

Insider Trading Task Force

BACKGROUND

- The Insider Trading Task Force was established in September 2002 by the regulatory authorities (Ontario, B.C., Québec and Alberta Securities Commissions) the Investment Dealers Association of Canada, the Bourse de Montréal and Market Regulation Services Inc. The objective of the Task Force was to evaluate how best to address illegal insider trading on Canadian capital markets. The Task Force focused on prevention, detection and deterrence.
- In Spring 2003, the Task Force asked the CBA to draft “best practices” for lawyers concerning the containment of confidential information about issuers.
- A working group comprised of Warren Grover (former Chair, Competition Law Section) as Chair, Catherine Wade and Kenneth Wiener (Business Law Section), [responded to the Task Force request](#). The CBA argued that the CBA *Code of Professional Conduct* and law society Codes dealing with confidentiality adequately govern information containment by lawyers.
- The CBA also argued that law firms with clients who may have material undisclosed information relating to publicly traded entities, being aware of insider trading laws, have established policies tailored to the culture of the firm. These policies appear to be doing an adequate job. For the CBA to suggest “best practices” would be intrusive and counterproductive. CBA saw the proposal to establish “best practices” as an attempt to regulate the legal profession. The Executive Officers informed the Federation of Law Societies of these concerns in September 2003.

CURRENT STATUS

- In November 2003, the Task Force released its report for public comment. The recommendations relating to lawyers include:
 - that the Canadian Securities Administrators (CSA) work with the CBA and law societies to develop substantive best practices for information containment for lawyers;
 - that issuers retain only lawyers who have adopted best practices on information containment.
- The Task Force also made over thirty other recommendations on insider trading.
- Then CBA President, F. William Johnson Q.C., wrote to the Task Force in February 2004, objecting to the “best practices” proposals. The Business Law Section formed a team to comment on the general aspects of the Task Force report and these comments were submitted in February 2004 ([04-02](#) and [04-02-2](#)).

NEXT STEPS

- CBA will monitor further action on information containment. CBA will work with the law societies and the Federation on issues of lawyer regulation.