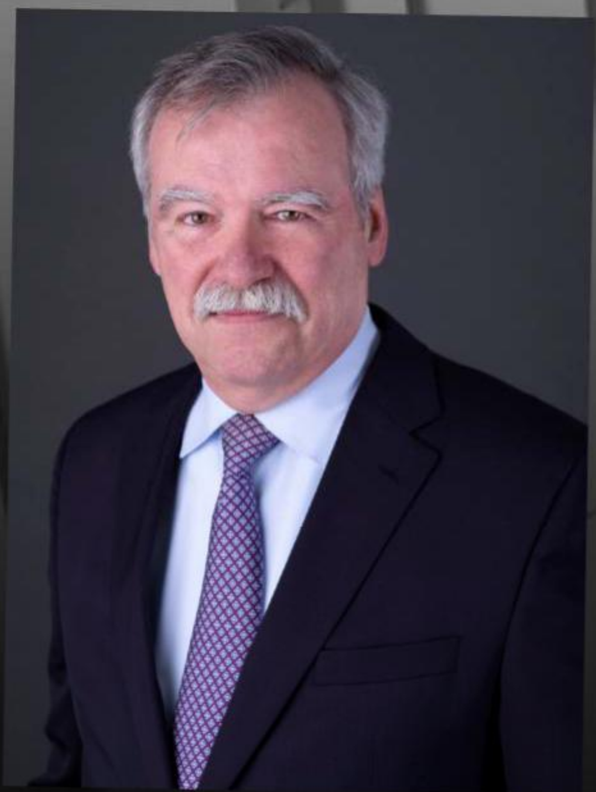
CHANGING LAW FIRMS

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

This is the forty-eighth in a series of articles about how corporate and government law



More than 75 % of companies have long-established relationships with primary law firms and local counsel. Banks, insurance companies, and utilities have worked with law firm panels for more than 25 years. Legal expertise and service levels are, by and large, meeting the expectations of most companies. However, companies with more specialized or modest legal spend are much more informal about how they secure and price legal services.

Still, things are changing for companies great and small. Relationship partners retire from preferred firms.

General Counsel move on more frequently than they used to. Companies merge and divest. And the Procurement / Strategic

Sourcing Team is always enthusiastic to introduce more structure, process and economic targets when the company retains counsel. Collaborative technologies and alternative fee arrangements have made it irresistible, if not inevitable, to assure leading practices in the management of the legal services portfolio.

Unsurprisingly, too few law firms initiate the business-to-business dialogue with key clients. Companies regularly craft Requests for Proposals (RFPs) for legal services in order to reset the relationship on all dimensions: the number of firms, different work intake and allocation protocols, collaborative technologies, management of the "legal supply chain" including of local counsel, pricing, and innovation. At times, the RFPs are bilateral and, at other times, they are high stakes competitive processes which are disruptive and can result in long-term value propositions for the client that differ dramatically from the *status quo*.

Threshold factors and RFPs do result in companies reducing and changing the configuration of their primary law firms. More than 70 % of the work referred to firms by corporate law departments is some form of litigation or of labour and employment work. Regular commercial work is typically much more cost-effective to in-source, while complex transactions and financings are referred to firms that have the bench-strength for the work.

I am regularly asked whether there are best practices governing how a company should replace one firm with another. When hourly billing was the order of the day, a law firm could be phased out over a few months, and new work allocated to the successful firms. Companies are better now at projecting the scope of work for multiple matters, specialties and regions. Many are prepared to make commitments of 3 to 5 years in return for stable legal teams and predictable pricing that is non-hourly. Without exception, law departments want to rid themselves of the administrative work that comes with retaining firms and processing fees in traditional ways.

It follows that companies do not wish to pay a fixed fee to one firm, which will overlap with fees paid to firms which are being transitioned out. At times, a network of local counsel is replaced with a new network. Other times, primary firms are replaced, even for strategic matters.

Companies are migrating from the traditional model of a panel of firms ("I select the lawyer – not the firm") to more structured business-to-business models. There are two ways to manage the transition. The first is to designate one or two firms as primary national, primary regional (e.g. the Americas), or primary global counsel. These firms are asked to review all active files presently with the company, and then to propose a fast-track (4 – 6 weeks) transition of the files. It is normal that some files will remain with legacy counsel until a certain milestone is reached or even until they are closed. These "carve-outs" are estimated for fees and the fixed fee of the primary firm is adjusted accordingly.

The second approach to manage the transition to a new configuration of external counsel is to have the primary firms immediately "oversee" the work and the matter budgets of legacy firms, receive and approve their invoices, and pay them from the fixed fee they are receiving. This creates a better balance of *incentives* for the company and for primary and local counsel to quickly reach a new equilibrium in legal services delivery, in legal fees and administration.

This latter approach has a beneficial side-effect. Individual members of law departments and business units form attachments to legacy counsel. Professional relationships, especially those which are effective, are difficult to disrupt. Some rank and file members of corporate law departments will passively resist changes to established legal services delivery arrangements. A managed transition prompts a dialogue for new expectations and introduces new players with a framework that is more business-like.

The General Counsel should insist on a clear transition plan with legacy firms. The plan should be fast-tracked in its execution, minimize duplication of fees, and minimize administrative time from lawyers and from others in the company to develop it and put it in place. The very best law firms should be tasked with proposing the details of transition plans and be evaluated on their success for doing so seamlessly.

About the Author

Richard G. Stock, M.A., FCG, CMC is the Managing Partner of [Catalyst Consulting](). The firm has been advising corporate and government law departments across North America and around the world since 1996. For law department management advice that works, Richard can be contacted at +1 (416) 367-4447 or at Richard.Stock@catalystlegal.com.

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