The Innovative Performance Management Framework

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

Responsiveness and hard work are not enough for law departments to capture and communicate the value of a law department. They are a poor way to manage expectations and not enough to sustain innovation. Moreover, it is not possible to become more strategic with a “retail” practice pattern. Too many law departments are collections of solo practitioners with up to 60 % of department time spent on matters and advice requiring fewer than 25 hours per matter. This typically correlates with high volume, low complexity work that is poorly leveraged.

Eleven Key Performance Indicators (KPIs) can be arranged in four groups: Client-Facing, Business Process Improvement, Talent, and Financial. Even though objectives,

initiatives and priorities change every year, KPIs should remain constant over several years. With few exceptions, like “external counsel”, they are equally applicable to other operating and support business units in most organizations. Annual objectives (initiatives) and their targets should follow from each KPI and form part of the performance management framework.

Client-Facing KPIs

Strategic Impact

This KPI is designed to capture and communicate the contribution of a law department to the high visibility / high risk / high reward priorities of the organization as a whole or of one of its business units. A project or initiative should typically exceed 200 hours of lawyer time. Primary ownership of projects with strategic impact would be with the company’s executive leadership or head of a business unit and not with the law department.

Results

Over the last 15 years, less importance has been placed on client satisfaction with the law department than on outcomes or results as a KPI. Organizations and business units with tight deadlines and chronically insufficient resources care more about “getting the job done”. Selecting “Results” as a KPI for the law department tells business units and the organization that it is focused on securing results against set expectations rather than on process improvement. Performance against a Results KPI is not intended to capture and report on law department activity levels, such as number of opinions, transactions, costs, *etc*. since these are part of operating practices.

Innovation

While a legal team can be innovative in much of what it does, and with all the initiatives it selects against the other KPIs, selecting Innovation as a permanent KPI shifts some of the priorities of law departments to more developmental and strategic contributions that are valued by clients/business units. These contributions should differ in content each year from those that fall under the Strategic Impact KPI and from the law department's other initiatives.

Business Process Improvement KPIs

Operating Practices

In the spirit of LEAN and Six Sigma methodologies, this KPI targets productivity improvements in the delivery of legal services. "Doing more with less" has been a mantra of all organizations for decades.

Reducing infrastructure, leveraging technology, simplifying processes, and reducing waste are the hallmarks of this KPI. Law department business plans and scorecards typically start out with many initiatives for this KPI because they are easier to control. However, each target must be significant and pass the S.M.A.R.T. test.

Service

Our discussions with business units over the years reveal, unsurprisingly, that they are often late and incomplete when requesting legal advice. Accessibility to legal services is rarely a problem. With the exception of the most complex files, turnaround is the real proxy for "service". Professionalism, accessibility, and thoroughness are taken for granted and do not warrant KPIs of their own.

In order to drive innovation, and attention to strategic priorities, initiatives for the Service KPI target turnaround performance for both regular and complex work.

Technology

It is not usual to propose Technology as a stand-alone KPI. Some lawyers regard technology as a necessary evil. Law departments are late adopters of technology in day-to-day practice. Back-office functions are well accepted. However, there is evidence of passive resistance when it comes to its application to legal practice, the complete elimination of paper with its related infrastructure, and in quantum improvements to productivity and self-sufficiency for business units.

Talent KPIs

Knowledge Transfer

Lawyers represent intellectual capital to the organization. They must possess the right proficiency levels and configuration of knowledge, skills, and attributes (KSAs) aligned with corporate priorities. They must set professional and personal development targets which help business get done. Initiatives can be crafted that make the law department and individual lawyers more efficient and more effective as they develop from early to mid to late career.

Competencies

Working with an extensive compendium of "Competencies for Counsel" allows the General

Counsel and the Human Resources Department to build a profile of KSAs for the law department and set targets for individual lawyers that are focused and aligned with corporate priorities. Too many law departments fall prey to professional drift and fail to leverage the legal and technical talent that is available.

Financial KPIs

Total Legal Spend

As a way to communicate doing more with less, a law department should calculate the total cost (fees and disbursements excluding taxes) of external counsel for the company as well as the *fully loaded* cost of its internal legal and advisory services. The focus is on ability to manage all fees for external counsel despite the uncertainty arising from litigation, labor issues, regulatory, and commercial activity.

This KPI tests the ability to manage internal and external legal costs regardless of the budgets to which these are attributed.

Unit Cost

It makes sense to calculate the "effective hourly rate" for a law department by isolating the cost of legal work similar to what would be considered "billable" by a law firm. This excludes practice management time, administrative time and paid time away from the office for vacations, sick leave, statutory holidays, etc. The total worked hours are then tabulated for the department and divided into the total direct and indirect costs of the law department, always excluding external legal fees and disbursements. The unit cost can be lowered by reducing administrative and practice management time as well as by reducing requirements for space, support staff and equipment.

External Counsel

Too few law departments manage to reduce the cost of external counsel beyond the traditional volume discounts. Measures such as law firm delegation protocols, legal project plans and budgets, and alternative fee arrangements will further reduce projected legal spend by at least 15% beyond projected levels.

The General Counsel can use the 11 KPIs to anchor an innovative performance management framework.

About the Author

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