

Does Timekeeping Have a Place in Law Departments?


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This is the thirty-ninth 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 more than 10 years since I have seen articles which refer to timekeeping by law departments. An Australian survey of 209 public and private sector counsel found that only 22 % were using time recording or time sheets. I recently asked the same question of 11 law departments and found that only four recorded time primarily for chargeback to business units. One law department set a timekeeping threshold that was only 75% of available time for each lawyer. This suggests that time recording is not perceived to be an appropriate measure of the value that in-house counsel add to their organizations.

Another piece on timekeeping by inhouse counsel raised a few good questions but did not go as far as recommending that law departments adopt timekeeping and time-reporting practices. The questions dealt with productivity,



cost-effectiveness, and communicating the value of the department. So just how does a law department manage its time, improve its cost-effectiveness, and communicate the value of its contribution to the organisation?

Difficult Times

Inflation, rising wages, and the risk of a recession together with changing corporate or government priorities have accelerated the requirements to measure, to justify, and – often – to reduce legal expenses. One survey of General Counsel reported that the pressure to reduce legal expenses moved to the number 1 rank of pre-occupations - ahead of regulatory/compliance and ahead of managing workloads. Add to that the current and anticipated shortages of legal talent for both law departments and law firms, and the increased demand for legal services in a post-pandemic world.

In rare instances, the General Counsel is faced with “an unsupportive CFO or CEO” asking the questions “What exactly do you do?”, “Where and how does the company benefit from the law department?”, “How cost effective are you?”, and “Why do you need the extra help?” These questions are not only financial in nature. However, the value proposition of the law department cannot be communicated without a clear and detailed understanding of the activity and cost of the department.

The Value Proposition for a Law Department

The Association of Corporate Counsel introduced its Value Challenge 14 years ago and the short-lived Value Index a little time later to help General Counsel focus the dialogue with their law firms. A consensus emerged about six areas which should be part of the evaluation of

law firms. I believe that most of these can be applied to law departments as well:

- understanding objectives / expectations
- legal expertise
- efficiency / process management
- responsiveness / communications
- predictable cost / budgeting skills
- results delivered / execution

It is easier for a lawyer to evaluate the technical aspects of the performance of external counsel than it is for a company to evaluate the legal skill of its law department.

In addition, legal budgets tend to be centralised and individual users of legal services are rarely concerned with predictable costs at the matter level. We found that only 18 % of Australian law departments charged all their costs back to the business unit, 57 % charged none, and the remainder charged some. However, what is important for the law department is its ability to predict and budget its *total legal spend* on a company-wide basis.

The six evaluation criteria can be readily condensed into a practical definition of value or “cost-effectiveness” for the law department. Thus, Value or Effectiveness = Quality (Service and Results) plus Price. The relative importance placed on service + results + price in legal services varies by company and by matter. Over time, the importance shifts. There is no tolerance for generalisations and theory. Legal leadership must find ways for the law department to measure, discuss and report on each element of the value proposition. A few suggestions follow.

Service

Fewer than 20 % of law departments formally survey their primary users for service each year. A series of 8 – 10 questions dealing with accessibility, efficiency, process improvement and deadlines will generate a key performance indicator (KPI) expressed as a single index for service. Some departments target all users which require at least 50 hours of legal work each year. A 75 % participation rate is advisable for such surveys.

Results

This KPI is by far the most important one for law departments today because it requires an alignment of department resources with specific users and specific projects. In the case of litigation, the results (win or a settlement with a target cost / time frame / probability of achievement) should be planned. There is much attention given to service levels and to costs in legal services but too little to defining the results from and expectations of the law department. Law departments are introducing KPIs to capture their contribution to strategic and operational priorities in such a way that key users are now jointly accountable to set clear expectations. This makes reporting on the “result” component of effectiveness much more straightforward. Otherwise put, the law department mantra should be about “getting business done”.

Price

There is no escaping the need to report on the cost of legal services. It is straightforward to demonstrate that the fully loaded cost of one hour of legal work in a law department is usually about 45% of the hourly rate for the same work from a law firm. “Total legal

spend” is a more accurate way to capture the cost (price) of legal services to the company. External counsel costs should be tracked segregating legal fees from disbursements and taxes. Internal legal costs should include all payroll, benefits, law department direct costs and a share of indirect costs, even if these are not budgeted in the law department. Legal leadership should be evaluated on its success in budgeting and meeting approved total legal spend targets as well as in meeting targets for the reduction of unit costs.

Even comprehensive cost reporting does not go far enough since law departments seldom accurately report on the amount and cost of the substantive legal work it delivers. Surveys suggest that more than 65 % of corporate counsel work 46 or more hours per week. How much of this is advisory, preventive, administrative or other work which can never be referred to a law firm and how much is legal work comparable to that done by external counsel?

Few departments track time at the detail or matter level. Some activity tracking with matter management systems does provide valuable insight so that legal leadership can better allocate legal resources. A few law departments do track time for the same 3 months (not year-round) each year to help lawyers improve their time management practices and to better understand the mix of substantive “chargeable” legal work and other valuable functions which corporate counsel carry out. Some time tracking is a useful way to establish the cost of a fully loaded legal hour delivered by the law department. But the pain must be worth the gain especial-

ly when service and results are great, measured, and reported.

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Part 3 Coming Soon

