

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.

Three Principles for Work Intake Post Covid-19

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

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

Some years ago, I attended a series of conferences to meet individually with US chief legal officers. As a legal management consultant, my goal was to identify the primary management challenges faced by each CLO. My last set of meetings in Tucson covered a broad range of industry sectors: renewable energy, insurance, auto manufacturing, cement producers, pet food, national restaurant chains, cloud hosting and camping equipment. All of the companies, however, drew annual revenue in excess of \$1 billion.

Of my 15 meetings, six were with foreign-owned companies. At least eight had business plans for significant expansion in Asia-Pacific. Before Covid-19, many economies were doing well overall, but this was not the case for every region and industry sector. It is time to conduct another assessment and perhaps revise my observations 5 years on.

Our conversations at the time focused on four sets of challenges: business plans and metrics; workflows and workloads; the organization and resources of the law department; and the costs of and relationships with external counsel. Three-quarters of the CLOs faced “internal” challenges. Aside from the demand for legal services, there was increasing pressure to measure and demonstrate the value of the law department. Typically, either the law department was overwhelmed, or it was on the defensive failing to meet expectations. Only four of the 15 companies saw a priority to reduce the cost of external counsel in the next year. My revised forecast for 2020-2021 is that law departments will experience less pressure to demonstrate their value but much more pressure to reduce internal and external legal

spend over the next 18 months.

I also observed that the law departments which seemed stressed about workloads and inadequate resources had little hard evidence – aside from a 55- to 60-hour work week – to support this contention. They had no data about the number of matters, the level of complexity of the work, cycle times and backlogs, and the practice-management habits of individual lawyers. Typically, most law departments were staffed with 80 per cent of the lawyers with at least 10 years of experience. Lawyers personally worked 95 per cent of the hours on matters with no opportunity for delegation. There were very few entry-level lawyers and only the occasional paralegal. Otherwise put, departments were poorly leveraged.

The demographics in 2020 show that the average experience levels in law departments have increased compared to 2015. This translates to at least 50 per cent of the work requiring significantly less than the experience level applied to it. This continues to be a common affliction in law departments everywhere.

In such cases, CLOs too quickly look for more resources. But most are unable to present a credible business case for additional resources. They do not have the data or the experience to prepare and argue the case. Added to this is the pressure for coverage in new jurisdictions – mostly in China, Mexico and South America.

Too often, the default solution – a very expensive one – is to retain external counsel to cover the outfield for the company. The post-covid

business environment will require compelling arguments for additional legal resources. This will prove doubly difficult for litigation and other forms of dispute.

None of the companies I met had introduced a program to reduce the amount of routine legal work that they did as well as the dependency of internal clients on the law department. Over time, the layers of work piled on and interruptions multiplied. For some CLOs, it is a real stretch to capture and communicate the value of the legal team in non-financial terms. While CLOs are appreciated by the company's leadership, they fall short of making a compelling argument to change workflows, workloads, and resources. My sense is that law departments will tighten their work intake criteria significantly over the next 18 months.

There are three principles to keep in mind when designing intake criteria. The first is to demonstrate that productivity improvements have been made in the law department. These should take the form of radically reducing the demand for routine work, introducing protocols to qualify who can call the law department, and making sure that individual lawyers have strong time-management skills.

The second principle is to consider coverage — to achieve increased specialization, for new jurisdictions, or for special and strategic projects. And the third intake design principle, also a good argument for in-sourcing work from external counsel, is to calculate the savings to be derived from additional resources compared to referring work to external counsel. Law departments typically aim for a fully loaded hourly rate that is no more than 45 per

cent of the rate that would be paid to a law firm for the same work.

Pleas for resources to deal with backlogs and tapped-out law departments will fall on deaf ears if they are not supported by a three-point business plan. CLOs must ensure that their law departments introduce and enforce more explicit work intake criteria to be properly leveraged in the next 18 months.

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