

## Canadian Lawyer Magazine – June 2011 issue

### In the big chair

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Lawyers are far too risk-averse to make it as entrepreneurs. They're a bunch of naysayers, out to kibosh or toss cold water on every business decision. They're obsessed with details and fail to see the big picture. They lack the bold vision, marketing skills, and financial savvy to lead a company. The legal department is where deals go to die or to be mangled beyond recognition. If you want to look for the negative stereotypes lawyers labour under, they are everywhere. There might be a little bit of truth to them, but today's lawyers aren't just risk managers. They're business enablers, who are not only skilled at identifying issues, but also at finding solutions. And a growing number of lawyers turned CEOs are demonstrating that members of the legal profession have what it takes to climb to the top of the corporate ladder and sit in the big chair.

In the past, lawyers who aspired to be CEOs might first sit on a company's board of directors. Serving as a director gave lawyers an opportunity to learn the ins and outs of the business, develop relationships with other directors and key executives, and earn the reputation as trusted advisers.

Take Purdy Crawford's career trajectory. Crawford, who is currently counsel at Osler Hoskin & Harcourt LLP in Toronto, served on Imasco Ltd.'s board of directors for six years from 1979 to 1985 before being appointed CEO in 1985. During his tenure as CEO from 1985 to 1995, Imasco — a holding company spun off from Imperial Tobacco to diversify its operations — owned Imperial Tobacco, Shoppers Drug Mart Corp., and Canada Trust.

“In the early '80s, Imasco was hit with succession problems. A series of candidates for CEO didn't work out. I was approached by the board to become COO and later CEO in 1985,” Crawford recalls. At the time it was normal for lawyers to both sit on the board of companies and give legal advice. As a member of the board and as external counsel, Crawford was deeply involved with Imasco's acquisition of Shoppers Drug Mart in 1983, which is today Canada's largest pharmaceutical retail chain. As the lead legal adviser on Imasco's takeover of Shoppers, Crawford had the opportunity to demonstrate his negotiation skills and business acumen to the other members of the board.

Lawyers who want to make it as executives must get over being lawyers, Crawford advises. “Lawyers tend to give advice that is very conservative, that keeps them out of trouble. Lawyers tend to be too cautious, stuck on details. . . . With my legal background, I found that I was comfortable with legal matters, but I didn't interfere with the legal department. I let them do the drafting and give advice. Some lawyers can't get over being lawyers and have to review every document and draft every contract.”

Corporate governance rules have become much more stringent since the early '80s when Crawford both sat on Imasco's board and gave legal advice. Today, lawyers who sit on boards are not considered an independent source of legal advice. Plus the scope of both personal liability and conflicts of interest is much broader. As a result, lawyers have become much more reluctant to serve on corporate boards. "The reforms have excluded many potential good people from serving on boards, but they have alleviated problems in terms of the independence of directors and conflicts of interest," Crawford explains. "On the whole these have been positive developments."

Serving on the board of directors is now a less common path to becoming CEO for external counsel. But lawyers who aspire to the top job at a company now have a better route. A growing number of lawyers have moved up the ranks of the legal department to the executive suite. Up until the '80s and early '90s, external counsel and inside counsel tended to report to the chief financial officer of the company. As legal issues gained a greater impact on the operations and profitability of businesses, most chief legal officers now report directly to the CEO. As the legal department grew in importance, it has sometimes served a training ground for future business leaders.

Scott Ewart, CEO of LexLocom, a legal outsourcing firm headquartered in Toronto, has trod the well-worn path from the legal department to the executive suite. Before being appointed to the helm of LexLocom in 2010, Ewart served as chief legal officer at Molson Coors Brewing Co., general counsel at Allstream (formerly AT&T Canada), vice president and general counsel at Coca-Cola Canada, and senior securities counsel at Nortel Networks.

According to Ewart, companies tend to appoint lawyers as CEOs in the following three scenarios: first, companies that are in bankruptcy protection and are undergoing restructuring or disposing of major assets; second, heavily regulated industries and sectors; and third, companies that are making major acquisitions.

Calin Rovinescu, who was appointed CEO of Air Canada in April 2009, proved that he had the ability to lead in tough times, when he orchestrated the beleaguered airline's turnaround as Air Canada's chief restructuring officer during the airline's 2003-04 restructuring under the Companies' Creditors Arrangement Act. Rovinescu was formerly the managing partner of Stikeman Elliott LLP in Montreal, where he practised law for over 20 years in the areas of corporate finance and mergers and acquisitions.

In October 2008, Anne Giardini was named CEO of the lumber behemoth Weyerhaeuser Co.'s Canadian subsidiary. The forestry sector is heavily regulated. Giardini's legal background — she served in Weyerhaeuser's legal department since 1994, rising to vice president and general counsel in 2006 — was surely a factor in her appointment as CEO.

Donald Schroeder was made CEO of Tim Hortons in March 2008. Schroeder had served as general counsel for the doughnut and coffee chain in 2006, when the company was being spun off from Wendy's. Spearheading the separation of the two chains allowed Schroeder's legal skills to shine.

Sometimes the board of directors may turn to the general counsel when it is faced with succession problems and wants someone to take the reigns of the company on an interim basis. Such was the case with Mark Fletcher,

who had served as vice president and general counsel for Toronto-based Generex Biotechnology Corp., until he was tapped to serve as interim CEO after the company let go former CEO Anna Gluskin in September 2010. “I was in the right place, at the right time,” Fletcher says to explain his appointment as CEO. Perhaps he is being too modest. Fletcher performed so capably as interim CEO that the board of directors of Generex recently appointed him the permanent CEO in March 2011.

Fletcher’s history with Generex dates back to its founding. As their external legal counsel and a partner at Goodman and Carr LLP, Fletcher had handled the company’s incorporation in 1999, drafting the companies’ articles of incorporation and corporate bylaws. He acted as Generex’s lead corporate counsel for four years before joining the company’s legal department as general counsel in April 2003. As general counsel for Generex, Fletcher says he became “well versed” in the legal challenges facing biotech companies, from navigating the regulatory approval process to drafting partnership agreements with big pharmaceutical companies.

“Lawyers tend to be more conservative than entrepreneurs. But once inside the role of CEO, you have to start thinking outside the box,” says Fletcher, adding most of the learning required to be a CEO is done on the job.

Companies don’t necessarily appoint lawyers as CEOs because they are facing financial, legal or succession hurdles. Sometimes lawyers move on up from the legal department to the executive suite after decades of loyal service. Kathleen Taylor was appointed CEO of the Four Seasons Hotels and Resorts in August 2010, after spending more than two decades with the company, for example. Taylor worked in corporate securities and competition law at Goodmans LLP in Toronto before joining the Four Seasons’ legal department in 1989. She was appointed vice president and general counsel in 1992, promoted to president of worldwide business operations in 1999, and then president and chief operating officer in 2007.

Perhaps Laura Formusa — who in December 2006 was appointed interim CEO of Hydro One Inc. — serves as an even better example of working your way up from the bottom to the top. Formusa began her career at Ontario’s largest electrical power utility as a summer student while attending Osgoode Hall Law School in 1973. In 1980, after being called to the bar in Ontario, the country was in the midst of a recession, and Formusa was unable to find a job in law. “Only one out of seven articling students was hired back at my firm. Rather than sit around doing nothing, I began to search for alternatives,” Formusa recalls. “I felt that if I got inside Hydro One, I could start applying for internal positions. So I took the lowest possible position as a clerk typist to get my foot in the door.”

After working as a clerk typist, Formusa became a community relations officer and finally joined Hydro One’s legal department in 1984, where she worked on corporate/commercial, regulatory, and environmental law matters. She was appointed general counsel and secretary in 2003. After her predecessor left unexpectedly in December 2006, Formusa was appointed interim CEO. In November 2007, after almost 30 years with Hydro One, Formusa was named permanent CEO.

Does Formusa think her law degree hampered her career in business? Not at all. “A legal background is a wonderful grounding for so many professions. We see so many lawyers who transition into careers in business, in politics, in government. A legal education teaches you how to think, how to analyze, excites a passion for learning,” Formusa says with enthusiasm. She advises her legal team at Hydro One to look at problems from the client’s perspective as well as the legal perspective and to go beyond flagging risks to finding solutions.

In May 2009, a popular cheeky law blog, Bitter Lawyer, had a post on lawyers as CEOs. According to statistics obtained from Spencer Stuart, a global executive search firm, about seven per cent of CEOs at large, publicly traded companies (S&P 500) have a legal background and worked in law. Of all S&P 500 CEOs in 2008, 67 per cent have earned some type of advanced degree, and of that percentage, 35 per cent are JDs.

Does the seeming rise in lawyers turned CEOs constitute a trend or is a legal background irrelevant? Carrie Mandel, a headhunter at Odgers Berndtson, a global executive search firm, doesn't think there is a significant trend of lawyers transitioning from the legal department to the executive suite. Mandel is a Harvard University-educated lawyer who works as a practice leader in legal and compliance for Odgers. She says that it is still relatively rare for a practising lawyer who has worked either as external counsel or in-house counsel to be appointed CEO. Typically, lawyers who become CEOs are people who have law degrees, but abandoned the practice of law early on to pursue their ambitions in business, according to Mandel. She refers to these people as "lawyers plus" since they often have business degrees in addition to law degrees.

Elliot Noss, CEO of Toronto-based Tucows Inc., is a prime example of a "lawyer plus." Trained as a lawyer, Noss graduated from the University of Western Ontario with a combined LLB/MBA in 1988. Fresh out of law school, he practised corporate/commercial and real estate law at Oslers in Toronto. After only two years, Noss left the practice of law to start up an Internet company, Remote Backup Systems, which did backups of computer systems for companies. He joined Tucows, a software and Internet firm headquartered in Toronto, in 1997 as vice president, corporate services. In May 1999, Noss was appointed CEO of Tucows. During his tenure, Tucows has grown into the third-largest domain name registrar in the world. Today, it manages over 10 million domain names on behalf of over 10,000 web-hosting companies and Internet service providers around the world.

At the end of the day, as poet Robert Frost points out, "How hard it is to keep from being king when it's in you and in the situation." For lawyers it's more than just being in the right place at the right time. They also have the right stuff. Lawyers can be counted upon to handle crises with confidence, rise to challenges, have a strong work ethic, and serve with integrity. Whatever path lawyers took to the top position at a company, none of them were appointed CEO by accident. It was in them and in the situation.

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