



BY RICHARD STOCK

# Seven Habits for Success

Getting better value from external counsel can be achieved through this seven-step plan

**AS THE INCOMING** CEO of an established company, what would you do with a division or department that has very little data aside from total fees, number of items purchased for the past two years, their variety and complexity, and the relative effectiveness of each item? What would you do with a business unit that was unable to forecast its requirements for external professional services for the next three years? And what would you do if the company failed to leverage its purchasing power by not relying on strategic sourcing practices?

These are not big concerns in sectors such as banking, insurance, telecom, big pharma and global manufacturing companies, because they continue to refine their practices for retaining external counsel. Still, the aftertaste of cost-reduction programs for law-firm legal fees is not pleasant. Legal procurement professionals often encounter passive resistance, even when invited to team up with the law department to introduce a new business model for retaining legal counsel.

The economies of the US, Canada and Australia are doing well enough, but some would observe that annual increases of five or six per cent are not sustainable in many markets. And while law firms will not be enthusiastic about changes to the *status quo* of arrangements with their primary clients, most will be receptive to initiatives that deepen relationships and increase market share. The most progressive firms seek out clients that are prepared to invest the time and money to create new ways to package, source, deliver and price legal services.

For law department leadership charged with reducing legal spend, the answer cannot be found in asking for bigger discounts, or mounting a procurement process that

targets a race to the bottom of the barrel for better hourly rates. A new business model for relationships with external counsel requires a complete rethink of traditional arrangements. Companies and their legal leadership are at a net disadvantage unless they get a few things right.

First, two years' worth of detailed data about number and complexity of matters should be obtained from each law firm. The data should include the number of hours for each experience level in the firm. Few companies have this information available,

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even though improving law firm practice patterns represents 50 per cent of the savings available after discounts are exhausted.

Second, the company should forecast its requirements for legal services twinned with measures to improve productivity in legal services' delivery and administration. The forecast should be quantified and converted into a scope of work that forms part of a request for proposals for legal services.

Third, the company should consider the next generation of "convergence" in the number of primary, specialist and regional law firms it retains. There are arrangements whereby firms are retained for legal work and to manage workflows, quality and pricing of a network of secondary firms for entire regions on behalf of the company. Increasing market share and making longer-term commitments for work to still few-


er firms allows primary firms to migrate to new pricing models and to innovate with service delivery.

Fourth, the company must acquire expertise so that it can evaluate the cost-effectiveness of alternative fee arrangements (AFAs). This is particularly important when applying AFAs to non-recurrent and complex legal work as well as to large portfolios of work. Both legal and procurement professionals should be at the top of their game in respect to law-firm economics and avoid variations of fees based on hours.

Fifth, getting the non-hourly price and conditions right for individual matters is a companion piece to a new business model with external counsel. Inside counsel must understand optimal staffing patterns as well as the related planning assumptions and their probabilities when budgeting individual matters in the context of a multi-year AFA program.

Sixth, the company should evaluate the performance of its primary counsel every six months. Criteria and process should be set out in the terms of engagement, even if the firm is sole-sourced, and even if fees are not tied to performance. The usual key performance indicators include results, service, innovation and cost management.

Finally, there should be a formal commitment by the general counsel to a detailed, written project plan to implement each of the six elements above. Preparation and an execution strategy that is properly resourced will improve the prospect of success every time.

These are the seven habits to practise for optimal results. 

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