

# Session 112:

# How to thrive and win in a risky world

Tuesday, June 1, 14.00-15.00



## Panel – Speakers:

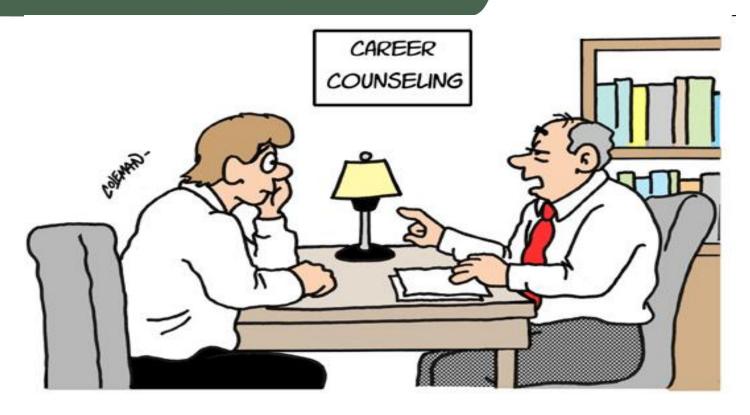
- Craig Thorburn
- Orijit Das
- Axel Viaene



#### **CONTENTS**

- Introductory Remarks
- Case Studies
- Suggestions
- Interactive Session





" FIRST YOU'RE A LAW STUDENT, THEN YOU'RE A LAWYER, THEN YOU'RE A JUDGE, THEN YOU'RE A POUTICIAN, THEN YOU'RE A CRIMINAL."



#### **INTRODUCTORY REMARKS:**

- Risk is a part of our <u>daily</u> lives.
- Our clients have recently become a lot <u>less risk averse</u>.
  - varies by business, culture, economic cycle, personality
- Should we <u>follow</u> our clients' example?
- Will this <u>change</u> any time soon?
- Has this happened <u>before</u>?
- In the concrete...a few <u>case studies</u>...



#### **CASE STUDY 1:**

- Offshore Business Services company processing sensitive data from an emerging country.
- BBC reporter carries out a "sting operation" and produces a damaging report which triggers an investigation by regulators.
- GC is part of the Risk Advisory Committee and is called in to head the group out of the present predicament.
- Discuss the measures to be adopted.
- Share the Best Practices.



#### **CASE STUDY 2:**

**Taming a Litigation Storm** 

Craig C. Thorburn
Blake, Cassels & Graydon LLP
Toronto



#### LITIGATION STORM

- International software business
- Euro 1 billion in annual revenue
- More than 100 active lawsuits by customers
- Over Euro 20 million in annual legal costs



#### **RISK ASSESSMENT**

- Sales force making unrealistic promises regarding features and performance
- Legal costs of lawsuits allocated to the legal function, not sales
- Sales personnel not supporting defence efforts
- Sales force had no incentive to change behaviours
- Customers getting no meaningful resolution of their complaints, so resorting to lawsuits



#### **NEGOTIATION**

- CEO and CFO agree with General Counsel's plan
- Product claim sheet developed to define scope of what sales force may promise to new and existing customers
- Sales commission structure changed so that one-third paid out over 18 month implementation period and only upon evaluation that the installation has been successful, thereby incentivizing sales force to ensure customers are happy
- 80% of costs of litigation allocated to the regional sales office that generated the sale
- No annual bonus if active lawsuit by one of sales rep's customers



#### LITIGATION STRATEGY

- CEO visited each customer/former customer that had launched a lawsuit
- Settlement offer made in 80%+ of cases at 70-75% of claimed amount
- All but 14 lawsuits settled at a total cost of Euro 35 million
- Legal fees reduced to Euro 4 million in first year
- Within two years, all lawsuits at beginning of program resolved, only 4 new lawsuits – legal fees under Euro 1 million a year



#### **SUGGESTIONS:**

- Be <u>kind</u> to yourself.
- Remember who you work for.
- A <u>reputation</u> is built over years and lost in a second.
- You are on <u>stage</u> 24/7.
- Adaptability is key.
  - thou shalt evolve -
- Reach out to your fellow corporate counsel thru <u>ACC</u>
  - it has all been done before -



### THIS IS YOU:





#### **MAKE SURE THIS IS NOT YOU:**





#### **INTERACTIVE SESSION:**

- How has your <u>life</u> changed in the past year?
- How has your <u>business</u> changed?
- What have you done to <u>adapt</u>?
- Will you do anything <u>different</u> following this Annual Meeting?
- Are you keeping an eye on the <u>home front</u>?



