



Rising to the challenge

As the in-house function grows in prominence, so too do the complexities that face in-house counsel in the performance of their role. Reflecting on the Australian legal scene, Dr Benny Tabalujan of consultancy *IKD* shares why lawyers adept at handling challenges will thrive in this environment.

The significance of in-house counsel is increasing in two directions. On one hand, in-house counsel are internally having more impact within their businesses than ever before. In a 2010 report published by UK law firm Eversheds, 74 percent of general counsel indicated they “now occupied a far more senior commercial advisory role in their companies compared to before the recession.” The report continues, “General Counsel are more likely to be strategists and business partners now than ever before. Just over half (55 percent) said they had assumed more responsibility for corporate governance since the credit crisis and many have taken on more functions and new responsibilities in business.”¹

On the other hand, from an external perspective in-house counsel are also having a major impact on how law firms do business, especially on the sensitive topic of legal fees. As Richard Susskind, author of *The End of Lawyers? Rethinking the Nature of Legal Services*, puts it, “In-house lawyers are increasingly discerning, knowledgeable, and demanding customers,

who are becoming ever more passionate about securing better service at lower costs. I claim that they are destined to play a major role in urging change within law firms and so in the evolution of the legal profession. Their power and responsibility is massive.”²

With this increased prominence comes greater complexity in their roles, as reflected in recent trends in the Australian legal counsel scene. Some trends may already be experienced by corporate counsel in Asia; others may be a harbinger of things to come.

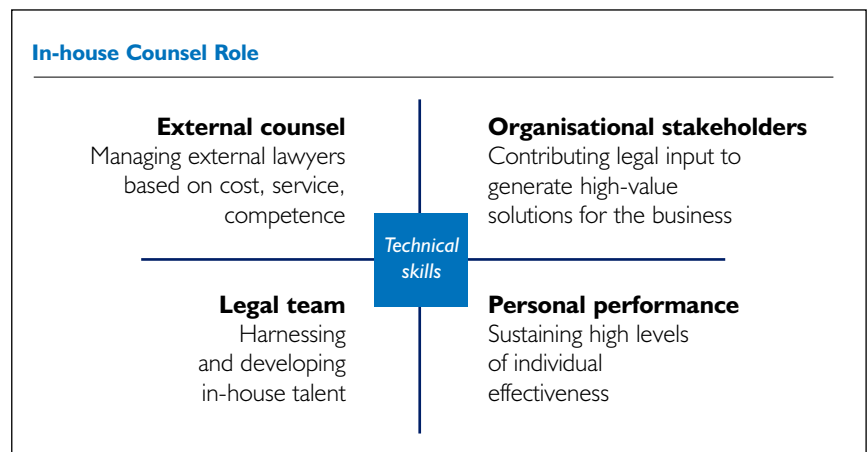
Technical skills: are they enough?

One noticeable trend among in-house counsel is the growing realisation that

their work involves more than just technical legal skills. This is partly due to in-house counsel being increasingly viewed as key partners to the business. In some organisations, their input even helps to shape the strategic direction of a business.

For this reason, while expertise in black-letter law, drafting and negotiation skills are still at the core of in-house counsel work, high-performing general counsel will also possess well-honed communication, management, leadership and influencing skills, as shown in the diagram below.

Many in-house counsel will have had a similar experience of starting their in-house careers spending most



of their time applying black-letter law skills, a scenario that is reversed by the time they become general counsel or sit on a management team. As a Korn/Ferry report elaborates, by this stage, “Leadership issues rather than technical work command a significant portion of a general counsel’s time.”³ Often, at this level, it is finely-tuned leadership and management skills that are critical for delivering outstanding performance.

Unfortunately, these soft skills aren’t taught in law school. A traditional law school doesn’t expose students to basic communication theory, influencing maps or business strategy. On these topics, in-house counsel are often self-taught. Others learn from customised management and leadership programs – like the Corporate Counsel Certificate in Management (CCCM) pioneered by the Singapore Corporate Counsel Association (SCCA) in 2009.⁴ What is clear is that many in-house counsel now realise they need a step-by-step personal development plan to acquire these skills if their careers are to progress forward.⁵

Commerciality – the art of being business-savvy

A second, related trend is the increasing emphasis on corporate counsel to be business-savvy. We call this “commerciality”. It is the notion that in-house lawyers must be commercially-astute, be able to speak and understand business jargon, and be aware of the business environment. As one experienced counsel explains, “It’s about seeing the law through business eyes rather than seeing the business through legal eyes.”

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different things to different people. Some internal clients think commerciality means saying “yes” to whatever they want. They don’t adequately consider legal risk.

Managing this tension between pursuing commercial ends and reducing legal risk is one of the more difficult tasks faced by in-house counsel. With an increasingly competitive business environment, commerciality is likely to remain a continuing challenge for the in-house counsel fraternity.

External legal fees – decline of hourly billing?

A third major trend affecting in-house legal teams in Australia revolves around their relationships with law firms. Specifically, in-house counsel are pushing for better bargains on fees from law firms, a stance that gained particular momentum during the GFC.

In Australia, one example was the 2009 fixed-fee deal between Telstra – the country’s largest telco (with an in-house team of around 120 lawyers) – and Sydney-based Gilbert + Tobin,

a respected mid-sized firm. Under the deal, Telstra adopted a retainer agreement with the firm that covers a substantial amount of work in exchange for the firm taking on the risk that it may have to undertake more work than budgeted for. The firm reportedly came up with the proposal after Will Irving, Telstra’s highly regarded group general counsel, went out to tender, indicating to both panel and prospective firms that he was seeking innovative fee arrangements. Asked recently to comment on the progress of these arrangements, Irving responded, “Not only have we had certainty and aligned incentives with G+T, but our other law firms have become much more focused on efficiency too.”

The *IKD Roundtable Report on Legal Billing* released in November 2009 confirms this trend towards alternative fee arrangements.⁶ Whilst it’s premature to announce the death of hourly billing, it’s clear that more Australian general counsel (especially those with significant amounts of legal spend) are pushing for alternative fee

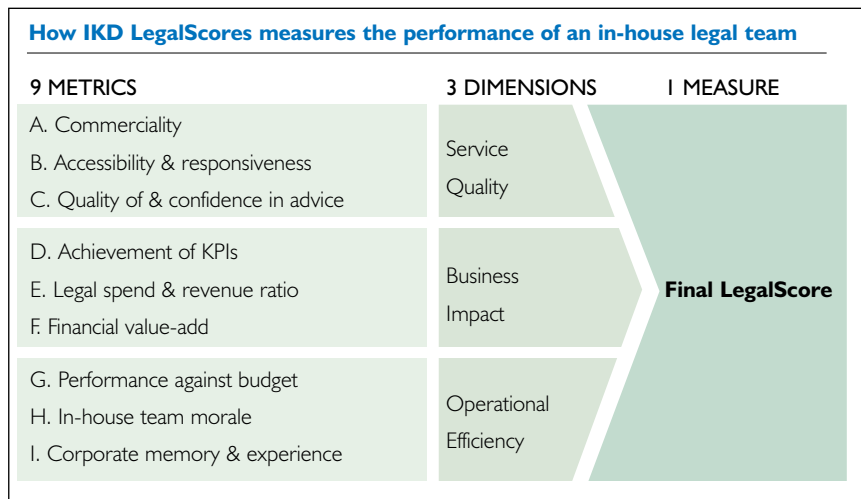
arrangements. The key driver for this push is budgetary certainty – as well as lower legal fees. For some general counsel, around 40 percent of their external legal spend is now on fixed-fee arrangements. This percentage is likely to rise in future.

Metrics – the pressure to measure

A final trend affecting in-house counsel work is the pressure to demonstrate value. Increasingly, everyone from CEOs and CFOs down want to know how their in-house legal teams are performing. Is the organisation spending too much on legal? What value-add does legal contribute? What is their business impact? What would it cost if the legal function is outsourced to external lawyers?

Unlike sales teams which can readily generate revenue data, legal teams often find it problematic to quantify what they produce. Yet the demand for objective, quantifiable and robust metrics to measure legal team performance is rising.

There are some *ad hoc* metrics in common use. In the United States, an oft-cited rule of thumb is to have one lawyer for every US\$200 million of revenue (so, a business with US\$1 billion in sales would be expected to



have around five lawyers in-house). A related metric is the ratio of total legal spend (i.e. the aggregate of internal legal spend and external legal spend) over revenue. Other legal teams use in-depth client surveys to gauge client satisfaction levels.

In 2008, IKD launched IKD LegalScores, a tool specifically designed for in-house legal teams. Using a proprietary set of nine separate metrics, IKD LegalScores measures performance in three dimensions: service quality, business impact and operational efficiency. LegalScores has been used by a number of Australian legal teams – in sectors as diverse as banking and manufacturing – to help measure and improve their performance.

At a broader level, in 2008

ACLA (Australian Corporate Counsel Association) and CLANZ (Corporate Lawyers Association of New Zealand) collaborated to produce their inaugural *Legal Department Benchmarking Report*.⁷ Packed with data from 120 in-house legal teams from Australia and New Zealand, the report provides detailed statistical analysis of key variables of legal teams. Underscoring this interest in metrics, ACLA and CLANZ are now collaborating on their second benchmarking report, expected to be released by August 2010.

In summary, these trends reflect the fact that in-house counsel are increasingly becoming more, not less, important to their organisations. With this comes additional prestige, influence and authority – not to mention accountability. For lawyers adept at handling greater complexity and challenge, there’s no better time to be an in-house counsel!

ENDNOTES

- 1 Eversheds, *Law Firm of the 21st Century: The Clients’ Revolution* (London: Eversheds, 2010).
- 2 Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford: Oxford University Press, 2008).
- 3 Nancie Lataille & Gabriella Kilby, “The Legal Function Transformed: Best Practices of Today’s General Counsel” (Los Angeles: Korn/Ferry Institute, 2008).
- 4 The CCCM is a collaboration between SCCA and IKD. The next CCCM is scheduled to be held in Singapore from 31 August – 3 September 2010.
- 5 See: Jil Toovey, “Professional Development for In-house Counsel: What’s Next?” in Benny S Tabalujan (ed), *Leadership and Management Challenges of In-house Legal Counsel* (Sydney: LexisNexis, 2008).
- 6 Benny Tabalujan & Andrew Godwin, *IKD Roundtable Report on Legal Billing* (Melbourne: IKD, 2009).
- 7 ACLA & CLANZ, *Legal Department Benchmarking Report 2008* (Wellington: Team Factors)

IKD is a Melbourne-based niche consultancy which works extensively with in-house legal teams. Dr Benny Tabalujan is a director of IKD and is also an adjunct associate professor with the Melbourne Law School and Melbourne Business School teaching in their LLM and MBA programs.

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