

Can You Hear Me Now?

The Many Voices of Corporate Governance in Canada

*The Brown Governance Inc.
2003 Canadian Governance Update*

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CAN YOU HEAR ME NOW?

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Brown

The Many Voices of Corporate Governance In Canada

Canada's governance landscape today can be characterized as having highly committed individuals and institutions in search of the right balance. Those at one extreme vigorously defend Canada's "principle-based" governance system with few changes to the status quo. Those at the other extreme argue that we would be better served by adopting sweeping governance standards ("rules") along the U.S. Sarbanes-Oxley (SOx) model. Where we end up as a country will depend on the outcome of this very public debate and on the decisive volleys of those players only now being heard from, including the Ontario Securities Commission (OSC), the Canadian Coalition for Good Governance (CCGG) and our atypically silent political leaders federally and provincially.

Who these players are, where they stand and where we may end up, is the subject of this briefing. And where people stand depends a great deal on how they answer the question: "What should Canada learn from Enron and SOx?" In turn, how people answer this question depends on how they believe corporations ought to be governed and where real power should lie: which fundamental corporate governance theory they subscribe to, implicitly or explicitly. This briefing includes a brief exploration of the main theories, since these are rarely discussed in the public dialogue. Each separately is a source of division, yet properly balanced, they provide an opportunity for consensus.

So what? What can or should you do about all this? The outcome of this dialogue will set the stage for Canada for years to come, affecting our competitiveness and image internationally. Here are some suggested actions:

- Hold a frank discussion with your board and executive team about where you stand on the competing governance theories—on the right balance of authority and control for your corporation. Be prepared for widely differing views but work on building a consensus, just as you would in setting a mission, strategic direction or financial priorities.
- Take another look at your corporate governance—both structure and dynamics. Are you still using an Executive Committee and, if so, do other board members and executives concur? How well are your Audit, Compensation and Governance Committees functioning? How productive are their relationships with your professional advisors (auditor, compensation consultant and search firm)?
- Take a look around the boardroom. How well are you assessing competencies, independence and performance? What is the next step you ought to take in your governance journey: profiling skills,

Boards of Directors are responsible for the governance of their companies.

Lord Cadbury

board evaluations, peer assessments or formal director education?

- Let Canada's governance players know where you stand. Both the Dey Committee and the Saucier Joint Committee on Corporate Governance made dramatic changes to their draft recommendations as a result of public input. The OSC, CCGG, Toronto Stock Exchange (TSX) and governments want to hear from you—and in Canada, one voice can make a tremendous difference.

The Players	Their Mandates	Their Positions
London Stock Exchange ¹ (U.K.)	Sets and enforces listing requirements for U.K., regarded as global benchmark	1992: Cadbury Report set out new standards for active boards and committees, independent directors. 1994–9: Hempel and Greenbury Reports add to standards (“Combined Code”); Turnbull Report produces guide for directors to take risk-based approach to internal control.
Securities Exchange Commission (SEC) ² (United States)	Sets and enforces securities requirements for U.S. markets including NYSE and NASDAQ	July 2002: U.S. Congress passes Sarbanes-Oxley Act, requiring sweeping changes to corporate governance including independent directors, three core committees with expanded mandates, skills on Audit Committees and CEO/CFO certifications. July 2003: SEC’s roadmap to implement SOx runs 12 months. Wide-reaching reforms on director elections are promised in July as well.
Toronto Stock Exchange (TSX)	Sets and enforces listing requirements for Canada’s major market	1994: Where Were the Directors? Dey Report echoed and built on Cadbury, putting in place 14 guidelines that TSX companies must disclose against. 2000: Saucier Joint Committee Report focuses on building a culture of governance and on the board’s role in ensuring disclosure. Sept. 2002: TSX expands listing requirements, emphasizing independence of directors; TSX favours principle-based approach, made-in-Canada solution and tiered standards (large caps/small caps).
Canadian Institute of Chartered Accountants (CICA)	Self-regulatory body and association for chartered accountants in Canada	Sept. 2002: Proposed new rules for professional conduct and independence. Also amended accounting standards for stock options. Continues to release 20 Questions series.
Canadian Council of Chief Executives (CCCE)	Association of many of Canada’s CEOs of leading corporations	Sept. 2002: CCCE publishes CEO commitment to high standards of corporate governance, including codes of conduct; favours principles over rules.
The Globe and Mail Report on Business (ROB)	“Canada’s national newspaper”	Oct. 2002: Report on Business publishes five day series on corporate governance, including a controversial new rating system, and extensive interviews and examples.

Canadian Public Accountability Board (CPAB)	New independent body to oversee auditors of public companies, set standards and carry out inspections	Nov. 2002: Chair Gordon Thiessen takes reins in June 2003: OSC and 11 fellow regulators introduce rules to give CPAB clout in effectively licensing auditors.
Office of the Superintendent of Financial Institutions (OSFI)	Sets and enforces standards for Canada's financial institutions, regarded as benchmark by provinces	Jan. 2003: New corporate governance guidelines for Canada's financial services firms.
The Conference Board of Canada and McMaster University	Independent research institute and university	March 2003: Announced The Directors College, a joint venture to provide systematic development to new and prospective directors, leading to a C.Dir. designation.
Finance Canada	Federal government department responsible for economic issues	March 2003: Appointed 'wise persons' committee to suggest changes to current system of securities regulation.
Institute of Corporate Directors (ICD)	Association of directors from some of Canada's largest corporations	May 2003: ICD seeking support for new director education program that would include accreditation.
Canadian Coalition for Good Governance (CCGG)	19 leading institutional investors joining together to set and enforce standards	May 2003: New Chair Michael Wilson and Executive Director David Beatty set out CCGG's mandate to promote strong corporate governance, including director independence and skills, stock compensation voting and disclosure.
Ontario Securities Commission (OSC)	Sets and enforces securities requirements for Canada's largest province, regarded as Canadian benchmark	June 2003: Adopts some SOx requirements, on CEO/CFO certifications, auditor independence and Audit Committees, but gives exemptions to controlled and small cap companies (creating tiered system).
Industry Canada and Senate	Legislative branch of federal government	Ongoing: Hearings and studies to revise the Canada Business Corporations Act and other options to set governance standards.

The two biggest corporate governance stories of the past five years unfolded south of the border—Enron's collapse in the fall of 2001 and the Sarbanes-Oxley Act passed by the U.S. Congress in July 2002 after being backed by the Bush administration.³ Canada's corporate governance headlines have been dominated by the reactions of our governance "players" to these events.

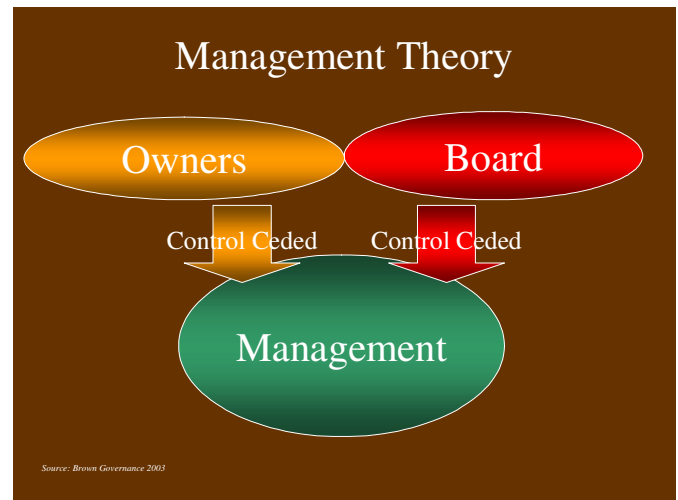
It is not unlike the situation 10 years ago, when Canada contemplated its reaction to the U.K.'s watershed Cadbury Committee Report⁴ and the earlier U.S. Treadway Commission. In 1993–94, Canada's diverse governance players reached consensus on a balance, codified by the TSX's Committee on Corporate Governance, led by Peter Dey.⁵ Its 14 guidelines set the standard across Canada. But its influence was felt well beyond TSX listed companies and the private sector, and will be felt in many countries around the globe for several years to come.

Central to the Dey Report, and to all subsequent discussions, has been the appropriate balance between the authority of a corporation's board and its executives.

While not widely acknowledged, our corporate executives have played a leading role in innovating and championing excellence in governance. Even before the Dey Report they surpassed those of the vast majority of other countries. NOVA, BMO, RBC, BCE and Alcan are among Canada's corporations whose CEOs are at the forefront of the corporate governance debate.

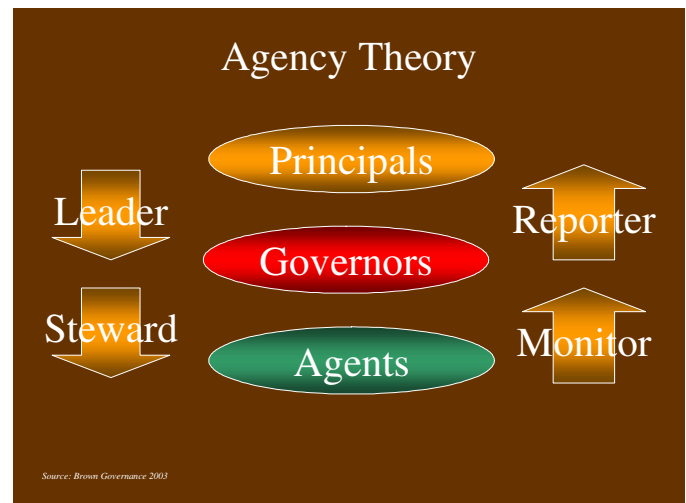
The Voice of Management

The CCCE speaks for Canada's CEOs collectively. CCCE's main governance contribution in the post-Enron era was a September 2002 report⁶ calling on Canada's CEOs to lead by example in business conduct and ethics, and to demonstrate in practice that we do not need onerous new rules like those of SOx.



Balancing the tension between the management theory of governance and the agency theory is a central issue for executives and CCCE. Management theory argues that today's corporations are too complex for real direction and control to be entrusted to volunteer or part-time directors; owners may still "own," but control has been ceded to a professional class of full-time managers who alone understand the firm's complexities and therefore effectively must both govern and manage it.⁷

Agency theory carves out a clear role for boards of directors as the arbiters between principals (owners/investors) and agents (managers/executives) in corporations.⁸ The economic role of boards is to minimize agency costs: any money agents spend in the corporation that does not align with the owners' purpose. Since the CEO is



the head of the management team (the agents), it is circular to imagine the CEO can fulfill this arbiter (governance) function as well.

While today 82 per cent of Canada's board chairs are not also the CEO, 39 per cent are "related" to the corporation—and a staggering 64 per cent do not meet today's tougher "independence" standards.

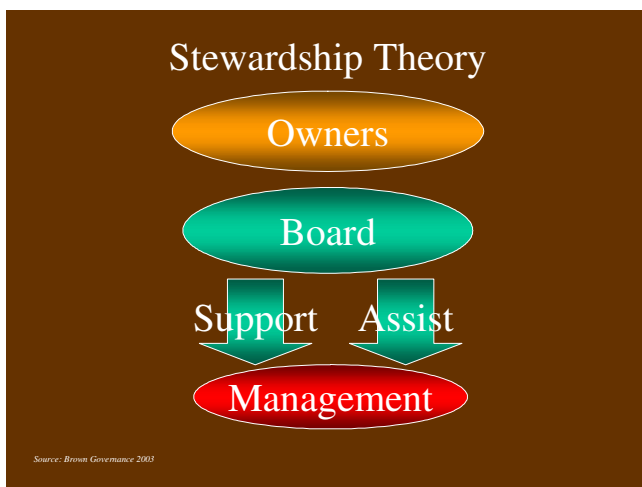
The chair/CEO split reflects agency theory; does the lack of independence show that management theory still holds a lot of sway in Canada's boardrooms?

A move towards agency theory is what both Cadbury and Dey espoused by explicitly handing governance (leadership and stewardship) roles to the board, meaning that the CEO cannot oversee and hold himself/herself accountable. The board must be responsible for governance.

The Voice of Directors

The ICD⁹ represents Canada's board members. The ICD has, in the recent past, partnered with the TSX in reviewing current governance practices and with the CICA in discussing Audit Committee effectiveness. The ICD is now seeking to emulate its widely-based sister organizations in the United Kingdom (IOCD (spell out)), United States (NACD (spell out)) and Australia by extending its leadership role nationally in corporate governance, including director education.

Just as the CCCE seeks the right balance between management and agency theory to reflect the views of its CEO members, so the ICD seeks to balance agency theory and stewardship theory in setting its direction. Stewardship theory argues that directors and executives are all on the



same corporate team, responsible for stewarding the corporation and its resources. As a result, the board's primary role is to support and advise management. Agency theory counters that the board's primary role is to direct (lead and steward) and control (monitor and report on) the corporation's

management. In putting in place programs for Canada's corporate directors, ICD weighs these competing models of board authority.

Shareholders get the governance they deserve.

Peter Dey¹

Two in five of Canada's widely-held, publicly-traded corporations conduct no form of individual director performance evaluation (including self) . . . less than one in five has a formal ongoing education or development program for directors.

Given the drop in terms and tenure, and the rise in responsibilities and compensation, what is holding us back from more robust evaluation and education?¹⁰

The Voice of Investors

The first line of defense against corporate governance lapses is market discipline.

The recent Basel II Accord¹¹ clearly stakes out two concepts that are fundamental to understanding corporate governance and regulation today. The first is that the best way to determine capital adequacy (and other critical corporate strategies) is through an effective risk management system, led by the corporation's board and executives. This system needs to reflect a much broader range of business risks than traditional functional risks. BIS's second concept is that the best way to ensure that corporations actually follow sound business practices is through market discipline. This means that capital markets will reward sound—and punish unsound—practices by varying the availability and cost of capital. BIS argues this is much more timely and effective than regulators (self-regulatory organizations (SROs) supervisory bodies like OSFI and Canadian Deposit Insurance Corporation (CDIC), and governments) at ensuring and enforcing sound practices.

While these conclusions relate to capital adequacy, both are readily extended to corporate governance: board and executives should take a risk-based approach to governance¹²; and investors in the capital market should exercise discipline as the first line of defense to ensure and enforce sound governance practices.

Institutional investors have long taken the lead in setting, rating and publicizing corporate governance practices in the United States, at least until the massive government intervention of SOx. In Canada, large pension and mutual funds have taken longer to become as active and vocal, despite the fact that they own about 70 per cent of Canada's outstanding equities.

U.S. reports indicate that CEOs alone now control approximately 12 per cent of outstanding equities, a phenomenal jump from about 2 per cent, 15 years ago. SOx deals with the high profile question of stock compensation by requiring Board Compensation Committees to deal with the firm's compensation consultant directly.

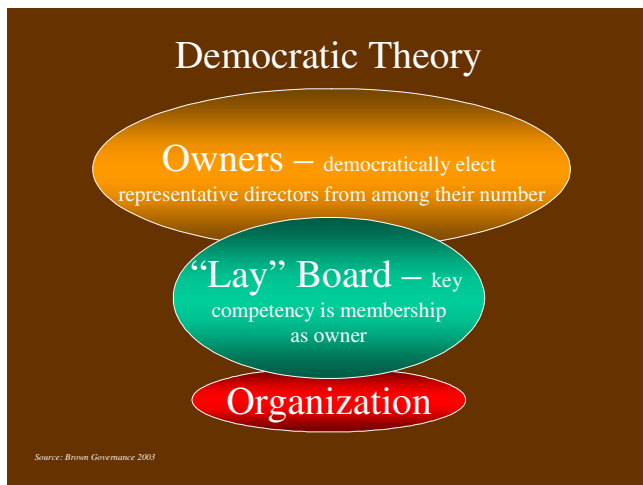
The Ontario Teachers Pension Plan (OTPP¹³) has been at the forefront of corporate governance change in Canada, and internationally through the International Corporate Governance Network (ICGN.) OTPP has taken public voting positions against management in executive compensation and shareholder voting class resolutions, and typifies the new “active” investor that will not just sell shares if it senses a governance lapse. Instead, it will communicate with management and the board, act to vote its shares and even litigate to further its interests.

The Ontario Municipal Employees Retirement System (OMERS) has pioneered the publication of proxy voting guidelines and how it actually casts its votes¹⁴. The Canada Pension Plan Investment Board was Canada’s first institutional investor to publicly announce it will oppose most executive stock option plans, in February 2003. La Caisse de Dépôts et Placements (CDP), Québec’s leading institutional investor, has also moved to stake out a position of activist governance leadership, particularly with regard to corporate disclosures and trying to break the vicious cycle of earnings guidances and analyst calls.

In recent months, a score of leading institutional investors including OTPP and Jarislowsky Fraser have banded together to form the CCGG.¹⁵ Determined to concentrate on corporate governance practices that promote long-term shareholder value, CCGG will be publishing governance principles on issues like executive compensation and enforcing them through proxy voting. Behind the scenes, CCGG has scored an early success: challenging Canada’s large banks on splitting the offices of board chair and CEO. (All have agreed.)

This implies that the CCGG embraces agency theory, and it will be interesting to see if its future standards are consistent with empowering the board. As do all investors, institutional investors have limitations as the guardians of “good governance”: they are driven by acceptable market returns (versus peers, rather than shareholder value

maximization), and are interested in getting real time, accurate (and inexpensive) information from corporations. Market discipline fundamentally requires transparent disclosure; this is the cornerstone of Canada’s corporate governance system, where the one “rule” is “thou shalt disclose.”¹⁶



Cadbury pointed out that shareholders have three core rights or duties: to appoint the directors, to appoint the auditors, and to assure themselves that the corporation has an effective corporate governance system.¹⁷ Shareholder governance requires shareholders to exercise their franchise diligently, appointing skilled, experienced, independent-minded directors and auditors.

As they make these critical selections, shareholders need to reflect on the tension between democratic governance theory and agency theory. Democratic theory espouses a “lay” board, where directors are qualified through how well they represent the shareholder. Co-operatives, not-for-profits and even public sector corporations in Canada tend to reflect democratic theory in practice, selecting board members based on the degree to which they represent owner constituencies. Agency theory contends that directors must have considerable functional skills and experience in order to effectively oversee and monitor management (sometimes called a “professional” board.)

Denis Desautels implicitly favoured agency theory when he pointed out in his final report as Auditor General of Canada that Crown corporation board appointments needed to reflect financial, business and industry skills, not just representational criteria.¹⁸ The 1996 Treasury Board Guidelines strongly endorsed an agency theory role for Crown corporation boards, yet Desautels argued that the process of selecting those board members did not change, often resulting in gaps in skills to fulfill this role.¹⁹ SOx requires Audit Committee members to be financially literate, another example of the continued swing towards agency theory and moving power to boards.

*In widely-held publicly-traded corporations, the top five criteria for selecting directors are character, financial knowledge, skills, industry and business experience;
in Crown corporations they are skills, financial knowledge, geographic representation, industry experience and gender representation.
Representation criteria reflect democratic theory's influence;
skills and experience, agency theory.
Since “character” is so difficult to assess, how much of this is “who knows whom?”*

The Voice of Auditors

Auditors are the third pillar of corporate governance, alongside executives and directors.

Canada’s auditing firms were the first off the mark to institute governance reforms in the wake of Enron’s collapse. In fact, six months before SOx, the leaders of Canada’s major accounting firms agreed with regulators that they would take two major steps voluntarily. They would split their

consulting and auditing arms into independent firms and set up an independent board to oversee their profession.

Within weeks, firms with names like 'Bearing Point' and 'Cap Gemini' entered the corporate landscape. The CPAB was announced on July 17, 2002, (just as President Bush was putting his weight behind SOx), and Gordon Thiessen was named as its first chair later that year.²⁰ Before the new fiscal years were out, every major audit partner had met with their clients' Audit Committees and reviewed a course of action to strengthen the Committee and the board's role in audit oversight and internal control.

The CICA, the SRO and the national association for C.A.'s in Canada, have also played a leading role in board governance for many years. It has partnered with the TSX and ICD in undertaking reviews, publishing studies and holding seminars, and has itself published guidances for boards of directors in Canada: the Criteria for Control (COCO) and 20 Questions series. Recently, the CICA has moved the bar on auditor independence, conduct and disclosures²¹.

The Society of Management Accountants of Canada, the SRO and national association for C.M.A. s in Canada, also champions strong governance within and beyond its membership.

Internal auditors have played an increasingly visible role in corporate governance, beating out the likes of George Bush for Time Magazine's "Person of the Year" in 2002.²² The Institute of Internal Auditors (IIA) is active in internal auditor standards and education, including the recently updated and expanded Committee of the Sponsoring Organizations of the Treadway Commission (COSO) standards.²³

The Voice of Stock Exchanges and SROs

Investors have another set of institutions to defend them beyond auditors: the securities industry and our stock exchanges. Traditionally, stock exchanges have played a major role in setting and ensuring governance practices in English civil law countries, including the United Kingdom and Canada.

In September 2002, the TSX benchmarked Canada's governance standards to SOx, outlining areas where the TSX or other bodies ought to be doing more, and staking out the position that further rules would be counterproductive to the Canadian principle-based system. Subsequently, the TSX upgraded listing requirements to require a majority of independent directors on boards and audit committees.²⁴

TSX's subsidiary Venture Exchange has published a separate, lower set of governance requirements, opening the door to tiered governance in Canada. The TSX argues this is necessary to encourage a junior capital market in Canada.

Fix-it plans prove either inadequate or unenforceable and everyone goes back to sleep until the next fiasco occurs.

Eric Reguly, The Globe & Mail

Of course stock exchanges like the TSX face internal tensions that must be carefully balanced as well. High governance standards are meant to prevent costly failures (agency theory) and enhance investor confidence. On the other hand, lower standards make capital markets more accessible, especially to small caps, and enhance stock exchange market share and profitability.

Barely 40 per cent of Canada's boards receive measures on the perception of their corporation's image or professionalism on a regular basis. If we really do "get what we measure", how are boards ensuring a high level of public trust and investor confidence?

The Voice of Analysts

The Investment Dealers Association (IDA) is currently refining a policy governing analyst standards²⁵. Financial analysts play a pivotal role in obtaining and analyzing information from corporations and guiding investors on their decisions. To the extent this work is timely and robust, it contributes a great deal to the efficiency of capital markets and can be a strong influencer of governance behaviour. However, analysts and brokers are not immune to challenges. Enron's experience at successfully influencing its own stock's "buy" rating through withholding "sell" business was a jarring lesson in the United States that may not have been learned here. In Canada, the housing of both "buy" and "sell" side brokers within our monolithic financial intermediaries (who are concurrently also large institutional investors) begs questions of independence. Further, the whole system of guidances, consensus calls and compensating analysts and brokerages invites both boards and investors to set realistic expectations of the industry, rather than viewing it through rose-coloured glasses.

One gap in the self-regulation of corporate governance in Canada has been enforcement. Despite very public malfeasance and major collapses, stock exchanges have been slow to delist or even punish offenders. Research into SROs in related industries (e.g., law and accounting) demonstrates that it takes both aggressive standards and enforcement to keep public trust in a profession.

Seventy-five per cent of listed companies do not have a board approved policy or plan for communicating with / disclosing to shareholders . . . 95 per cent of companies only discuss executive compensation in very general terms, without explaining specifically how compensation was determined or how it related to company performance. Why have these elements of agency theory not been adopted in Canada?²⁶

The Voice of Regulators and Governments

As 20-20 hindsight demonstrated with both Enron and WorldCom, the governance team of executives, directors, investors, auditors, stock exchanges and SROs, and analysts can completely fail to exercise due diligence, leaving us with the rear guards to defend us: supervisors and regulators. Again, this is a balancing act: the appropriate role of government regulation in governance, balanced with market self-regulation. It is when market discipline and self-regulation prove inadequate, that regulatory bodies must step in to set and enforce basic standards of disclosure and behaviour.

The bulk of corporate and securities regulation is the responsibility of the provinces, each of which authors its own Corporations Act and operates its own Securities Commission. While the Acts generally do align in important aspects, often the Securities Commissions' policies and rulings differ a great deal, reflecting underlying political leanings and partisan objectives.

The OSC is acknowledged as Canada's lead securities regulator. This was shown recently when 11 of the 12 other regulators backed its new governance rules.

Within a few weeks of SOx, the OSC required market participants, including the TSX, to share their responses and actions. The OSC decided to strike a middle course, agreeing with the TSX and CCCE that a "robust, made-in-Canada" solution is appropriate, offering "equivalent but not identical" protection (compared with the United States) that reflects the higher proportion of small cap and controlled corporations trading on Canadian markets²⁷. Balancing the need for tougher rules with sensitivities to Canada's markets, the OSC introduced new regulations in key areas:

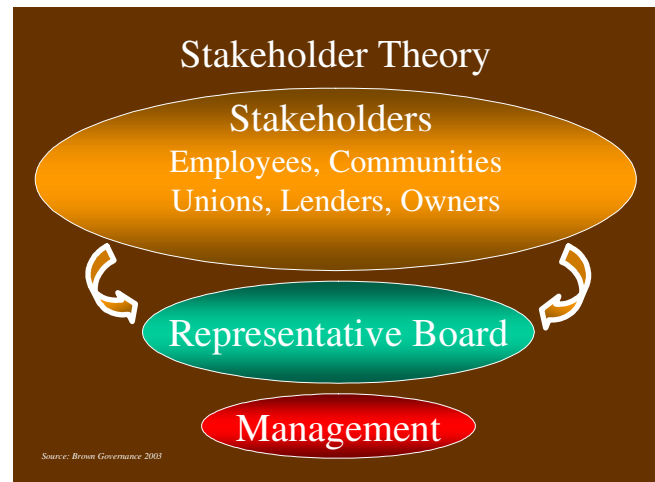
- CEOs and CFOs must certify quarterly that financial disclosures are fair presentations, and that their corporations have effective internal controls (phased in after one year).
- Auditors of public companies must be in good standing with the CPAB.
- Minimum standards of financial literacy and independence are required for Audit Committee members, and expanded duties of the Audit Committee include leading the external auditor relationship. Audit Committees are not required to have a financial expert, just to disclose whether they have one, consistent with the way the SEC has decided to deal with SOx. Two exclusions have been allowed by the OSC. Controlling corporations may name the same (independent) directors to the Audit Committees of affiliates and subsidiaries as the parent's.

And small cap companies are exempt from the independence, financial literacy skills and financial expert disclosure requirements. The first exclusion aligns better with governance principles than the second: it is difficult to justify endorsing unskilled individuals to be responsible for oversight and control, although it is understandable on practical grounds. With these exclusions, the OSC has opened the door to a tiered governance system in Canada, despite receiving overwhelming advice against taking this step. Balancing regulations involves balancing benefits and risks.

More than 80 per cent of publicly-traded corporations' boards or Audit Committees have already instituted steps to assess and ensure the independence of their external auditor
. . . less than 60 per cent of the directors of publicly-traded corporations currently meet new higher independence standards.
Director search firms are used by only a quarter of publicly-traded corporations;
at most places, there is a fairly tight circle of people making these critical selections.
Why has agency theory won the day in terms of auditors, but not with directors yet?

Beyond the provinces, the federal government does still have at least three major ways to influence corporate governance across the country:

- The Canada Business Corporations Act (CBCA), federal legislation (Industry Canada, with input from the Senate's Standing Committee on Banking, Trade and Commerce), sets the standard for corporate law for the provinces. Currently under further review, it speaks to central questions of governance such as the duties and qualifications of directors. One alternative being considered is expanding mandatory standards of corporate responsibility, including a corporation (and its directors) owing a duty to stakeholders beyond the shareholders. This is the fundamental tenet of the final governance theory, stakeholder theory, whose implication is that boards need to reflect the diversity of stakeholder interests. Leading stakeholder and corporate social responsibility practice derives from continental Europe, where boards do include representatives of lenders,



employees, unions, small shareholders and other stakeholder groups. A recent poll found that a majority of Canadians would favour “public directors” appointed by the government or some other independent body to represent the public interest inside the boardrooms of our biggest corporations. Incorporating either of these changes in the CBCA would change the face of Canadian corporate governance and is consequently the focus of intense lobbying.

- The financial services industry is federally regulated, through both constitutional and delegated authority. Finance Canada, OSFI and the CDIC are the leading players here. Each has a solid international reputation. OSFI’s corporate governance guidelines, which include the use of committees and requirements for disclosure, have influence well beyond Canada’s financial community²⁸, as do CDIC’s sound business practices, which that embrace a risk management approach to control.²⁹
- Under its national interest mandate, Finance Canada is searching for ways to harmonize securities regulation across the country, through its “wise-persons” committee struck earlier this year. Two alternatives are possible: a single regulator (federal or trans-provincial) or a “passport” system where issuers could deal with a single regulator. Of course, a third alternative, the status quo, is always feasible. Other recent efforts to reform securities regulation, most recently the Crawford Report in Ontario, have met with mixed reviews from the provinces. The four leading provinces fiercely defend their claims. As some wry commentators have noted, one way or another, Canada will end up with a national securities commission . . . even if it’s the SEC!

While 90 per cent of Canada’s boards take responsibility for their corporation’s approach to governance, and 86 per cent take responsibility for ensuring a Code of Conduct, only 56 per cent take responsibility for ensuring their corporation’s approach to corporate social responsibility.

Stakeholder theory has advanced further in Europe than in North America. At their recent summit, G8 leaders (including Canada and the United States) named corporate social responsibility, transparency and integrity, the foundation for sound macro-economic growth and corporate governance.


A paradigm shift may be in order here: must satisfying the legitimate needs of stakeholders (CSR) be at the cost of shareholder value (agency theory)—or should they enhance one another?

Conclusion

This whirlwind tour of Canada’s governance landscape and competing underlying theories would be incomplete without a brief mention of key independent players.

Leadership is a matter of intelligence, humaneness and courage . . . humaneness without intelligence is like having a field but not plowing it . . . intelligence without courage is like having sprouts but not weeding . . . courage without humaneness is like knowing how to reap but not how to sow.

Sun Tzu, The Art of War



Perhaps the most important new player is the media, led by The Globe and Mail and its Report on Business. The ROB made headlines of its own by publishing Canada's first corporate governance ratings in a hard-hitting five-day series in October 2002.³⁰ While many disagreed with the criteria, no one could argue their lasting effect in every boardroom and executive suite.

At least three national organizations periodically publish wide-reaching reviews of governance practices in Canada, contributing benchmarks and analysis to corporations and regulators alike. The Conference Board of Canada has been publishing its Canadian Directorship Practices research since 1973³¹, Patrick O'Callaghan partners with Korn Ferry on a popular annual summary³² and Spencer Stuart teams up with the Rotman School at the University of Toronto in its Board Index.³³ McMaster University and The Conference Board launched The Directors College in 2003 with The Institute of Corporate Directors and The Rotman School of Business. And other institutions and business schools are seeking to add to the body of knowledge and learning in the field.

Leading law firms, notably Gowlings, Osler and Tory's, have produced a range of governance aids over the years, from guides on directors' and committees' duties to updates on director liability and recent governance cases.³⁴ Accounting firms, D&O insurers, banks, search firms, governance and compensation consultants and others all contribute effectively to the ongoing and widening dialogue.³⁵

Where does all this leave us? We are convinced that this dialogue and its outcome are critical to issues of central importance to Canada and Canadians: to efficient capital markets, to profitable and responsible corporations, and to public trust. Today, we in Canada have an opportunity to regain our position of leadership in governance before we experience embarrassing disclosures and failures similar to those faced by our colleagues in the United States. Together, our government, self-regulatory organizations and corporations can forge a coalition to take governance to the next level, that of corporate responsibility.

Endnotes

- 1 www.londonstockexchange.com
- 2 www.sec.gov
- 3 www.sarbanes-oxley.com
- 4 The Cadbury Committee Report, op cit.
- 5 Where Were The Directors (the “Dey” Report), Toronto Stock Exchange (Toronto: 1994.)
- 6 www.ceocouncil.ca
- 7 We acknowledge work published on governance theories and balancing tensions by Chris Conforth of the Institute for Co-operative Studies in the United Kingdom (www.wisc.edu/uwcc/icip/orgs/ica) and Debra Brown of Brown Governance (www.browngovernance.com .) We also acknowledge the recent “Who’s Who” in corporate governance authored by Connie Sugiyama of Gowling Lafleur Henderson LLP (www.gowlings.com .)
- 8 Articulated by Adam Smith in The Wealth of Nations (Boston & Chicago: 1776.)
- 9 www.icd.ca
- 10 Unless otherwise stated, all data cited is from The Conference Board of Canada’s Canadian Directorship Practices board governance research, based on comprehensive surveys conducted every two years from 1973 through 2003. 2003 results are used throughout the report. These are from 162 organizations in a broad range of industries and sectors.
- 11 The Bank for International Settlements (BIS), located in Basel, Switzerland is the global “banker for banks”. Among other things, it sets capital adequacy standards, driven by risk management considerations—this is the subject of the Basel Accords (I and II.)
- 12 Required by the London Stock Exchange as a result of adopting the Turnbull Report (Institute of Chartered Accountants of England and Wales; London: 1999. www.icaew.co.uk/internalcontrol/)
- 13 www.otpp.com
- 14 www.omers.com
- 15 www.ccg.ca
- 16 TSX listed companies were not required to follow any of Dey’s 14 Guidelines, just to disclose their compliance against each. New TSE guidelines do make some basic governance standards listing requirements.
- 17 The Cadbury Committee Report, op cit.
- 18 www.oag-bvg.gc.ca
- 19 www.tbs-sct.gc.ca
- 20 www.cpab-ccrc.ca
- 21 www.cica.ca
- 22 www.time.com
- 23 www.theiia.org and www.coso.org “COSO” is the Committee of the Sponsoring Organizations of the Treadway Commission, the U.S. study into fraudulent reporting and internal control that became the nation’s early benchmark in corporate governance (in 1987.) It is rarely remarked upon that between Treadway in 1987 and SOx in 2002, the United States had no Cadbury or Dey Committees with broad national mandates. Instead, leadership in governance in the United States was left largely to institutional investors (like CalPERS) and SROs (like COSO, NYSE, NASD and NACD.) In light of this, SOx shouldn’t have been a surprise, as central intervention tends to be cyclical.
- 24 www.tse.com
- 25 www.ida.ca
- 26 Studies published in 2000 by the Ontario Securities Commission (www.osc.gov.on.ca) and in 2002 by the Canadian Securities Administrators (www.csa-acvm.ca)
- 27 www.osc.gov.on.ca
- 28 www.osfi-bsif.gc.ca
- 29 www.cdic.ca
- 30 www.globeandmail.com
- 31 www.conferenceboard.ca
- 32 www.poca.net
- 33 www.spencerstuart.com and www.rotman.utoronto.ca/CCBE



34 www.gowlings.com www.osler.com www.torytory.ca

35 www.ey.com www.pwcglobal.com www.kpmg.ca www.deloitte.com www.towers.com
www.mercer.com www.chubb.com/canada