Finding Opportunities in the Midst of Obstacles:
A CLO Roundtable Discussion

Now more than ever, chief legal officers (CLOs) must reassure stakeholders that in-house counsel are making the right strategic decisions to propel their companies forward. While the economic downturn has taken its toll on corporate legal departments, great opportunities exist for CLOs to demonstrate strategic leadership and prove the legal department's ability to be responsive, lower costs and implement best practices to improve overall efficiency.

CLOs from leading companies in the US, Europe and Canada came together during ACC's Annual Meeting (*www.acc.com/education/am09*) in Boston for an engaging roundtable discussion to address the role of CLOs as strategic leaders, forging a path to success for their companies. Despite the challenges that have come their way, the participants have found opportunity amidst uncertainty: They shared what they are doing differently now to ensure long-term success. In addition to best practices for efficiency and alignment, the participants openly discussed the lessons learned from the past year.

Acknowledging that economic conditions have had an impact but looking ahead rather than back, ACC President Fred Krebs opened the dialogue by addressing the great opportunities that exist for CLOs and asking how those around the table were tackling issues while demonstrating strategic leadership for their companies. To better understand their current efforts, Krebs asked, *"How has the economic situation over the past year changed the demographics, staffing and structure of your legal department?"*

The question prompted nods as everyone acknowledged without words that they had all experienced change within their departments. However, the changes were not necessarily the result of the economic downturn, as Martine Turcotte, executive vice president and chief legal and regulatory officer with Bell Canada, explained.

While Turcotte acknowledged reductions in staff, she noted the cuts were more a result of a proposed privatization in Canada than a consequence of the economy. Last summer, she was forced to look closely at the department's practice areas and reorganize for better alignment, combining such complementary practices as advertising with trademark and government with regulatory.

"We looked at the job components and identified how our lawyers could free up their time to be more strategic," explained Turcotte. "We also broadened the scope of work for legal assistants and empowered staff to take on more responsibility. In turn, the realignment and expanded responsibilities have proven be more lucrative for future advancement."

In addition to the realignment, Turcotte explained that Bell Canada reduced outside counsel legal spend by bringing more work in-house, hiring a young litigation lawyer and continuing to develop better processes for handling matters internally.

Marc Gary, executive vice president and general counsel at Fidelity Investments, began evaluating processes before the economic crisis hit. He had a plan in place for reorganizing the legal function and was continuing to identify opportunities to reduce outside counsel spend by another five percent — in addition to reductions last year.

ACC Board member Martine Turcotte; Marc Gary of Fidelity Investments; and Sabine A. Chalmers, ACC Board member.

Marc Gary and ACC Board member John Page.

ACC President Frederick J. Krebs.

Like Turcotte, Gary too brought more work in-house.

"Bringing ediscovery work in-house — almost entirely in-house — has been a tremendous money saver for the company," Gary explained.

For Bradford L. Smith, senior vice president and general counsel for Microsoft Corporation, changes were tied to the conditions and he was working with a budget that had been reduced by 10 percent. He was tasked with finding the right balance between outside counsel spending reductions and identifying opportunities to drive efficiencies internally. With the cuts and overall reductions, Smith noted, "Communicating constantly with people during this time has been vital to ensure understanding — and acceptance — of the changes."

For Patricia R. Hatler, executive vice president, chief legal and governance officer at Nationwide Insurance, last year was the worst in several decades for her company. Hatler noted a number of changes that resulted, notably the implementation of a rule mandating that "if any position opened up, it would not get filled without approval by everyone on the department leadership team." She also described her team's exercise in identifying hypothetical changes they would make if they were required to reduce spending by 25 percent. By "risk ranking" various changes, they identified what they could stop doing — or do differently — and determined where they could make cuts. "While some, not all, of the changes were implemented, having organizationwide buy-in and the ability to show options proved to be beneficial," said Hatler.

"InBev was already known for having a focus on efficiency," said Sabine Chalmers, Anheuser-InBev's chief legal and corporate affairs officer. "So while there was some natural attrition and elimination of positions during the recent combination with Anheuser-Busch, the quality lawyers really stood out."

Vice President, General Counsel and Corporate Secretary for Golden State Foods Corporation John Page said his company has always stayed lean. He also believes that now is a "great time to find lawyers interested in wanting to do other types of work." Page said he has been very fortunate to bring in excellent — and more affordable — lawyers during this time.

Hatler concurred, noting, "There's a phenomenal pool of talent out there."

Susie Flook, group general counsel, The Body Shop International Plc, agreed, referencing a recent job opening she posted on ACC's Jobline[SM] (*www.acc.com/jobline/index.cfm*), which resulted in "over 275 applications

ACC Board Chair Patricia R. Hatler and Bradford L. Smith, ACC Board member.

ACC Board member Susan "Susie" N. Flook.

within a few hours, many of which were senior, very qualified attorney applications." During interviews, Flook found that a number of the applicants were willing to take lower, more "management sellable" rates of pay than perhaps would previously have been the case for that level of experience.

With respect to internal operations and management, Krebs asked, *"How has your role with key company stakeholders, such as the CEO, CFO and Board of Directors members, changed?"*

"No change," replied Flook. "Same as always — highly demanding."

For Smith, he saw significant opportunities for general

Roundtable Participants

- Frederick J. Krebs, President, Association of Corporate Counsel (Moderator)
- Sabine A. Chalmers, Chief Legal & Communications Officer, Anheuser-InBev; ACC Board Member
- Susan "Susie" N. Flook, Group General Counsel, The Body Shop International Plc; ACC Board Member
- Marc Gary, Executive Vice President & General Counsel, Fidelity Investments
- Patricia R. Hatler, Executive Vice President, Chief Legal and Governance Officer, Nationwide Mutual Insurance Company; ACC Board Chair
- John Page, Vice President, General Counsel & Corp. Secretary, Golden State Foods Corp.; ACC Board Member
- Bradford L. Smith, Senior Vice President & General Counsel, Microsoft Corporation; ACC Board Member
- Martine Turcotte, Executive Vice President & Chief Legal & Regulatory Officer, BCE Inc. and Bell Canada; ACC Board Member

counsel to play a broader role. "More companies look to GCs today for broad-based advice, not just legal-related matters." Further, he saw the role of the legal department in helping the company: "By working together, we focus on a shared goal."

"You skate to where the puck is going to be," Hatler said, noting that the strategic direction of the company informs the structure and role of the legal function.

When Krebs asked, *"How do you, as a CLO, measure success?"* all had their own internal measurements in place. Page noted that Golden State Foods had a plan that was evaluated and tracked, based on maximizing shareholder value and minimizing risk.

Chalmers noted very specific target goals, which were continually measured — very specifically — by each success.

Smith used a scorecard system, whereby activities were measurable over one- and three-year time periods. "If you break things down to be measurable," Smith cautioned, "then you must measure."

Gary referenced the legal department's business plan, which was aligned with the mission of the company. All initiatives had to be tied to the company's strategy and mission and clearly defined. If there was no correlation, those initiatives were not pursued, he said.

As the CLOs shared their insights, the dialogue prompted Krebs to ask, *"Are the changes you've implemented intended to be permanent or are you waiting for things to get better so you can return to some of the previous norms?"* Not surprisingly, the question quickly propelled participants to correlate their challenges to those related to outside-counsel relationships and the oft-discussed topic of the billable hour.

Believing the billable-hour model was in a long state of decline, Smith thinks the current trend to move away from it will be difficult to reverse. He anticipates that 45 percent of Microsoft's legal fees will be on an alternative fee basis, up from 31 percent two years ago. In relation to law firms' response to the changes, Smith said, "Firms are getting more comfortable and understand it isn't necessarily a bad thing."

Chalmers interjected, "What happens when the banks come back and begin doing extensive work again?" The question loomed, *Would law firms be back to their inflated rates?*

A law firm that came to her with an analysis of a previous deal, explaining 10 ways they could be more efficient with similar deals in the futue, spoke volumes for Chalmers.

Gary believes there will be continued decline until things level off. "What we're learning is how to use alternative fee arrangements," he said. "We must evaluate when they work best and make sense, and I see more categories of matters where alternative fees or flat-fee arrangements will be more accepted." Gary further predicts significant changes will stay, such as bringing more work in-house; and that the law of supply and demand will reignite the M&A and IPO deals.

For Flook, who has not accepted the billable hour for five years, this shift was not a concern. All of the firms she used were agreeing to alternative fee arrangements, and "if firms won't comply, I won't use them," she said.

Acknowledging that "bet-the-company cases" will still occur and outside firms will be able to demand what they want, Hatler believes that the "glut of attorneys" will prompt differentiation by way of efficiency. "Individual attorneys who understand efficiency, who can deliver better and be more profitable — the ones who get it — will get more work."

As the discussion relating to outside counsel relationships continued, Krebs referenced the results of the 2009 *ACC/Serengeti Managing Outside Counsel Survey* (*www.acc.com/aboutacc/newsroom/pressreleases/2009/serengeti2009two.cfm*), noting that controlling spending on outside counsel had returned as the top priority for in-house counsel, topping compliance concerns. He raised the question for participants, *"Would you agree that outside counsel spending has become a greater priority for you?"*

Gary quickly responded, saying that was "inconsistent for him because his company was so highly regulated" and he could not take his eye off compliance. As was echoed by his senior management, Gary said, "We will never cut costs at the expense of quality."

Smith generally agreed, believing the survey reflected something that was quite real, but also noted, "You can't take your eye off the ball." More to the point, Smith cited the delicate balance between "sustaining ambition and raising ambition, while still reducing costs."

For Turcotte, outside counsel relationships and compliance concerns were not mutually exclusive. By helping to drive the company to its goals, she evaluated how they could become more streamlined without opening the company up to exposure. Furthermore, she explained, "The drive for internal efficiency demands the same of outside counsel." Referencing the increased use of RFPs, Turcotte said she was digging in deeper to identify firms willing to work on a fixed-fee basis. Looking ahead to 2010, Turcotte mentioned an interest in exploring the pooling of resources with other companies to get lower rates based on volume.

For Chalmers, who was in the midst of doing her biggest leveraged deal during the economic crisis, she said the company could not shirk on quality counsel for the merger and acquisition deal. While they were somewhat beholden to the demands of outside counsel, Chalmers said they had "creative conversations with the law firms" related to fees. Many of the firms had lost their banking or private equity clients, so not only was there value in being associated with the InBev brand and transaction, but outside counsel knew the company was moving into a $7 billion disposal process, and they wanted (or needed) to be there. Chalmers acknowledged that value adds from the law firms were very important during this time.

When Krebs asked, "*What specific suggestions would you offer to outside counsel to increase the value of their services?*" Smith noted that he was looking for partner firms that focus on efficiency. Specifically, he was interested in those firms that were better aligned with the economic interests of the client and the firm. The focus on efficiency, he said, leads to reductions in costs by driving a focus on business analysis and the ability to estimate. "Good business analysis," explained Smith, "relates directly to a better partner relationship."

Flook stressed that she works with firms that understand her business. Familiarity and understanding of the business — the ability to solve problems — correlated directly to long-term relationships between law firms and The Body Shop.

Like Flook, Chalmers noted the importance of understanding the business. As trivial as it might sound, she often wonders when going to meetings at law firms, "What did they put out versus what's in their fridge?" As a representative of the world's largest beer brewer, whether beer or wine is set out is a detail that she doesn't overlook.

Chalmers also recognized firms for being proactive. A law firm that came to her with an analysis of a previous deal, explaining 10 ways they could be more efficient with similar deals in the future, spoke volumes for Chalmers. "A firm that is proactive and comes to me with ideas before I ask makes an impression."

Gary agreed with Chalmers, saying that firms need to be proactive and help their clients to get ahead of the curve. "I'm looking for what, above and beyond legal advice, they can offer." Gary emphasizes the need for firms to demonstrate their value. "It's not enough to just understand my industry and the nature of our services, but firms need to provide a broader view to identify both the risks and opportunities that exist."

"I am looking for the firms that don't wait for me to offer new ideas, and I want firms that have the ability to show options," Hatler chimed in.

Page reminded everyone that the ACC Value Challenge provides a great framework for better engagement with outside counsel and that there were some firms aggressively trying to get out on front on it. "They are marketing their ability to do this and I have been approached by firms about the Value Challenge," he explained. Referencing the Value Challenge's *Meet. Talk. Act.* guidelines, Page said this was another effective way to open the dialogue and discuss ways to improve the relationship with outside counsel.

A reminder to law firms from Turcotte: "Don't underestimate the power of the internet." Referencing the wealth of information law firms can glean by doing research and noting that anyone can listen to the webcast of BCE's annual outlook, Turcotte said there was no excuse for not understanding her business. "Firms that don't focus on my business," she explained, "won't get the work." There is no reason why law firms should not also strive to be proactive with ideas for improving the business — but this can only come about if they are attentive to the industry and the company itself.

Whether it's tapping into the growing talent pool of unemployed lawyers, realigning internal processes or evaluating outside counsel relationships, the panel's wide range of experience and approaches illuminated areas of great opportunity. Economic change will continue, and CLOs will be tasked with identifying changes that will provide favorable returns in the long term. While there is no one-size-fits-all solution, the roundtable participants clearly illustrated that, by overcoming obstacles, identifying lucrative opportunities and providing strategic leadership, CLOs can indeed forge a path for their companies' success.

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