

HANSELL

WHAT WE DO

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Hansell LLP advises boards, investors, shareholders and management teams in crisis and other special situations, and in respect of their governance practices, generally. We advise public and private companies as well as Crown corporations and other government-owned enterprises. We also strive to be thought leaders.

We provide expert, independent legal and governance counsel. That needs a bit of an explanation. Our expertise is both on the legal and governance side. We are lawyers grounded in corporate and securities law. We have extensive experience in corporate transactions and challenges of all kinds, acting for the full range of stakeholders. However, we go beyond advising our clients on what is required or permitted by law. We are expert on practices followed by a wide range of organizations and on existing and emerging expectations of investors and regulators. We have worked with many boards, management teams and investors to help meet their business objectives and deal with the legal, organizational and strategic challenges along the way. We are alert to issues of personal liability and to potential exposure of any process to legal and regulatory scrutiny. We equip our clients with the most effective legal and governance tools to promote and protect their interests.

We have described below some of the types of situations on which we have been engaged.

SPECIAL COMMITTEES

We have acted for special committees on a range of matters, including proxy battles, board investigations and related party transactions.

We provide securities and corporate law advice, but we go beyond that. We guide the directors in the discharge of their fiduciary duty. In this regard, we advise them as they consider the interests of various stakeholders, keeping in the forefront the best interests of the corporation. Our extensive transactional and board room experience as well as our expertise in regulatory risk, equip us to provide effective counsel to special committees as they navigate the company through a challenging period.

We are also alert to issues of personal liability and how best to protect the directors and officers.

SHAREHOLDER MEETINGS

We have been retained by both sides – the dissidents and the special committee of the board – in contested shareholder meetings. Where an activist emerges to challenge the incumbent, both sides often prefer a negotiated settlement to a costly proxy battle. Whether this is possible or not depends very much on the facts of each situation.

We have also been retained by organizations in connection with meetings that may be challenging in some regard. For example, we acted as the independent chair/counsel to the chair in connection with a court-ordered meeting of shareholders. We advised a major not-for-profit organization where a member challenge to corporate decisions was an issue. We also acted for a large investor in connection with voting irregularities at a shareholder meeting to approve a transformational transaction.

We have acted for a number of large institutional investors and other stakeholders in connection with matters relating to the proxy voting system.

SHAREHOLDER ENGAGEMENT

Shareholders are engaging directly with management teams and with boards differently than they did 10 years ago. That engagement is sometimes tactical, a first step in a strategy to effect a change in the board or in strategy. In other cases, it reflects the emerging sentiment of investors with a long interest in the company. We have acted on both sides of these engagements. We understand the tools available to achieve our clients' objectives and how best to use them.

We have been retained by investors on both sides of the border. In one case, a US investment fund was frustrated with its investment in a TSX-listed issuer and wanted to influence a change in strategy which would promote greater liquidity. It retained us to provide corporate, securities and governance advice on how best to engage with the issuer's board. In another case, a US hedge fund was concerned that a Canadian issuer in which it held a majority interest, was engaging in related-party transactions which were not in the best interests of the corporation. It retained us to review the public record and advise on legal and governance strategies.

INDIVIDUAL DIRECTORS

Individual directors reach out to us for guidance in new or challenging situations. We have advised senior executives who serve on boards at the request of their employers, directors who are in a position of conflict of interest with the corporation, and directors who are experiencing personal conflict on the board. We have also acted for directors who are leaving the board and wish to resolve certain issues before they resign. In these situations, our advice includes consideration of the individual's exposure to liability as well as reputational issues.

CONFLICTS OF INTEREST ON THE BOARD

We have advised management and boards on complex issues of director conflicts of interest. In one situation, the organization was the defendant in franchise threatening litigation. Two members of its board were executives of the defendant, and intimately involved in the litigation on behalf of their employer. In another situation, a director was disclosing board matters to a third party. In yet another situation, former directors were engaged in a transaction that had been under consideration by the corporation while they were still on its board.

In some cases, what appears to be a conflict of interest is simply a difference of perspectives. We have advised board chairs in working through these issues.

INVESTIGATIONS

During the past year, we advised an audit committee in an investigation of wrongdoing revealed by a whistleblower. The experience of our partners in other investigations, including stock option backdating and manipulation of corporate assets, is critical in framing the investigation, directing the forensic consultants and formulating the disclosure to regulators and other stakeholders.

DEPARTURE OF A CEO

One of the most challenging situations for a board arises when it decides it must terminate its CEO. It is also one of the most difficult experiences in a CEO's career. The parties are concerned with the nature of the settlement, the content and timing of disclosure and the impact of the decision on stakeholders. Personal relationships and reputation are an issue for the CEO, but often for the directors as well. We have acted for several boards in the dismissal of the CEO, as well as for CEOs and for a board chair as their relationship with the organization comes to an end.

REGULATORY ISSUES

We regularly advocate for our clients to securities regulatory authorities, stock exchanges and OSFI. We have submitted arguments in connection with matters that are significant to our clients.

OPINIONS TO THIRD PARTIES ON GOVERNANCE PRACTICES

We have been retained by stakeholders to provide an expert opinion on an organization's governance practices. The stakeholders of a leading Canadian regulator retain us annually to conduct a comprehensive governance review of the regulator and to report back to the board. We provide an opinion each year on the governance practices of a public company, as required in connection with a remediation order issued by a branch of the US government.

ADVICE ON GOVERNANCE PRACTICES

We have been retained by boards of leading organizations to assess their governance practices and to make recommendations. In some cases, there is a specific problem the board needs to address. In others, the board retains us as part of its on-going consideration of its effectiveness. We have advised several financial institutions in connection with OSFI's Corporate Governance Guidelines.

The approach we take to these assessments varies, but we typically start by evaluating the organization's legal and governance context and its current governance practices. We often interview the directors and members of senior management to hear their candid views and to discuss with them our impressions and the recommendations we are considering.

ADVICE ON PARTICULAR GOVERNANCE ISSUES

Governance issues often arise as a result of changing circumstances. We have advised a number of Crown and government-owned corporations on how to align their governance practices with those generally accepted in other sectors. We have also advised them on how to respond to requests (and sometimes demands) by their shareholder and to government reviews of the governance of public sector entities.

We have advised in-house counsel of public and private companies on issues relating to their boards. The general counsel is frequently the chief governance officer for the organization. That executive's knowledge of the organization's culture and personalities is central to the development of governance structures and policies that are most appropriate for the organization. Our extensive experience in boardrooms and of the practices most commonly followed (and those that are most practical) allowed us to support the general counsel in satisfying the needs of the board of directors.

We have also advised major issuers on the appropriate protocol when their senior executives serve on boards of organizations in which the issuer has an interest.

EDUCATION AND COACHING

We are frequently asked to speak at board and management meetings about corporate governance practices and trends and about the organization's own governance practices.

We are also asked to advise on difficult dynamics, director development as well as board cohesiveness and independence. This coaching function is a natural extension of our legal expertise and our extensive experience advising boards and management teams on their governance practices and problems.

THOUGHT LEADERSHIP

We contribute considerable time to researching and writing on issues of concern to our clients. We are well known for our leadership in the area of proxy voting, for example. We have also issued very highly regarded commentaries on advance notice by-laws and on term limits for directors.

INSIDE THE BOARDROOM

We have considerable experience inside the boardroom. Carol Hansell was inducted as a Fellow of the Institute of Corporate Directors in 2013 in recognition of her board service and contribution to governance. She currently serves on the boards of SickKids Foundation, the Toronto Symphony Orchestra, the Global Risk Institute in Financial Institutions and the International Corporate Governance Network. Past board service includes the Bank of Canada, the Public Sector Pension Investment Board, Toronto East General Hospital and Royal Group Technologies Inc. She is the only non-American to serve as Chair of the Corporate Governance Committee of the American Bar Association (Business Law Section) and continues to serve as Special Canadian Advisor to the Corporate Laws Committee. Frédéric Duguay currently serves as the Chairman of the Board of the Coopérative Radiophonique de Toronto (C.R.T.).

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The information and views set out above are a general discussion of certain legal and related issues and should not be relied upon as legal advice or opinions in relation to any particular circumstances. If you require legal advice, please feel free to contact us and we would be pleased to discuss these issues with you further.

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