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BY RICHARD STOCK

LAW DEPARTMENTS

An Unsustainable Business Model

Corporate counsel are being increasingly bogged down by numerous individual requests. Adapting won't be easy



EARLIER THIS YEAR, the global consultancy Corporate Executive Board (CEB) reported that one of the most significant challenges facing law departments is the need to transform the skills and workflows of their legal teams. The implications are profound for both in-house counsel and their clients.

Over the past 20 years, corporate counsel have worked hard to establish their value to the company. In earlier days, this meant establishing a less expensive – typically 60 per cent less expensive – version of a commercial law firm. In-house counsel added value to the company with their expertise in regulatory matters and industry-specific knowledge and commercial work was in-sourced, while in most cases, litigation was referred to external counsel.

Over the past 10 years, though, corporate counsel have become more closely tied with their business units, giving them operational support and general advice. Fundamentally, this is a relationship-based business model for the law department, not unlike the “trusted advisor” law firm business model. And this, reports CEB, is unsustainable — for two reasons.

The first is the large number of individuals, typically middle managers, calling on the law department for support. Our studies on law department workflows and workloads show that, while a general counsel may deal with five to 10 corporate executives as well as the board, the rank and file

of the law department typically report 50 regular clients each. Of these clients, 80 per cent require less than 60 minutes of time per week. It is not possible for one lawyer to sustain 50 robust relationships.

This brings us to the CEB's second conclusion. Internal clients want resolution, not a relationship. Clients acknowledge that their lawyers are overworked, but they are not sympathetic — especially as turnaround times for their regular, non-strategic work continue to erode. Some law departments have resorted to escalation criteria for certain types of work, and have introduced multiple steps and checklists for them to follow. Clients want turnaround, not escalation.

Escape from the relentless and impatient demand for legal services requires making the bold decision to modify the law department workflows, skills and resources — a decision that will likely be resisted by inside counsel because it runs counter to their instincts and experience.

A detailed analysis of law department traffic patterns is the starting point. There are three essential components to this analysis for each lawyer and paralegal, as well as for the law department as a whole.

The first is an estimate of the types of tasks and activities and the number of hours required for each area of law. Most law departments will need to construct this profile since very few have opted for time-keeping systems. Nevertheless, consultation of closed files, meeting schedules and email activity for a three-month period will provide the necessary baseline. Invariably, the “general” and “advisory” categories will warrant additional review since they can often consume 30 per cent of law department resources.

The next part of the analysis is to determine the complexity and risk for each mat-

ter handled by the law department. Few departments have formal systems in place to track complexity of each matter, nor protocols or thresholds to define a “matter” and determine when a file should be opened. This makes later analysis difficult. One can rely on a fast-track substitute for a three-level complexity matrix: one to five hours worked for a routine file; six to 25 hours for a regular file; and more than 25 hours for a complex file. Our surveys show that 65 to 70 per cent of law department resources are assigned to “non-complex” files.

The third component of the analysis of “traffic patterns” requires an understanding of why clients consult the law departments in the first place, especially when three-quarters of middle managers report that the law department is difficult to deal with. Is this because procedures oblige a sign-off from legal on all commercial matters, because managers seek endorsement from legal, or because legal cannot resist correcting the English in all business documents? Interviewing 25 middle managers in operations, sales, procurement and projects will uncover the primary drivers for needing to involve legal.

Law department leadership should consider corporate and business unit priorities before they decide to maintain an “open-door policy.” Operational support work is quicksand for a law department. A program to shed 50 per cent of this demand by making clients self-sufficient is a good start. This might buy one year of relief — enough time to introduce client-specific technology, raise the level of lawyer proficiency in workflow design and practice management, and then restructure law department resources to manage the changes. ☛

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