel often have different views on speaking with the media. Outside counsel may be more reticent to speak; in-house counsel can develop messages. Outside counsel may also be reluctant to speak publicly on an issue because they may not want to be identified with it. They also discussed how an association, such as the Association of Corporate Counsel, can be helpful in speaking with the media and developing and communicating messages. Participants discuss how the media needs the company when it is developing a story and the importance of cultivating relationships.

#### CRISIS MANAGEMENT

Crisis Management/Policies: Participants discussed key components of some crisis management policies. Some participants noted that their policies included steps to take in connection with an incident. One CLO also described a program that includes incident response training. If an incident were to occur, key coordinators receive information and instructions via phone and further relay instructions to their groups. One participant also described program elements that include going through a process to determine which functions need to be preserved for a period of time in the event of an incident and having a control center that includes key functional areas to operations can continue. In addition to crisis management policies, some participants also described having specific policies for search and seizure, product recalls and business continuity.

Crisis Management/Training and Implementation: Participants discussed notion that having a policy is not enough; there is a need to make sure that the policy is communicated, implemented and enforced.

#### BLOGGING

Blogging/Rules & Practices for Internal Blogs: Participants queried whether law departments or companies have internal blogs. Participants discussed need for training on blog use if an organization allows employees to blog on their own time or has a sanctioned internal blog: participants agreed that there is a need to train employees that the blog isn't purposed to allow them to vent their frustrations about work to outsiders; it's to share perspectives, ideas, and information in a manner consistent with other company policies. The general sentiment expressed as "if you can't stop them from engaging in blogging, you might as well host the blog so that you'll be able to see what's being said and learn from it.

Blogging/ External Blogs: Participants discussed prohibitions on employee participation on external blogs and noted difficulties in enforcing those types of rules. They also discussed whether companies have designated personnel to monitor external blogs concerning company operations. One participant noted that individuals within the company's communications department are on point for monitoring external blogs.

#### GOVERNMENT RELATIONS & LOBBYING

Government Relations & Lobbying/Personal Contributions: Participants discussed approaches for what happens when employees make personal contributions that are not expensed. If an individual attends a function and makes a contribution but does not expense that as a business expense, should the company care? Participants discussed how reputational issues may come into play if a large number or critical mass of employees goes to a function--even if the personal contributions are consistent with law.

Government Relations & Lobbying/Community Involvement: One participant described practices that include encouraging employees to get involved in their local communities to add value and establish a presence and develop relationships.

Government Relations & Lobbying/ Lobbyists: Several participants noted practices that include having lobbyist firms on retainer. They also discussed the evolving multidisciplinary nature of lobbying firms, and the need for an integrated approach that includes both practices regarding access and working with staffers.

Government Relations & Lobbying/Registration: Participants discussed positions within their organizations that register as lobbyists. One participant noted that some Legal Directors within the in-house law department who perform day-to-day work on lobbying are registered.

Government Relations & Lobbying/ Consistency in Approach: Participants discussed whether their organizations have set rules on what to report and the importance of being consistent across the organization. Interest was expressed in the possibility of lobbying reforms possibly pending in the US.

#### RISK MANAGEMENT

Risk Management/Reputational Risk: Participants discussed approaches for training employees and in-house lawyers on risk management. Some practices are embedded within the company's Code of Conduct, which may cover both operational and reputational risk and internal controls. One participant described providing training on red flags for financial compliance and internal controls, and encouraging employees to ask questions if a situation doesn't feel right or they're uncomfortable-- even if they don't know there is a problem. Another 'test' for identifying possible risks includes the headline test: even if something is legal, but if the headline would give pause, then the issue may require further analysis. Participants discussed how reputational risk is difficult to grasp because it's often times hard to know the outcome.

Risk Management/Organizational Issues: One participant described having a Risk Management group that recently changed organizational reporting relationships, with the head of the Risk Management group now reporting to the head of Internal Audit (who, in turn reports to the Chair of the Board's Audit Committee). Participants discussed the importance of lawyers having some base level of knowledge on financial issues so they can be issue spotters, but discussed how lawyers should not be used as control mechanisms.

Risk Management/Core Issues: Participants discussed the value of having processes that include internal review of issues and practices that are critical and core to the company's business as a component of risk management. They also discussed the Spitzer presentation regarding law enforcement's approach and how law enforcement will seek to identify sources of potential conflict as key focus areas for their investigations.

Risk Management/ Correcting Inaccuracies: Participants discussed approaches for addressing inaccuracies created by the media (e.g., inaccuracies in newspaper or other reporting by the media) and whether companies have a threshold for determining which types of inaccuracies are most important to take action to correct. They also discussed concerns with 'urban myths': where falsehoods can be repeated so often by the media or outsiders to be thought of by others as truths.

Risk Management/Professional Insurance & Liability: Participants discussed whether they include lawyers on corporate Errors & Omissions insurance policies and/or provide for bar insurance for in-house lawyers. One participant shared that all in-house lawyers are included on the company's E&O policy.