Corporate social responsibility (CSR) was once a voluntary exercise taken up by companies for business reasons ranging from reduced energy costs, to increased competitiveness in the market for talent, to improved corporate morale. However, with the recent advent of CSR laws and regulations, legal practitioners have been confronted by unique and burdensome CSR-related legal requirements, and CSR initiatives that were previously entirely voluntary have become inherently legally mandatory. Companies now face significant legal penalties, measurable litigation risk, and meaningful public relations fallout if they fail to address these requirements. These evolving requirements to be a “good corporate citizen” also place on corporations the responsibility for not only increasing shareholder value and following the law while doing so, but also to fulfill a more holistic set of obligations to a variety of stakeholders: regulators, prosecutors, shareholders, employees, business partners, customers, and the communities where they operate. This concept of “corporate social responsibility” requires in-house counsel to face the prospect of having to “cut twice” if CSR programs are not designed and implemented with reference to existing, pending, and proposed CSR-related legal requirements.

One could reasonably make the case that the increasing frequency with which in-house and outside counsel have been confronted with legal issues that in one way or another implicate CSR concerns is one of the most notable legal trends of the past decade. Such issues can arise in disparate contexts ranging from supply chain compliance requirements related to minerals sourcing or anti-trafficking, to investor inquiries regarding environmental, social, and governance performance, to board governance regarding sustainability issues. The issues typically span various legal practices areas such as securities law, corporate governance, compliance, commercial law, labor law, and trade law, among others. Moreover, the issues are frequently fairly unique when compared to the matters typically addressed by corporate practitioners and require unique expertise; there is little in a business attorney’s repertoire that lends itself to reporting on the tracing of minerals back to their sources in the Great Lakes region of Africa or assessing whether a company should consider transitioning to one of a variety of alternative corporate forms that incorporate social goals.

While there may be similarities among CSR issues in terms of the substantive concepts involved and the legal expertise required, it has historically been the case and continues to be the case today that it is difficult for a lawyer to acquire the knowledge and gain the experience required to effectively address them. As a result, in-house attorneys often manage these issues by involving operational teams within the business (e.g., supply chain, procurement, social responsibility), analogizing from their own legal backgrounds, and/or seeking input from outside counsel (even if such legal counsel has no specific expertise itself). The need for guidance is rendered even more acute by the fact that although the number of CSR-specific legal positions is increasing, and although the
number of law firms with dedicated CSR practice groups continues to grow, in many if not most cases, CSR law has no clear home within a business or law firm. CSR-related legal issues are too often handed off to the in-house corporate, compliance, or commercial attorney who draws the short straw, and law firm management too frequently fails to recognize the business case for a CSR practice. Clear and concise guidance is even more critical in the absence of institutional structure, as in-house and outside counsel will not receive the full benefit of repetition, precedent, peer benchmarking, market norms, and organizational knowledge.

No single program can adequately cover the emerging landscape of issues and challenges associated with the relationship between CSR and the legal profession; however, when in-house or external lawyers work with business colleagues, they can provide practical and legal guidance in designing a CSR program that includes the processes that business should follow to better integrate CSR into the day-to-day activities of the business. In undertaking this endeavour, lawyers need to consider the various labels that have been used when discussing “corporate social responsibility”: ESG, sustainability, human rights, business integrity and corporate/environmental stewardship. Beyond that, lawyers need to address and answer a fundamental question: why should I care and take the time to learn more about CSR and integrate it into my practice and my interactions with clients? Lawyers, in-house and external are well-situated to guide their organizational clients toward establishing methods to implement not only mandated requirements for corporate social responsibility but also to implement process to assure value-based decisions.