



BY RICHARD STOCK

# Budgeting Complex Legal Work

Client and firm should agree on the planning assumptions for each task before too many resources are expended

**VERY FEW LAWYERS** enjoy budgeting for complex legal matters, and this is equally true for inside counsel and partners in law firms. I recently had the opportunity to review 50 budgets from 20 law firms. Some were for commercial agreements, but most were for complex litigation. At the low end, the smallest files had 100 hours, while at the high end the largest matter exceeded 12,000 hours. Time frames ranged from five months to five years. A few firms had well-developed templates for budgeting complex matters in several specialties. Yet 80 per cent of the firms had no templates or standards for planning and budgeting matters. Relationship partners tended to improvise with general statements and relied on long emails.

It has been at least 15 years since detailed matter plans and budgets for complex work have been required by clients and done well by a few progressive firms.

Today, much of the work referred to external counsel is for litigation, since few law departments have the volume of matters and infrastructure to support complex files in multiple jurisdictions. It is often the case that a file is referred by a commercial lawyer serving as inside counsel with no experience in conducting litigation files personally. Few in-house counsel feel at ease analyzing and challenging the matter plans and estimates put forward by law firms.

Law firms may not eagerly offer detailed matter budgets to clients that do not ask for them. Instead, they may provide figures rounded to the nearest \$25,000 by phase of the matter, accompanied by an eloquent explanation of why each case is different and detailed estimates with probabilities are unreliable or impossible. Detailed matter budgets set out the hours for individual

fee earners by phase and task at least for pre-trial phases, if not for the duration of the matter. The client and the firm agree on the planning assumptions for each task and the percentage probability of the assumptions. This forces an up-front discussion and agreement with the client before too many resources are expended.

An 80-per-cent probability threshold is recommended for each task requiring no more than 100 hours. Activities with more than 100 hours should be broken down into smaller parcels to avoid rounding up.

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Companies and their business units want to plan their costs on an annual basis and for each matter to the end of the matter cycle. This suggests that law departments and their law firms need to up their game. Both should master legal project planning and budgets. Primary law firms should be asked to describe their training programs, methodologies and resources for project management. This description should reflect the firm's formal position rather than the preference of individual partners.

For the most part, it is sufficient to find the description of the matter and the planning assumptions in a memorandum accompanying a matter budget, as long as there is a clear correlation with phases and tasks. Firms should provide a breakdown of hours for partners, associates and paralegals, identified by name for each phase and

task. The client can then determine if the ratio of work delegated to associates and paralegals is appropriate. Our studies reveal that partners and associates could delegate an additional 20 per cent of their hours to a more junior member of the team without compromising efficiency and results.


There is evidence of sophisticated budgeting for class actions, coroners' inquests, trials, appeals, and all manner of litigation, complex labour disputes and arbitrations. Templates and code sets exist for mergers and acquisitions, commercial agreements,

intellectual property and general advisory work. Inside counsel can ask their primary firms or colleagues in other companies for sample templates and leading practices in matter budgeting.

Clients should encourage their law firms to budget for the most likely and not the worst-case scenario. This means that retainer agreements should provide for

milestones to review and revise matter plans and budgets.

At the very least, a new budget should be prepared if the original budget is to be exceeded by 10 per cent or more.

Companies — especially those with more than five in-house lawyers and with important volumes of work referred to external counsel — should consider designating one member of the law department to review and approve all complex matter budgets. Concentrating this responsibility with one or two individuals builds up expertise in the law department and pays dividends for the company. External counsel will eventually appreciate this investment of time and effort. 

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