

Getting The Governance We Deserve

Lessons for Canada

*The Brown Governance Inc.
2002 Canadian Governance Update*

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GETTING THE GOVERNANCE WE DESERVE

Lessons for Canada

The Need for Action

President Bush was absolutely right when he said we can have “no capitalism without conscience.”¹ For too long, many corporate leaders have been driven by the interests of shareholders alone, and short-term interests at that, despite their legal requirement to act in the best interests of the corporation itself. Short-term moves in share prices are not good proxies for long-term corporate sustainability, yet we now have in place a system that encourages and motivates CEOs, managers, board members, analysts, brokers, stock exchanges and even accounting firms to maximize short-term stock price.

Enron, WorldCom, Global Crossing, ImClone . . . the list grows as Canada shakes its collective head at the governance fiascos in the United States. Yet Canada has no room for complacency: Bre-X, YBM Magnax, Livent, Cinar . . . We could easily list major embarrassments in corporate governance at home. From an outside perspective, it is easy to conclude that boards in Canada, too, may have forgotten a basic premise of corporate governance: boards need to see themselves as downward projections from the owners, not upward projections from management.

Where does Canada stand today in governance?² After sharing a position of global leadership in corporate governance during the mid-1990s, with the publication and fairly widespread adoption of sweeping changes in the Dey Report (*Where Were the Directors*, 1994), Canada has slipped behind its major trading partners in recent years.

Recent efforts of the Canadian Council of Chief Executives (CCCE) and the Toronto Stock Exchange (TSX) to take initiatives in improving governance should be applauded. However, boards and directors need to take a more visible role in their own right. We should be mindful of a fundamental tenet of corporate governance: “Boards of directors are responsible for the governance of their corporations.” Clearly stated in the 1992 Cadbury Report (United Kingdom) and repeated in Dey and most other governance guidelines since, it means we cannot leave the setting or enforcement of governance practices to CEOs. The board must explicitly take the lead in governance, including ethical leadership and stewardship.

On striking the Saucier Joint Committee on Corporate Governance, the Toronto Stock Exchange Group (TSX Group) and the Canadian Institute of Chartered Accountants (CICA) had a golden opportunity to move corporate governance forward in Canada in the pre-Enron, pre-September 11th world. Instead, as a result of heavy pressure exerted on the Committee, first the draft report and then

¹ Speech by President George W. Bush (July 9, 2002).

² This briefing is a viewpoint and assessment, drawn from many sources including empirical research.

By:
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and
Debra L. Brown

*Wealth is not
permanent . . .
not even nations
last forever.*

Proverbs

the final document were surgically altered and watered down so much that the final report has met largely with silence.³

We shouldn't forget that the TSX is a stock exchange, owned for the benefit of brokers, whose revenue is derived from the listing and trading of shares. While it is in a stock exchange's interest to avoid embarrassing failures, it is also true that its revenue and incentive streams, and those of accounting firms, align with the short-term financial returns and reported results of corporations. It is difficult to conceive of a stock exchange, concerned with its own competitiveness in a global capital market, being too onerous on its members. Yet, a substantial minority of leading corporations today ignore even the standards laid out in Dey. No Canadian corporation has been delisted by the TSX for governance violations. Meanwhile, both the United Kingdom and the United States stand poised today to raise the governance bar even further, threatening to outpace Canada by two iterations.

What can be done about it? Canada has ample opportunity for improvement in a number of areas.

A Call to Action in Canadian Governance

1. Engage an independent Governance or Nominating Committee to intentionally and transparently profile skills and select the right people for the board.
2. Moderate the use of stock compensation and stock options, tying their issuance to specific targets reflecting sustained out-performance of peers.
3. Launch a National Director Development program providing ongoing training and accreditation for potential and experienced directors.
4. Take a risk-based approach to oversight, governance and internal control.
5. Require corporations to follow the recommendations of the Blue Ribbon Committee on Effective Audit Committees (New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD)).⁴
6. Identify and review regularly at the board level a broad and diverse suite of corporate indicators that reflect performance with customers, employees, communities and other stakeholders, in addition to shareholders.
7. Evaluate formally the performance of the CEO, board, individual directors and key board committees using objective, rigorous criteria and methodology.
8. Establish a National Securities Commission with reach and resources to expose wrongdoers and prevent abuse.
9. Harmonize accounting standards for Canadian corporations, providing a measure of protection for investors (this will require resolution of the three current sets of competing standards: CICA, U.S. generally accepted accounting practices (GAAP) and the International Accounting Standards Board (IASB).)
10. Ensure government plays its role in standard setting and enforcement, including criminal convictions for corporate leaders involved in fraud.

³ Two brief examples: the concept of a powerful co-ordinating "Chief Governance Officer" in the preliminary version became mandatory Corporate Secretary reporting to the board in the draft and was left voluntary in the final; and Turnbull's risk approach to governance was considered as mandatory (as it is in the United Kingdom) initially, then voluntary in the draft, and moved to an appendix in the final.

⁴ *Blue Ribbon Committee on Improving the Effectiveness of Audit Committees* (New York: NYSE and NASD, 1999).

Each of these 10 actions is intended to address underlying systemic structural governance issues that exist on both sides of the border, most visible at the extreme in the cases of Enron and WorldCom and in other recent crises. We shall now explore each issue individually, beginning with the experience of Enron and its peers, extending these lessons to Canada, and proposing remedies.

Select Board Members Who Know the Business

While it is easy to blame the CEO and CFO for Enron, none of the oversight bodies—not the board, internal audit, Audit Committee, external auditor, financial analysts, institutional investors or regulators—noticed the serious flaws in this firm’s operations in high-risk businesses until the house of cards was already falling. How could it be that all of these were asleep at the switch at the same time?

Asleep at the Switch: Where Was Everybody at Enron?

1. Management and the board were enriched by stock compensation and options that rewarded every uptick in share prices.
2. The board technically met outside director and skill criteria, but did *not* have enough meetings, receive usefully segregated information, or act practically in an oversight position.
3. Internal audits were subrogated or outsourced to the external audit firm.
4. The Audit Committee failed to act independently of management and failed to ensure the independence of the external auditor; indeed, the Committee failed to follow most of the Blue Ribbon recommendations.
5. External auditors had become so reliant on outside consulting contracts and so comfortable in their relationship with the firm, management, and Audit Committee that they failed to conduct basic due diligence or to assertively disclose to the board and shareholders.
6. Financial analysts too often held vested interests in the firm’s stock issues and trading, to the point that positive recommendations led to more investment brokerage business.
7. Regulators, under-resourced and complacent after an unprecedented economic and stock market boom, were swamped under a sea of paper and relied largely on the due diligence of all of the above.
8. Institutional investors relied largely on the due diligence supposedly performed by all of the above.
9. Individual investors relied largely on the due diligence supposedly performed by all of the above, including institutional investors.

While this illustration is based on the experience at Enron, very similar patterns can be detected at WorldCom and other recent embarrassing governance failures in the United States and Canada. In short, both the governance structure and culture discouraged dissent, opposition, and due diligence all the way up the line.⁵

Clearly, each player on the governance team could use improvement in almost every area here, but the overarching lesson is as simple as this: “Know the business.” A starting point is the selection of board members themselves, the

⁵ These are the author’s observations of the events at Enron – see the official investigation report for further insights.

There are always failures and negligence, but no ideal model of governance will ever eliminate the risk element . . . business in essence is managing risk . . . and managing is an art, not a science. No compendium of elaborate rules or textbook of practices can ever change this.

Paul Desmarais
Jr.¹

pivotal players in corporate governance and those responsible for governance at corporations. This is not often written about, nor is it a major thrust of the sweeping changes called for already by the Sarbanes-Oxley Act, the Securities and Exchange Commission (SEC), NYSE, NASD, Ontario Securities Commission (OSC), TSX, and CICA.

Each corporation needs to put in place an independent board committee that follows an intentional and transparent process for profiling board skills and selecting the right people for the board. This means individuals who are knowledgeable and comfortable in dealing with complicated financial issues.⁶ Despite the fact that this is a central recommendation in Dey, many corporations still rely on the CEO to propose board candidates and leave people on the board without accountability for contributions.

There is a right balance, of course: while every board member must understand the business, governance theory also calls for diversity and the inclusion of outsiders who will ask “out of the box” questions of management and bring fresh ideas to the corporation.⁷

This is an area where corporations know what to do: profile needed skills based on strategic objectives; ensure independence, hard business and leadership experience, as well as diverse representation; and make the whole process much more rigorous and understandable. They just need to do it.

Compensate Executives with a View to Long-term Success

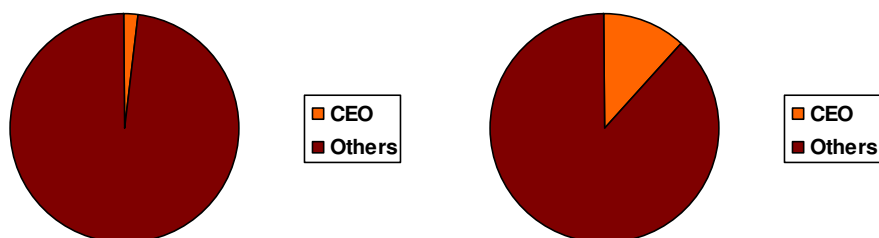
Once the right people—those who know the business—are in place in corporations, governance systems of performance management, rewards and development that reward the right behaviour need to be put in place. All too often, each player on the governance team—management, committee, board, associates, the auditor, financial analysts, and stock exchanges—have been compensated either directly or indirectly based on the market price of shares.

Incentive compensation based on stock options and grants risks corporate leaders and others chasing the “hot ticket,” seeking short-term financial gain. They are all too often rewarded by short-term upward movements in stock price and not rewarded for anything that might threaten these (like negative earnings news). Recent U.S. reports indicate that the CEOs of major publicly traded corporations now control approximately 12 per cent of their outstanding equities, a phenomenal jump from about 2 per cent 15 years ago. (See Charts 1 and 2.)

⁶ Senator Michael Kirby in a presentation to the Conference Board's Corporate Governance Conference.

⁷ See Brown and Brown: *Replacing a Few Good Men and Women on Boards*, re: choosing the right “11th person” for the board (The Conference Board of Canada.)

Charts 1 and 2: Ownership by CEOs of Outstanding Equity Stock



1985

2002

Source: *CNN Money Line* with Lou Dobbs, September 2002.

Boards are often unaware of the intense pressure that management is under from analysts to meet or exceed interim profit targets or "guidances." At times, analysts effectively dictate earnings to management and so tempt creative accounting. Instead of acting in the corporation's best interests, boards and management are easily deceived into focusing on short-term earnings per share. This becomes a slippery slope: a culture of innovative accounting leads to manipulative accounting and so to a culture of greed and corruption.

Frank McKenna warns about board members slipping into the "Stockholm Syndrome": becoming so enamoured with their corporation, perks and management that they fail to fulfill their fundamental challenge role within the corporation.⁸ An inconsistent level of skills and independence at the board level in Canada is a direct contributor to this in practice. Boards must be prepared at all times to challenge management's recommendations, assumptions, reports and responses.⁹

The use of stock compensation and stock options needs to be moderated. This means ensuring that stock compensation does not completely overwhelm base and cash compensation for both executives and directors in terms of mix. Option periods should be long enough to align with the accomplishment of strategic goals and objectives, not just short-term stock price moves. Payouts need to be tied to specific targets that reflect sustained out-performance of peers, not just general upward movement of stock markets. Further, we applaud recent decisions to mandate the expensing and better disclosure of stock option compensation in corporate reports.

Strengthen Director Development

At the board level, perhaps the most practical step that can be taken is ongoing director development. Even with the best selection processes, directors need continuous training and exposure to different aspects of the business and of governance, oversight and control if we are to expect them to exercise true leadership and stewardship over our corporations.

⁸ In a speech to the Conference Board's Directors' Roundtable.

⁹ Ontario Teachers Pension Plan statement on corporate governance, June 2002.

Yet director training, for either potential or experienced directors, is almost non-existent in Canada: 74 per cent of corporations have no formal ongoing development or education program for members of their boards.

Perhaps the time has come for a National Director Development program, with accreditation and respected leadership. We are not in favour of universally mandated director education, where one could not serve without having received this training; this is both onerous and counter-democratic. However, a nationally recognized program of director education with accreditation would provide a powerful incentive and opportunity for corporations in search of practical learning tools.

Adopt a Risk-based Approach to Governance, Planning and Control

Having the right people, with proper incentives and the right compensation and training systems, will not alone produce good governance. Structural enhancements that engage and activate the board and its committees are also required.

Enron and the other failed firms left behind a trail of warning signs that are visible in 20–20 hindsight. Leverage ratios, working capital, cash flow, obvious business risks, industry trends, the use of subsidiaries, affiliates and off-balance sheet entities, aggressive growth assumptions, pro-formas and profit warnings can be pieced together to tell the story.

What is needed, of course, is something closer to 20–20 foresight. Taking a risk-based approach to strategic leadership, ensuring an active challenge role at the Audit Committee and embracing a dashboard of varied performance indicators will all contribute to success in this area.

Explicitly delineating levels of authority for individuals and teams at the top of the corporation and holding them accountable for achieving results within those levels is generally done well within a corporation but poorly at the top. Boards need to be better equipped to know how to effectively exercise oversight, control and accountability in modern complex corporations.

Taking a risk management approach to control and accountability has proven the most effective approach for boards grappling with information overload and functional expertise.¹⁰ This involves looking at business risk and opportunity from an enterprise-wide view and using this understanding to guide delegation, control and reporting to the board.

Strategic risk management is an approach that boards, analysts, regulators and shareholders can all benefit from. What are the key business risks? How well does the company mitigate these? Understanding risks helps focus attention on the right areas of planning, disclosure, reporting, evaluations and accountability.

Concurrent with the publication of this briefing, Brown Governance Inc., in partnership with the Conference Board, is releasing a new Integrated

¹⁰ This is required board practice in the United Kingdom since the London Stock Exchange adopted the recommendations of the Turnbull Report.

Governance Risk Management Tool, contributing a practical next step in this direction for Canada.

Implement Rigorous Audit Regime Practices

The audit regimes at Enron, WorldCom, and the other recently failed mega-corporations failed stakeholders miserably. External auditors often let the allure of lucrative consulting contracts—fees of over U.S. \$50 million annually at Enron alone—cloud their judgment and independence. Audit Committees rarely recognized these cozy relationships, in place many years, and rarely seriously questioned either the auditors or management about risks, assumptions, sensitivities, or aggressiveness of the financials. Internal auditors were generally non-existent, were subsumed by external auditors, or failed to have sufficient clout to stave off disaster in time.

The most visible changes in corporate governance embraced in both countries since Enron are aimed at addressing these deficiencies. Sarbanes-Oxley and securities, stock exchange and accounting industry oversight bodies have all led to tougher codes and penalties here. This is hindsight: regrettably, few followed the lead of some institutions that had the foresight to recommend similar changes in 1999, two years before Enron.

The OSC was disappointed and more than a little surprised to discover in 1999, five years after the TSE listed it as a guideline, that 75 per cent of listed companies did not have a board-approved communications and disclosure policy. Certainly, the board must take a lead in ensuring stakeholders are receiving continuous material disclosure—this is an example of a rule that has been in place but has no history of enforcement in Canada. More than that, however, boards need to ensure that the information they are receiving meets their needs (based on their strategic risk assessment) and has integrity.

The Blue Ribbon Committee on Effective Audit Committees issued groundbreaking recommendations, also in 1999, concerning the financial skills, independence and active engagement of the Audit Committee.¹¹ Step by step, the report outlines how audit committees ought to function in the selection of and relationship with the external auditor. Audit committees need to stop being apologists for management and truly carry out their challenge function, empowering and understanding both the internal and external auditors.

These recommendations now must be adopted as requirements in their entirety if Canada is to return to a position of leadership in governance.

Apply Corporate Resources in the Interests of All Stakeholders

Many corporations pay only lip service to corporate social responsibility—to serving the needs of stakeholders beyond the owners. This is an area that

¹¹ *Blue Ribbon Committee on Improving the Effectiveness of Audit Committees* (New York: NYSE and NASD, 1999.)

People want to
work for a cause
. . . not just for a
living.

C. William
Pollard, *The Soul
of the Firm*

encompasses ethical leadership. Ethical leadership must start at the top of the corporation—in the boardroom. “Bottom up” or “middle out” ethics don't work.¹²

Board members who think that “what happens in the boardroom stays in the boardroom” are sadly out of touch. Codes of conduct exist for a reason, and a single exception sends a signal like lightning through the whole corporation: “Our values are important most of the time, but sometimes we have to do things outside them for the sake of expediency.” The telegraphed message: “Do what you need to do to get short-term results.”¹³

Recent research clearly demonstrates that corporate social responsibility and financial results are not mutually exclusive. Employee engagement, customer delight and respect for community are proven, long-term drivers of market share, profits, growth, and shareholder value.¹⁴

The best evidence that a corporation is embracing corporate social responsibility is board adoption of a suite of performance measures that go beyond traditional financial indicators and include customer loyalty, employee retention, ethical conduct (moral hazard incidence and consequences), community relations and environmental sustainability.

Once executives, directors and committees are evaluated—and executives are compensated—based on a range of such performance criteria, we will have gone a long way to breaking a culture that has infected too many executive suites in the past decade and led directly to breaches of trust and corporate responsibility.

Separate Power and Hold Those at the Top Accountable

Since at least the Great Depression, power and authority have been concentrated at the top of organizations, often in the person of a single individual. We observe this in governments, where the prime minister and premiers have taken on staggering levels of unilateral authority, far in excess of wartime powers yet exercised during a period of unprecedented peace and prosperity.¹⁵ We observe this in social organizations of all types.

We observe this too in corporations, where all too often the positions of chair of the board, president and general manager are rolled into an all-encompassing chief executive officer. Except in a few months towards the end, Enron embraced

¹² Brown and Brown, *When Leaders Serve* (Ottawa: The Conference Board of Canada, 1999).

¹³ Of Canadian boards, 20 per cent report that they do *not* ensure their corporation has or follows a code of conduct.

¹⁴ See, for example, Blair W. Feltmate, Brian A. Schofield, and Ron W. Yachnin, *Sustainable Development, Value Creation and the Capital Markets*, and Eleanor Randolph Brooks, *Loyal Customers, Enthusiastic Employees and Corporate Performance* (Ottawa: The Conference Board of Canada, 2001 and 1998).

¹⁵ Acknowledging that we are currently in a state of war, the arrogation of powers currently observable is not a result of recent tragic events; it has built up over generations.

this governance practice, as do 75 per cent of U.S. corporations and a sizeable minority of Canada's leading firms as well.¹⁶

A separation of powers at the top of organizations dates back well before this century. In ancient Sparta, not one but two kings reigned together, sharing power and keeping an eye on each other. The tradition continued in republican Rome with two consuls. It continues today in the United States and many countries, with the separation of the executive and legislative branches of government. It is meant to be in place in corporations, with the separation of the board and management.

Exacerbating this lack of separation of power at the top is often a lack of true independence on the board and, by extension, its two pivotal committees: the Audit Committee and the Compensation Committee. By "true" independence, we do not mean the checklist approach adopted by many Canadian corporations or the legalistic approach adopted by most U.S. corporations, but a practical, realistic assessment of the ability of individual board members to think and act independently.

At Enron, for example, a director was head of a charity that relied on major donations from Enron, a director had a family member who relied on consulting contracts with Enron, and a director served on the board of a supplier corporation that relied on Enron for much of its revenue. These board members probably met technical and legal definitions of independence, but when push came to shove, could they really think and act independently of the management team?

And again, in case we are tempted to point the finger at Enron, let's take a look in the mirror: a preliminary review of the boards of many of Canada's largest corporations turns up examples of each of these situations and more besides. Currently, Canadian corporations disclose that about 72 per cent of their directors are "unrelated," a categorization that is defined by the corporation itself, but this proportion would drop substantially if sweeping tests of independence were applied here.¹⁷

What a lack of separation and independence is doing, in effect, is ignoring agency theory, the fundamental economic underpinning of governance that distinguishes a clear role for boards as arbiters between owners and agents in corporations. While there are a number of theories underlying corporate governance (at least six major ones), agency theory is the leading one, globally and in North America. Popularized by Adam Smith,¹⁸ it distinguishes between owners, who accumulate and invest capital, and agents, who apply capital to ideas, with a return to the owner. Boards are the brokers or intermediaries between these two. The economic role of boards is to minimize agency costs, that is, any money spent in the corporation on anything that does not align with the owner's purpose.

The board's four key roles derive from agency theory: leadership (setting the strategic direction and putting the leadership in place to achieve it), stewardship (shepherding resources belonging to others), monitoring (evaluating the

¹⁶ While 70 per cent of Canada's board chairs are not also the CEO, almost half (47 per cent) are "related" to the corporation under current narrow interpretations, calls into question the independence of the majority.

¹⁷ About 18 per cent of board members are "inside," i.e., current members of the management team.

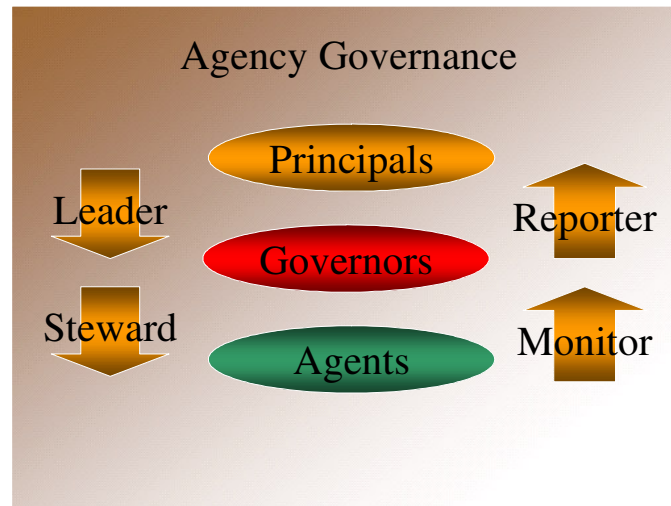
¹⁸ Articulated by Adam Smith in *The Wealth of Nations* (Boston and Chicago: 1776).

Everything rises
and falls on
leadership.
You cannot
produce
consistently on a
higher level than
your leadership.

John Maxwell

performance of the corporation and holding management accountable), and reporting (to shareholders and all legitimate stakeholder groups). This is illustrated in Chart 3.

Chart 3: Adam Smith's Agency Theory and the Four Core Roles of the Board



Source: Brown Governance Inc., 2002.

Since the CEO is the head of the management team and therefore of the agents, it is circular and fallacious to conceive of the CEO attempting to fulfill the arbiter (governance) function as well. That is what Cadbury and Dey suggest: the CEO cannot oversee and solely hold himself/herself accountable.

All too often in today's boardrooms effective performance evaluation of the CEO and of the board is missing. Performance management systems tend to be rigorous and practical until we reach the boardroom door, where those responsible for strategic leadership of corporations are often subject to little more than "beauty contest" evaluations, if they are evaluated at all. Rigorous objective performance criteria, honest appraisals and outside expertise need to be brought to bear on CEO and board performance evaluations if we are truly to achieve corporate accountability.¹⁹

Support Market Discipline with Appropriate Regulatory and Government Action

Enron was to business what September 11th was to society at large. Since those two events we have questioned our safety, the security of our institutions and the degree to which we could trust what we previously took for granted. Further collapses and governance failures have caused us to question our faith in corporations as well.

¹⁹ Almost half (48 per cent) of Canada's boards do not formally evaluate their own performance; over 60 per cent do not evaluate individual directors; and over 70 per cent do not evaluate committees.

So far, we have deliberately focused on what corporations need to change in light of the lessons from Enron and others and particularly on what the board needs to do. The board is where responsibility for governance begins, even though most ink since Enron has been about what outsiders should be doing. But what is the appropriate role of government regulation in governance and its balance with market self-regulation?

It is when market discipline and self-regulation prove inadequate that regulatory bodies have roles setting basic standards and ensuring mandatory, timely disclosure of information and practice.

And we are becoming increasingly aware that market discipline has some significant flaws in widely held firms, particularly in complex businesses and in bull markets. Many shareholders have been relying on others to conduct due diligence, unaware that these others, including self-regulatory organizations, can act against owners' long-term interests. Shareholder governance is an area where huge gains must be made. No one who holds Enron shares today would say that those responsible for governance were acting in their (shareholders') interests.

Certainly someone needs to be watching the watchers, and someone needs to take disciplinary action against violators. The federal government has already stepped in, working with Canada's accounting firms to ensure that steps are taken to split their auditing and consulting businesses and put in place an objective oversight board.

Similar action, at least, seems to be called for in the securities business. While securities regulation is the responsibility of the provinces, research demonstrates that the growing cost of regulatory compliance has an impact on the competitiveness of financial institutions both at home and abroad. Canadian securities regulation is full of complex and rigid rules that are costly for industry but do little to protect investors. Companies wanting to sell securities to investors across the country must obtain permission from 13 different jurisdictions. It may now be time to put in place a national securities regulator akin to the SEC, with teeth, reach and resources. Naturally, some provinces, such as Quebec, Alberta and British Columbia, oppose this initiative. But perhaps the impetus is finally here to realize this.

There is a risk of too much regulation and of poorly conceived regulations that can raise unnecessary obstacles to competition, innovation and growth. Excessive consumer protection can encourage undue risk-taking, for example. Too generous deposit insurance or guarantees motivate consumers to buy, regardless of risk, and thus actually have a contrary effect: high-risk lenders can attract deposits. The opposite effect happens at institutions: too much regulation can dampen risk taking in areas that may be productive, innovative and useful.

Harmonize Accounting Standards

A missing link in promoting corporate transparency on a global scale is the harmonization of accounting standards.

Currently, two major systems—including the rules-based U.S. GAAP standards that opened the door to Enron in the first place—and many national ones are competing for global acceptance and convergence. Achieving consensus on a regional, let alone global, scale has proved challenging: most Latin American

economies are converging toward the international standards of the International Accounting Standards Board (IASB), but Mexico has adopted U.S. GAAP after abandoning international standards.

Harmonizing accounting standards in Canada, across the CICA, U.S. GAAP and IASB rules, will provide a common yardstick to compare the relative performance of companies around the world. This in turn will provide investors, shareholders and governments with a measure of protection from biased or inconsistent reporting by corporations. It will also enable better enforcement by regulators.

Enforce Standards Vigorously

Governments in Canada, need to play appropriate roles in standard setting and enforcement, including criminal convictions for corporate leaders involved in fraud.

The key to governance regulation is not more regulations: "What we need are more tools, not more rules," as Jonathon Skinner of GovernanceSolutions.com says. An appropriate role for governments is promoting and ensuring transparency in corporate disclosure. We already have world-leading standards of continuous disclosure for our corporations in Canada but we have a poor record of enforcing compliance.²⁰

Regulators can start by putting in place strict penalties for failure to disclose material changes in financials, stock compensation, vesting periods and insider trading. This means corporations will exercise the same degree of due diligence in real-time interim reporting as would be expected in prospectuses.

Conclusion

Canada has an opportunity to regain its position of leadership in governance before we experience embarrassing disclosures and failures similar to those of our colleagues in the United States. Together, our government, national institutions, self-regulatory organizations and corporations can forge an effective team to ensure that our country and people "get the governance we deserve."

The Governance We Don't Deserve? Lessons Learned	The Governance We Deserve . . . a Call to Action for Corporate Governance in Canada
Players on the governance team failing to exercise effective due diligence in oversight	Formal, rigorous, transparent selection processes for board members and the CEO
Compensation, direct and indirect, rewarding short-term stock returns and not rewarding dissent or transparency	A nationally accredited, independently operated director development program
Players on the governance team being tempted to "chase the hot ticket" and ignoring warning signs	Boards taking a risk-based approach to governance, stewardship and control
Audit firms focusing on lucrative	The Audit Committee being

²⁰ The TSE issued its continuous disclosure guidelines in 1995; the OSC and others benchmarked compliance (or lack thereof) in 1999 and 2001.

consulting contracts and losing independence	composed of skilled, independent individuals, actively exercising an expanded mandate in managing the entire audit regime of the firm
Boards and CEOs bypassing ethical codes and standards of corporate responsibility	The board taking leadership in ethics and corporate responsibility, ensuring it receives the right information and metrics to oversee and monitor these areas
Arrogating and vesting authority in a few individuals, violating centuries' old traditions separating powers	Written periodic performance evaluations for the board, CEO, committees and individual directors, with results measured back to rigorous targets
Players on the governance team failing to take responsibility for their unique role in governance and stewardship, including regulators and governments	Governments playing their appropriate role in setting standards and enforcing disclosure, letting SROs and markets fulfill their complementary roles in ensuring good governance