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## **ACC's CLO THINKTANK EXECUTIVE REPORT**

### **“ENTERPRISE RISK MANAGEMENT & THE LAW DEPARTMENT’S STRATEGIC ROLE”**

This Executive Report provides an overview of discussion results from ACC’s CLO ThinkTank session titled “Enterprise Risk Management & the Law Department’s Strategic Role” held in Montreal on February 8, 2008. 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:

- Daniel Desjardins, Senior Vice President and General Counsel, Bombardier, Inc.
- Sylvain Aird, Corporate Secretary & General Counsel, Boralex Inc.
- Gary Chad, Senior Vice President, Governance, Law & Corporate Secretary, Cameco Corporation
- Pierre Chesnay, Vice President- Legal Affairs & Secretary Uni-Select Inc.
- Kate Chisholm, Vice President and General Counsel, EPCOR
- Monique Mercier, Executive Vice-President, Law and Human Resources, Emergis Inc.
- Pierre Nollet, Vice President, General Counsel and Corporate Secretary, CBC/Radio-Canada
- Eric Paul-Hus, Vice President, Legal and Corporate Secretary, Bell Nordiq
- Francois Ramsay, Vice president, General Counsel and Secretary, Yellow Pages Group Company
- Kevin Ratcliff, Vice President, Compliance and Legal Affairs, Cannaccord Capital
- Simon Rivet, Vice President, General Counsel and Secretary, Metro Richelieu Inc.
- 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:

- **Organizational Structure for Risk Management**
- **Process for Identifying Risks**

- **Law Department’s Role in ERM**
- **Training and Communications**
- **Records 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.

- **Although the CLO for most participants is not the Chief Risk Officer, the CLO and law department play an important role in risk management.** Participants discussed CLOs have defined roles on various corporate risk management committees. They also discussed the law department’s role as advisor to the business and how involving lawyers up front can benefit the risk management process.
- **Companies use a range of committees to help with risk management.** Committees described as having a role in the risk management process include: Ethics Committee, Risk Oversight Committee, Construction Risk Committee, Crisis Management Committee, Disaster Recovery Committee, Avian Flu Committee, Ethics and Disclosure Committee and a Bid Approval Committee. In addition, one company has a Compliance, Audit and Risk Assessment group (CASRA) that plays a key role in risk management. Not all companies have all committees; participants described roles for the CLOs on most committees.
- **Managing risks requires identifying and auditing them.** Participants described a broad range of practices to help identify risks and to assign responsibility for oversight and follow-up. Some practices and processes are built into the front-end and woven within the every day fabric of the business; some are primarily audit/retrospective; others involve formal, periodic assessments; and some are a combination.
- **Training, certifications, surveys and communications from leaders are tools for risk management.** Participants discussed various approaches for getting the message out—from governance tours to messages from CLOs to messages from corporate leaders. They also discussed using training modules, tracking training, using annual surveys with repeatable questions to help spot trends, and certification and sub-certification processes to help enhance awareness and accountability. Communications from leaders, including the CLO, help set the tone-at-the-top.
- **Records Management is a ‘monster’ topic—especially with regard to electronic communications and documents.** Records management practices range from sending everything to a centrally-managed ‘vault’ to periodic prompts for managing/delete functions. Training on electronic communications, policies on blogging, policies on use of network sites for document creation, questionnaires/certifications in connection with e-discovery, read-only document features and security levels/key word restrictions on document transfer are examples of components of various programs. Electronic discovery presents great challenges and is expensive and resource-intensive.

## DISCUSSION HIGHLIGHTS

### ORGANIZATIONAL STRUCTURE FOR RISK MANAGEMENT

**Organizational Structure/Functions Other than Legal Reporting into the CLO:** Participants described a broad range of additional functional groups that report organizationally to the CLO, including:

- CLO is also Chief Compliance and Ethics Officer
- CLO is also Chief Regulatory Officer
- CLO is also the Chief Privacy Officer
- CLO has organizational responsibility for: corporate secretarial function, security, and internal audit

Organizational Structure/Risk Management: Participants described various organizational structures for risk management, including:

- Chief Risk Officer (CRO) on point & reports to the Chief Financial Officer (CFO)
- CFO on point
- CFO and the CLO on point
- Internal Audit leader on point; ERM as a specific area handled by this group
- Segmented Approach: Board of Directors is on point for strategic risks; Finance Treasury is on point for financial risks; and Chief Compliance Officer is on point for operational risks (CCO reports organizationally to the Chair of the Audit Committee with a dotted line reporting relationship to the CFO)
- Compliance, Audit and Risk Assessment (CASRA) Group plays a key role

Organizational Structure/Risk Committees: One participant described having three committees on point for handling different types of risks: (1) Ethics Committee (handles risks relating to ethics and financial reporting); (2) Risk Oversight Committee (handles risks relating to commodities and financing); and (3) Construction Risk Committee (handles risks relating to construction initiatives).

Other participants described the CLO's role in connection with crisis management/disaster recovery committees—with one participant co-chairing the organization's crisis management group and another participant having a role as a member of the organization's Disaster Recovery Committee, a committee with a separate charter and processes for risk management. Another participant described having an Avian Flu Committee with a specific crisis management plan. Another participant described being a member of the company's Ethics and Disclosure Committees. Another participant described having a Bid Approval Committee with bids for business ultimately managed through the law department.

#### PROCESS FOR IDENTIFYING RISKS

Process/Risk Registry Process: One participant described having a process that includes a risk registry—a matrix/mitigated program. As part of this process, the CLO and all of the company's VPs meet quarterly to challenge the 'owners' of various risk areas on risk mitigation initiatives. For this company, risk identification is characterized as a challenge/audit approach rather than integrated up front into the day-to-day processes.

Process/ Annual ERM Process: One participant described having a large ERM program that is handled through the company's Internal Audit function. As part of this process, the Chiefs of all of the company's functions participate in an annual risk management review.

Process/Strategic, Financial and Operational Risks Handled by Separate Groups: One participant described having a segmented approach, with risks generally viewed in three large categories: strategic, financial and operational risks.

- *Strategic Risks:* responsibility of the Board of Directors

- *Financial Risks:* responsibility of Finance/Treasury with oversight from the company's Audit Committee; the company has a financial risk policy and procedures
- *Operational Risks:* responsibility of the Chief Compliance Officer & compliance function (more on the process for classifying operational risks below); the CCO does not report to the CLO but instead reports to the Chair of the Audit Committee with a dotted line reporting relationship to the CFO

Process/Operational Risks: One participant described a process that included interviewing each business unit and creating an inventory of operational risks. The company then conducted a risk classification exercise and developed an internal audit plan to help manage risks.

Process/CASRA Assesses Top 10; Group Management Assesses Additional Layers: One participant described a two-tier process that includes having the company's CASRA (Compliance, Audit & Risk Assessment) group assess the top ten risks for each group reported to the Board; a second tier of risks is assessed by the management of each group.

Process/Risk Assessment as 'Alive' Rather than Reactive: One participant described a process that includes conducting a survey each fall of approximately 2,000 employees. The same survey is used each year and includes questions on compliance and risks. Using the same survey allows the company to compare year-to-year data for trends, etc.. The company's CASRA group meets to identify the first and second tier risks, and to provide input on risk management and to identify an audit plan.

Process/Sarbanes-Oxley Certification Process: One participant described having a quarterly and annual certification process that includes having approximately 200 people provide certifications/sub-certifications.

#### LAW DEPARTMENT'S ROLE IN ENTERPRISE RISK MANAGEMENT

Law Department's Role/Lawyer as Business Partner: One participant shared a view that clients need to view lawyers as business partners so they will come to lawyers as advisors for guidance and not viewed as 'nay-sayers.' Another participant described participating on the company's Executive Committee and having lawyers sit with the business units they support—to help stay in the loop.

Law Department's Role/Problem Solver & Advisor: One participant described a preference to keep the CLO and CCO positions and responsibilities separate. For this participant, separate responsibilities and positions help maintain the view of the CLO as a problem solver and advisor on tough compliance issues.

Law Department's Role/Watch Dog Role: One participant described having some lawyers in the law department that perform almost a pure 'watch dog'/oversight role.

Law Department's Role/Relationship with Finance: One participant described a view of the importance of being organizationally independent from the company's finance function but also the need for having a close working relationship. Another participant described reporting organizationally to the company's CFO and noted that this reporting relationship has helped the law department because lawyers and finance professionals develop close working relationships.

Law Department's Role/CLO Public Relations Pitch to the Business: One participant described the role of the CLO in delivering a 'sales pitch' to the business to help demonstrate how lawyers can help craft creative strategies and solutions if business personnel bring ideas to lawyers and include them early in their strategic planning processes.

Law Department's Role/CLO & the Board- tension: One participant described a tension in involving CLOs early in the process: if they're involved early (which can be viewed as good), then it may also be viewed as possibly having the CLO lose some sense of independence because he/she was part of the process.

Law Department's Role/Situations Involving Separate Counsel for the Board: One participant described recommending—in some cases—that the Board create a separate committee and retain its own counsel to review certain situations where the CLO may have been part of the business process. This approach is reserved for rare situations to help provide independent oversight when the potential for special risks or conflicts exists.

Law Department's Role/Governance Overlay: One participant described a process designed to help preserve healthy debate among lawyers and business people: if the strategic direction of a proposed deal goes beyond a certain comfort zone for lawyers or in a direction of potential question or concern, then the deal goes to a governance overlay and approval process for approval and input on direction and next steps.

Law Department's Role/Lawyers' Need for Business Acumen: Participants described the importance of healthy debate among lawyers and business people. They also discussed the benefits of basic training to help provide lawyers with some level of business acumen, including training on project management, risk management and finance 101.

## TRAINING & COMMUNICATIONS

Training & Communications/Governance Tour: One participant described conducting a 'governance tour' that included meeting with various groups throughout the company and sharing information on risks, providing training and communicating the importance of ethical conduct.

Training & Communications/Use Practical Examples: Another participant described the importance of presenting training on a regular basis. Training programs are designed to provide practical guidance on situations using hypothetical practical examples of when things go right or wrong.

Training & Communications/Quarterly Finance Calls: One participant described having large quarterly calls that can include around 140 people; the calls are conducted as part of the quarterly financial statement process and include communicating specifics and high-level information on financials.

Training & Communications/Blogs as a Communication Tool: Participants discussed how blogging is a new reality in today's corporate business world and how it can be a powerful and creative communications tool. They also discussed whether blogs and blogging can create potential liabilities. One participant described a company decision to have blogs—but with a decision that the blogs should be efficiency and business-directed. As part of the decision to allow blogs and blogging, the company has developed a set of rules to help promote creativity but also help sensitize employees about the need to be conscious in crafting blog communications.

Training & Communications/Online Training Modules: Participants discussed various types of online training modules to help communicate and train on corporate codes, policies and substantive areas. One company described online modules that allow individuals taking the training to stop in the middle of the module and then resume the training session. Participants described monitoring progress on training. They also discussed challenges in implementing training and the importance of the tone of senior managers in rolling out training initiatives and communicating training requirements.

## RECORDS MANAGEMENT

Records Management/ 'Monster Of': Participants described a broad range of challenges in connection with implementing records management programs and practices. They discussed how, fundamentally, records management needs to work for the business and be driven by business needs. This includes an understanding of what information the business needs to have and get at rapidly and an assessment of who needs to keep what.

Records Management/Software Janitor: One participant described having a function that doesn't allow individuals to send or receive email until the individual does a 'clean-up'/periodically manages the information.

Records Management/Vault: One participant described a process that includes keeping all emails. The company has a search engine that enables the company to retrieve emails and information using search terms. The company's view is that, while there may be some risks in keeping everything, having the information enables the company to better manage situations. As part of this approach, the company has a training process on emails that includes providing training to everyone every 18 months.

Records Management/E-Discovery: Participants discussed the challenges associated with e-discovery: how it is an immense amount of work that can involve enormous costs and be very resource intensive.

Records Management/Email Content Training: One participant described a practice that includes communicating that emails should be treated as letters or documents that could become public—with a goal of sensitizing individuals up front to the importance of thoughtful communications via email.

Records Management/Email Management: One participant described a practice designed to have every email managed/filed or destroyed within six months. The process includes a classification system—each business unit creates its own filing categories. An important feature: no miscellaneous categories because so much could have the potential to go there. The system includes 'live links' and retention periods kick in once filed with reminder notes asking if individuals want to keep or destroy the information. The overall process also includes scanning paper documents to include them in electronic files.

Records Management/IT Function: Participants discussed whether IT is handled in-house or outsourced and issues regarding the various approaches. They also discussed whether assessments of IT service providers include questions about where the file servers are kept—and whether companies require certificates stating that file servers/data won't be kept in certain geographic locations (such as the U.S.).

Records Management/Home Computers, Hand-helds, etc.: In connection with e-discovery, one participant described using a questionnaire that employees are required to complete and certify regarding information on home computers, hand-helds, etc.. One participant described a policy that requires employees to use the company's network when working on documents from home if the employee has access to the network from her/his house.

Records Management/Key Word Monitoring; Restrictions on Transmittal: Some participants described having key word monitoring programs that restrict the ability to send outside of the company documents with certain key words included. One participant described a company practice that includes monitoring and tracking documents sent electronically as part of the company's industrial espionage prevention initiatives.

Records Management/Encoding Software: One participant described using encoding software as a feature that can enable the document creator to block who can receive (internally or not) a given document.

Records Management/Read-Only Function: Another participant described a software program that enables people to read a document. Once the document is closed, it goes away.

Records Management/Voice Mail: Participants discussed electronic communications features that enable voice mail to be transferred via email and issues associated with these features.