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General Counsel Grow into their Government Affairs Roles: Best Practices, Lessons Learned

By E. Leigh Dance and Ed “Smitty” Smith



It's no surprise that many General Counsel have gained responsibility for government affairs since 2020.

In-house legal leaders are finding their companies in a unique environment since early 2020. Governments, employees, customers, regulators, and other external stakeholders are looking to private sector CEOs to comment on key issues of the day. “What are you doing about COVID?” “What are you doing about racial injustice?” “What are your actions on climate change?” This is how Lucy Fato, EVP, GC and since 2020 Government Affairs chief at AIG describes the way in which legal, government affairs and communications have come together.

It's no surprise that many General Counsel have gained responsibility for government affairs since 2020. Fato says, “General Counsel have typically been involved in these activities at some level— but over the last couple of years it has become more important than ever for CEOs and other senior leaders to speak to all stakeholders with one voice, taking into account everything going on within the company and more broadly.”

To discuss what's new in government affairs and how GCs are approaching this role, we recently got together on video with a group of in-house leaders. We found some common threads and important areas that many legal teams haven't yet considered in their approach. This article shares the General Counsel's views and prevalent practices and recommends steps to help you strengthen your government affairs capability in 2022.

Readiness pays off

One corporate legal chief saw the damage that a company in crisis experienced when they had no existing relationships with government and regulators. In this case, the

crisis spread quickly because there were no voices in government that knew or could stand up for the company. It had always been under the radar screen, with no visible problems in the past. The result was that there was no one in government to negotiate with that had any familiarity with the company, and this made the issue far more difficult and lengthier to resolve than it needed to be.

Stasia Kelly, whose brilliant career includes EVP and General Counsel roles at AIG, Sears, MCI/WorldCom, and Fannie Mae, emphasizes that even if your company is trying to keep a low profile with governments, you can become front-page news overnight. “It can depend upon what's going on in the world, whether you're regulated or not. It's important to be prepared with a government relations function. It should be manned with people who understand the company's key issues, and I see that as the legal department.”

Kelly, now Senior Leader to the Chair & Executive Director - Client Relations at DLA Piper, values the ability of Legal to connect the company's various risk elements, since nearly all issues will have a legal component at the end of the day. She suggests that the work to understand your exposure, and most importantly, have a face to the world, must happen long before the proverbial stuff hits the fan. “It's almost impossible to go back and re-establish credibility when you lost it doing whatever it was that people think you were doing,” she says. Perception becomes reality far too quickly.

According to Kelly, “If you have people on the inside and outside that know your company well and know your story, it gets you through the first couple of days, and in the first couple of hours, when lasting damage is often done because you're unprepared to respond effectively.”

Be Proactive

You want to have the right person actively creating an ongoing dialog with regulators and policy makers. It's the only way to make sure that they are clear about what your business is doing. Your spokesperson must be able to effectively explain why what you do is relevant to them and their interests, or to their constituents, or to the needs of a particular sector. You want your colleagues in government to feel that they are a partner with you.

The participants agreed that an important value of government affairs counsel is their network of relationships across regulatory agencies, states, and countries. The most competent ones know a lot about their interests and priorities. They can thus be an asset to help the company succeed in building those relationships. They will help you understand the opportunities and challenges and be aware of potential problems before they happen.

Government affairs as a competitive strategy

“When a regulatory agency or government has a query for you, in my experience it is almost always your competitors (whether you know it or not) that are behind the shenanigans,” says Ann Ford, Executive Director, Client and Sectors at DLA Piper. “You may think it’s a regulator with a thorn in their side, but usually somebody else is prodding them.”

We can’t emphasize enough how important it is to take the initiative to build relationships with government and regulators. If the key actors on the government side don’t know you or are unfamiliar with your story or your business, you are already operating at a big disadvantage.

Many companies make the mistake of assuming that if they aren’t active in government affairs and aren’t affirmatively putting their message out to policy makers, that the impact is neutral. In fact, the impact is negative. The reality is that if you don’t own and drive your message, someone else will define it for you and also define the space in which you are operating.

Often the outcome is advantageous to the other party and adverse to you. It’s not always a competitor—it can be anyone on the other side of a policy issue that may view your company as hostile to their policy position. If they are effectively putting forth their own narrative, the government official who may not be so versed in your sector will accept their position, especially if there is no alternative narrative.

What do you want regulators to remember about your company?

To respond effectively and create a compelling narrative that can help build a relationship that also positions you well, the government affairs spokesperson must really understand your company’s business or businesses, and where they are going. That’s really the only way that you can be strategic about figuring out which relationships that you need to build within government.

Ask the question: What are the upcoming pieces of legislation that are relevant to what we do? What changes can we make an order to help move the company forward? If you’re spokesperson is off to the side and only addressed when there’s a problem, they won’t be able to do their job.

The group agreed that for the in-house legal leader to be involved in government affairs is a good use of their advocacy skills and their ability to set out the facts. The government affairs ability of corporate counsel makes sense given their understanding of ethics, compliance, and the importance of building relationships with regulators so they can properly do their work. Few others in the organization have that skill set.

Lead with Your Strengths - Value of Education and Information

Many of the General Counsel find that they can effectively build positive relationships with governments by informing and educating people on important areas in which the company is very active. This raises the profile of the company, helps create friends in government and a foundational relationship. It also shifts the dynamic from that of an adversary to being seen in as an innovator or useful ally.

Fato gave an example of this: “We strive to help educate legislators and others in government on issues that they care about,” she said. “We have deep subject matter expertise in areas that people are very focused on today, like climate change and natural catastrophes. Cybersecurity is another issue that every government agency in any part of the world cares about. As a global insurance company, we can explain what companies are doing to protect themselves and what vulnerabilities exist.”

Another General Counsel’s team focused on the value that the company was creating in certain countries or communities. “We reached out to those who regulate our industry or may influence how our business operates. We talked to them about the investments we’ve made in the country or the community, in the employees, in the charitable work that we do as well. We find that it’s really starting to pay dividends for us.”

Coordinating Your Story Across States and Countries

“A big issue is aligning your various business operations in different jurisdictions to ensure that you’re speaking with one voice,” said Ann Ford, Director of Client Relations and Sectors at DLA Piper. “You’ve got competing people working on different issues. How do you get them all to tell the same story and share what they’re hearing on the ground?”

Fato explained that the decision on her appointment to lead government affairs was mostly for this reason. “We recognized how important it was that our activities be coordinated,” she said. “We can’t afford to be telling one story in the UK, another story in Australia, another story in the US. The same thing goes for our interactions with the US federal government and state regulators— coordination is essential.” Fato then aligned Government Affairs with AIG’s Regulatory group. The company’s Chief Regulatory Officer oversees both groups and reports to Fato.

For multiple reasons, if your organization is multi-national you must frequently look beyond the domestic challenges to your international activities. It is very helpful to understand what’s going on with new regulation and new enforcement policies, just as much in in Asia Pacific region, or in Europe as in the US. Lately more regulations are coming from Europe—the GDPR is a perfect example, and ESG regulations are also likely to follow the EU framework.

The other reason is that regulators worldwide have relationships with each other and are frequently communicating. Often something will percolate in Belgium, for example,

and end up causing a change in policy direction in Singapore or California. Understanding these interrelationships helps you choose what approach you may take that you believe are closer to the global 'standard,' so to speak. You can then align your messages to incorporate these trends.

Government affairs presents opportunities too

We often talk about the defensive context of government relations, but don't forget the positive side. There are opportunities for you to benefit from government and from the relationship in ways that fuel your business. Sometimes the challenge that General Counsel face in dealing with government is that they assume you are not integral to the business operation, but more of a separate function that sets rules for the business and defends the company. It's important to be able to show how you or your government or regulatory affairs spokesperson is integrally involved in the business and its growth strategy.

The authors are grateful to the in-house leaders who contributed to this discussion. E. Leigh Dance works with global corporate legal teams on managing change and deepening engagement. She is Executive Director of Global Counsel Leaders which she founded in 2010. Edward "Smitty" Smith is Managing Partner of DLA Piper's Washington office, Chair of the firm's Regulatory & Govt Affairs Practice, Nat'l Diversity & Inclusion partner. A former FCC official, Smith advises clients on telecommunications and the full range of issues in the wireless and satellite sectors. Edward.smith@dlapiper.com