

## An exclusive interview with Brad Smith, General Counsel of Microsoft

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In an exclusive interview with April French of *Who's Who Legal*, Brad Smith, general counsel and executive vice president of legal and corporate affairs at Microsoft in Seattle, shares his views on the importance of diversity and inclusion and the role clients can play in driving change among their external legal service providers.



**Who's Who Legal:** How important is diversity and inclusion to you as general counsel of Microsoft?

**Brad Smith:** I believe that diversity needs to be one of the core values for the legal profession and it needs to become even more central than it is today. Our legal department has team members sitting in 55 countries and diversity is simply a necessity for us to work together and serve our clients. Our headquarters country, the U.S., is becoming more diverse; that's obvious to anybody who reads anything in the news. If you think about what binds our diverse country together, it's really a few things: it is the commitment to democratic principles and freedom of expression that are enshrined in the Constitution; it is a healthy respect for other people's points of view; and it is an abiding and deep appreciation for the rule and the role of law. That is what enables 310 million very different people to live, work and succeed in a country as diverse as ours. When you think about all of those things, they all rest on having a healthy legal profession. We are here to serve the world. We need to be as diverse as the countries we serve.

**Who's Who Legal:** Microsoft made the headlines in 2008 when it decided to offer a 2 per cent bonus to firms if they achieved one of three diversity-linked benchmarks. Six years on, what impact has this bonus had?

**Brad Smith:** I think our programme has had a powerful impact in enabling Microsoft to access the top diverse talent at the law firms with which we work, but it hasn't had as much impact in causing the firms as a whole to become more diverse. We launched our "Law Firm Diversity Program" to encourage the firms with which we work to focus more on diversity by "paying for performance". We have combined this with closer collaboration and greater accountability. We pay the participating firms an annual 2 per cent bonus on their total fees to us if they meet one of a few different predefined diversity goals: increase by 2 per cent the number of hours that women and minority attorneys at the firm work on Microsoft matters; increase the number of women and minority attorneys at the firm by 0.5 per cent, compared with the previous year; or become more diverse than the Microsoft legal department itself, which is 54 per cent women and minorities.

During the first five years of the programme we have seen diverse representation on our matters rise from 33.6 percent to 46.5 percent. So at a time when diversity was basically flat in the profession as a whole, we saw a significant improvement in work being done by diverse people for Microsoft as a client. In contrast, there was much more limited progress in growing diversity representation as a whole at these same firms. That grew, but only from 43.7 percent to 45.3 percent. The clear lesson is that if one large client focuses on diversity, it is likely to get stronger diverse representation on its matters. If many large clients focus on diversity, firms are likely to do more to build their diversity representation overall.

**Who's Who Legal:** How did law firms react to the scheme at the start? Did you experience any difficulties with implementing the scheme in the early days?

**Brad Smith:** The firms reacted well, and I think in part this is because we talked a lot with them before we launched our

programme. We wanted to hear their candid and direct feedback on the proposal before we implemented it, so we created an online survey through which they could provide their reactions to us in an anonymous way. All the firms participated. Almost all – but not 100 per cent – were quite supportive. Many had very good and concrete suggestions about how we could best make the programme work in a practical and fair-minded way. We definitely benefited from those suggestions and implemented quite a number before we even started.

**Who's Who Legal:** How has the scheme developed since 2008?

**Brad Smith:** We have worked on a few things. First, not surprisingly, it has been important to make it easy for firms to report their data in an efficient way. I'm sensitive to the fact that clients ask law firms for a lot of information, and this can create overhead costs for them. We received good feedback and improved this aspect. Second, the firms of course want to earn their bonuses, and we want them to perform at a level that enables them to do so. As a result, we've implemented steps to take a look at progress each quarter. If a firm is off track early in a fiscal year, we can and do work with them to get back on track. Third, we continue to look at ways to innovate further, and we're actively thinking about that. As we make more progress in improving diversity representation overall, a logical next step is to ensure that diverse lawyers are getting more opportunities for leadership roles on our matters. We have launched some new collaborative programmes with the firms focused on mentoring and development. Ultimately we not only want great diverse lawyers to work on our matters; we want these individuals to have great opportunities to grow and assume bigger and more important roles as they progress in their careers.

**Who's Who Legal:** What more can be done to improve diversity in the legal profession?

**Brad Smith:** I think there are two things worth considering. First, we need to work in a more cohesive and unified way across the profession, so that our efforts are not so fragmented. And second, we need to identify a few important measurable goals and hold ourselves accountable for achieving them.

I'm enthusiastic about the work of the Leadership Council on Legal Diversity (LCLD), which I currently chair. It was founded five years ago and brings together the managing partners and general counsels of about 220 major institutions across the country. More than any single thing, we've focused on the professional development of diverse lawyers, starting with the pipeline in law school and extending to lawyers in the mid-career stage. The LCLD has created a unique opportunity for us to work together across organisational boundaries, and I like the fact that we are working in a very measurable way. In our first five years, we have created summer jobs for 536 1L students [those on the 1L Mentoring Program for Diverse Law Students], mentored 2,292 law students in 33 cities, and worked with 603 mid-career lawyers through the LCLD fellows programme. I'm particularly excited by the measurable impact we're starting to see. So far 100 per cent of the law students who had jobs after their first year of law school have had jobs after their second year and after graduation. And this is at a time when only 64 per cent of law graduates have had jobs at the time they received their diplomas.

Another set of data points is especially interesting, in my opinion. The retention rate for the LCLD fellows has been very high (84 per cent), but even more than that, I'm struck by the fact that a third of the fellows have referred work to each other. Basically what we're seeing is a very talented group of diverse mid-career lawyers emerge and create their own informal community. And not surprisingly this is helping to grow their legal practices. Any law firm managing partner that does not have lawyers participating in the fellows programme is missing out on a very important emerging opportunity to grow their firm, in my view. They should wake up before they see their competitors outpace them by doing a better job of harnessing diversity as a growth engine.

**Who's Who Legal:** Do you believe clients should be the main driving force of change?

**Brad Smith:** I believe clients should be a driving force for change, but not the only one. Clients have had an impact, starting when Rick Palmore launched the “Call to Action” roughly 15 years ago. But diversity today needs to be a mainstream issue and opportunity that is pursued by everyone. Clients should play a leadership role. Law firms should play a leadership role. And the deans of law schools should play a leadership role.

One thing that concerns me is that even people who are passionate about diversity can look at the legal profession’s shortcomings and sometimes think that the problem can only be addressed by someone else. That’s just not the case. We each have the opportunity to help move the needle in a way that will improve opportunities for those around us. As one of the senior executives at Microsoft often says on other issues, “Even if we’re all victims, we all need to participate in our own rescue.” You don’t need to be a leader in the profession to help. You just need to be a leader at your own desk. Collectively, we can all have a bigger impact.

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