

Special edition icws 2016

JEM

JURISTE D'ENTREPRISE *magazine*

THE IN-HOUSE COUNSEL GOING GLOCAL

SPECIAL EDITION



Value With Innovation In the Law Department



Daniel Brinley General Counsel at Shell Oil Company,
Gregg Marrazzo Senior Vice President - Deputy General Counsel at Estee Lauder Group of Companies,
Ali Uysal, Head Legal Counsel at Turkish Airlines & **Richard Stock** Senior Partner at Catalyst Consulting

Daniel, Gregg, David, Ali and Richard are speakers at the upcoming ICW World Summit in Paris. Richard G. Stock, M.A., FCIS, CMC is the senior partner with Catalyst Consulting. The firm has advised more than 250 corporate and government law departments across North America, Europe and Australia since 1996

Defining Value

Legal professionals are like artists when it comes to defining and communicating the contributions of the law department. Their preference is to “let the art speak for itself.” The *modus operandi* is to respond promptly to all requests for service from all corners of the organization. This “artist-in-residence” model, where working hard and maintaining good “client” relationships, is no longer appropriate. There are three reasons for this.

First, there are not enough hours in the day to be all things to all people. Surveys ask counsel to estimate how many individuals from within their company typically call them to request work in a year. Too often, the response exceeds 150 individuals calling on a single lawyer – and mostly for routine matters. This type of accessibility, combined with excellent service drives up demand. Very few law departments have formal working protocols in place to make their clients more self-sufficient and to permanently reduce the number of calls.

Second, the proliferation of requests for service makes it impossible to separate the wheat from the chaff of legal work. A critical analysis of the type and complexity of matters handled by law departments reveals that there is a significant misalignment between the large amount of routine, non-complex work that lawyers plough through and the experience levels of the lawyers buried in this type of work. Up to 40 % of a lawyer’s year is spent on routine matters. Another 30 % is spent on matters requiring fewer than 20 hours to complete. Otherwise put, as law department demographics keep shifting, corporate counsel find themselves “punching below their weight” three days out of five.

The third reason why the “lawyer as an artist” model no longer works is because it is not strategic. Saying one wants to be strategic does not make it so. We ask legal departments to present us with their annual business plans. However, more than 75 % of legal departments cannot produce a written statement

of their annual objectives aligned with the company’s strategic business plan.

Necessity is the Mother of Innovation

Why change anything in a law department when nothing is wrong? Work is plentiful, most of it is interesting, and clients genuinely appreciate the contribution of in-house counsel. Gregg Marrazzo, the Senior Vice President and Deputy General Counsel at the Estée Lauder Group of Companies, states that “*the paradigm for law departments has shifted. It is no longer good enough to just have terrific lawyers. Now, a law department, if it wants to be world class, also has to have exceptional processes and structure to drive an agile, effective and efficient operation.*”

“As we all get pressed to do more with less and do it faster, we need to be certain that we have the infrastructure to deliver. We need to maximize the use of technology. We have to have a robust organization design that promotes expertise that focuses on big win areas - those areas are identified in our corporate strategy. And of course, we need to keep costs down by bringing work in-house where appropriate. Finally, we must negotiate win-win deals with external counsel that not only keep costs down but provide benefits to the firms as well.”

Innovation should be identified as a stand-alone, separate performance indicator. This is not because law departments need a longer list of things to do or to measure. Instead, a KPI for innovation requires that the leadership and members of the law department actually discuss innovation and then invest the resources in initiatives that make a strategic difference to the company.

There are several priorities for innovation in a progressive law department. These include shifting more of the law department’s resources from daily operational support of business units to developmental and corporate projects that the com-

pany identifies as strategic priorities. Changes are needed to ensure greater self-sufficiency for business units for some legal services through a combination of training, streamlined procedures and systems, templates and a more limited role in contract reviews by the law department.

Other areas can benefit as targets for innovation: abandoning hourly billed legal work in favour of performance-based fees with external counsel; making sure that lawyers and the other members of the law department have challenging work most of the time; and raising the proficiency of the department's lawyers in leadership, business negotiation and project management skills.

For the most part, the best innovations for a law department are externally focused. They are dedicated to corporate projects and to the priorities of business units rather than the internal workings of the law department. Success with innovation should answer the question, "What difference do the lawyers make?"

David Brinley, General Counsel – Projects and Technology with Shell International BV in The Hague, observes that *"we really do seem to be at an inflection point in the legal services industry. Long standing traditions such as hourly fees reliance on external experts is giving way to creative, value adding solutions which include creating additional risk/incentive for service providers. This is not the time for a law department to keep its collective head down and wait for the winds of change to blow over. The opportunities to provide legal support have never been more susceptible to creative, commercially astute solutions."*

At Shell, we are experimenting with a combination of alternative fee arrangements, offshoring of legal services, managed services and partnering with firms who offer variations to the traditional models of legal advice."

Shifting Priorities

Law department business plans are shifting away from activity descriptions that begin with words like "support", "assist" and "enable". One General Counsel report that corporate planning instructions explicitly preclude the use of this category of descriptors precisely because it makes it too difficult to isolate contributions and to hold individuals and departments accountable for their share of joint initiatives. Instead, terms like "produce", "deliver" and "conclude" focus the attention on results rather than on process, and it is more straightforward to measure what has happened.

Corporate counsel say that they are stymied when it comes time to create a detailed business plan, much less to invest the time to follow-up and to execute each of its elements according to a set schedule. They are frustrated by current demands either because they are being inundated with small matters or consumed with large projects.

Daniel Desjardins, Senior Vice President, General Counsel and Corporate Secretary with Bombardier Inc., recently wrote about the essential *"value pillars where law departments add*

value to their corporations through supporting the business by delivering both a sustainable bottom line, developing creative legal strategies to ensure solid risk management and drive revenue and profit."

There are a few things to keep in mind when deciding to shift priorities and resources to make the law department a more strategic business contributor:

identify 3 – 5 high visibility projects or corporate business priorities that have strategic value to the organization as a whole

prepare an annual business plan for the law department that includes strategic projects and other objectives that improve the performance of the department

find ways to generate 25 % capacity in the department by shedding routine work and occasional clients in order to do what is in the plan

measure everything and report progress to both the department and the organization's executive leadership team

Ali Uysal, Head Legal Counsel for Turkish Airlines, achieves several of these objectives at once. *"As a fast-growing company with activity in 125 countries, we are committed to better manage the time, costs and results associated with decentralized legal services. There is a direct impact on our customers as well. Partnering with a single law firm to manage this global supply chain is sensible. Paying for this arrangement on a fixed fee basis supplemented by significant funds for innovation is ground-breaking."*

Strategic Impact

These are two words that one does not readily associate with corporate or government law departments. An experienced General Counsel recently asked, after 30 years of serving a company, how does a law department add value? How does one change service delivery to do this when demand already exceeds resources and clients seem quite satisfied? The adoption of a second key performance indicator called "strategic impact" can provide focus and momentum.

The General Counsel's reporting relationship matters. Access is less and perceptions are affected when the GC does not report to the CEO. Executive turnover and corporate re-organizations are opportunities to improve the positioning of the law department. While this is a place to start, it rarely affects the day-to-day work of the remainder of the law department. Moreover, the GC has to have the experience and skill to be a corporate executive.

Lawyers possess many of the attributes essential for strategic impact. They are committed, thorough and often good communicators. But they must now become creative thinkers who develop imaginative solutions and new ways of thinking about situations, problems and opportunities. They must approach problems and situations in a non-linear fashion, and develop ideas and make decisions based on intuition as much as on

logic. Basically, they must demonstrate ideas or solutions that seem to come from someplace outside of the immediate problem or situation.

The right structures, projects, complex work and competencies are essential for the law department to have strategic impact. Sustaining momentum for innovation in legal service delivery depends on the right blend of demand forecasts, progres-

sive operating protocols for business units, the configuration and reporting structures of legal teams, and key performance indicators.

Innovation demands creativity. It depends on discipline to execute the initiatives, and it is transformative. Moreover, innovation is interesting — far more interesting than working faster or longer hours, or negotiating greater discounts from law firms.



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