



The Sustainability Imperative for the Legal Profession



By N. Craig Smith and Ron Soonieus , INSEAD

Lawyers should step up to help the world seize its “last best chance”.

Any agreement at the UN Climate Change Conference (COP26) in Glasgow – a.k.a. “the world’s best last chance” – relies on businesses as well as governments to turn it into action. This fact is as obvious as a raging wildfire.

Another equally obvious fact is still insufficiently recognised. Namely, that legal professionals can also be a powerful “force for good” by helping companies to navigate and accelerate in their journey towards sustainable business.

This is exactly what John Kerry, the first ever United States Special Presidential Envoy for Climate, hinted in August 2021, when he addressed the American Bar Association: “You are all climate lawyers now, whether you want to be or not. We have a narrow window to avoid the worst

consequences of this crisis, and there is a place for lawyers to help hold back the tide and create new pathways.”

Kerry was spot-on with his observations ... except perhaps for understating the magnitude and scope of legal experts’ potential impact on the climate crisis and other pressing sustainability issues. Hence our three following points.

1. Lawyers must be leaders in the fight against climate change

Legal professionals need to keep one step ahead of current legislation if they are to give good advice to businesses on how the world is changing, and what that means to the organisation. They must anticipate the shifts in societal expectations on which corporate reputations, not to mention regulations, are founded. Having done so, they must challenge executives on decisions that may not only go against the spirit of current laws, but also against the letter of *future* laws. After all, today’s best practices and landmark judgments are the precedents on which tomorrow’s legislation will rest.

To wit, in April 2021, Salesforce began adding binding clauses to supplier contracts, thus committing other organisations to climate-change goals. A small step by one in-house legal team (supported by the charity, [The Chancery Lane Project](#)), but also the likely basis for future laws (heralded by the European Commission’s Corporate Governance Initiative or the 2020 Swiss referendum on the Responsible Business Initiative).

A month later, a court in the Netherlands ruled that it was not enough for Shell to comply with national environment laws. The energy giant also had to comply with global climate policy. Pending appeal, Shell is now obliged – under the terms of the Paris Agreement – to cut its CO₂ emissions by 45 percent (compared to 2019 levels) by 2030.

After a summer of soaring temperatures that killed more than 570 residents of British Columbia, Canadian lawyers sent an open letter to newly re-elected Prime Minister Justin Trudeau. The 100 signatories called for a wholesale review of laws and the justice system through a “climate justice lens” – on the basis that climate-change catastrophes are an infringement of citizens’ most fundamental rights.

2. Lawyers have the skills to guide business through the ESG maze

The arguments of our first point apply as much to social and governance issues as they do to environmental matters: race and gender equality, nutrition and public health, supply-chain ethics, employee wellbeing and myriad other pressing topics. Of course, much of this legal work will be about helping companies mitigate reputational and financial risks or avoid litigation, but it will also be about advising managers on how to turn moral choices into business opportunities.

Lawyers are the closest thing the world has to “professionals in right and wrong”. In addition, they are trained in the logic and creativity required to deal with the intricacies of ESG issues. In short, they have skills that many business leaders and technical specialists lack. Legal experts will thus play a pivotal role in supporting boards and managers through the complex transition to sustainable products, services, and processes – and away from business models or technologies that are “proven” yet harmful to planet and people.

Illustrating this, in the first half of 2021, the law firm Baker McKenzie conducted a survey of corporate compliance managers on the connections between inclusion, compliance and corporate risk. Some 28 percent of respondents said that their own organisations were vulnerable to litigation for failing to fulfil public promises about diversity.

When the chocolate producer Barry Callebaut vowed to “eradicate” child labour from its supply chain by 2025, legal eyebrows were raised. Was this tantamount to a confession of past abuses? Or a brave move towards transparency for the rest of the industry to follow?

3. Transparency and accountability are essential (even for law firms)

Unlike the finer points of applied ethics, transparency does not come naturally to lawyers. Theirs is a profession where client confidentiality is a sacred principle (and rightly so). But technology has made transparency unavoidable. Never before has there been such an abundance of data in the public domain. Technology has also enabled leaks to multiply (the Pandora Papers and whistleblowing at Facebook are just two recent headline-grabbing examples). The result is a chain of corporate accountability – sometimes even legal liability – that extends to law firms, as well as to their clients.

Telecoms giant Vodafone now uses an ESG scorecard when selecting its legal service providers, while pharma company, Novartis, withholds 15 percent of fees from law firms that do not meet contractually agreed diversity and inclusion targets.

In Asia, amid a “Twitterstorm” of opposition, global law firm Mayer Brown recently withdrew from advising the University of Hong Kong after the removal of a statue commemorating the victims of Tiananmen Square. No doubt this brave act involved a loss of fees. But what will be the total cost of accepting the work in the first place – in terms of reputational damage, future fee income and attraction/retention of talent?

The implications

Our three points add up to an urgent need for a profession that has been behind the ESG curve to learn – **and learn fast** – in order to accelerate the sustainability transition in business. If legal professionals can get up to speed, that must surely help humanity pull off its “last best chance”.

History gives us hope in the form of figures like Abraham Lincoln (abolition of slavery), Gandhi (freedom from colonialism), Nelson Mandela (peaceful end to apartheid) and Ruth Bader Ginsburg (women’s rights). They were all lawyers.

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