

A professional headshot of a middle-aged man with grey hair and a mustache, wearing a dark suit, light blue shirt, and patterned tie. He is looking directly at the camera with a neutral expression.

# Budgeting Complex Legal Work

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

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

Very few lawyers enjoy budgeting for complex legal matters. This is equally true for inside counsel and partners in law firms. I recently had the opportunity to review 50 budgets from 20 law firms. Some were for commercial agreements, but most were for complex litigation. At the low end, the smallest files had 100 hours, while at the high end, the largest matter exceeded 12,000 hours. Timeframes for matter completion ranged from 5 months to 5 years. A few firms had well developed templates for budgeting complex matters in several specialties. Yet, 80 % of the firms had no templates or standards for planning and budgeting matters. Relationship partners tended to improvise with general statements and relied on long e-mails instead.

It has been nearly 20 years since detailed matter plans and budgets for complex work have been required by some companies and since they have been well done by a few progressive firms.

Today, much of the work referred to external counsel is for litigation since few law departments have the volume of matters and infrastructure to support complex files in multiple jurisdictions. It is often the case that a file is referred by a commercial lawyer serving as inside counsel with no experience in managing litigation files. Few in-house counsel feel at ease analyzing and challenging the matter plans and estimates put forward by law firms.

Law firms may not eagerly offer detailed matter budgets to clients that do not ask for them. Instead, they may provide figures rounded to the nearest \$ 25,000 by phase of the matter, accompanied by an eloquent explanation of

why each case is different and detailed estimates with probabilities are unreliable or impossible.

Detailed matter budgets set out the hours for individual fee earners by phase and task, initially at least for pre-trial phases, if not for the duration of the matter. The company and the firm agree on the planning assumptions for each task, as well as the percentage probability for each assumption. This should prompt an up-front discussion and agreement with the company's law department before too many resources are expended. An 80 % probability threshold is recommended for each task requiring no more than 100 hours. Activities with more than 100 hours should be broken down into smaller steps to avoid rounding up the estimates.

Companies and their business units should plan their legal costs on an annual basis and for each matter to the end of the matter cycle. This suggests that law departments and their law firms need to "up their game." Both should master legal project planning and budgets. Primary law firms should be asked to describe their training programs, methodologies, and resources for project management. This description should reflect the firm's formal position rather than the preferences of individual partners.

For the most part, it is sufficient to include the description of the matter and the planning assumptions in a memorandum accompanying a matter budget as long as these are clearly correlated with phases and tasks of the matter. Firms should provide a breakdown of hours planned for partners, associates, and paralegals,

identified by name for each phase and task. The company's law department can then determine if the ratio of work delegated to associates and paralegals is appropriate for each task. Our studies reveal that partners and associates could delegate an additional 20 % of their hours to a less senior member of the team without compromising efficiency and results.

There is evidence of sophisticated budgeting for class actions, coroner's inquests, trials, appeals, as well as all manner of litigation, complex labour disputes and arbitrations. Excellent templates and code sets exist for mergers and acquisitions, commercial agreements, intellectual property and general advisory work. Inside counsel can ask their primary firms or colleagues in other company law departments for sample templates and leading practices in matter budgeting.

Clients should encourage their law firms to budget the most likely and not the worst-case scenarios. This means that retainer agreements should provide for milestones to review and revise matter plans and budgets.

At the very least, a new budget should be prepared if the original budget is to be exceeded by 10 % or more.

Companies, especially those with more than five lawyers and with important volumes of work referred to external counsel, should consider designating one or two members of the law department – one for transactions and another for litigation and disputes - to review and approve all complex matter budgets. Concentrating this responsibility with one or two

individuals builds up expertise in the law department in the area of resource management and pays dividends for the company. External counsel will eventually appreciate the investment of time and effort.

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### About the Author

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