

The modern general counsel: Legal advisor and strategic business partner



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The modern general counsel (GC) role has evolved from legal advisor into something more. They now serve as a strategic and influential partner and counsel to the C-Suite, helping make decisions that protect the business while guiding growth and profitability.

Trained to mitigate risks, the GC must now shift focus to how to best manage risks in a highly risky environment. They must provide strategic insight, as legal and regulatory concerns arise, to change the perception of the legal function as simply a cost center.

This paper explores the evolving responsibilities, key priorities, and highlights innovation needed to shape the modern practice and business of law to not only survive but thrive in the digital age.

Shifting expectations and responsibilities

Regulatory complexity and global economic constriction are driving expansion of the legal responsibilities of the GC. A stronger voice, greater agility, and innovation are necessary to weather changing expectations, increased volume and complexity of data, new regulations, and cost pressures. Legal risk must be better managed, decisions made faster, and operational costs reduced. GCs must also learn to exploit new critical technologies for maximizing ROI and minimizing risk in re-shaping the modern enterprise practice and business of law.

Decision-making with C-Suite executives

GCs possess a unique understanding of business activities, including operations, risks, and opportunities. Working with the C-Suite and other executives, they can be valuable assets in establishing predictability and resolving uncertainties relating to economic, operational, socio-political, and regulatory risks.

To succeed today, the GC must become smarter and more informed. Modern technology allows faster access to facts to drive and improve planning while making better risk-adjusted decisions. These legal leaders should work more cross-functionally with other business departments to gain a clear understanding of goals, challenges, and overall operations. As a result, their legal strategies and decision-making will be data driven and will help the business avoid risk.

Partnering with the CIO

Meeting these goals not only requires close collaboration with its legal operations team (Legal Ops), which it is doing today, but also with the chief information officer (CIO). The CIO should be a critical partner not only to address cross-functional risk challenges (e.g., cybersecurity technology), but to support the GC and its Legal Ops team in identifying and developing solutions to digitally transform the legal department while ensuring the full value of technology utilized. Today, adoption remains low. Many in-house legal departments do not have established technologies, such as matter and document management, in place.

The legal team's technical requirements must align with solution needs and existing systems. This includes how that infrastructure is configured and maintained, deployment options, and how performance is measured. Technical partnership between legal and IT teams will boost adoption by ensuring needs are best met, establishing integrations with key applications, reassessing work dynamics, and driving secure and compliant data handling.



GC as the risk and compliance manager

A global pandemic, new government policies, a paradigm shift to remote work, and a rise in social activism have created new risks. With a continuously changing landscape, there is greater scrutiny of how organizations evaluate and manage risk. Legal departments are forced to act based on fears emanating from the boardroom, especially with regards to reputational damage.

Business leaders cannot afford to manage risks on a reactive basis. “The general counsel is now more of a secretary of state for the CEO; there is a sense that a crisis can pop up in a geopolitical way.”¹ The GC must adjust to the unpredictability of internal and external risk impacting the organization, adapting operating models to stay ahead of modern challenges.

Regulatory scrutiny is on the rise. In the United States, the Biden Administration’s goals of combatting corruption require greater coordination and data sharing across many enforcement agencies. The US Department of Justice (DOJ) and other regulators have committed significant resources to corporate criminal and civil enforcement. New rules, updates, and guidance are increasing burdens on companies to identify compliance issues.

The Federal Trade Commission is pursuing more antitrust lawsuits, investigating significantly more merger deals, and enforcing stricter settlements.² Whistleblower incentives and protections are on the rise (e.g., the US Securities and Exchange Commission program payout is at an all-time high) along with significant efforts to increase whistleblower protections in the European Union (e.g., the EU Whistleblower Directive).

For in-house legal and investigations teams, the threat of internal misconduct is rapidly increasing in frequency and scale. Enforcement agencies expect more of businesses, emphasizing iterative risk management and the need to use data analytics to inform those activities.

Expanded role in cybersecurity and privacy

Cyber attacks have become the second-highest ranked area of concern for class action lawsuits and an area of expected dispute exposure.³ Comprehensive data privacy and protection laws, with their stringent obligations and potential for fines and lawsuits have exacerbated this. Breaches often create significant chaos as key members of the executive team pivot from preexisting priorities to address the reputational, regulatory, and likely financial impacts.

GCs and their departments are starting to play a pivotal role in driving organizational cybersecurity and data protection initiatives. They are collaborating closely with IT and security teams to develop robust information security policies, incident response plans, and data breach notification protocols. According to a recent report:⁴

- More than 84 percent of chief legal officers (CLOs) now have at least some cybersecurity-related responsibilities.
- 22 percent of companies now employ an in-house counsel with responsibility for cybersecurity—up 10 percent since 2018.
- In 48 percent of cases, this lawyer is responsible for coordinating cybersecurity strategy across the entire enterprise. In 29 percent of cases, they are fully embedded in cybersecurity/IT, working directly with technical resources.

1 The General Counsel Report 2023.

2 Norton Rose, 2023 Annual Litigation Trends Survey.

3 Ibid.

4 ACC Foundation – 2022 State of Cybersecurity Report



Data privacy management and ESG

Many general counsel are facing an ever-expanding role in managing the enterprise data privacy program. In fact, privacy is now the most common business function directly overseen by legal, overtaking compliance.⁵ Almost half of organizations in North America house their privacy function in legal, compared to approximately one-third of organizations across the rest of the world.⁶

Beyond climate change issues and guidance on disclosure requirements, Environmental, Social, and Governance (ESG) priorities and goals are becoming a key risk management priority for the modern GC. Many in-house departments are leading material portions of ESG initiatives and strategy. This includes having greater oversight in some jurisdictions, over due-diligence, third-party practices, and keeping track of regulatory and compliance obligations.

Organizations also have to consider growing consumer activism. Many legal departments are concerned with a rise in ESG-related class actions.⁷ With increased emphasis on the social and governance pillars, corporate governance, anti-corruption, and oversight regarding supplier practices associated with modern slavery and human rights have emerged as key priorities.

Innovation, productivity, and talent retention

The modern GC must recruit, hire, and retain a supremely skilled team to successfully execute on these initiatives. With more work insourced, delivery models must be assessed, including possibly hiring non-legal professionals to augment internal skill sets and meet department needs. This may include technologists, program managers, data analysts, eDiscovery professionals, business strategists, and operations specialists.

A fundamental move over the last several years to hybrid and remote work means workers expect higher degrees of flexibility and greater work-life balance. The hybrid work paradigm is not a passing fad—and in-house legal departments must operate in some remote capacity going forward.⁸ As more Gen Zers and Millennials dominate the workforce, a more empathetic and flexible work environment is needed to remain competitive and ensure skilled workers remain engaged and fulfilled.⁹

Legal department leaders are clear that they want to facilitate innovation for their organizations, recognizing that automation and other innovations must be implemented to increase productivity and improve performance and collaboration. This provides breathing room to prioritize the professional fulfillment and work-life balance desired by today's workforce.

⁵ ACC 2023 LDMB Report. Similarly, according to the IAPP EY Annual Privacy Governance Report, legal remains the most prominent place for privacy offices at 41%.

⁶ 2022 IAPP EY Annual Privacy Governance Report

⁷ See Norton Rose Litigation Trends Survey.

⁸ See Thomson Reuters, 2023 State of the Corporate Law Department

⁹ A recent survey focused on understanding the experience and challenges of US based in-house legal talent and data by tenure in an in-house role. Findings indicated that for the most junior in-house attorney, the key focus is on well-being, increasing employee engagement, and providing effective training/development opportunities. Those employees seek time not only on work but to engage in activities outside that environment. Deloitte, 2023 Legal Talent Survey.



Technology: Managing risk and costs without sacrificing quality

Research from the Thomson Reuters Institute has found that while 65 percent of law departments are experiencing increasing matter volumes, 59 percent are dealing with flat if not decreasing budgets.¹⁰ At the same time, regulatory developments, compliance risks, and support costs are causing legal departments to anticipate much more legal spending across practices, regions, and industry sectors. In fact, the median total legal spend by law departments rose 29 percent to \$3.1 million, from \$2.4 million a year ago.¹¹

The GC is starting to rely on technology to streamline legal operations. In one recent study, 43 percent called the use of technology a high priority for their legal department budget in 2023.¹² Technology investment is being leveraged to improve key legal activities, keep other expenses down, and to meet deadlines. This includes advanced analytics, AI, and machine learning with a focus on automating workflows and solving complex legal programs.

By adopting these platforms and solutions, legal departments can optimize workflow, enhance collaboration, and increase productivity within their legal teams. Centralized access to legal resources and repositories facilitates effective knowledge sharing, repurposing work to expedite responses to litigation or regulatory requests, and ensuring consistency and defensibility across the organization.

Information retrieval tools, advanced technology, and services are being sought to minimize the costs and risk of eDiscovery, managing legal hold notifications, and preserving data. Many buyers are placing heavy emphasis on offerings that cover end-to-end requirements. They are selecting technology to improve and automate the legal hold notification and tracking process that integrates with eDiscovery solutions.

The ultimate goal is a balance between minimizing the costs of outside counsel and keeping permanent staffing of in-house resources down. For document reviews, this includes determining what cases or matters to apply more resources towards and the sophistication needed to support review activities and analysis.

Leveraging outside providers as valuable experts and resources can be especially useful for document review services, as well as those associated with litigation support activities. Experts can leverage existing workflows or customize them in ways that are legally defensible. With service professionals' support, technology assisted review (TAR) and visualization tools can be used to provide legal departments with true value. Organizations can mobilize resources efficiently to meet deadlines and keep review costs down.

Focus on high-value work

In-house legal departments must get creative to meet demands and ensure manageable workloads with a limited resource pool. Technology can free up legal teams to focus on more substantive, high-value work vs. mundane or routine legal tasks. Higher value targets can include accelerating data analysis or review to meet deadlines or to find information pertinent to a matter, distilling facts, and driving prioritization and case strategy.

¹⁰ Thomson Reuters, 2023 State of the Corporate Law Department.

¹¹ See ACC Law Department Management Benchmarking Report.

¹² Norton Rose, 2023 Annual Litigation Trends Survey



Expanding the eDiscovery use case

Information retrieval and advanced analytics tools, including eDiscovery technology and techniques, are being implemented to support use cases beyond litigation—including investigations, arbitrations, audits, incidence or post data breach response, information/subject rights requests, and M&A due diligence activities.¹³

Some organizations are outsourcing investigative capabilities and expertise to locate key facts and gain insights at a fraction of the time through unique workflows and automation. With increased obligations to demonstrate effective compliance programs, greater emphasis is being placed on data-driven approaches to risk management and analysis.

Future outlook

Forward-thinking lawyers are already creating high-performance, highly flexible legal departments. They are using solutions to support business colleagues, deliver better staff experiences, and provide greater control over work performed by outside providers.

There is an opportunity for the legal executive to emerge as an empowered decision-maker relying on intuition, legal knowledge, and data-driven insights. With a more robust and informed approach to risk-based decision-making, the modern GC can tackle emerging compliance and regulatory challenges with fiscal frugality.

Additional resources

OpenText, as the leading information management company, offers the total legal experience through its customizable, intelligent platform and trusted services spanning enterprise legal data management needs.

[Visit the website](#) to learn how OpenText can help drive smarter business decisions, optimize legal operations, reduce legal costs, and manage risk.

Download the position paper, [Powerful new applications for eDiscovery Technology and Techniques](#), to learn about the growing influence of the legal department on organizational strategy as well as the expanded use of information retrieval and analysis tools and techniques.

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