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Corporate Counsel Leadership: Building Winning Teams And Effective Legal Strategies

*The Editor interviews **Sandy Jakab**, Acting Manager, Capital Markets Regulation, Policy Branch, British Columbia Securities Commission, and **Anna K. Fung**, Q.C., Senior Counsel, Terasen Inc. They co-chair the 2005 Annual Meeting of the Canadian Corporate Counsel Association set for August 14-16 in Vancouver, British Columbia. [Editor's note: To read our October 2004 interview with the President of the Canadian Corporate Counsel Association, visit www.metrocorpcounsel.com and put "Francine" in the search box.]*

Editor: Please tell our readers about your practice.

Jakab: In Canada, securities regulation is a provincial, rather than federal matter. One of 13 regulators in the country, the British Columbia Securities Commission oversees trading in stocks and bonds and the issuance of new securities in our province. The securities administrators across Canada regularly confer on policy making, enforcement prosecutions and oversight of the self-regulatory organizations, like the Investment Dealers Association (IDA, the equivalent of the NASD in the U.S.), the Mutual Fund Dealers Association (MFDA), the exchanges and the alternative trading systems. An example of our collaboration is my participation on a multi-jurisdictional team working toward the provinces' uniform adoption of a rule to apply the same registration requirements regardless of jurisdiction.

Within that world, my day-to-day practice is wonderfully varied. My division is responsible specifically for regulation of brokers and portfolio managers as well as the Commission's part in overseeing exchanges and self-regulatory organizations. We also handle requests for exemptions. Reasons range from regula-

tory protection not being needed for the particular industry to sufficient regulation already being provided by another jurisdiction. Many exceptions are processed through our e-services application, which we're very proud to have been the first province to implement.

As a manager, I play a role in the Commission's strategic and operational decision-making. We monitor market trends to anticipate what might require regulatory intervention. Before imposing a new rule, we consider whether enforcement blitzes, examination audits or investor education might be better tools. We are keenly aware of the costs of over-regulation and want to solve problems without imposing undue burdens on the industry.

Fung: We're a holding company with three separate lines of business: (1) the biggest natural gas distribution pipeline in British Columbia; (2) the crude oil transmission pipelines headquartered in Alberta that go into British Columbia, Saskatchewan and the U.S.; and (3) the provision of water and sewer services to utilities, which is a growing business for us based in western Canada and 28 states across the U.S., including Alaska.

Privacy issues occupy a good portion of my time in terms of both our employees' handling of customers' information and our company's treatment of our employees' information. Federal privacy legislation applies across Canada unless the provinces have adopted similar legislation. Because British Columbia, Quebec and Alberta have adopted privacy legislation, companies like ours may find different legal requirements in the various provinces where they do business.

The USA PATRIOT Act adds another layer of potentially conflicting legal requirements. Technically information kept in the U.S. is subject to the provi-

sions of the Act regardless of its origin, ownership and use. When services are outsourced, a Canadian company may not even be aware that its service provider houses the Canadian information on computers located in the U.S.

I also grapple with the myriad of compliance requirements imposed on public companies as a result of Enron. One example is the new set of requirements for public companies trading on the Toronto Stock Exchange recently promulgated by the Ontario Securities Commission.

Issues associated with the integration of our Canadian and American businesses increasingly demand my attention. One difference between our laws is that some states in the U.S. look to see who actually owns the entity to determine which law applies. In Canada, we resist piercing the corporate veil. Conflicts among the differing laws will come to a head sooner or later.

To handle these and the other legal issues related to our companies' operations, our department at Terasen Inc. has five lawyers in Vancouver. Terasen Pipeline, which operates our crude oil pipeline, has three lawyers in Alberta. We hire outside counsel to help with the legal work for our U.S. entities. We use Stoel Rives for the majority of our corporate functions and Dorsey & Whitney LLP, which has an office in Vancouver, for our U.S. business acquisitions. We also use a number of smaller firms. For instance, we use Reinhardt Law Offices LLC for our sewer and water metering business headquartered in Milwaukee.

Editor: How has technology impacted your practice?

Jakab: Like every other lawyer, technology impacts every aspect of my work. I use calendaring tools, project manage-

ment, process mapping, word processing and spreadsheet software, as well as a work-in-progress application that charts our workflow to help ensure that we're meeting our service standards for turn-around times.

As a single mother, technology has allowed me to advance my career in ways that I don't think would've been possible for me in earlier times. Because I can connect through a secure, virtual access network to the commission's files anytime, I'm able to carry my office with me wherever I go. I can be with my children in the evenings and keep pace with my office work during early morning hours. After a few experiences of seeing that deadlines are met and that the quality of the work is excellent, an employer is more likely now to have no concern about whether you are managing your time right.

Fung: One thing to keep in mind is that the laws, statutes, regulations, court rulings and legal commentary published on the Internet are available to our clients. More and more sophisticated about legal issues, clients are prepared to challenge their counsel's opinions.

In addition, email makes clients more demanding in terms of response time. They call if you do not respond within an hour. Managing the expectations of clients has made the jobs of in-house counsel more challenging.

Email also has traps for the unwary. Once sent, you lose control of where an email goes, which can jeopardize privilege and confidentiality.

Editor: How did you become involved in CCCA?

Jakab: I attended the CCCA's Spring 2003 Conference where our Commission Chair, Doug Hyndman, was a keynote speaker. I had never been in the middle of so much good energy. I really liked what I saw and understood that it was a reflection of the tremendous growth that we were experiencing in our country of in-house counsel. I wanted to be a part of that.

Fung: I got involved through my local chapter because my boss was looking for a replacement to serve in the chapter's leadership. An offer I could not refuse, my volunteer role grew to ultimately serving as CCCA's president.

CCCA provides tremendous value for

corporate counsel. Much of its value comes from its practical focus. Anyone can read a law, but what are the most cost-effective ways to ensure compliance? CCCA allows you to learn about other in-house counsel's experiences to identify the best solution to these and other questions that arise in a corporate counsel's day-to-day practice.

Editor: Please tell our readers about CCCA's upcoming annual meeting,

Jakab: Springing off one of the most exciting things happening in Vancouver – hosting the 2010 Winter Olympic Games – our opening session features lawyers who are former Canadian Olympians. Continuing on the team-building theme, programs and workshops will talk about how best to organize your team and the most effective way to get the work done.

Fung: One workshop addresses the special issues that arise when teams include such non-legal advisors as underwriters and accountants. We also have a session on the challenges a one-person legal staff faces. Another session focuses on aboriginal law, which is a huge issue in British Columbia under court decisions requiring federal and provisional governments to do proper consultations whenever a proposed project looks like it is going to adversely affect aboriginal claims. One workshop will be in French for our French counterparts dealing with common law contractual issues.

At our chief officer's roundtable, peers will talk about leading the legal staffs and working on executive management teams. Another session will focus on safeguarding the executive team from personal, professional and fiduciary liability.

I'm moderating a session on corporate counsel ethics. I'll identify ten things corporate counsel should know and the potential conflicts between loyalty to management and responsibilities to the company and shareholders.

Our workshop on diversity in the workplace will discuss best practices and diversity audits. Our workshop on class actions will give updates on class-action legislation recently enacted in Ontario and British Columbia. We'll discuss not only the differences between the provinces, but also the differences with the U.S. There is also a workshop on controlling litigation costs led by one of our Conference Partners, Gowling Lafleur Henderson LLP.

We'll have a session to help supervising lawyers manage their subordinates and report to superiors. We will also have a special session on corporate social responsibility and why it's good for business.

Our workshop on U.S. employment, immigration, tax and environmental law is targeted to corporate counsel trying to understand the traps associated with U.S. subsidiaries. Another workshop will talk about what to do when a reporter shows up at your door asking for information. A workshop called Work Smarter not Harder will give practical tips for maintaining a high performance lifestyle.

A special workshop on leadership skills for women will describe ways to develop a network and reach the full leadership potential despite cultural and institutional barriers. This workshop will be led by Counsel Network, a legal recruiting firm and one of our long-time sponsors.

Jakab: Your readers won't want to miss the meeting's opening 2, 5 and 10K fun run. It benefits the Sarah McLachlan Music Outreach and Arts Umbrella Project, which is a local program offering all kinds of musical training opportunities to inner city kids.

Editor: Please tell us about the long-time supporters and other sponsors of CCCA's annual meeting.

Fung: Without the support of our long-time sponsors and supporters, we would not be able to provide these conferences. Counsel Network has been with us since the beginning. We also need to recognize Blake Cassels & Graydon LLP, a national firm that also has been with us since day one. Another long-time supporter is Richard Stock of Catalyst Consulting, who provides consulting services to law departments.

It is these and other law firms and legal service providers that make our conference and CCCA possible. Every annual meeting has a conference partner, and Gowling La Fleur Henderson LLP is the CCCA Annual Meeting Partner for 2005. They will be doing that workshop that I mentioned earlier on containing the costs of litigation. We also have junior partners who have supported us throughout the year.

I would suggest that whoever is interested in becoming a sponsor contact our office in Toronto. The address is on our website at www.cancorpccounsel.org.