

MOVING BEYOND RELATIONSHIPS FOR SMARTER, MORE STRATEGIC ENGAGEMENT DECISIONS

Good data is only effective when applied effectively. So how are you using data in your decision-making processes?

The modern legal department no longer exists merely for the provision of legal advice. A critical component of an organisation's internal and external mechanics, it is increasingly relied upon to:

- Identify, manage and monitor risk.
- Deliver efficient, effective and reliable legal advice designed to maximise organisational and shareholder value.
- Develop and foster an agile, responsive culture that encourages innovation and ongoing improvement.

Amidst this change in focus also arises an immense amount of environmental change.

Changes in the law, projects spanning multiple jurisdictions and increasing pressure to streamline and digitise processes have all combined to create a markedly different working environment from that of decades past.

However, as legal departments accept and even embrace the need for change, one element stubbornly resists transformation.

Despite the growing availability of digital technology designed to assist with relationship management and engagement processes, the hiring of outside counsel is still overwhelmingly influenced by pre-existing personal and professional relationships.

According to a recent Globality and The Lawyer Research Service survey of over 300 General Counsel and other senior members of in-house teams across Europe, North America and the Asia-Pacific, only thirty-two per cent reported instructing firms beyond their existing network. The remaining sixty-eight per cent sourced providers from pre-existing relationships or referrals from their existing network or existing outside counsel.

Interestingly, when asked which factors influence those engagement decisions, sector breadth and expertise were cited as being the most important. Therefore, why is this not reflected in engagement decisions?

One may argue personal relationships trump all. However, with the plethora of data available at our fingertips, this seems like far too easy an answer.

The difficulty, then, lies not in moving away from a relationship-based decision-making model. Rather, the challenge is in identifying and harnessing the data required to make more strategic, results-based engagement decisions.

Data collection by category

So, what kinds of data should in-house teams be collecting to positively influence their engagement decisions?

Data collection activities can be split into four distinct categories: matters, personnel, finances and performance.

By collecting data on each of these core components, in-house teams can gather a body of evidence that encompasses different types of matters and engagements. Importantly, they'll also have access to a macro and

micro view of the financial matters that can either make or break the value provided by the legal department to the broader organisation.

Consequently, it will become significantly easier for legal teams to develop an engagement strategy that relies on historical and contemporary data, as well as existing relationships.

With the two working in concert, legal departments can provide the service that underlies their existence, while contributing to the greater financial objectives of the organisation as a whole.

Matters

Before the legal department can critically assess their engagement processes, they must have a detailed overview of the matters they are responsible for.

Types of matters

The first logical step is to compile a list of all the matters that the legal team is responsible for (whether they're completed in-house or externally) and categorise them by type.

Once distinct categories have been established, the next step is to examine each category, separating the matters dealt with in-house from those dealt with externally. It may be useful to begin with a broad overview, e.g. matters over the last 12 months, and then drill down into more distinct periods like quarters or months, or both.

It is at this point that helpful patterns may begin to emerge.

Were specific types of matters kept in-house during specific times of the year, can external engagements be connected to staff movements (in-house or externally) or are certain types of matters always dealt with in-house or externally? Which firms are continually dealing with specific types of matters?

Exploring the matter type further, there may be certain matters where different legal service providers are engaged for certain stages.

For example, legal process outsourcing providers may be engaged for due diligence, some stages kept in-house and some stages briefed to external counsel. In-house legal teams are quickly understanding that there are benefits in managing legal matters this way, even large complex ones. However, engagement decisions ultimately come down to the internal resources available at the time.

This information will help in-house teams uncover the factors that influence engagements, providing valuable preliminary food for thought.

Complexity

Once the split of matters dealt with in-house versus externally has been established and categorised, consider the associated complexity.

Are more complicated matters always farmed out to external counsel or are they kept in-house? Is this true across the board or is it restricted to certain categories? Does this information highlight expertise held in-house or within specific law firms (or even specific external counsel)?

The primary benefit of this data is that it allows legal teams to identify and

define their areas of expertise. As the value add of the legal department is fully realised, the passage of matters to external counsel will slow, external legal spend will reduce and legal's resources can be efficiently and fully exploited.

An additional benefit is the creation of a 'go-to' list of specialist practitioners, firms and alternative service providers that may, in turn, build a firm foundation for the creation of legal panels down the track.

Length of engagement

The final step is to consider the length of each engagement. Do external firms have management of matters from beginning to end? If so, when and for which kinds of matters? Is external counsel more commonly engaged for matters lasting a short or long period of time?

This information adds another level to the engagement story and will assist teams to compile a spend/time analysis that can be used to justify the decision to engage (or not engage) external counsel.

Personnel

Once matters have been categorised and split into in-house versus external, it's time to consider personnel-related matters.

Who, what and when

Understanding who in the organisation is briefing which law firm for which type of matter is extremely valuable, particularly in larger organisations operating across diverse geographical locations. This data not only leads to new insights and opportunities for process improvement but promotes greater transparency and strategic alignment. There may even be opportunities to streamline future procurement and engagement decisions that can deliver potentially lucrative savings.

Making sense of this data involves calculating how many personnel were involved in each matter (both in-house and external), along with the types of personnel involved (e.g. paralegals versus associates versus partners). Then, layer in how much time each level of personnel spent on the matter and on which types of engagements, e.g. bespoke panel, existing panel or single engagement.

As with the matters observation, this exercise will uncover patterns over time and highlight engagement practices that require more detailed consideration. It also adds another layer to the spend/time equation.

Finances

Although engagement decisions should never be made on price alone, financial statistics form an important part of the story. Working on a matter by matter basis, collate the following information:

- Original matter budget.
- End of matter costs.
- Anticipated costs and budget changes throughout the matter.
- Professional fees versus disbursements.
- Spend by month, year and law firm.
- Work in progress.

Again, for a critical analysis of engagement processes, it is important to collate the data for matters dealt with in-house, as well as externally. Without this comparison, it will be impossible to uncover the patterns that underlie engagement decisions and determine whether relationships have exerted an undue influence on who was engaged, when and for which matters.

Performance

The final factor to be considered is performance. By gathering objective and subjective data on partner and law firm performance, in-house teams can identify benchmarks for future engagements and set the stage for continuous improvement initiatives.

With that in mind, teams should be looking for the following data/information:

- Commerciality of advice received.
- Firm and partner responsiveness across a range of matters and situations.

- Evidence of consistent and effective project management processes.
- Proactive communication of scope changes/amendments.
- Willingness to move away from hourly billing and explore alternative billing arrangements.
- Firms or partners consistently exceeding fee estimates.

If engagement practices are to move away from a relationship-based model, ongoing performance management is an absolute must. Practical, actionable feedback should be shared with legal service providers on a regular basis, paving the way for open, honest discussions about service delivery and the strengthening of ongoing working relationships.

Making sense of the data

With large amounts of data on hand, it's not uncommon to become overwhelmed. To ensure the data collection and analysis process is as efficient and effective as possible, it is imperative that manual processes are minimised or eliminated altogether. The data collected must also be accurate, securely stored and easily accessed.

This is where technology steps in.

Thanks to the growth of legal technology, in-house teams no longer have to rely on outdated data collection programs or applications designed for industries outside legal. The needs of the legal department are unique and, although bespoke systems are not a pre-requisite for successful data collection and analysis, programs built specifically for the legal team are.

Thankfully, the number of cost effective, user friendly tools built specifically for the legal department is growing all the time. However, there is no such thing as a 'one size fits all' solution.

Legal teams should clearly define their needs (and prioritise them in order of importance) before implementing a solution. They should also be prepared to undertake a detailed needs analysis before embarking on their digital transformation journey.

Adopting new technologies and processes requires careful change management, not just from the time, budget and technical perspectives, but from the human perspective as well.

With this in mind, involvement from internal stakeholders should also be encouraged. This not only ensures the needs of every user is accommodated, but helps foster and strengthen a department, if not organisation-wide approach to innovation. Sustained leadership support from management is also mandatory for a successful change process and, for the full benefits to be realised, the General Counsel or equivalent must also actively demonstrate their commitment.

All in all, with the advent of new technology designed to simplify and streamline a host of sometimes laborious legal processes, it's an exciting time to be exploring change. With the right mindset and useful, actionable data on hand, in-house teams can seize the initiative and bring decades old processes into a new light. **a**



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