Managing the Legal Supply Chain

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

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

It has been 27 years since the DuPont Legal Model was inaugurated. DuPont recently published its fifth version of an 85-page handbook explaining the model. The model is premised on four elements: strategic partnerships where the parties invest in each other's financial success; technology utilization to drive collaboration, improve efficiency, and eliminate duplication; alternative fee arrangements; and a commitment to diversity.

Today, the company has 40 firms across North America including Fasken, formerly Fasken Martineau DuMoulin, in Canada. I have had the opportunity over more than two decades to represent almost 100 companies and their law departments in designing and negotiating multi-year arrangements with their preferred law firms. There is a successful precedent for almost everything: multi-national firms covering 200 countries and which can serve as the general contractor and guarantor of quality for firms in regions where it has no offices, specialty firms doing the same on a national basis for asbestos litigation or automobile recalls, and full service firms managing complex transactions and regulatory files.

Everything from high volume "commodity" work, to niche practices like cybersecurity, to bet the company transactions.

So why has there not been a stampede by companies and their law departments to redesign, introduce, develop and improve their relationships with external counsel? More than 80 % of companies still retain counsel on a discounted hourly basis. For the last 25 years, in-house counsel have been saying that they "retain the lawyer, not the firm." What a failure to leverage the innovation, the expertise, and the operating practices of law firms that are on Version 4.0 of legal services delivery. What are the obstacles and how can the law department catch up?

I have observed five impediments to modernizing the corporate law department's relationship with law firms and other service providers in the legal universe. The first is a lack of a clear statement – some call it a manifesto – over the signature of the Chief Legal Officer that sets out what the nature of the relationship with primary and preferred law firms should be. Are they merely vendors and suppliers of professional services to be priced by procurement and managed by the law department? Or are they closer to what Ben Heineman (see *The Inside Counsel Revolution*, 2016) calls Phase Five when "law departments are seeking to integrate more completely with law firms and make them strategic advisers"? Few Chief Legal Officers provide unambiguous clarity to their legal and business teams, much less to their law firms, on this question.

The second pre-requisite to effective partnering with external counsel depends on some competence in influencing the causes and sources of legal work that comes into the law department. It also depends on proficiency in categorizing and quantifying the workflow by area of law, level of complexity and number of hours. Companies equipped with world-class matter management systems ensure that their law firms interface for billing and payment purposes. But they fail to leverage the analytical and management reporting functions of the systems they have in hand. It is one thing to carry out a retrospective statistical and financial analysis. But it is quite another to understand the data and the company well enough to predict and manage the demand for legal services for the ensuing three years. There are great examples of companies which do all this well, but the majority have no written and detailed statement of the demand for legal services.

The third obstacle to forging a viable partnering arrangement with law firms amounts to a deficiency in the organization, resources and operating practices of the law department. Here are some of the symptoms. The Chief Legal Officer / General Counsel or deputy does not spend enough time managing the resources of the law department and relationships with external counsel. The department tends to operate as a group of solo practitioners or perhaps as a captive law firm. A department of 10 or more lawyers should have a professional head of legal operations, but many do not. The lawyers in the department have no professional training in legal project management and budgeting as a way to manage their own time and that of external counsel on matters. Finally, the department under-leverages the collaboration technologies available from its most progressive law firms.

A number of law firms now own consulting firms that are designed specifically to help law departments operate “smarter, better, faster.”

The fourth barrier is a lack of proficiency with alternative fee arrangements, especially when applied to complex legal matters and to multi-year portfolios of legal work cutting across categories of law and legal jurisdictions. Being able to apply hybrid fees and fixed fees to more than one matter at a time depends on two factors. The first is the ability of the law department to provide, but not guarantee, a scope and flow of work to its law firms as a way to secure stable legal teams and predictable pricing. The second is finding a way to stimulate the law firm to use fewer hours and to improve its delegation of tasks to get the same work done. Law firms have their Chief Pricing Officers and they are accomplished professionals. Law departments must master alternative fee arrangements to stimulate the right balance of results, innovation and cost with law firms.

Every good plan perishes on the battlefield. Overcoming the first four barriers to managing the legal supply chain for maximum value to the company will fall short unless the plan is well executed. The essence of an effective strategy – especially one that seeks to manage the legal supply chain through strategic partnering – is in its execution. The strategy and the tactics must allow for adjustments along the way. Unforeseen issues, challenges and opportunities should be incorporated along the way. The Chief Legal Officer needs to make the execution of the strategy a top priority, ensure its visibility every step of the way, and compensate members of the in-house and law firm teams for success

About the Author

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