

# The GC disrupted: eight trends redefining the role

We have long heard about the expectation that general counsel need to be more like business leaders rather than just lawyers. But while in-house counsel may have once viewed this evolution as aspirational or optional, the proliferation of technology and the pace of business today have made it mandatory.

The GC role requires a plethora of skills – giving legal advice is just one of them. Today, GCs must be ready to put on any number of hats, sometimes simultaneously, depending on the situation. Among them: crisis counsellor, risk manager, CEO confidante, board counsellor, and department leader. At the same time, many GCs are being asked to take on these new responsibilities with fewer resources or professional leadership development.

As advisers to clients on their most strategic and transformational transactions, cases and risk management, Morrison & Foerster has witnessed the evolution of the GC role close up. Bringing together insights from our work around the world, along with our market research, we have identified eight trends demonstrating this change. From the perspective of the GC, this could either seem to be daunting or an exciting opportunity to be a significant force in shaping the future of your business.

## 1. The new GC-CEO relationship

Once upon a time, many CEOs consulted with their GCs only sporadically, and when they did, the discussions were limited to legal matters. The relationship between the two executives was sometimes so distant that they sat on different floors. At most companies, those days are long gone. Today, the predominant CEO-GC relationship is a dynamic and close partnership, involving constant engagement around a wide range of issues.

We have witnessed this new model flourish with the fast-paced growth of technology companies. Because many nascent technology companies were relatively small and had limited resources, hiring someone to serve just as a legal adviser was a luxury few could afford. CEOs knew they needed business-savvy GCs who could take on a

broad portfolio of responsibility. That's still true today of early-stage firms that may be cash-strapped. As two GCs observed in a 2016 *Harvard Business Review* article: 'To justify her presence among the first dozen employees, a lawyer must add something beyond legal knowledge to the equation.' This view is reinforced by Emma McFerran, SVP of legal at Lyst, a disruptor in the fashion retail industry, commenting that: 'As we have grown so quickly, the value in my relationship with our CEO is that I can be a sounding board on a whole range of business issues and opportunities, whether legal or otherwise. That level of trust is something I value immensely.'

As the speed and complexity of business have increased, this model is prevalent beyond the technology sector. GCs are regularly consulting not only with their CEOs but with leaders from a wide range of business functions. 'Regulatory compliance such as GDPR can give GCs the opportunity to offer risk-based solutions and engage in meaningful ways with, not only CEOs, but also others in the C-Suite such as CIOs,' says Annabel Gillham, data privacy specialist at Morrison & Foerster. 'The most successful GCs have learned to cultivate these relationships, seeing them as opportunities to add value.'

## 2. The leadership imperative

The psychology professor Carol Dweck popularised the term 'growth mindset' to describe a belief that our abilities are not fixed and that we can always learn and improve. More than ever, this attitude is required of GCs who are being asked to take on more responsibilities and acquire new skills. It is a given that GCs have the technical legal capabilities required of the role. But it is the intangible skills and characteristics that are increasingly in demand, and these are different from those required of the role just five to ten years ago. GCs need to be dynamic, inspirational, hungry, influential, and eager to drive change in fast-moving environments. They need to be leaders who can build mixed teams by embracing diversity and nurturing future leaders. For Katherine Bellau, deputy GC at Moneysupermarket



(L-R) ALISTAIR MAUGHAN, ANDREW BOYD AND ANNABEL GILLHAM OF MORRISON & FOERSTER

Group, this starts with being clear on her personal purpose. 'Understanding your purpose and how it aligns with the goals of your business enables you to lead with clarity and focus.'

The good news is that these emerging leadership qualities are already present in many GCs. A 2017 study by the executive search firm Heidrick & Struggles assessed how GCs around the world stack up against other executives in eight leadership signatures: harmoniser, forecaster, pilot, collaborator, energiser, provider, producer, and composer. GCs outpaced all other non-CEO C-level executives in the harmoniser (reliable, creates positive and stable environments) and forecaster (learning-oriented, deeply knowledgeable) signatures. But the study also cautioned that in the pilot style, which includes the ability to be comfortable with ambiguity, GCs scored more than 15% lower on average than CEOs and other C-level executives. The bottom line: there is always room to grow.

### 3. The legal technology revolution

It is hard to overestimate the profound impact that technology has had on the legal industry in the last few years. What's more, this transformation has only just begun. From billing to contracts to compliance and litigation strategy, technology is constantly inserting itself in the workflow of lawyers in new ways. It is no surprise that a 2017 survey by Thomson Reuters of more than 200 in-house counsel indicated that innovative service delivery through technology was a more critical factor for choosing outside counsel than personal relationships. Additionally, 63% of respondents to a 2018 survey from

Right Hat and ELD International of more than 100 legal services buyers said that implementing technological tools/systems for efficiency and performance was their team's primary objective beyond delivering legal advice.

But while legal technology offers so much promise – savings, efficiency, speed, new insights, etc – the prospect of keeping up can be overwhelming. Knowing how best to exploit all of these opportunities requires a network and available budget. For GCs, that means getting comfortable with collaborating with outside partners. The fact is, knowledge in this space is diffuse. Even at the most sophisticated companies, the best ideas will reside with external sources.

In our experience, the best outcomes around innovation have been the result of close collaboration with clients. 'Every client has different needs,' says Alistair Maughan, technology partner at Morrison & Foerster. 'With technology, it's important to experiment with solutions. There is no one size that fits all.'

### 4. The urgency bias

When confronted with either completing urgent tasks within a limited time window or working on important matters with no definite deadlines, many of us will choose the former. That is confirmed in findings recently published in the *Journal of Consumer Research*. Perhaps more than any C-suite executives, GCs need to be aware of this tendency to favour the urgent over the important.

In any given day, there is a constant stream of urgent matters to tend to – and those can quickly swallow a GC's mental energy. But



(L-R) DAN COPPEL OF MORRISON &amp; FOERSTER AND EMMA McFERRAN OF LYST

it is critical to recognise the need to put time aside for what's truly important, not just what is urgent. Defining what is truly important, however, must be re-evaluated from time to time – which will likely require a realignment of resources. In Morrison & Foerster's *General Counsel Up-At-Night Report* that surveyed more than 200 GC and other in-house counsel, we discovered a significant gap between the commercial importance that in-house counsel assigned to things like privacy and data security and the amount of time their departments devoted to them. It is easy for GCs to become overwhelmed with so much on their plate. But the best GCs learn to keep an eye on the horizon. Michael Cunningham, GC for the open-source solutions firm Red Hat, told *Modern Counsel* that he regularly reserves time to plan for the future and encourages his colleagues to do the same.

### 5. Increased exposure to crises

There may be no better test of a GC's value and mettle than his or her handling of a crisis. When others are losing their cool, a GC can be a calming influence. Conversely, when a crisis is not being taken seriously enough internally, a GC can convey the required urgency needed.

If a GC has not yet been tested by a crisis, it is likely to be only a matter of time. We can thank, in large part, technology for this development, which has exposed companies to a range of new calamities, with data breaches being among the most common. The explosion of social media, which can act as an accelerant to a crisis, has increased the stakes for responding quickly and appropriately.

These factors help explain why 63% of those surveyed in our *General Counsel Up-at-Night Report* responded that risk and crisis management were essential challenges for their legal department. In

the same survey, risks to a company's brand and market reputation were cited most frequently as top concerns.

Of course, the best antidote to these concerns is preparation, and that is where GCs can take the lead.

'Too many companies are woefully underprepared for a crisis,' says Gemma Anderson, litigation and crisis management partner at Morrison & Foerster. 'While every crisis is different, many of them have a lot of factors in common. Smart GCs recognise this and are preparing for what can be anticipated, lining up stakeholders and processes so that they can respond in a measured and strategic way.'

### 6. The rise of the chief risk officer

Just two decades ago, the chief risk officer (CRO) was a new position mostly found in the financial and insurance sectors. But with the ever-increasing complexity and risks facing companies from globalisation, technology, and increased regulation, the position has been introduced across a range of industries.

The rise of the CRO should be welcome news to legal heads. The CRO takes a broader view of risk than just one domain like legal, and often reports to the CEO or CFO. Although the job was once viewed as just saying no to prevent losses, it has evolved into a more proactive role in which risks can be exploited for gain. Together, GCs and CROs can form a powerful team that unites behind a shared goal of risk agility and growth. This allows the GC to be a more effective business leader focused on commercial growth.

### 7. The globalisation of business

Just as GCs are being asked to adopt a wider perspective through which to see their roles, they are also being required to manage



(L-R) GEMMA ANDERSON OF MORRISON & FOERSTER AND KATHERINE BELLAU OF MONEYSUPERMARKET GROUP

matters beyond markets and jurisdictions in their home countries. Understanding how to navigate new political and legal terrain is an absolute requirement and expected competency of GCs.

Take the rapid rise of cross-border M&A. Although cross-border deal activity declined 10% last year, according to Thomson Reuters, it will continue to be a key driver of future transactions. As recently noted by Mergermarket, despite political uncertainty in specific regions, many companies see more upside in spreading risk over various markets rather than consolidating positions at home.

The demand for technology assets will also likely continue to drive cross-border transactions. 'It seems like no matter the industry, companies are on the hunt for technology assets that will help them better compete,' says Dan Coppel, an M&A partner in Morrison & Foerster's corporate group. 'To get the best deal possible, it's important that companies do their homework on the local market.'

### 8. The data drive behind decision-making

Just about every major strategic corporate decision begins with data. And increasingly many start and end with data. With the development of artificial intelligence, there is no sign of data-driven decisions abating.

If GCs want to maintain credibility with management, they must embrace data, especially when it comes to law firm relationships. A survey of more than 300 GCs located in Europe, North America, and the Asia-Pacific region, conducted by *The Lawyer* and *Globality*, lamented the lack of tools and data available to help them evaluate firms.

But some GCs are getting creative. Last summer, GCs from 25 major companies announced that they had teamed up to share data

about their law firms, including billing rates, practice areas, and other business information. Their aim, they suggested in an open letter, was to foster a constructive dialogue with law firm leaders about how best to collaborate.

'We believe that, working together, we can provide a helpful road map, suggesting which practices and innovations lead to positive results and strong relationships,' they wrote.

'Through better information, we hope to move the profession forward.'

### The role of the GC is changing rapidly!

We are fortunate to work with some of the most talented GCs around the world. They come from diverse backgrounds, bring different skills to their roles, and work for companies of all sizes. But the great ones all share at least one crucial trait: an enthusiasm for the opportunity to play a role in growing their businesses and developing teams.

Some seem born with this attitude, but we've seen others cultivate it and inspire their colleagues. These GCs have tossed aside old ideas to meet the new demands of today and tomorrow. They relish the idea of playing a leading role in their company's history and to leave a legacy.

So when you look back, will you have been a safe (commercially-minded) pair of hands; someone who's risk aware but not risk averse; or a leader who is in tune with yourself, your business and our changing world? ■

*Morrison & Foerster acts at the intersection of law, business, and technology, supporting GCs as leaders around the world delivering value to their organisations and teams. This article is based on our observations, insights, and work with clients and market research.*