KEEP IT SYSTEMATIC:
MEETING MANAGEMENT CHALLENGES IN THE LEGAL DEPARTMENT

By Richard Stock

It is not just here in the Great North. General Counsel in the U.S. and Europe are experiencing the same types of business, resource and management challenges as their Canadian counterparts. Given the deteriorations in many regional and national economies since the beginning of 2016, few law departments are likely to improve their prospects in the near future without some fundamental changes.

Over the past year, I have met with and interviewed more than 50 General Counsel in the U.S. and Europe. My first question: "What top three challenges are you seeking to address or what are your top three projects for this year?"

Some of the U.S. companies I spoke with are household names: Coleman, Hershey, Hyundai, Purina-Nestlé and Red Lobster. Other companies are less well known because they are not visible in retail consumer markets; their sectors include insurance, electronics, medical technology, wind turbines and building materials. Annual revenues average US$20 billion per company.

The European companies I met are not well known in Canada, but the industry sectors are familiar: media, pharmaceuticals, engineering, telecommunications, a retail eyeglass chain, and a manufacturer of semiconductors, among others. In one case, annual revenues approached €35 billion, but the average is closer to €20 billion.

Even though there were differences among the companies, they all expressed similar management challenges. For our sake, I condensed them into four categories:

- Coverage, Organization and Resources
- Efficiency, Workflows and Workloads
- Value, Performance, Metrics and KPIs
- Legal Spend and Costs

Coverage for legal departments depends on having enough resources of the right type and in the right locations—especially for multi-nationals. But it also depends on explicit protocols for managing work intake and allocation within the department.

It was clear during the interviews that many departments feel they are chronically overwhelmed. At least five of the European departments experiencing workload and resource issues are "regional counsel" (Europe and the Middle East) for multi-nationals. They appear to have little success in securing support from their global headquarters.

While some had not succeeded in making the business case for more resources, a few were struggling to keep up with the company's success in new and emerging markets. The demand for metrics and KPIs is the leading challenge. Demonstrating value is critical for legal departments if they wish to influence expectations and secure additional resources. Few businesses have escaped the deteriorating financial conditions since the beginning of 2016. For that reason, it simply is not enough to demonstrate high demand and improved productivity.

Still, I believe adding one or two lawyers to a department makes no real difference in coverage or performance in the long term unless a number of other measures are introduced at the same time. The Conference Executive Board published survey findings early last year concluding that the "typical" business model for a legal department is one of a captive law firm with little internal leverage or team-based lawyering. In other words, corporate law departments are more often than not a collection of solo practitioners. And most do not have qualified paralegals to support service delivery.

There are few, if any, work intake controls. Instead, legal departments default to a relationship-based, open-door policy. They continue to think of the others in the company as "clients," rather than business partners. Fewer than 10% of the departments have documented protocols identifying what kind of work they do, when they should be called in, who should call and the turnaround standards. In other words, expectations are not managed and professional practice continues to be inefficient.

The bottom line is that the current business model—one where the legal department is all things to all people—is fundamentally unsustainable. To remedy the situation, I have outlined a five-step process.

STEP 1: Determine the department's activity levels. Begin with the following questions:

- What type and quantity of legal and advisory work does the department do for specific divisions and the company as a whole?
- What proportion of the department's resources support which parts of the company each year?
- How many matters are there? How complex or routine are those matters?
- Can the department quantify the resource requirements for the most significant projects for the next 12 months?

Departments need this data and more to describe the value they add in concrete business terms. A professional relationship and stamina are not enough. Everyone is rushed and often ill-prepared when calling on in-house counsel, and unclear about what the department should be doing. How can General Counsel capture, measure and communicate value in such swamp-like conditions? So the first step is to explicitly describe and measure the law department's current and anticipated activity levels.

STEP 2: Select a handful of basic performance indicators that are part of the department's value proposition.

In recent years, these five indicators seem to resonate with most General Counsel:

- **Strategic impact**, as measured by the contribution against high-profile corporate priorities. These can include significant transactions and disputes, regulatory issues, and even successful labour agreements.

- **Results** achieved on regular and complex work for the department's regular users.
- **Knowledge transfer** within the department, from law firms and through to other parts of the company to increase their self-sufficiency.
- **Innovation** on everything regarding service delivery and professional practice.
- **Cost reduction**, especially with progressive practices to retain external counsel efficiently.

STEP 3: Manage work traffic in the department.

This is where managing expectations comes into its own. General Counsel need to be explicit about the "terms of engagement" with other parts of the company. Annual work estimates should be written out and shared with each department. Every effort should be made to slash operational support work and ensure everyone is better prepared when calling on the department.

Terms of engagement combined with more informal "when to call the lawyer" protocols are absent in 90% of Canadian departments. Addressing this productivity challenge is a prerequisite for hitting the mark on the five performance indicators.

STEP 4: Assign and align the right amount of legal and paralegal resources with each user group.

This goes far beyond informing everyone of their contact in the department. As possible, General Counsel should also consider pairing counsel with more than 10 years of experience with other counsel and paralegals to improve turnaround times on matters.

STEP 5: Actively manage the cost of external counsel in two ways.

First, reduce the demand for external counsel with explicit terms of engagement, matter-by-matter legal project budgets and non-hourly fee arrangements that encourage productivity. Second, reduce the cost of external counsel by ensuring proper delegation of tasks within matters, minimizing annual rate increases for "inflation," eliminating office disbursement charges and inviting a "second" bid for the most complex work.

These five steps are not easy. However, they are clear and the sequence is right. That the most effective legal departments are meeting these challenges under difficult conditions should be an encouraging precedent. The metrics and performance indicators offer the necessary focus. The active ingredient is legal department leadership.

Richard G. Stock, M.A., FCIS, CMC, is a partner with Catalyst Consulting. The firm has been advising corporate and government law departments across North America, Europe and Australia since 1996. He can be contacted at rstock@catalystlegal.com.