Great Expectations: The Changing Role of In-house Counsel and the Rise of the Legal Business Executive

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Within the legal community there has been increased commentary on the changing nature of the role played by in-house counsel inside the businesses they serve. At the same time, those within these businesses are giving voice to their growing expectation that their in-house lawyers should deliver more than pure legal expertise. As a result we have witnessed the rise of the in-house lawyer as business executive; a lawyer who influences decision making within their organisation and acts as a key part of the leadership team which sets the course the company will follow. These lawyers have moved beyond providing mere legal analysis or limiting their involvement to document drafting and negotiating. This breed of in-house lawyer has learned to walk the tightrope of being a commercially savvy and strategically minded business leader with the legal knowledge and resolve to keep their company away from legal pitfalls and on the straight and narrow. A tall order indeed.

Whilst the role of in-house counsel is developing, the status of the in-house lawyer in the eyes of their private practice counterparts has also risen. Once upon a time it was the best and brightest lawyers who stayed in private practice, working their way towards partnership. As a consequence there was sometimes a perception that the life of in-house lawyers was more mundane, with all interesting work being outsourced to their relationship firms. However here again there has been an increasing shift in attitudes and perception. Increasing numbers of younger lawyers are seeing the in-house route as an attractive alternative to partnership. A recent survey conducted by the UK’s The Lawyer magazine revealed that 65% of UK based private practice lawyers wanted to move in-house attracted by what they saw as the diverse workload, the increasingly high profile nature of the role, the opportunity to experience the business environment first-hand and the broader career path which in-house life can offer.

Like many in-house, my own background was in private practice. Having made the transition just under three years ago to a busy in-house team, I have witnessed first-hand the rise of the legal business executive and what is required both in personal approach and work practice to be successful in such a role. It can be easy to dismiss this role as being of relevance only to a select group of in-house counsel, those holding the General Counsel role or the level just below. However that is short-sighted. The truth is that the skills and approach needed to be a successful legal business executive are applicable to every level of the in-house legal team. Each lawyer in the team, regardless of their seniority, needs to understand the legal business executive role and work to develop the habits and behaviours required. Likewise those new to in-house need to educate themselves as to the type of behaviours they need to develop and demonstrate in order to ensure a successful transition.

Later on in this article I will set out in greater detail those key traits which I consider a lawyer needs to be able to demonstrate to be a legal business executive. The problem, of course, is that it is often simple enough to describe what these attributes are but difficult
to know how to put into practice. In essence, how do you start to develop the skills needed to be a legal business executive?

Earlier this year I was appointed as Associate General Counsel of my company. Part of my new role involves managing a team for the first time and this has given me the opportunity to try and clearly articulate what we, both individually and as a team, can do to meet this challenge. Set out below is some of my practical guidance.

**It’s all about the numbers**

Most lawyers I know (and I include myself in this list) have a fear of numbers. Numbers are what the Finance and Treasury team do. Generally, the closest most lawyers come to numbers is writing the price into the contract they are working on. But if studying a set of accounts is like trying to read a foreign language or working in Excel leaves you in a cold sweat, then I have some bad news: you are going to have to conquer your fear.

The key people in your business will all speak in financial terms and they are going to expect you not only to understand them but to do the same. Whilst I’m not advocating that you train as an accountant in your spare time, you do need to know enough about accounting policy to understand how it may impact on the matters you are working on. For example, if you don’t understand the concept of revenue recognition and the policy your Finance team has in place around it, how are you going to be able to make sure that the contract you are working on is concluded in time to enable its value to count towards revenue earned at the end of a critical quarter?

Similarly if the CEO tells you that raising your company’s earnings per share ratio is going to be a critical objective for the next financial year or if the CFO is presenting the company’s financials to the market, you are going to need to know enough to join in the discussion or at least keep up with it. Otherwise you risk of losing credibility and limiting your influence when it comes to being involved in decision making.

So you are going to have to become comfortable using financial language and reading financial data. If your company is prepared to send you on a finance course then this is the perfect way to kick start your introduction. However if budget is a problem, then consider raising a request with the Finance team to see if they would be prepared to give a training session to the in-house legal team on aspects of accounting which they think lawyers need to know. If you have external relationship firms, see if they can offer any training to the team on this area. At the same time try doing a little homework of your own and seek out the opportunity to ask questions of your Finance team contacts when you can.

**No, no, no**

Saying “no” is hard to do. It’s not a word lawyers are trained to use. Our role is to help our clients in the business in whatever shape or form their requests for help come, right? Well, not quite.

In-house lawyers sometimes mistake being busy for being productive but when there is almost an endless stream of work to do, you need to be sensible in the way you allocate your time. Lawyers are an expensive resource and the business expects them, quite rightly, to focus on those matters which are critical to the success of the company or on areas where legal assistance is needed to anticipate risk and to carefully navigate the company away from it. You cannot do that if you are knee deep in minor matters which are filling your day.

Therefore every piece of work that comes across your desk needs to be carefully assessed to determine exactly what your involvement will add and whether it is something on
which you should be focussing your attention and time. Ask yourself - how critical is this to the business? What is its value for the company? What is the worst that could happen if something goes wrong? If the answer to all these is “negligible”, then consider how much of your time, if any, you need to devote to the work. In some cases consider whether it is appropriate to push back on business. I tell my team that if they have been sent a contract to review by a department like, for example, Procurement, to check that the team member sending across the contract has at least read it beforehand and, better still, given some guidance on what they are looking for from Legal. That way we have more clarity on what is needed before devoting time to the task. We can focus our attention on those relevant points and will be able to have a much more meaningful discussion on the contractual position with them afterwards.

Get smart

What the in-house legal team delivers to their company is often less tangible than in other areas of the business. A sales team can point to the sales revenue they have generated, the R&D team can point to their innovations and products as prove of their worth. What can the in-house legal team do to demonstrate their value to the business? This is particularly critical in a time of rationalisation and cost cutting. If a legal function cannot both demonstrate and publicise the value they add then no one else will do it for them. This leaves the team vulnerable to attack, from budget cutting to headcount reduction.

In-house lawyers trying to focus on high end work will always find that the more mundane day to day matters will get in the way. You can analyse whether all those matters do actually need legal attention, as I have advocated above, however it is likely that there will always be an element of such work which does require some legal input. The smart in-house team will therefore be trying to find ways of managing the low end work in an efficient and cost effective manner so that their time can be spent on more valuable company work.

In-house teams should consider how much of their routine work can be automated or passed out into the business. For example, consider whether the production and negotiation of more basic agreements (such as non-disclosure agreements or contracts beneath a certain monetary value) can be pushed out into the business through the production of standard form templates and the provision of training on key clauses and their negotiation. For those matters over which the in-house legal team retains control, lawyers should look to create precedent documents so that team members are not continuously re-inventing the wheel each time they look to draft a certain contract or a particular clause. If the team is small and there is insufficient resource to bring in more lawyers, consider whether there any other alternatives which could be considered as cost effective ways of doing lower end legal work. That could be anything from bringing in paralegals to using external providers offering offshore resource. In our legal team, for example, we have started using a tendering platform for the outsourcing of some larger scale projects where we either lack the capacity or the expertise to handle the work in-house. Asking firms to tender for work also has the added advantage of highlighting the very different fee quotes law firms can offer for the same piece of work, which can be illuminating.

Up close and personal

The in-house lawyer is usually someone people turn to when they need something. A contract reviewed, a piece of advice given or a document drafted. Often by the time something is handed to a lawyer, key decisions have been made or the way in which a project is to be run has been determined. Getting involved earlier requires getting close to the business teams. This is not necessarily easy and will require time and patience – most
people will question why there needs to be a lawyer in the room if there is nothing obviously “legal” being discussed. To get people over that hurdle, lawyers need to focus primarily on gaining credibility with the business team. That means earning respect for your legal skills and your ability to deliver quality work on time.

Once you have your foot in the door, you can start making approaches to the business team you work with: show them you are interested in understanding more about their function, how their processes work, what the key business pressures on them are. Sit in on their team meetings from time to time if you can. Listen a lot and ask questions. The goal in all this is twofold: to increase your knowledge of their function but more crucially to get advance warning of the work and projects that the team have in the pipeline. Once you have this insight you can push to get involved in these projects earlier, to help shape them, input on timetable and flag in advance strengths and weaknesses. Demonstrate that you have skills beyond just legal knowledge. You may need to work hard to convince the business that you can help them before you have even put pen to paper to draft a contract. However in doing so you stand not only to increase your own knowledge of the business but, critically, to increase the legal team’s visibility within the organisation.

You lost me at “hello”

One of the most important things an in-house lawyer needs to learn is how to communicate with their audience. Failure to do so limits your ability to influence. Lawyers take comfort in words and like to give their clients the full picture. This sometimes means writing lengthy emails setting out the options, listing their pros and cons and, at times, caveating their conclusions. If you are presenting advice to senior management the chances are they are not going to have a great deal of time to digest and evaluate lengthy notes of advice, so your hard work may be wasted and you may fail to get your message across.

For each piece of advice given, in-house counsel needs to think carefully about the audience being addressed. In particular the in-house lawyer needs to consider the best way of communicating their message to ensure maximum impact. In my experience there seems to be an overwhelming preference amongst senior management to receive advice distilled into a crisp, clear message, often using bullet points and an executive summary. I have also found that the majority of senior executives dislike being bombarded with emails and have little time to read these, particularly if they are frequently travelling. It is therefore crucial to always consider whether the best way of communicating your message is actually face to face rather than over email.

If you want to win an executive round to your way of thinking, you need to put time into working out how you are going to communicate your advice. Think of it as a sales pitch. All effective sales pitches need a hook, so consider how you can “sell” your advice to the executive by ensuring your message speaks to them in a way which will catch their attention. Leave them with brief written outline of your advice if they need to go away and think further about what you have discussed, then make sure you follow up on your meeting. Be prepared to have to pitch your argument more than once if you don’t agree that the conclusion they have reached is the right one for the business.

In the same way that in-house lawyers need to learn the language of business to increase their credibility, they also need to adopt the same tools used within the business in order to ensure their message is understood. That may mean using a spreadsheet when working with Finance and Tax or presenting their work on PowerPoint if that is the format most familiar to the audience.
These are just some of the ways of working which any member of the in-house team can adopt to help them develop the skills expected of a legal business executive. Working alongside many different types of lawyers in-house, I have been able to consider the characteristics which in-house counsel need to demonstrate to be considered legal business executives. These, in my view, fall broadly into the four categories set out below and capture the behaviours which need to be exhibited both at an individual level and as part of the wider in-house team.

**Legal business executive as financial controller**

In an age of austerity, businesses everywhere are expecting their employees to do more with less. The legal business executive therefore needs to demonstrate how they are managing themselves more efficiently and effectively to drive down cost whilst retaining quality of service. Lawyers are, by their nature, an expensive asset to have on a company’s books. Therefore the legal business executive must constantly remind their company of their necessity to the business and demonstrate they understand their company’s financial needs and can respond accordingly. One of the main ways they can do this is to actively managing the legal budget. They must demonstrate that they can maximise value for the money they spend externally. That means being creative with law firm pricing models, being prepared to negotiate on fees and, where necessary, challenging those fees if they are excessive. It also means actively managing external lawyers, creating tight and accurate scopes of work and working in partnership with these lawyers in order to direct their input more precisely.

Managing the legal budget is the most tangible, but by no means the only, way to prove financial management. The successful legal business executive needs to show imagination in proving they can deliver greater value for money in terms of their own cost to the business. That means finding ways to automate some of the lower value work or more day to day matters they work on, perhaps through standardised contracts with playbooks for contract negotiation which can be used by non-lawyers. This can free up the legal team to work on big ticket or complex deals which require strong legal involvement or on those projects which are of high importance to the business or stand to deliver long-term value to the company.

**Legal business executive as salesman**

The legal business executive needs to work hard to increase their level of visibility to the business as a whole. Every business sells something and the in-house legal team is no exception; it is therefore the responsibility of each lawyer in the team to promote and publicise the in-house legal function and to sell their skills and the value they offer to the business they serve.

What that means in practice is that it is no longer sufficient for an in-house lawyer to just sit back and wait for the work to come to the team or to be asked to get involved. They need to come forward and become part of the culture of the environment they work within, rather than sit slightly removed from it.

The legal business executive understands the need to become a familiar face to the business teams they work with. They understand the team’s business objectives, their key drivers for success and failure and have a clear understanding of their risk profile. Most importantly they use this deep understanding to provide relevant legal input in a timely manner or even, at times, in anticipation of being sought out for assistance.
**Legal business executive as deal maker**

An important role of the legal business executive is to act as an influencer and to shape the processes and transactions in which they are involved rather than just react to them.

Most in-house lawyers will recognise the situation where they have become involved in a deal where the full implications of some of the key decisions have not have been thought through or other key risks have been overlooked. This can lead to poorly drafted documentation, protracted and difficult negotiations and, at its worst, the company signing a deal which may not be in its long-term best commercial interests. By becoming involved in the early stages of a project, the legal business executive can bring with them a great deal of experience and flag the pitfalls and opportunities before they arise. Over time the business will come to recognise the advantages of having these lawyers help shape transactions and input on their formation even in circumstances where their actions are not within the traditional “legal” sphere.

It is not just in the negotiation of deals where the legal business executive can provide this insight. For example, before the launch of a new product, lawyers involved in contract negotiation and customer dispute resolution may be able to give the development teams an understanding of the key issues and risks they have seen arise in previous product launches so that these can be avoided. Similarly in shaping commission plans for sales teams, in-house counsel can advise on the risks to the business of incentivising sales executives in a way that may not necessarily align their own financial interests with those of the organisation. Neither of these are areas in which in-house lawyers have traditionally involved themselves, however they can bring a great deal of experience with them if they do.

Lawyers have a great breadth of knowledge across the range of business functions which they serve. They make good project managers and are well skilled at bringing together different work groups or connecting the right people together. It is therefore a key skill of the legal business executive to demonstrate these abilities to the business by actively seeking opportunities to take a lead and assist in guiding the business away from unwittingly making high risk decisions.

**Legal business executive as risk officer**

The legal business executive holds the position of risk officer and must demonstrate their ability to deal with an increasing range of external risks which may impact business decisions and practices.

In Europe, for example, as the Euro crisis deepens, senior business leaders are turning to their legal counsel for guidance on what it means for the company's contractual and financial position. Will the key customer contracts be enforceable? Will the company get paid in a different currency to the one they are expecting? Do they need to be more careful as to which governing law they apply? The legal business executive is expected to have a response to these questions but also to go further than just carrying out a pure risk assessment. They are required to apply their knowledge to create an approach which the business can adopt to protect itself. They also need to be able to engage with those trying to implement their recommendations, for example by providing clear and practical guidance and solutions for difficult customer contract negotiations.

Businesses are starting start to look further afield for revenue opportunities in times where domestic and neighbouring markets remain difficult. This creates a need for the in-house legal counsel to provide clear leadership on areas such as anti-bribery, where articulating the expectations the company has on how its employees and representatives conduct business on its behalf becomes crucial.
When applying these principles in practice, in-house counsel may at times come up against those within the business who perceive their actions as “deal blocking” or as being overly legalistic. A legal business executive’s ability to manage their duty to protect the reputation and long term interests of their company whilst persuasively advocating and reinforcing the need for risk management with key business leaders is critical. Once they have helped shape and articulate the "tone from the top", the legal business executive needs to ensure that this message is not only delivered but resonates and is adhered to within all levels of the organisation.

To be successful in this balancing act, the legal business executive needs to be sufficiently integrated and accepted within the business so that people are not reluctant to come forward and discuss their concerns. At the same time they cannot let the pressure to be part of the business team cloud their judgement if the best interests of their company (if not the individuals pressing for a more favourable outcome) is hold their ground on an unpopular decision.

The role of in-house counsel is changing. The rise of the legal business executive has demonstrated that lawyers today are expected to provide more than just legal advice and to embrace instead a wide range of skills. These range from taking a greater lead in shaping and influencing business decisions to managing risk within their company, all whilst retaining the integrity of the unique and valuable service they offer. As pressure on budget intensives, lawyers at all levels within the business will be required to manage their workloads effectively and efficiently whilst working hard to sell their function and to demonstrate their value and necessity to their company. Within this changing environment however, there are a range of practical methods which lawyers at all levels of the in-house team can adopt to help themselves stand out, stay ahead and meet these demands and ensure they are successful in becoming the next generation of legal business executives.

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Misys is at the forefront of the financial software industry, providing the broadest portfolio of banking, treasury, trading and risk solutions available on the market. Misys employs over 4000 people worldwide who serve over 1,800 customers in over 120 countries, including every one of the world's top 50 banks.