

Internal bridge-building

Invite your lawyers to the corporate responsibility dance

Phillip H Rudolph explains how to engage your company's lawyers on ethics issues

"There is a general prejudice to the effect that lawyers are more honourable than politicians but less honourable than prostitutes. That is an exaggeration."

Alexander King

"99% of lawyers give the rest a bad name."

Steven Wright.

If you're reading this article, the odds are good that you're not a lawyer. It's my general sense that the target demographic for this publication is not the legal profession.

Indeed, if you work for a large company, the cynic in me would lay the odds at no better than 50-50 that you can even name your lawyer (I mean his or her given name, not your own special term of endearment). If so, this is a shame. Lawyers usually pay for lunch.

It's a shame for other, more substantive reasons as well. Lawyers, whether in-house or outside, have an increasingly central role in helping their clients manage their corporate responsibilities, however those responsibilities are defined. There are four broad ways in which lawyers play such a role.

Three of these fit neatly into the traditional – and traditionally perceived – role of lawyers; one is somewhat less traditional. On the traditional side of the equation are deal-making, risk management (regulatory and legal compliance), and dispute reso-

lution (litigation, arbitration and the like). On the non-traditional side is strategy – a role that is properly becoming part of the job description of corporate lawyers.

Within the past year, three excellent pieces of writing from three disparate sources have provided keen insight into the role of lawyers in corporate social responsibility. Most recent is a report by Halina Ward of the International Institute for Environment and Development, entitled "Corporate Responsibility and the Business of Law"*.

Similarly, the Financial Times of 14 July last year ran an excellent piece discussing the wider role that company lawyers must play in the corporate responsibility arena. Finally, SustainAbility published a first-rate report late in 2004 entitled "The Changing Landscape of Liability", setting forth in great depth the evolving and elusive nature of corporate responsibility risks to companies, and the importance of more creative and strategic legal leadership in this arena.

(And I penned a piece, which appeared in the January edition of Ethical Corporation, touching on legal issues in corporate responsibility reporting.)

Because these pieces have detailed the role and importance of lawyers, I will focus less on the "whys" and more on the "hows" of getting things done. It is all well and good – and perhaps a little self-serving – for a lawyer to tell you that you should offer your lawyers a seat at the corporate responsibility table, but embracing this wisdom does not provide guidance on how to put it into practice.

From the horse's mouth

I can offer insights gleaned from my own experiences of representing companies in connection with corporate social responsibility. If you haven't yet invited your lawyer to the corporate responsibility discussion, pull up a chair.

First, and perhaps most obviously, if you don't know them already, you'd best figure out who your lawyers are. Sometimes this is a snap, but not always. Smaller businesses often have small – perhaps one-person – legal departments, in which case locating your quarry is fairly easy. And many small companies have no legal departments at all, despite having heaps of corporate responsibility issues. Other, larger, companies have armies of in-house lawyers, most of whom play discrete and defined roles within the greater legal and business structure of the organisation.

Generally, there is a top legal dog within any business (even businesses with no in-house lawyers have an officer, typically the chief operating officer or the chief financial officer, who manages external legal resources). That's your person. This

What lawyers think

A 2003 Legal Director/Baker and Mackenzie survey of heads of legal and general counsel at 105 multinational companies with operations in Europe found that:

- Legal training accounted for 56% of the training received by in-house lawyers, compared with 16% only for management training.
- In-house lawyers still saw themselves more as an objective legal adviser than as strategic business adviser.
- Of those companies with a CSR policy, more than a quarter of general counsel or heads of legal say they had a role in devising the policy, rising to 50% among those who sit on the main board of the companies.
- One in five (21%) said that they implemented the policy. 52% said they did not have a role to play.

Source: *Corporate Responsibility and the Business of Law*



Lawyers advise against this form of risk management

Key facts

Corporate responsibility has implications for the way in which business lawyers offer advice and meet their professional responsibilities to clients.

In-house business lawyers are already deeply involved in the development of corporate responsibility initiatives and management systems within their employers' businesses.

Traditionally, in-house lawyers within large businesses lead development and supervise implementation of compliance programmes reflecting the business's core values or operating principles.

Source: *Corporate Responsibility and the Business of Law*

person will typically be the most directly involved with the activities of senior management. If you don't know him or her, fix that. If you don't know them, they don't know you, and chances are they won't know or understand what you are up to and how it fits into the goals of your business.

Second, begin to educate each other about your respective roles, responsibilities and accountabilities. I suspect that even those of you who know your lawyers and know them well may not fully understand or appreciate the scope of their duties. Again, if this is true of you for them, it is equally true of them for you. Schedule time for a download of the structure, organisation, and responsibilities of their functions, and provide the same to them concerning your functions.

As part of this dialogue, be sure to share organisational charts and roadmaps that define your respective functions. Also learn and share who the key players are within your functions, and what their respective roles and responsibilities are. Schedule time after work one day to bring these groups together in a social setting (making sure, of course, that the lawyers pick up the tab). Getting to know people on a personal level humanises them (you might be surprised how user-friendly most lawyers are) and thereby makes working with them easier.

Third, take time for a more substantive discussion of the corporate social responsibility issues that your company is managing or attempting to manage. A strategic and thoughtful senior lawyer will take a keen interest in them – indeed, you'll almost be able to see the wheels spinning in his or her head as you speak.

Prepare for the unexpected

Be warned, however, that the outcome of this process might produce a mixed result for you in the short term. As you share your issues with your lawyer, he or she will have a panoply of reactions ranging from "you're doing WHAT?!" to "Cool – my group would love to be a part of this initiative". You will need to be prepared for an array of tough, probing, and sometimes sceptical questions from a professional trained in cross-examination. You will almost certainly have anticipated many of these questions. You will not have anticipated all of them.

Resist the urge to flee. Even if your interrogator seems confrontational or challenging at times, it is unlikely that he or she intends to be. Lawyers love the sport of debate, but sometimes fail to understand that their ardour is easily misread by lay people as hostility or aggression. Be patient, be responsive, and occasionally talk them down from the metaphorical ledge they have climbed upon.

The role of the lawyer is to help his or her client achieve its goals. Most lawyers work hard to do this. The enthusiasm and zeal with which they will occasionally "mix it up" with you are their way of



Legal counsel often advise caution in business

processing data and developing solutions. Just grin, bear it, and be happy you aren't married to one.

Fourth, welcome the lawyer into your function, if not in a formal, structural sense, then in an informal sense. Invite a legal department representative to be a regular participant in your team meetings, as well as in cross-functional meetings with others in your company who are involved in corporate responsibility issues. This is critical, and will advance many salutary ends. For example, if lawyers are involved in an ongoing process, they will be able to spot issues of concern early, and define paths that will enable you to achieve your goals without undue legal risks. The end this serves is the gradual elimination, over time, of the "You're doing WHAT!?" and of the consequent need to revise your activities mid-stream.

Inspire enthusiasm

Similarly, ongoing legal involvement will inspire an interest and enthusiasm among your legal colleagues that will advance your corporate responsibility goals and objectives, producing many of the "my group would love to be a part of this" comments. At a broader level, developing the habit of having your lawyer participate in these activities enables more thoughtful, rigorous, and probing analysis of the responsibility challenges and opportunities facing your company. And this will enhance the overall quality of your company's endeavours on corporate responsibility. Coupled with the occasional free lunch, the advantages of such an approach cannot be overstated. ■

**Corporate Responsibility and the Business of Law*, available at www.iied.org

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Useful link:

www.ethicalleadershipgroup.com