The Five Pillars of Performance for the Legal Department

By Richard G. Stock, M.A., FCIS, CMC, Partner with Catalyst Consulting

This is the twelfth in a series of articles about how corporate and government law departments can improve their performance and add measurable value to the organizations.

After absorbing years of trade literature and attending inside counsel conferences disccuing value, doing more with less, scorecards, metrics and key performance indicators, the time has come to distill the ingredients into five basic elements. I term these the pillars of performance for the legal department because they will support an array of paradigms, programs and operating practices.

Over the years, I have relied on 17 critical success factors and 52 indicators for law departments, the 29-point check-up for legal departments, and endless variations of balanced scorecards with 12 key performance indicators. So what works best, is practical and resonates with Chief Legal Officers in the quest for performance?

Years ago, the legal department was viewed as part of the necessary overhead. In the worst cases, it was regarded as the business prevention police and over-enthusiastic gatekeeper to manage risk. Times have changed and most departments work hard and are highly service-oriented – perhaps to such an extent that they discover they have become all things to all people.

This makes it difficult to answer the question "What difference do the lawyers make?" Part of the answer must be the extent of "strategic impact" of the legal department.

Lawyers can add value to the extent that they help business get done. While that requires daily operational support of business units, some analyses reveal that the amount of strategic legal and project work typically consumes less than 30% of department resources. The first pillar of performance for a legal department must be its contribution to the strategic priorities of the organization. These can be transactions, regulatory hurdles, or high-profile litigation. The CLO must find a way for allocate enough legal resources to such priorities by allocating at least 20 % less time for operational support and upwards of 50% for work of strategic value. It follows that these priorities must planned and featured as the top priorities in the legal department's business plan.

The second pillar of performance is intellectual capital. Surveys consistently find that a CLO's biggest worry and challenge is to keep the lawyers engaged. This may not be much of an issue for counsel in their first 5 years as lawyers , but after a while the novelty wears off. Legal specialization and gaining an intimate knowledge about the business will take another few years. And then perhaps a few experienced counsel can secure a transfer to another part of the company or are able to lead a business unit or special project. Talent management should not be a matter of survival of the fittest. Too many legal departments fail to live up to their full potential. The stamina needed to work 50 hours per week is not a substitute for leveraging the intellectual capital that is legal services, especially the capabilities of senior counsel. The CLO must insure that the initiatives making up this pillar are at the forefront of the department business plan and embedded in lawyers' personal development plans.

Professional associations and trade publications alike have been recognizing legal departments for innovation for the last 7 years. Many awards feature improvements in how counsel work with their clients, while others highlight collaboration with external counsel.

Every balanced scorecard addresses business process improvement, LEAN initiatives, and productivity in some form. Productivity measures are a tough sell with counsel used to working as solo practitioners with their clients. However, considered through the lens of innovation for efficiency, the possibilities become interesting. Efficiency improvements have to be measurable. They can be designed to reduce client dependency on legal for operational support, or they can take the form of technology literacy such that counsel can function without significant assistance from law clerks and paralegals. Measures to improve turnaround time for client work are always welcome. Without innovation as the third pillar of performance, lawyers will always find themselves behind the demand curve and will grow frustrated because of their unavailability for strategic work.

It is inevitable that costs be the fourth pillar of performance for the legal department. CLOs and their companies want predictability of their legal spend for individual matters referred to external counsel and for the fixed costs of the department. Studies show that inside counsel lose up to 20 % of their available time on administrative matters, non-productive meetings and interruptions.

Quovant's Other studies show that they under-leverage available technology and are overly dependent on support staff. Setting targets to lower unit costs, that is to say the effective hourly rate for legal and advisory work, is a viable approach to strengthening the fourth pillar. Equally important is the use of alternative fee arrangements with external counsel that will motivate law firms to better delegate tasks and minimize the number of hours needed to get the job done. Too few legal departments master law firm economics and non-hourly fee arrangements. The pillar of cost performance has been weak for decades. There is always a way to reduce total legal spend.

Management and administration are not synonyms for leadership in legal services. Ensuring that a legal department performs to its full potential is the responsibility of everyone in the department. It is the reason that some companies extend formal leadership training to all lawyers as a matter of course and not as an elective. Leadership relies on a broad range of attributes, skills and knowledge. Analytical skills, oral and written communications, negotiating skills, team building, and adaptability are just a few. Without sufficient leadership as the fifth pillar of performance, there will be very little strategic contribution, innovation, cost-effectiveness and growth in intellectual capital

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