



# **Opportunity in an uncertain time**

Lex Mundi Summit  
Amsterdam, the Netherlands

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Jun 8, 2018



Donny Ching was appointed Legal Director of Royal Dutch Shell plc on February 10, 2014.

He was previously General Counsel for Shell's Project & Technology business, based in Rijswijk, the Netherlands.

Donny graduated with a law degree from the University of Southampton in the UK and was admitted to the Bar of England and Wales in 1988. He joined Shell in Australia in the same year and re-qualified as a lawyer in Victoria, Australia, in 1989. He worked initially in the Resources business before moving on to downstream and corporate work in Shell Australia.

In 1992, he moved to Shell Hong Kong to work on the Nanhai petrochemicals project in China, as well as other smaller joint ventures and projects that marked Shell's re-entry into China. In 2000, Donny moved to London in the UK where he first worked on some chemical divestments before moving to support Shell's then Gas & Power business. He helped to set up Shell's global liquefied natural gas (LNG) trading business and on projects such as Pearl GTL in Qatar.

Donny moved to Singapore in 2004 as Associate General Counsel for the Gas & Power business in the Asia-Pacific region. His role included supporting Shell's growing LNG trading business and LNG projects such as Sakhalin LNG and Gorgon LNG. In 2008, Donny became Head of Legal for Shell Singapore, responsible for legal support to the Downstream business in South-east Asia. He became General Counsel of Projects & Technology in June 2011.

Donny was born in Malaysia and is married with two daughters. In his spare time, he enjoys tennis, skiing and cooking.

## The oil and gas industry is facing a period of change and uncertainty. In this speech, Donny Ching explores how Shell Legal is addressing the risks of the future in a world of flux.

Ladies and gentlemen,

It is a pleasure to be here again in such distinguished company. It is a pleasure – and it is vital too because we must share our thinking in a time like this.

Today, we are in a period of change and uncertainty as never before.

Law has always been about precedent. Lessons from yesterday, guiding actions today.

But how does a legal team address the risks of the future, the risks of a world in flux?

At Shell, we approached this by bringing together two very different teams for one very different session.

It was 2016. In the UK, there was the Brexit referendum. In the Philippines, Rodrigo Duterte took on the establishment and won. In the US, Donald Trump was on the rise. It was time to reset the way our legal teams looked at the world.

At Shell, we are lucky to have a talented bunch of thinkers and strategists we call the scenarios team. This team studies the bigger picture. For instance, their recent publication, *Sky*, shows a technically possible pathway towards limiting the rise of average global temperatures to well below 2 degrees. The team works across disciplines, they apply a robust methodology and they partner with institutions such as the Massachusetts Institute of Technology.

The litigation team invited the scenarios team for a two-day workshop to help them to take a step back and look at the horizon. It was the start of a process that continues to this day in every legal team in Shell. We need not only a firm grasp of detail, we need to see the bigger picture too.

### Scenarios

Shell scenarios are just this. They are not intended to be practical, rather they help to

inform company strategy and guide decisions by examining remote events. They are not forecasts nor predictions. They are a set of interconnected factors and trends that lead to alternative views of potential energy landscapes.

Our Mountains scenario, for example, is one of stasis, where world trends continue, such as the concentration of power among elites. Our Oceans scenario is one of change, one of people-power and individualism.

The Sky scenario is the latest one, and it is one in which society achieves the goal of reducing carbon emissions as outlined by the Paris agreement. This requires unprecedented and sustained collaboration between not just individuals and teams, but society, markets and governments. The three scenarios represent dramatically different worlds.

This is the bigger picture.

We wanted our legal teams to take a step back from the pressing issues of the present, and apply the same scrutiny – with the same urgency – to the future. Not only did they need to look at the horizon, and search it hard, they needed to be open to different possibilities, in potentially different worlds, against different time frames.

### The benefits of change

Just ask Londoners what happens when you stick doggedly to your preferred route. A paper by Oxford University showed that when industrial action forced commuters onto different routes, a significant fraction changed their daily journeys and improved their commute. They literally found a better way. Disruption became an opportunity.

And so it proved with our exercise. By changing our approach, we found better ways to work in this complex, volatile time.

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By understanding future risk, and by doing it early and holistically, it gave us a chance to turn a threat into opportunity.

### Three areas of risk

We identified three areas of potential legal risk.

The first is the rule of law. We felt that we had to do more in this space to promote laws that are equally enforced, justice that is accessible to all and legal certainty. This informed our new External Focus strategy for Shell Legal.

The second area focuses on human rights. The impact of Shell's operations on the communities in which we work is of huge importance. The third area is climate change – and I will expand on this, because it is the most pressing global challenge.

I have a daughter who is very, very environmentally aware. Nicole is also a formidable advocate. She is studying to be a chemical engineer at one of the leading engineering universities in the UK and she wants to help to solve the climate change challenge. Even at home, I find myself defending Shell. I explain that Shell intends to play an important role in the transition to a lower-carbon world. That we are changing at every level, even in our legal thinking. Her answer is simple. It's not what you say that matters, it's what you do. And she is right. This, for me, is the "Nicole" test.

We may we have identified three significant areas of risk, but unless we do something about them, society has every right to turn to us and say: "So what?"

### The challenge

When it comes to climate change, the courts have certainly become very active. There are now many cases that raise climate issues pending worldwide, the majority in the US. We, at Shell, believe that climate change is a complex challenge that should be addressed through sound policy and

cultural change, not through the courts, but we must be prepared for this continuing shift.

So, what are we doing as a legal team?

Take the possible consequences of a social media campaign such as #shellknew. It is based on the notion that Shell was aware of climate change risks but failed to disclose what we knew or somehow tried to discredit the science. We can use the facts to contest this claim, we can challenge the strength of the argument, but we need to do more than this.

We need to see the bigger picture.

There is no safety in precedent in an era of disruption and discontinuity. In this instance, it is a campaign that seeks to mobilise disparate groups with one emotive idea. A notion of negative behaviour that can grow far beyond the initial claims and take on a life of its own in public discourse. The legal team's role is vital in identifying such areas of risk, because we need to create a bridge between the legal arguments and what Shell is actually doing. Words and actions. It is about how we as a company perform, how we behave and how we communicate. It is about winning in the court of public opinion as well as the court of law.

So, what are we doing as a company?

We are taking actions big and small. From the fundamentals of restructuring our portfolio, to the step, last month, of appointing our first lawyer dedicated to energy transition issues.

Shell takes climate change seriously, and supports the goals set by the Paris agreement. We are taking significant steps now and in the long term. In 2016, we set up our New Energies business, which concentrates on new fuels and electricity, and we will invest up to \$2 billion a year in it until 2020.

Last year, we announced our ambition to halve the net carbon footprint of our energy products by 2050 – including emissions caused by the consumption of our products. No other company in our industry is doing this.

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This is what we are doing at Shell – and what we all do now matters.

Just ask Nicole.

### The present

This brings me back to where I started: the present. Our uncertain time.

Just think of those commuters, and how disruption became an opportunity.

The global legal team has a new discipline. A way of thinking more broadly, more creatively.

Where once detail and precedent were our guides, now we look into the future too.

The micro view and the macro. Risks – and opportunities.

We must learn to absorb different perspectives within our companies ... our industries ... from other industries... and in the wider world. This uncertain time is our time to learn, to change and to find a better way.

We can and should learn from each other to deal better with a VUCA world.

I look forward to working with you all on this.

Thank you.

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