The power of persuasion

In his new position, Stephen Erlichman will have the opportunity to draw on three decades of thinking and writing about the evolution of principles of good governance

BY PATRICIA CHISHOLM

AFTER MORE THAN 30 YEARS OF practising corporate and securities law in Toronto and New York, Stephen Erlichman has seen and studied much when it comes to fair play in the world of profit and loss. Now, in the next chapter of his varied career, Erlichman has taken over as executive director of the **Canadian Coalition for Good Governance** for the next three years.

Why interrupt a busy law practice, including acting as leader of investment products and wealth-management services at **Fasken Martineau DuMoulin LLP**? For Erlichman, the new job represents a unique opportunity to raise the bar when it comes to both the principles and the technical requirements of sound corporate-governance practices. Making further progress in these areas, he says, "is very important for Canada and for the world."

The CCGG has grown dramatically since its creation in 2003, and now has almost 50 institutional members representing about $2 trillion in invested assets under administration. This depth has helped the CCGG develop into one of the most influential voices in the Canadian investing landscape, even though it has no regulatory authority.

The CCGG's central goal is to promote good governance in public companies; in doing so, it tackles a range of specific issues that change over time. Its current agenda includes the reform of director elections, "say on pay," and boosting support for a national securities regulator.

Change in these areas doesn't come easily. But it is becoming more and more obvious that change is needed. In the delicate dance between financial markets, lawmakers, their enforcers and the great, grey world of public sentiment, much depends on confidence. Are the rules that companies play by fair to investors? Are most companies abiding by these rules? And when they are violated, are there consequences?

Unfortunately, rules — while crucial — are seldom enough to maintain that confidence, as many countries have recently discovered. The CCGG already has brought about many changes in the way public companies are governed, and it has done so with what is an almost unique approach to corporate reform — the power of talk.

Of course, the talk is pretty complicated, and it's coming from CCGG members, which include Canada's largest pension plans and investment funds and advisors. Erlichman notes that one CCGG initiative, called "board engagement," essentially comes down to meeting with the boards of directors of some of Canada's largest companies, including the big banks. In a forum that is both structured and relatively informal, teams from CCGG sit down with boards of directors to discuss a range of issues related to corporate governance.

Over the years, Erlichman says these conferences have developed the reputation of typically going "very, very well." So much so that some companies now invite CCGG feedback on corporate-governance issues. Erlichman adds that these in-depth face-to-face discussions often result in greater insight on both sides of the table.

Deep interest in how any system works — and how to change it —usually goes back a long way, and that's fair to say of Erlichman. He credits his early exposure to outstanding law teachers for sparking his initial interest in corporate governance, including Frank Iacobucci and Peter Dey at the University of Toronto.

A growing interest in business led Erlichman to Harvard, where he obtained an MBA. He then spent three years at a major New York law firm before joining Davies Ward & Beck LLP in Toronto.

But despite the satisfaction in practising law, Erlichman continued to feel the pull of policy. In addition to writing and speaking about issues such as directors' fiduciary duties and conflicts of interest, he was tapped in the late 1990s to study and report on Canada's mutual fund regime. Released in 2000, Erlichman's *Making it Mutual* report turned a spotlight on systemic issues such as conflicts of interest and protections for retail investors. Several of his recommendations have evolved into new laws and regulations for the sector, and its clear Erlichman derives a lot of satisfaction from being the author of change. Because of that report, he says, "We could have something better than what we had before. And, hopefully, it would be better for all retail investors."

Erlichman will start out by exploring current agenda items: approaches to "say on pay"; persuading all Toronto Stock Exchange-listed companies to use majority voting to elect directors; and continuing to push for a national securities regulator.

Currently, public companies are permitted to use a voting system in which "no" votes are ignored, allowing directors to be elected to boards with as few as one vote. (See the Mid-October 2011 issue of *Investment Executive*, page 26). "We need to have majority voting in Canada," Erlichman says. "That's the right thing to have."

There is a "workaround" system, developed by the CCGG and adopted by many companies, that, Erlichman says, could be used by virtually all companies. It requires directors to sign a resignation notice in advance of a corporate election; if the director receives less than half of the vote, that director must resign. Says Erlichman: "This is how we work within the system."

When it comes to "say on pay," the CCGG believes that "getting compensation right is very important," Erlichman says, but without using specific regulation to give shareholders direct input on this subject. What is important is a board's approach, he says, not whether an individual is earning too much or too little. That includes concerns about overemphasizing short-term rewards — what's happening to the stock in the next quarter, for instance — at the expense of the future. Says Erlichman: "You want to reward people based on the long-term results of the company and make sure that the company continues on and prospers in the future."

Part of the CCGG's success is its ability to operate effectively in the gap between formal legal regimes and the every day demands of running a business. The goal, Erlichman says, is to "get people with integrity, people who are curious, people that want to do the right thing." This helps build "a culture of integrity starting at the highest levels — that's very, very important for companies."

Sound laws, of course, are key but, Erlichman notes, basic moral codes are most crucial: "People have their own moral compass. You don't need laws to tell you what's right — and what's not right." IE