LAW DEPARTMENTS

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Too Little, Too Late?

Law departments can still take charge of legal services management and pricing to get better value from their firms

A RECENT DEEP dive into current practices for legal services delivery, the use of legal project management, multi-jurisdictional coverage, and pricing revealed no surprises. Corporate law departments do not process information or analyze the data they have available to leverage law firm capabilities. As a result, they are unable to define the value proposition for legal services expected of their law firms. And securing financial predictability in the total cost of legal services for the next three years is also out of reach for most companies.

In late 2017, two companies – one headquartered in Canada and one in the UK — were seeking detailed analyses of historical patterns for service delivery in order to better understand the possibilities for new arrangements with their primary law firms. Catalyst Consulting was able to review information for 195 law firms from the databases provided by the two clients, and then conducted in-depth conversations with 33 of these law firms, in Canada, the US and the UK.

The first observation resulting from our analyses is that large, decentralized law departments are much less thorough than they should be in conducting evaluations of their primary law firms; there was little evidence of formal performance indicators, for example. While general counsel do meet their firms at least once a year to discuss files, trends and legal spend, there is rarely a correlation between law firm performance and legal fees. The primary driver in working with law firms is still relationships with key partners.

A second observation relates to competence and coverage. Companies preferring to reduce the number of law firm relationships while still securing local counsel for regional and global business requirements are looking to firms with extensive footprints in key markets. India, China and Brazil come to mind, as do Texas and Louisiana for the energy business. Global firms have invested heavily in building their regional offices and networks of local counsel. Yet even these law firms, could do more to introduce firm-wide standards for service delivery, quality assurance and cost predictability.

A third aspect of this research was the use of matter plans and budgets. Firms were asked to provide their best examples of matter plans and budgets for both transactional work and litigation. The quality and usefulness of the templates varied enormously, but very few of them incorporated plans and budgets by phase and task, planning assumptions, a percentage certainty by phase and by task, and distribution of hours by fee earner for the work to be done. However, legal project management and budgets are a pre-requisite to non-hourly fee arrangements. Inside counsel would benefit greatly from training in scoping and pricing of legal matters with the use of legal project management and budgeting.

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A fourth observation concerns legal fees. While most law departments have fixed fees and caps for certain types of matters, or for a phase of a matter, our discussions with the 33 firms confirmed that traditional practices dominate in pricing legal services. At least 85 per cent of legal work is still billed on an hourly basis, and law firms have no incentive to control the scope of work unless there is an agreed cap for the matter. Few companies have historical data with which to better unbundle and analyze their historical legal spend, and are unskilled at estimating the scope of work for multiple jurisdictions and several years into the future. The result is a default to retail hourly pricing and the usual discounts for volume. There are notable exceptions of companies creating critical masses of work and committing it to a handful of preferred firms.

The last finding sheds light on the future of pricing legal services. One company was able to write the specifications for three years of patent work covering filings and litigation in six major markets. Four firms were able to quote an "all-in" fixed fee, including filing fees, disbursements, and fees paid to local counsel over a three-year period. And law departments with decades-old relationships with preferred firms have been able to set aside 15 per cent of fixed fees for innovation, performance, and investment in technology and specialized management reporting. With rate schedules increasing an average of four per cent annually in many metropolitan markets, some law departments are securing a much better return on their investment by concentrating work.

Law department leadership must work on all fronts if it is to introduce leading practices in legal services management and pricing. Too little, too late is a recipe for mediocrity.

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