

Legal assessments benefit the bottom line

Staying ahead of the competition, combined with ever-changing priorities, regulations and technology, requires a legal department able to adapt to evolving company strategy and be responsive to the needs of its constituents.

Navigating this challenging business climate calls for frequent course correction and a business-minded general counsel (GC) at the helm. The rise of the business-minded GC represents a new wave of leadership within organisations, reflecting the value and increased responsibilities of in-house counsel.

At public companies, the GC's responsibilities have grown tremendously, playing an integral role in strategic planning, especially as it relates to risk management and determining competitive advantages in the market. Multinational companies require their GC to understand the complex and various economic, social and political climates around the world, in addition to a myriad of legal issues. To be effective, a general counsel must be:

- An expert in various areas of law that are core to the business enterprise
- A skilled manager of a professional staff and outside legal counsel
- A respected member of the C-Suite executive team
- An important face of the company to external audiences
- An efficient administrator of legal and related operations
- An individual with a keen sense of the business, an effective negotiator and a diplomat who is adept at dealing with a variety of inside and outside constituents, from shareholders and directors to regulators, litigants and risk managers

The GC now has a broader leadership role

Benjamin W. Heineman Jr, former GE senior vice president for law and public affairs and current senior fellow at Harvard University's schools of law and government, sums up the

An outside perspective can address gaps in resources or a misdirection of efforts

Robert Barker

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new standing of the GC within the corporate hierarchy in his book *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension*. He states: "The general counsel now often has a broad leadership role and final decision-making authority beyond the legal department, heading such areas as tax, trade, environment, security, real estate, customer care, community relations and public affairs. The general counsel is now often seen as having importance and stature comparable to that of the chief financial officer by directors, CEOs and business leaders because the health of the corporation requires that it navigate complex and fast-changing law, regulation, litigation, public policy, politics, media and interest group pressures across the globe."

In addition to the intellectual contributions that they make to the executive team and board, the areas where GCs add most value are related to corporate governance, compliance, risk management and mergers and acquisitions. As guardians of the company, it is imperative that they build, motivate and manage high-performance departments, implementing programmes that help identify and even reduce regulatory and reputational risks by having the requisite expertise to spot issues, trends and solutions, as well as the advocacy skills to implement the steps necessary to mitigate, if not eliminate those risks.

The most successful organisations are conducting more frequent performance reviews as a means to record and track the development and effectiveness of employees. This big-picture approach provides the data needed to know how the team is operating and where they are excelling, as well as where they are struggling.

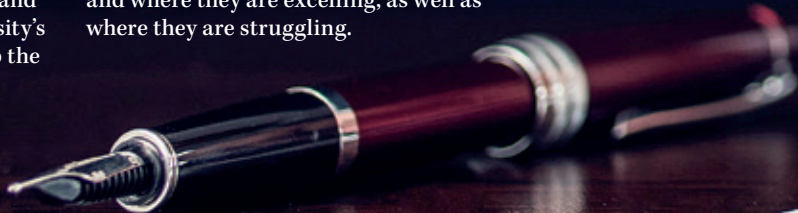
Assessments can be focussed on a single aspect of legal department performance, cost-effectiveness or responsiveness, for instance, or can involve a more comprehensive review of the overall health and effectiveness of the entire department, especially when measured against other similarly situated legal departments, whether by size, industry or specialty.

Boards and senior management are subject to increased scrutiny by shareholders, the public regulators and rating agencies. To one degree or another, all of these constituents have higher expectations of performance, insight and control by the leaders of the firm. A comprehensive, objective assessment of the legal function, including some of the common ancillary roles with which it is often charged (i.e. the corporate secretary's office, licensing, government relations and compliance), is the best way to check the overall quality, effectiveness and efficiency of the department, while also providing the salutary benefit of protecting the board and others from possible later challenges to their decision-making. If nothing else, the 'business-judgement' rule that underlies director exculpation from most shareholder liability claims is enhanced by this prophylactic action.

I spoke with some of BarkerGilmore's most highly accomplished senior advisors on the subject of legal assessments and the rise of the GC's role within successful organisations. These impressive individuals from across the country have managed the legal departments for some of the largest and most widely respected corporations in the world. Their insights on the importance and effectiveness of legal assessments and enhancing communications with the C-Suite and board affirms the importance of outside perspective and an impartial eye.

Reducing costs, not quality

Legal operations leadership is an expanding function within organisations, that continually monitors and drives efficiency standards throughout the law department. Michelle Banks, former GC of Gap Inc and a senior advisor at BarkerGilmore, was tasked



with cutting costs by 20 per cent during her first year as GC. This was an across-the-board directive at Gap and certainly a challenge for any legal department.

Conducting a legal department assessment gave her the data she needed to create a cost reduction strategy, without compromising legal services and provided the springboard for conducting semi-annual stakeholder interviews and annual spending reviews. "A best-practice company does this all the time," Banks advises. It should be an integral component of regular department reviews.

As GC of The J.M. Smucker Company, Ann Harlan used both formal and informal assessments to plan the legal integration of newly acquired businesses. Evaluating the past legal issues, as well as where there may be risks and opportunities as the business is folded into the existing operations, allows the legal department to deploy already thin resources in the most effective and efficient manner. We are all asked to do more with fewer resources and an assessment of and, if necessary, reallocation of, talent and expertise allows the legal department to be proactive in addressing changes in workload and requisite expertise. "The idea is to create a culture of continuous improvement, not merely a reaction to a problem," said Harlan. And an assessment held at regular intervals provides an opportunity to recognise and reward outstanding performers while also identifying gaps in service. »

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» “It helps ensure that the department is doing the most valuable work as defined by business needs,” says senior advisor Marla Persky, who began making personnel and strategy changes at Boehringer Ingelheim within three months of joining the company as its GC.

Regular law department assessments are a kind of ‘wellness check-up’ for a healthy law department. Even if a problem isn’t immediately apparent, a check-up verifies that things are running smoothly and gives your law department a clean bill of health, or, conversely, allows you to diagnose any problems. Persky adds that proactively undertaking assessments and resolving inefficiencies in workflow, as well as clarifying individual roles and responsibilities, ‘helps to establish your leadership as strategic and business oriented. It also helps a newly appointed GC’s onboarding process’.

federal regulators, the always imminent challenge of plaintiff’s attorneys and shareholder ‘activists’. One clear, simple way for boards and senior management to mitigate these risks is to conduct a thorough and comprehensive assessment to ensure that its internal legal function is operating in accordance with industry best practices and to remediate those areas – whether with changes in process, technology, scope, strategy, structure, or staff – as needed to redress the shortcomings.

Enabling alignment between the legal department and company strategic goals as set by the C-suite and board is a tangible advantage of the assessment process. Roya Behnia, who was Pall Corporation’s GC, says the assessments can provide ‘a roadmap for goal-setting in a multi-year period’. A deep-dive review of the legal and compliance function can identify gaps in resources or

and effectiveness of the legal department by identifying areas for improvement and engaging the entire department in implementing change. Building positive benefits directly into the assessment for your employees, as well as the business at large, will make regular assessments a welcome activity. The keys to a successful assessment implementation as recommended by BarkerGillmore’s advisors include:

- Outside perspective and an impartial eye
- Industry leadership and expertise
- Consistency – timing, methodology, etc
- Benchmarking against industry standards
- Tailoring your assessment to your specific goals

These tools and methodologies take careful planning for successful implementation. In a changing legal environment, benchmarking against industry standards is increasingly

complicated. Engaging industry experts allows for an unbiased and nimble approach to benchmarking that considers the most current and successful legal departmental standards and services.

Legal departments are in a state of flux. Leadership expectations for GCs are changing to include a wider range of responsibilities and influence; this in turn changes the way that departments are run. The legal profession itself is evolving amid increased regulation. Awash in new technology and technological threats, including privacy and cybersecurity concerns, departments can drift and lose sight of focus of business goals. While the legal profession continues to innovate, legal management and culture has not.

Of this phenomenon, Roya Behnia observes: “Our colleagues in operations, sales and marketing have used these

kinds of assessment tools for years. Isn’t it about time the legal department catches up?”

A good start is an objective legal assessment process that identifies strengths and weaknesses and clarifies communication throughout the business. While business leaders have traditionally set their sights on the marketing department to reduce spending, there is growing recognition among the most innovative companies that a legal assessment can be a highly effective means to ensuring quality of products and services while benefiting the bottom line. 

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AN OUTSIDE PERSPECTIVE
Work with an advisor to assess your legal team

Where the business enterprise is one that is highly regulated and regularly examined, such as banking and financial services, the demands on management and especially the board of directors, have increased significantly since the last ‘Great Recession’. Bill Solomon, the former long-time general counsel of Ally Financial (formerly GMAC) reports that bank regulators have ‘piled on’ requirements of directors to know, manage and do more than just act in their traditional role as policymakers and overseers of senior management, to the point where the customary and legal construct of a director’s limited duties and responsibilities may be at risk of changing and not necessarily for the better. *The Wall Street Journal* recently published a lengthy article questioning why any prudent businessperson would ever want to be a director on the board of a bank or financial institution, given the increased demands and expectations of state and

misdirection of effort resulting from a lack of communication with the business or understanding of business goals. With these gaps identified, an assessment can help the legal function dynamically allocate resources

according to company goals and identify and implement process tools that would allow the function to serve company strategy. The assessment process, in its highest form, can lead to ‘a defined strategic plan and cascading goals’ on a multi-year basis.

Compiling a successful legal assessment

What makes an assessment successful? Ultimately, the goal of a legal assessment is to recognise talent, streamline workflow, reduce costs and improve the overall quality