



BY RICHARD STOCK

# The Rest of the World

How are legal services procured outside the Western world? Herewith, a case study

**A GREAT MANY** Canadian companies do business and have employees outside of North America and Europe, and it can be instructive to review the invoices of one company that is retaining external counsel for “commodity” or regular work in 50 countries. What follows is a case study of sorts around one such business.

This European company has the same requirements for local matters everywhere — whether for basic commercial work, the resolution of simple claims for damaged or lost goods, or the full spectrum of labour and employment issues, with tens of thousands of employees and contract workers around the world. Complex transactional files, financing and regulatory matters are managed well enough from corporate HQ, but the authority for local matters is highly decentralized.

Local counsel for this organization are retained from around the world — Belgium to Brazil, New York to New Delhi, Tel Aviv to Toronto. The template for the retainer letter has been developed by the corporate law department, but it is the company’s regional and local managers who refer the work to local firms.

Almost two-thirds of the 100 firms that were retained by the company billed on an hourly basis, but this arrangement is prevalent mostly with European and North American firms. While the billing rates are “normal” for all the jurisdictions concerned, terms of engagement did not stipulate specific rates for each timekeeper, or the criteria for raising the rates, or the applicability of local taxes, or the eligible disbursements. At best, the invoices reflected a patchwork of local arrangements.

An examination of the hourly invoices for 2015 revealed that firms in most non-

European jurisdictions struggle to clearly describe the work they have carried out and define the issues for the matters concerned. It did not help that many invoices were translated into English or drafted in English as a second language. The client concluded it needed to modernize and harmonize timekeeping, reporting and billing from its law firms.

Centralized infrastructure for billings and changes to operating protocols are likely of little interest to the company’s local representatives. But not making the

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right investments centrally prevents the company from conducting any serious analysis of the tens of thousands of hours of regular legal work from 50 of the firms in as many countries. While accounting systems can produce reports about how much is paid to each firm, they do not segregate legal fees from other expenses and taxes for each type of law. In short, data analysis hits a wall very quickly.

My tedious review of invoices did uncover the usual shortfalls: poor task delegation by the firms, the absence of statement of fees and hours to date for each matter, and settlement costs embedded in the monthly invoice. Only 10 per cent of arrangements with local counsel included a fee discount.

About one-third of arrangements with law firms were based on fixed monthly retainers, often developed by the company’s

local representatives. The scope of work covered was not detailed in the legal-services agreement and retainer. This deficiency makes it difficult to appreciate the conditions that justify supplementary billings beyond the retainer. Occasionally, the supplementary account is hourly, but usually it consists of a one-time fee with very little detail.

It should be appreciated that many local law firms outside North America and Europe have business models that are not highly leveraged with junior lawyers. Few will have the expertise of law clerks or paralegals. How then does the law department of a global company doing business in over 100 countries introduce best practices in retaining local counsel?

Every company wants to demonstrate value for money when retaining external counsel. This is easy enough with global firms for corporate and “bet the company” work. However, it is not apparent that investment in new systems and time to extract the reports and act on these are worth it for regular work in highly decentralized organizations. Yet progressive practice patterns, stable non-hourly pricing and semi-annual performance evaluations must be anchored in good data.

There are enough global and multi-regional law firms with proven ability to leverage their systems and infrastructure with local counsel — be they from their own local offices or from associated offices. Chief legal officers should reach out to their primary firms to coordinate and manage workflows, workloads, pricing, billing and reporting on their behalf. ♣

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