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Lin-Shi
ACC Hong Kong President

At the time of writing, we are preparing for our Annual General Meeting. This year’s agenda includes electing five directors and proposals to amend our Articles of Association. When HKCCA was first incorporated, candidates for directors were solicited by word of mouth, mostly by the existing directors. A few years ago, we started publicly soliciting interest from all members and arranged to have them meet with the board. This year, to better align with other ACC Chapters, we formed a Nominations Committee, which met with each of the director candidates and made a recommendation to the Board.

The Nominations Committee is a subcommittee of the Board comprised of the current President, the Immediate past President and the President of ACC, or her delegate. Since our immediate past President, Jasmine Karimi, is in Singapore, Chi Wai Pang and Deon Wong ACC representative constituted the Nominations Committee. We met each of the candidates, including incumbent directors seeking re-election, to discuss their areas of focus for the organisation and how ACC can better address members’ needs.

The ACC Hong Kong board consists entirely of volunteers. I am devoting this report to highlighting the important work of our directors. Of the five vacancies, four incumbent directors, Gordon Chan, Grace Chan, Beverly Chau and Davyd Wong decided to stand for re-election. In addition to co-heading the Real Estate Industry Group with David Lamb, Gordon also looks after ACC Hong Kong’s IT needs. Gordon was instrumental in updating the look and feel of our website and coordinating with ACC to prepare for our launch as ACC Hong Kong.

One of our most active industry groups is Technology, Media and Telecommunications (TMT) which is headed by Grace and Beverly. They have done an extraordinary job of hosting a number of CPD seminars and networking mixers. With so much interest from members in this sector, they are looking to organise a half day conference in the near future.

Our newest director, Davyd was appointed when Michelle Wei retired earlier this year. Davyd was well known for his dedication to pro-bono, forming and co-chairing our pro-bono subcommittee with Sharyn Ch’ang, one of our Vice Presidents. The pro-bono subcommittee is in the process of preparing a guide for in-house counsel on pro-bono work. This guide, a first for Hong Kong, will facilitate the development of more pro-bono opportunities and partnerships, and help nurture a pro-bono culture within our in-house community.

As featured in this issue, on March 27, the pro-bono subcommittee also held a pro bono stakeholders summit and dinner that brought together in-house counsel, local regulatory bodies, NGOs, solicitors and barristers to discuss common priorities and future cooperation in improving access to justice in Hong Kong. Attended by over twenty representatives, it was the first time such a multi-party roundtable had taken place and proved to be a unique opportunity for attendees to better understand the various approaches taken by different stakeholders. Davyd and Sharyn are drafting a full report that will consolidate the outcomes and further actions to be taken as a result of the summit and to inform the development of the guide.

Doug Silin, who has served two terms as director, decided to retire this year. I want to thank Doug for initiating the mentorship program with Hong Kong law schools to match law students with in-house counsel. Doug also organised a panel discussion of ‘life as an in-house lawyer’ at the Chinese University of Hong Kong. I hope that although Doug is no longer on the board, he will continue to develop the relationships he has built with the law schools and organise events for ACC Hong Kong.

By the time of publication, we will have a new board with at least one new director. The nominations committee was very impressed with the enthusiasm of the candidates and their commitment to raise the profile of ACC Hong Kong. We thank all applicants for their interest and welcome the new board members.

Lastly, I hope that the proposals for the amendments to the Articles of Associations have also passed. The amendments are to address succession planning and bring more stability to the operations of ACC Hong Kong. Under the proposed amendments, we are lengthening the term of directorship to three years, shifting to a staggered board where one-third of the board (or five directors) will be elected each year. The five directors elected this year will be serving a three-year term. Next year, ten directors will be up for election, but five of them will resign the following year (2020) to achieve the staggered board. By limiting new directors annually to only a third of the board, we hope to provide more continuity and at the same time make room for fresh ideas from new directors. As always, members are welcome to join and contribute as part of a subcommittee and we hope this will increase engagement and the quality of our programming.
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en years ago, Jeff Zucker, then head of NBC Universal, warned about the profitability challenge faced by the media business, having to trade ‘analog dollars for digital pennies.’

Today, as new technology start-ups disrupt old ways of working, businesses in every industry face the challenge of making sure that that their traditional revenue models can fend off such new market disruptors. Every company needs to figure out how it can be better, faster or cheaper, or it will risk being overtaken by new competitors. Working in such a business climate, it would be the rare legal department that hasn’t been asked to justify their existence as a cost centre.

Against this backdrop, many of us in leadership roles within in-house legal departments will need to figure out how to optimise our work using technology enablers and how to demonstrate the value that our departments add to our organisations.

With the mission of doing more with less in mind, many of you perhaps would have investigated the bewildering landscape of LegalTech enablers out there, whether it be AI tools to give you faster insights into your contracts, automation tools to increase your speed to closure on document reviews, workflow management systems to add transparency into the legal handling process or e-discovery tools for handling disputes. Whatever your particular pain point, there is probably a LegalTech solution out there in the market for you.

What I’ve observed though is that many of my cohort are waiting for the dust to settle on the winning technology before making any investment into this area. Few are early adopters, particularly given the challenges of obtaining a budget in general. The ones who are talking about their use of LegalTech solutions tend to be the law firms, in pitches designed to display their tech savviness and, by subtle association, their expertise in this field.

2018 will probably be known as the year when the LegalTech industry in Singapore came to prominence, driven by the launch of the Future Innovation Programme, spearheaded by the Singapore Academy of Law as well as the inaugural TechLaw Festival in early April. Clearly, if you are not already thinking about using technology to optimise how you work in-house, you will do well to start including it on your agenda.

For those in legal departments who are early adopters of LegalTech solutions, they would be finding that more and more of their time is being occupied with managing IT projects and initiatives to reimagine how to deliver in-house legal support to their company. This is a sea change from the usual comfort zone of parsing documents and drafting legal advice for traditionally-trained lawyers.

Strategic thinking is now a prized skillset in running an effective and efficient legal department. In-house legal leaders need to grow their business management skills—how to make a business case for more budget, how to project manage global initiatives, how to motivate their teams to accept a new way of doing things—as these are critical for their long-term success. Whether you are a sole counsel or whether you are running a regional department, developing a long-term vision for how you deliver your legal services to your business stakeholders and obtaining their support for a roadmap to get your vision realised, will make a big difference to whether you are seen as a cost contributor or a value contributor to the business.

Operating a legal department the traditional way will become harder, without dedicated people onboard to help you figure out and run the operational bits efficiently, leaving you and your lawyers freed up to focus on the traditional advisory work of the business. It is therefore not surprising to find Legal Operations teams being set up in more companies and that they are often staffed by non-lawyers with skillsets that can range from business, communications, finance or technology.

For traditionally-trained lawyers, it is a truly exciting time to be a corporate counsel as the opportunities to learn new skills and to grow in new directions have never been greater. Good luck with your in-house journey!
**A DAY IN THE LIFE**

**ANN STUBBINGS**

Group General Counsel and Company Secretary
Orora Limited

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**5 am or 6 am**

On gym days, I am up at 5am (way too early) or 6am on other days, and each morning I walk our two Labradors, whatever the weather. Early starts also allow me to check in on overnight emails, news alerts or calls to our North American businesses and, most importantly, to drink my first coffee of the day.

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**7.30 am**

After squeezing in normal household activities, I travel to work at our head office in suburban Melbourne. As my family is now beyond school years, I try to avoid the chaos of school traffic. Travel time allows me to make work or family calls. I call one of our two US lawyers to discuss some litigation we have on foot in the US that will involve searching old email records—we resolve the best way to undertake this task.

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**8 am**

Any time after 8am, depending on traffic, the first priority when I get to the office is another coffee, then I deal with quick emails before completing a final review of the pre-read for a 2-hour Group Executive meeting.

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**10.30 am**

As the Company Secretary, I follow up on actions arising out of our recent board tour to the US, finalise the minutes of the meetings and start preparation for our next round of board and board committee meetings. This includes drafting the agendas and sending them to the Chairman and Committee Chairs for approval.

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**11.30 am**

My next meeting is with my Co-Sec para-legal to review the year end reporting timetable, including preparation for the annual general meeting and the annual report. We also start planning the content for the annual report and the first draft of the notice of the annual general meeting. As we are a lean team, we have to plan well ahead to allow for interruptions.

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**12 pm**

Just as I am about to start focussing on the final review of material for a customer and investor innovation expo the business is holding the following week, I receive a phone call from a US colleague about a contractual provision in an acquisition deal that requires an urgent response. We work through the answer on the phone. I complete the review of the innovation expo content and then take a call from one of my sons to discuss the terms of a contract he has been given for a new role.

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**1 pm**

This is my regular catch up with the Sustainability team, which, pleasingly, has recently moved to report to me. We review the sustainability material for the innovation expo and discuss the work we are doing on our sustainability strategy. I go to a local café to grab lunch and eat it...
in my office while scanning the news. Missing lunch is fraught with danger as my team has been known to succumb to the 3pm chocolate fix—a poor substitute for lunch.

2 pm

I interact regularly with the lawyers on my team throughout the day, which is not difficult given our small numbers. This involves discussing matters, resource planning and deliberating on legal or governance topics for our next board or exec team legal report. In a catch up with one of the Australian lawyers, we discuss the status of an employment investigation, some IP matters and how we are going to continue streamlining our legal processes. The team has been on an innovation journey over the last year, implementing matter and document management systems to improve the way we work. The team has identified further initiatives to enhance our service to the business, so our discussion centres on how we will progress this.

3 pm

I attend a meeting with the CEO and CFO to discuss the key terms of a significant contract prior to execution. We also take the opportunity to discuss plans for a board tour to one of our key Australian sites later this year.

4 pm

I now have some time in my office—I ask the team to update the status of their key matters in our matter management system so I can produce the key matters report for my regular meeting with the CEO the following week. Several emails arrive from our head of safety on recent ‘near misses’ and actions taken as a result. As a manufacturer, safety is a high priority, so I respond immediately with my comments. After reviewing external advice on a potential dispute and a discussion with our group head of procurement about a contract, text messages start arriving about what’s for dinner, who will feed the dogs and a weather forecast update from my skipper for our sailing race on Saturday. I am a mentor to several women at Orora and one of them pops into my office for a chat.

6 pm

I try to leave the office any time from 6pm onwards. I check in with my parents and my husband on the way home. My husband is a barrister and, while we usually discuss ‘normal’ topics, we have been known to argue over dinner about in-house counsel’s right to claim legal privilege! After a family dinner and another dog walk, I try to catch up on work and the schedule for the next day. We then have a call with our daughter in London as she walks to work—a lovely way to end the day.

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PERSPECTIVES

CHRISTOPHER BUAY

Christopher Buay
Currently Regional Counsel and business partner for the Johnson Controls, Buildings division in APAC (ex-China), Christopher works closely with country counsels in Asia and was previously also the Litigation Counsel for Asia. He was admitted to the Singapore Bar in 2002 (non-practicing) and earlier this year, obtained the ‘In-house Counsel Certified (ICC)’ qualification from the ACC Certification Institute.

Christopher is a current member of the ACC Singapore Executive Committee.

In-house law departments exist to support the business. We must never forget that. In addition to performing our role as the ‘guardian and conscience of the company’, we should contribute towards the company’s accountability to its customers, shareholders and employees. Over the past few years, I have observed and participated in numerous exercises to improve law department management in Asian and US companies, with the aim of aligning the law department closer to the business.

This is what I have come across:

1. Create a heat-map of the business the law department supports. Find out the revenue and profit numbers of the markets the business operates in. How many employees does each entity have? How many contracts were entered into each year? What are the major categories of contracts and average contract amounts? How many of these have unlimited liabilities and other onerous terms?

2. Draw up a footprint of the law department. Are the most important markets adequately supported with in-country counsel or contracts managers? Are the contracts managers accountable only to the local business and if so, should they be brought into the legal department? Can we assign the more routine or specialist work to external parties or to other regional legal with the capacity to assist (e.g. English language contracts from common law jurisdictions in Asia being handled by a UK or Australia-based team).

3. Use technology at the right level. I am not referring to fancy software which uses artificial intelligence to review contracts, at least not yet. Instead, contract templates can be uploaded to a Sharepoint site and shared with the business. Separately, contract in-take software is particularly useful for large companies operating in multiple jurisdictions. Such a tool allows the business to upload their request, along with all supporting documents, which then directs the request to the responsible counsel. Even when that counsel is away, such a request will then be automatically routed to the covering counsel. To the business, this simplifies matters and improves service. Such a portal allows for more accurate tracking of reviews, turn-around times and collection of contracts data. In turn, those numbers can be used by the legal department to justify or augment resourcing needs. It is up to the legal department to decide to limit the types of contracts that can be sent through the on-line portal. This is where the data collection exercise referred to earlier is relevant in determining if it is necessary to require contracts below a particular amount be handled by the sales team, albeit with the aid of contract management playbooks.

4. Deliver on quantifiable goals. No one understands numbers better than the business. To show the value of the legal department, track monetary amounts recovered by the legal team for the company. This can be by way of accounts recoveries, in litigation or even when we manage to reduce the liability of the company.

5. Having sub-regions and greater regional autonomy. There appears to be a shift away from having one APAC law department, to one comprising sub-regions such as ASEAN, India and Southeast Asia, Northeast Asia and Pacific. China is such a large market that it should be a stand-alone. These sub-regions will be led by those having local legal qualifications and in-depth knowledge of local markets. A more contentious issue is the degree of autonomy that the regional legal department should have vis-à-vis the global legal department. For example, if the main business partner of the APAC legal department is based in this region, it is my view that such a legal department should have more autonomy in how it wishes to run its affairs.

6. Global specialist functions versus regional counsel. Not many companies can afford the luxury of having specialist compliance, litigation, labour & employment, M&A or intellectual property teams. For those that do, they are often located at the HQ level rather than in the regions. Such specialist counsel often lack familiarity with local laws and a connection with the local business. On the other hand, regional counsel perform generalist roles and are not subject-matter experts. There is also the tension between such specialist counsels and regional counsel (as the latter support the local business). I was previously the Litigation Counsel in Asia and it was difficult, considering the multiple jurisdictions in Asia and the issue of language in China, South Korea and Japan. Perhaps, coloured by this experience, my view is it is better to have regional counsel take on a side-specialisation, rather than be a full-time specialist counsel. Such regional counsel will still work with in-country teams and businesses and have the support of external lawyers.

Items 5 and 6 contain perspectives which are probably more contentious and difficult to implement, especially in multi-nationals with large legal teams and well established processes. However, this should not stop us all from re-imagining the legal department, thinking of how to keep processes simple and user-friendly, reducing unnecessary costs and ultimately, working towards the goal of being a partner to the business.
LEGAL OPERATIONS – THE BIG PICTURE

In order to provide some differing perspectives into the broad theme of Law Department Management, ACC Australia approached four General Counsels’ and asked each of them to share their insights across a range of themes including strategic planning, aligning legal and business, measuring success and driving collaboration. The four respondents; each with diverse legal backgrounds and across very different industries were happy to reflect on their own legal department functions and share their experience and lessons learnt.

What are the most important attributes of a well-run legal department?

Richard Dammery (RD): Great lawyers and a committed support team, working together, focussing on their clients’ needs, solving problems and not creating them. Thinking end-to-end and always putting the interests of the Group first. Looking out for each other. Having great peripheral vision for what lies just around the corner ... Courage and resilience ... and a sense of humour.

Tanya Myint (TM): It starts with the great people in the team, and I definitely have that within the Penske Legal Department! Our team is close-knit and we centre our success on communication and organisation. At Penske, we often work independently on matters but we make a concerted effort to share knowledge and ideas at all possible opportunities. Because we do this, we often find that efficiencies can be gained from leveraging off previous work product. Organisation is also critically important as this allows us to streamline our work flow and capitalise on efficiencies to meet the fast-paced demands of the business.

Mick Sheehy (MS): The most important attribute of a legal department is its people. The most important attribute of a well-run legal department is that its people are empowered to bring their best to work, to understand what is most valued by the department, its clients and the company, and that they have the knowledge, tools, support and incentives to deliver measurable outcomes consistent with what is valued.

David Lamb (DL): The most important attribute of a well-run legal department is the quality of the legal team that operates in the department and that includes the lawyers, para-legals, legal executives, administrators and personal assistants. Without quality colleagues, a legal department cannot be run well, even with the best intentions. The second most important attribute is effective communication. This applies within the department as well as outside the department with business colleagues, counter-parties and business partners. The best advice and insight in the world are of little value unless they can be communicated effectively.

What does strategic planning look like in your legal department? Do you start with the corporate strategic plan or a “blank sheet”?

RD: We start with being crystal clear about our role in the organisation. We have set this goal as providing top-tier legal services to our clients, aligned to businesses/functions, but independent of them. We want to do this as a strong team and in the most efficient way possible. These aspirations define the core elements of our plan. We operate to a three-year planning horizon. Big change doesn’t happen ‘between breakfast and morning tea’! Working patiently and methodically on the key dimensions increases the chances of success. And since we don’t have the luxury of just working on the business’ (by which I mean improving the legal function), we all have to accept that success will take time. Showing progress creates organisation-wide support.

TM: We usually hold strategic planning sessions towards the end of the year. We reflect on the past year, our achievements, areas for improvement and how we want to position ourselves in the following year. In developing our department strategic plan, we certainly consider the corporate strategic plan and how we can support that. From late 2016 to 2017, Penske expanded its presence in the retail market and simultaneously experienced personnel growth. In response to this, we developed and delivered training at each of the new locations focusing on topics relevant to the day-to-day operation of the dealership.

MS: It is a balancing act. The corporate strategy is very important as a framework for ensuring the legal department is best placed to service the company’s future needs. However, it is not sufficient. The legal department strategy must also be focused on what work will it seek to do the same, differently or not at all. The legal department must also ask itself not only how will we do tomorrow what we do today more efficiently, but also what value will we produce tomorrow that we don’t deliver today. This requires thinking more broadly than simply what is in the corporate strategic plan.

DL: Strategic planning entails contemplating the type, volume and location of legal work that is likely to arise in the next one to five years. We start with our current team and build from there, adding professionals and staff in the fields of expertise and jurisdictions that are needed to support our corporate objectives.

Big change doesn’t happen ‘between breakfast and morning tea’! Working patiently and methodically on the key dimensions increases the chances of success.
In an era of increasing use of data for decision making and performance management across the corporation, how is the legal department adapting? What are some interesting examples of using data to drive strategy and change behaviours?

RD: All our management decision making is data driven. We understand how every single dollar of our total legal resource is spent, internal and external. We classify it by business function and by legal practice area. That allows us to be creative in how we build our own capability, as well as how we partner and select external legal support. It also allows our transformation to be self-funding, i.e. greater efficiency funds the next investment. You can’t do this without great data. Our next challenge is to enhance the data we have about how the internal legal team adds value to our clients.

TM: We collect data on every matter that is referred to the legal department and we categorise the information meaningfully. This allows us to analyse (1) year-on-year changes in the number of matters referred to the department, (2) from which business divisions they originate; (3) year-on-year changes in external legal spend; and (4) the types of matters referred to the department. Whilst the data allows us to observe trends and plan accordingly, we don’t currently use it for performance management as we tend to take a more holistic approach to driving strategy and behaviours.

MS: Legal departments are getting better at recognising that data-driven decision making trumps decisions made by gut-feel. We’re also understanding that we don’t always need new tools to capture data as some of our existing ones already do it, we just weren’t using them optimally. We’re also becoming better at understanding that we need to know our baseline if we are to effectively measure change. More work needs to be done on understanding what decisions we might make with different data and therefore what type of data we should prioritise to obtain. One of the more interesting applications is the categorisation of different work types in terms of strategic importance and value and the way in which better resourcing decisions can flow from it.

DL: Data is clearly one of the buzz words for the 21st century. However, data is not the answer but rather a tool that can be used to carry out objectives and implement strategies. We use data to evaluate where each practitioner is spending time with respect to practice areas, business groups and jurisdictions. We then use that data to review our capacity as well as to see whether we can create additional opportunities to provide input. We then realign our focus to address areas that require bolstering or perhaps were overlooked in the past. We also use data to evaluate jobs and tasks and then work to create a more efficient and effective response to our colleagues’ needs.

How do you see the legal ecosystem evolving to better meet the needs of corporate legal departments? And what further changes do you anticipate?

RD: That’s a tough question. Our next evolution is to build a top-notch Legal Operations function. We are well underway on this journey now. It encompasses a range of areas: knowledge management, legal technology, administrative support, reporting and contracts management. There is no shortage of opportunities.

TM: I haven’t seen a great shift in the legal ecosystem to better meet the needs of our department. Whilst external service providers are more willing to provide capped fee pricing, virtual/in-person secondments and hotline style advice, 6-minute billing increments is still a prominent feature. There is greater flexibility from external service providers in non-contentious matters but time-based billing in litigation has a tendency to lead to unpredictability of costs and this continues to challenge us. I am an advocate for greater information sharing amongst the in-house community and that combined with increased use of AI will undoubtedly drive further change.

MS: The legal ecosystem is making great progress helping legal departments with strategic direction, and tools and process improvements to assist legal operations. It is also doing a fabulous job helping legal departments identify lower value and more repetitive work types that can benefit from technology and alternative labour models. I think the next wave of change will evolve from specific point solution tools to better integrated platforms to enable corporate legal departments to better obtain and use technology solutions.

What initiatives have you undertaken lately to cut legal costs, improve predictability or achieve better outcomes?

RD: This is an ongoing journey. By the way, cutting legal costs and achieving better outcomes need to be the same thing! No one will thank you for cutting costs but losing cases or doing so at the expense of client service. That is the magic: finding a way to cut costs and enhance service and quality simultaneously. I’m proud that we have reduced our legal costs by around forty percent over the past three to four years. However, I am prouder that we have built a fine team, who are collegiate and hard-working. They have great judgement, great values and achieve terrific results.

TM: We have directly briefed out to barristers in the past to decrease legal costs. This brought about advantages as counsel was intimately involved in the case and played a strategic role. The ability to sustain this arrangement can be difficult if there are time constraints and the team is being pulled into other directions. We take a proactive approach in working with our insurers on claims which has resulted in early resolution and/or abandonment of the claim. This has involved carefully setting and managing expectations with our insurers and their panel lawyers.

MS: I have undertaken numerous initiatives ranging from automation, AI review, triage, matter and knowledge management and obtaining the right data and metrics. These are all important, however, I still think much of the low hanging fruit sits in the automation of documents, processes and decisions. With all initiatives, the hardest part is behavior and cultural change, which is where we seem to end up deploying the bulk of our effort.

DL: We have recently restructured our team moving expertise, responsibilities and personnel closer to legal matters. This meant restructuring some of the Hong Kong professionals to become part of the China legal team. This ensures that practice expertise and skills are better matched to the underlining business needs.

... data is not the answer but rather a tool that can be used to carry out objectives and implement strategies.

I am an advocate for greater information sharing amongst the in-house community and that combined with increased use of AI will undoubtedly drive further change.
ACC recently published a Maturity Model for the Operations of a Legal Department to facilitate benchmarking and advancing in maturity in 14 key areas. What are your priorities for legal operations modernisation and why?

RD: It’s a great model and I commend it. By the way, don’t be tempted to think you need to reach the ‘advanced’ stage of the model in every domain. That’s a trap! It’s about being fit-for-purpose. The Woolworths team is progressing on multiple fronts. We are looking to enhance e-Discovery, we are reviewing the Group’s contract management system, we are about to make some further changes to our management of external resources, we are looking to enhance information governance, we are working on a new knowledge management strategy and we are building a legal tech strategy. Like the rest of our planning process, we are doing this in a three-year horizon. Why? Because it’s where the next phase of our service and costs improvements will come from!

TM: Our immediate priorities are to advance maturity in the areas of compliance and contract management. Face-to-face compliance training intrinsically delivers many benefits; however, it is not sustainable due to resourcing and costs. We are developing online training modules which will provide transparency on a range of different metrics. We are also centralising our key policies and other documentation in the total quality management system. In terms of contract management, we are developing a greater variety of template contracts accompanied with in-built instructions for ease of use. Leveraging off enterprise level platforms will allow the team to increase focus on strategic and higher risk matters.

MS: All of the areas are important and it would be dangerous to prioritise some over others. That said, you must start with strategic planning, so this is critical from the outset. Additionally, no shift in any of the other areas will be successful if you don’t understand and invest in how to effectively execute change management.

DL: Our priorities concerning modernisation include trying to create a paper light environment where we use soft filing and facilitate data storage and retrieval in a manner that creates efficient space and enables quick recovery of documents and correspondence on a shared platform. In addition, we are restructuring our office space to create more modern, open and collaborative work spaces. This is being undertaken in conjunction with an overall corporate office renovation that will create more social hubs, breakout rooms, telephone rooms and community space.

What have you undertaken to align legal with business priorities? Or to prevent or reduce disputes that lead to litigation?

RD: We now operate a legal model that aligns senior lawyers to each key business/function, what we call ‘business partnering’. By definition, this makes our client’s priorities our priorities: we are client demand driven. A close partnering relationship allows the team to negotiate priorities where there are competing demands and limited resources. We adopt a philosophy that there are two reasons only to litigate: either an important point of principle or there is a lot of money (or reputation) at stake. Most other differences of opinion deserve to be resolved commercially if parties are reasonable.

TM: We communicate closely with internal stakeholders to understand their strategy and tailor our work product in view of that objective. I participate in the executive management meeting which helps immensely to understand broader corporate objectives and I relay that information to the team. Our department also hosts monthly meetings with members of the executive team which helps to align objectives on projects, initiatives and management of ongoing matters.

MS: Most legal departments understand the importance of lawyers being closely integrated with their commercial clients and encouraging them to have a deep understanding of business strategy and commercial drivers. A recent example of alignment work that I was involved in was the establishment of a team to identify emerging technologies the business was moving into and the associated new legal issues concerning those technologies. Once identified we began planning how to ensure we would have the right capabilities and expertise to service those future needs.

DL: As mentioned above, we have recently realigned professionals and their practice areas, skill-sets and expertise to various jurisdictions that bring them closer to the business groups in need of legal services. This has led to the expansion of our legal teams in Beijing, Shanghai and Singapore and the recruitment of legal officers in Hong Kong to handle Group-wide issues including intellectual property, marketing, communication and branding. We hope that additional staff at business centres will facilitate a more collaborative approach with the business teams. This, in turn, should lead to a better understanding of business issues that will, hopefully, prevent or reduce disputes that lead to litigation.

. . . no shift in any of the other areas will be successful if you don’t understand and invest in how to effectively execute change management.

There is a lot of buzz these days about Artificial Intelligence, blockchain and smart contracts. Where do you see the most exciting potential offered by emerging technology options and what steps are you undertaking to prepare to leverage new offerings?

RD: We are very keen to leverage AI and decision-making tools to standardise currently manual decision processes and the legal documents that follow them. Lease options renewal is a good example.

TM: The potential to automate some of the less complex but more time consuming tasks associated with the running of the legal department is attractive. Our team is developing work flow processes around the engagement and renewal of dealers. We anticipate that this process could potentially be automated in the future. We have developed a clause bank containing our commonly used clauses which will serve as a useful foundation if we deploy smart contracting strategies in the future.

MS: We shouldn’t underestimate the influence that AI and blockchain will have on legal departments but so too will it influence the enterprise more generally. There is a great opportunity for legal departments to take a leadership role and provide our companies value in navigating and implementing these new technologies. There are many exciting applications and one I like to think lawyers might be able to help provide solutions for sooner rather than later is smart contracting and obligation management throughout the lifecycle of a contract.

DL: Technology options are intriguing but many remain in their infancy and are not yet value added initiatives. The standardisation of templates and facilitating quick retrieval and production of more standard documents is something we do and hope to get better at in the future. This applies to more mundane documents such as confidentiality agreements, framework agreements and heads of terms, as well as more complex documents such as shareholders’ agreements and complex leasing documents. We continue to revise the system to better our offering and abilities to assist our colleagues. Smart contacts are perhaps the wave of the future but we are some ways away from being able to use that innovation effectively in our day-to-day businesses. In addition, the use of technology to make due diligence reviews more efficient, timely and inexpensive is beginning and, hopefully, will continue in the future. Blockchain will certainly change the approach to due diligence and settlement in a huge number of transactions. It appears that, initially, blockchain will develop internally within global commercial institutions before becoming more widely adopted. However, it is clear that the use of a verifiable, decentralised, public, digital ledger will be a game changer in a whole host of areas ranging from banking, real estate, securities, financing, due diligence reviews, and so on.
How do you measure success in your legal department? What metrics do you wish you had and don’t? How do you benchmark to identify opportunities for improvement?

RD: We measure Voice of the Team (team feedback on key dimensions such as leadership, flexibility, resources to do the job, and so on). We are just now implementing the same for Voice of the Client. Happy Team (with the right skills and professionalism) = Happy Client.

TM: The success of the department has traditionally been subjectively measured. It has been based on feedback from the business and reflection on activity e.g. projects completed, transactions completed, disputes settled. External legal cost is not always a strong indicator as it can fluctuate and is largely driven by claims volume due to reasons not attributable to the department. We would like to release a survey to the business to obtain some metrics on a number of criteria including timeliness, quality, ease of doing business etc. which will serve to provide some benchmarking data for future years.

MS: Success can be measured through many lenses, such as outcomes, speed, materiality, employee engagement and client satisfaction to name a few. Measures should be chosen for two purposes, first, what are the most important measures to enable us to make better decisions about how to operate the legal department and, second, what measures are most important for the company to understand what return on investment it is receiving from its legal team.

DL: We measure the time we spend on each particular business operation, jurisdiction and department. We supplement that with surveys that are performed periodically and post significant transactions. We benchmark ourselves with our previous metrics and our fellow group companies, particularly with respect to billing and transactional efficiency.

...it is clear that the use of a verifiable, decentralised, public, digital ledger will be a game changer in a whole host of areas ranging from banking, real estate, securities, financing, due diligence reviews...
In this dynamic environment, change management is an ongoing challenge. What are your most successful change management tactics?

**RD:** Let’s face it, change is hard. If I have learned anything over the past 4 years at Woolies, it’s that transformation is messy. It’s not linear. And we all make mistakes as we go... I look back and think “jeez, I wish I hadn’t done that”. But when you surround yourself with an energetic, diverse and open-minded team, it allows you to move so much faster. Building alignment is key: people want to understand the “why”. They want to feel that the hard yards will be worth it in the end. Marking milestones and celebrating successes is critical. Passive resistance is a huge pitfall—it drains the energy of those working to create a better future.

**TM:** One critical tactic that is employed at Penske is communication and transparency from the leadership team through to all employees as to not only the “what” but the “why” and to err on the side of repetition so that the change becomes a company habit. In line with that, we view the bigger picture in supporting any transaction or dispute. We see our value in identifying areas which may need continued focus even after contracts are executed or disputes resolved. We have provided training, produced summaries, manuals and checklists for the operations team to manage contracts and projects. We also do not shy away from follow-ups and publishing “Legal Reminders” in monthly circulars.

**MS:** One of the key tricks for change management is to understand ‘what’s in it for me’. This applies whether you’re trying to change the behavior of the lawyer providing the services or the client consuming them. Also, you need to be relentless about making any change lead to a far superior outcome than the status quo, especially if it involves technology. People are far less forgiving of technology flaws than they are of human ones.

**DL:** Collaboration between business colleagues, legal practitioners and other service providers is the best way to encourage productive change. Not until all are working toward the same goal, will effective change take place. It is not useful for one unit to propel change if it is not adopted by another unit. It is not until all are working in common for mutually beneficial change, will it truly be adopted.

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**One of the key tricks for change management is to understand ‘what’s in it for me’.
What are some effective ways to drive knowledge sharing and collaboration in a legal department?

RD: This is far more a cultural challenge than a systems and processes issue. It starts with each lawyer feeling they belong to a single, collegiate community of interest. If people like and trust each other, that’s half the battle won! Next, it’s about creating a common vision for what we do and why we do it. Woolworths Group’s purpose is “Better Together” and we look to give life to that in the Legal Services Group. We deliberately have a pretty flat structure— as few levels as possible— after all, we are all practising lawyers looking to provide the best independent advice we can to our clients. We also use a “two-eyes” approach for major projects being handled internally. This reinforces our shared view that no-one has all the answers.

TM: As we are a small legal team of four, we work independently. Despite this, there is a strong level of knowledge-sharing in the team. We have regular meetings and our central matters register and filing system provides (1) transparency into each other’s workload and; (2) access to each other’s work product. As a team, we will usually select which external seminars to attend. The person who attends a seminar will provide a brief of the work product. As a team, we will usually select which external seminars to attend. The person who attends a seminar will provide a brief of the seminar content and key learnings at the next team meeting. If we develop a useful document, we will circulate it to the team for future reference and place it into a precedents folder.

MS: Irrespective of what knowledge management tools or processes you have, the design principles should always be the same. Knowledge sharing needs to be easy: easy to share and easy to find. Searching should be fast and relevant. Great sharers of information should be celebrated and rewarded. Additionally, you should always measure the effectiveness of any current system or tool so you know how well it is functioning and know where improvements are required. Poor knowledge sharing is one of the more wasteful and inefficient areas in our profession.

DL: Collaboration with business units that is championed by younger and perhaps more free-thinking lawyers seems to be the best method for creating beneficial change. The use of technology for sharing information particularly with respect to outside legal opinions, documents and other professional advice and opinions is also an effective way to drive knowledge sharing.

The Association of Corporate Counsel (ACC) has produced the Maturity Model for Legal Department Operation. Legal department leaders are encouraged to use it as a reference tool to benchmark maturity from early to advanced stages across fourteen law department management functions. ACC Australia members are invited to download this resource via the ACC global site.
FOCUSING ON WHAT MATTERS MOST

Three years after a global restructure of its legal function, an independent survey of internal stakeholders revealed 91% considered the legal team as ‘valued business partners.’ While 96% indicated the team enabled them to do their jobs more effectively, BHP’s General Counsel, Caroline Cox, shares her insights on how this was achieved.

In 2014, BHP undertook a global restructure of its legal function. A new vision was created for the team – to be true business partners, with a ‘seat at the table’ in solving problems and identifying opportunities. Becoming a ‘business partner’ is a commonly stated goal for in-house teams. However, achieving this aspiration, and gaining (and keeping) a ‘seat at the table,’ is much easier said than done.

At BHP, we have been focusing on three key areas to embed ourselves as true business partners: speaking the language of the business, shifting our mindset from risk adverse to risk aware, and ongoing development of our team.

Speaking the language of the business

In my former life as a law firm partner, I would regularly say to the lawyers in my team that the first step to delivering excellent strategic advice was to have a deep understanding of the client’s business. In an in-house environment, this level of understanding is non-negotiable. To drive this, our lawyers are co-located with the businesses they support, sit on business leadership teams, and get involved in core business processes such as risk assessments. This ensures the team has relevant context, and can provide input in real time.

We have also focussed on ensuring we plan our work and seek to demonstrate our value to the company. This has given us credibility and a common language with the business.

We have taken a number of practical steps to ensure these things are front of mind for the team:

• **Embedding non-lawyer analysts** – we have embedded analysis and improvement experts into our team to drive efficiency gains, as well as assess the dollar value of the work we do.

• **Reserving time for proactive projects** – we aim to spend 25% of our time on continuous improvement projects that streamline our processes, increase the business’ self-reliance or ensure we are planning for issues in advance so we can respond quickly and consistently if they arise. By way of example, we introduced a suite of new standard contracts across the Company which achieved an estimated efficiency gain of 7,000 hours annually.

• **Prioritisation** – as we have become more embedded in the business and the external environment has increased in complexity, the demands on our time have increased. As a lean team, we recognised that we needed to be more deliberate in how we allocate our resources and budget. We are currently rolling out a prioritisation tool across our global team that involves all of us identifying the value of various ‘buckets’ of work by reference to annual business plans and company priorities. This then drives a clear view of where we need to spend our time, what work needs to come out, and where we need to do things differently and more efficiently (e.g. through technology or removing overlap).

Shifting mind-set

I have also been working with the Legal team on taking a more holistic approach to risk. I want us to take into account broader considerations, beyond the ‘black-letter’ law, including community and regulatory expectations. Therefore, the question for us is not just, “can we do this?” But, “should we do it?” and the law is just one component in answering that question. Taking this approach is critical to BHP for achieving long-term value and sustainability, and has been welcomed by the business.

Developing our people

As part of our restructure in 2014, we took on over thirty new lawyers, many of whom were in the five to ten year post admission experience range. Ensuring we are catering for the ongoing developmental needs of our team is, therefore, a key priority.

Our lawyers continue to develop their skills through broad exposure to the business in a variety of roles, both legal and commercial. In a large organisation like BHP, opportunity can arise in a variety of ways. This includes temporary roles elsewhere in the Legal team (such as on a specific project or providing cover while another member of the team is on leave), a secondment to another part of BHP’s business or a secondment outside of BHP. By way of example, we have had lawyers on secondment to Corporate Affairs, Audit and Risk. One of our lawyers also recently completed a six-month secondment with the Department of Prime Minister and Cabinet as part of the Chief Executive Women Program. We advertise these development roles to everyone in the legal team and distribute a quarterly newsletter profiling the roles and benefits of the experience.

We continue to think laterally about the types of opportunities that will build the team’s understanding of operational drivers and the interests of various stakeholders critical to our business. This has strengthened the commerciality and breadth of their perspectives and increased team engagement.

Driving continuous improvement, the right mind-set and ongoing development has positioned us as partners with the business on the issues that matter most to the company. This is an engaging and rewarding role, and one we will certainly be striving to keep.

Caroline Cox

After joining BHP in August 2014, Caroline was appointed Group General Counsel in March 2016. There she leads a team of more than one hundred lawyers across Europe, North and South America, Australia and Asia. Prior to joining BHP, Caroline enjoyed an eleven-year career with Herbert Smith Freehills where she was a Disputes Partner specialising in large cross-border regulatory investigations. Caroline also represented companies in a range of significant public commissions of inquiry, including the Oil for Food Inquiry and the James Hardie Inquiry.
DEVELOPING A HIGHLY ENGAGED LEGAL TEAM

How does engineering, development and legal intersect? REA Group General Counsel & Company Secretary, Sarah Turner and Senior Legal Counsel James Hutchins share how the REA legal function remains agile and innovative within one of Australia’s fastest growing digital businesses.

REA Group Ltd operates one of the world’s largest property and lifestyle media companies. It is a fast-growing digital business spanning four continents.

From realestate.com.au, realcommercial.com.au and flatmates.com.au in Australia to our platforms in India, Malaysia, Singapore, Indonesia, Hong Kong, Thailand, Macau and the Philippines, people use REA’s sites and apps to find a place to rent, buy or share, search for a home loan, find property inspiration and understand the market.

REA is a key player shaping the digital sector in Australia and its legal team needs to be closely aligned to not only the strategy of the Group, but also to the way it works and the values it lives.

In developing new ways of working, the legal team has taken inspiration from the engineering and development teams and has sought to create efficiencies based on innovation and agile ways of working.

Why innovate?

Innovation is about solving problems quickly and efficiently. It’s tempting to quickly take onboard the most promising technology to keep up with other in-house teams; however, it’s important to consider first what problems need to be solved.

Artificial Intelligence is fascinating and blockchain is a great CPD topic; however, in REA’s experience, truly valuable in-house innovation is about finding solutions that fully meet legal needs while enhancing the value of the legal team to the business.

REA’s lawyers have set out to transform their team through innovation. On the way, we have learned a lot about what innovation can do to transform the team and its contribution to the broader business.

Why change?

The first step to intelligent innovation is to work out what problems need solving. Working in an industry-leading tech business that has delivered a long list of game changing products using agile principles and a deep commitment to innovation, we were inspired to improve our presence in the business, spend more of our time on things that really matter and help the business grow.

What changes are important?

Understanding what we wanted to achieve as a legal team was a helpful first step, but we wanted to test whether we were right, so we asked a broad focus group, at all levels of seniority across our business, what they thought we did well, didn’t do so well and what was confusing them.

We knew that innovation directed at solving challenges for the legal team was only half the answer and change would only be truly useful if it also helped the business meet its priorities.

Consistent themes quickly emerged around needing greater efficiency for frequently asked questions, easier access to legal resources, empowering the business to achieve their work objectives faster and putting in place infrastructure that made it easier for everyone to access the right tools at the right time.

How do you go deeper?

Once we defined target areas for what we named ‘Project Hoover’, we needed to prioritise. We identified easy wins; chunkier projects and the ‘longer burns’.

Our quick wins centred on the things we controlled, such as collecting and analysing workflow data, updating templates and training programs, standardising responses, designing clean guidelines and checklists, making existing resources easier to find on our intranet and delegating appropriate tasks to colleagues outside the legal team.

The chunkier projects generally had a technological aspect to them or relied on input from people outside the team or outside the business. These included refining processes, automating template documents and implementing a digital contract management system.

Finally, there were cultural goals that we knew we couldn’t achieve immediately. We wanted to improve the team’s brand, engage more openly and visibly with the business and learn from the best talent in the legal and business worlds.

Where did we begin?

After defining the goals, we started prioritising our work by creating ‘streams’, defining the tasks under each stream and nominating owners for accountability. Consistent with the way our developer squads and engineers work, we knew creating streams and tackling them at the same time would create synergies, foster collaboration and drive engagement.

The stream focuses were:

- **Improve the team** – build the legal brand, learn from the best, seek feedback and respond to opportunities for improvement.
- **Empower and educate** – empower the business with guides, training and efficient processes for engaging with Legal.
- **Build the Claiminator** – create a dynamic resource for marketers to craft leadership claims using current, always up-to-date, market data.
- **Reference Warehouse** – deliver simple legal resources and processes to increase efficiency and leverage knowledge.
- **Digital legal infrastructure** – digitise contract management, guides, contract approvals and training attendance records.

How do you keep track?

With a clear idea of how and what we wanted to do, we had to manage workflow. We had a complex project and heavy workloads.

Taking inspiration from REA’s incredible team of software developers, the lawyers chose to use ‘agile’ software development practices in their workflow management; using an online tool called ‘Trello’.

Trello is an app installed on each lawyer’s smartphone and laptop that visualises a shared virtual workflow pinboard. On this board, each lawyer...
Through prioritisation and project management, REA’s lawyers have undertaken some powerful work to change the team’s contribution to the business. Some of the highlights include:

1. The Claiminator. We built the “Claiminator” to tackle the in-house problem of efficient marketing approvals. It’s a simple reference source on our intranet that tells marketers what they can say and how they can say it each month, depending on how our apps and sites perform against competitors.

The Claiminator automatically ‘sucks in’ data from analytics providers such as Nielsen and Omniture and spits out real-time figures. It calculates multiples (e.g. 2.98 times) and averages (e.g. ‘averaging over 1 million Australians a day’) and logs record performances (e.g. ‘6.60m in February’). Each claim has its own legally approved source reference or disclaimer that can be copied and pasted into marketing materials.

To create the Claiminator, our lawyers worked with the data services and marketing teams to firstly ingest the data through APIs, pass data through

date-sensitive formulae and seamlessly surface the data into clean marketing copy ready for multi-channel communications. We even created a launch campaign on the intranet, internal screens and other internal channels. Our advice: “Claiminate, don’t litigate!”.

The result is an evergreen and accessible resource that was used over four hundred times in its first six months, transforming the marketing approvals process, saving an estimated three hundred and fifty hours, reducing risk and increasing compliance.

2. Embedding privacy-by-design. In a world of Cambridge Analytica and a broad regulator focus on data and information, we need everyone, not just the legal team, to focus on caring for personal information entrusted to REA.

The process of embedding ‘privacy-by-design’ has been a prime example of our ‘lo-fi, high-impact’ innovation through Project Hoover.

What did we achieve?

Through prioritisation and project management, REA’s lawyers have undertaken some powerful work to change the team’s contribution to the business. Some of the highlights include:

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‘playbook’ with escalation and reporting processes carefully planned out, placed ‘incident rooms’ on standby, drafted template notifications and created a secure Slack channel for incident team members.

Before the new laws came in, all line-of-business leadership teams were briefed by their in-house lawyer on the scope of the new laws and how REA had prepared for them.

To ensure that communications about the new laws reached the entire business, the legal team created ‘explainer’ cartoon videos using real-world scenarios about how a breach could happen and how to report a breach.

3. Better due diligence. We simplified and personalised the due diligence (DD) process to better understand risk, deal with it maturely and engage efficiently with internal stakeholders and suppliers.

How does it work? The new DD process intuitively ‘flexes and shrinks’ according to the supplier and what they are supplying—if the supplier is not providing services that influence personal information, why ask them to answer privacy compliance questions?

Communication is now more direct thanks to weekly cross-functional DD ‘stand-ups’: rapid-fire 10-minute catch ups to discuss progress and the key issues affecting suppliers.

Collaborators are now more focused on their professional ‘sweet spot’: the lawyers talk to the legal issues and the IT security team speaks to security issues. Email chains and ‘cc’ lists are shorter and there is much less confusion, repetition and process management.

The overall result is a better process for suppliers and greater efficiency for our team and internal stakeholders.

4. Digital contract management. To centralise contract administration and gain insights into utilisation, we decided to go digital on our contract management.

Why did we need this? The business wanted fast reporting on supplier metrics and proactive management of contract renewals. For internal purposes, our team needed a better way to understand what we were working on, how work was allocated and what value we were bringing to the business.

The only way to achieve this was to go digital. However, realising that an off-the-shelf product could not perform as well as a customised one, we collaborated closely with our internal tech support and business improvement colleagues to get the most from our investment. With the help of our in-house tech talent, we were able to build integrations, workflow tools and reporting functionality into the system.

The result is a customised document management system that delivers much greater clarity for the business and insights into how we add value.

5. Fun. One of the perennial challenges of in-house lawyers is to foster a positive and highly engaged dynamic between the “Legal” and the business. While our relationship with the business has always been positive, we decided to ‘build the brand’ in a range of innovative ways.

One of the most successful examples of this has been our concerted effort to become an integral part of “REAio” – a quarterly festival of innovation at our business. While our relationship with the business has always been positive, we decided to ‘build the brand’ in a range of innovative ways.

Did it work?

In-house innovation is no different from innovation in the outside world. For it to work, it has to improve something. To measure our success in Project Hoover, we measure metrics but we also keep an ear to the ground for the intangibles.

At the end of its first year, Project Hoover produced two stunning metrics proving its value. First, the legal team engagement score was an incredible ninety-seven percent. Second, we estimate that external fees ‘saved’ equates to $1 million per year or almost two thousand hours of saved time for our lawyers across the team.

On the intangibles, we truly believe we have changed and we are making a difference. We feel that we are more engaged within and across the business. But the last word must go to the business itself and, who better to speak to the changes than REA Group’s Chief Inventor, Nigel Dalton:

Our legal team has busted all the myths that lawyers are an expensive, add-on-at-the-end, ass-covering, tick the boxes business prevention department. Our lawyers are valued members of every squad in the business.

Sarah Turner
As General Counsel and Company Secretary at REA Group Limited, an ASX100 multinational digital advertising company specialising in property, Sarah leads REA’s global legal, secretariat and compliance teams. Sarah’s current role at REA Group followed previous General Counsel positions at EBOS Group Limited, Symbion Pty Ltd and SMS Management & Technology Limited.

James Hutchins
Currently Senior Legal Counsel at REA Group, James acts as lead counsel to, and sits on the Leadership Teams of, REA’s Media and Content and Consumer Marketing lines-of-business. He is also REA’s Australian Privacy Officer and represents the legal team on the REA Risk Council. James is a member of the Regulatory Affairs Council (Australia).
WHY EVERYONE NEEDS A LEGAL SPEND ASSESSMENT

How does the legal department demonstrate the value returned to the organisation through improved outside counsel management?

This common question is posed frequently by legal operations professionals and there are often multiple answers. When Starbucks and Elevate considered how the legal operations team could effectively communicate the value of enhanced outside counsel management, we started by asking ourselves, “What data is available and how might we best leverage that data as the basis for decision making?”

As is the case with many legal operations departments, we quickly realised that the first step on our roadmap to more effective management of outside counsel would require focus on our foundations and understanding aspects of legal spend. We recognised that there were significant insights that could be derived through a detailed assessment of our legal spend-related data.

Performing a legal spend assessment provided a low-cost solution that required minimal effort and helped us accelerate conversion of our existing spend data into relevant metrics that we could leverage to inform future direction—including how the legal team could operate and provide better leverage for outside counsel.

**So, what is a legal spend assessment?**

A legal spend assessment is an in-depth analysis comprised of spend management recommendations, performance indicators, industry maturity benchmarks and substantive details communicated in the form of a well-presented deck that is supported by access to the underlying data in Cael Vision, Elevate’s legal business intelligence platform.

The spend assessment provided us with heightened levels of visibility into our data and allowed our teams to have meaningful discussions about the strengths and opportunities that existed within our legal department, as it pertains to the management of legal spend.

Through a detailed analysis of trends in spending, customer concentrations, outside counsel rates, staffing models and billing compliance, we gained full visibility into the data and were able to quickly identify existing risks and support our decisions to prioritise and implement new strategies.

**What do you need to get started?**

We understood that before we could begin to take a data-driven approach to managing outside counsel and spend, we had to better understand the underlying data. Our initial challenge was to ensure we had full visibility into a clean, comprehensive and reliable dataset. By leveraging the data we already had available through our eBilling system, we were able to quickly clean and convert this data into information and relevant metrics:

- **Clean data:** Assessing the quality of our legal spend data was an important first step in the process. By performing a few simple data cleansing and transformation exercises, we gained assurance that the data supporting our analysis were complete and accurate.

- **Clear goals:** Before setting our own goals, we considered how other organisations were managing their legal spend and what metrics they were commonly monitoring to measure their performance. Taking the time to educate ourselves on industry trends and discuss our own goals, while assessing the data, allowed us to prioritise the metrics we felt were most important to our lawyers and management teams.

- **Minimal time:** After the data were cleansed, we went through a simple process to represent the data visually and communicate the results of the spend assessment. Within two weeks, we extracted information from our matter management system and loaded it into Cael Vision through which we could quickly generate reports for initial review. After another week, and consideration of a few additional areas of analysis, we presented the final spend assessment to the team.

**What can you learn from a legal spend assessment?**

Once we had gained visibility into our data and used these data to spark discussion amongst team members, we were able to discern a lot about how we manage outside counsel to deliver legal services. A few common questions we asked were:

- **Concentration of legal fees:** How many law firms are we engaging to deliver legal services? Calculating the percentage of legal spend delivered by our top law firms was one simple metric to consider when discussing the potential need to contain costs through consolidation of our panel of existing law firms. In addition, limiting the number of new law firms being onboarded was an obvious way to reduce administrative burden.

- **Staffing mix and leverage:** How were our matters staffed by outside counsel? The ability to view staffing models by law firm, matter, phase and timekeepers helped us identify potential opportunities to realign work and ensure legal services are appropriately delivered by resources with the required level of expertise.

- **Rate management:** How many rate increases were approved in a given period? Analysis of trending rate data, as well as comparisons of rates to historical matter details allowed our team to benchmark an acceptable range of rate increases and determine whether there was a need for enhanced control over the rate approval process. The data points resulting from the spend assessment also helped drive process improvements to eliminate the administrative burden commonly associated with communication around rate approvals.

- **Timekeeper control:** How many total and new timekeepers worked on our matters last year? Understanding turnover rates and the frequency with which new timekeepers were added helped our team better understand whether timekeeper control process enhancements should be considered or not.

- **Billing compliance:** Are we being billed for work that is not in compliance with our outside counsel guidelines? A high-level review of line item billing descriptions and phase or task codes helped our team identify a potential range of cost savings and justify whether a more detailed legal bill review engagement could help control legal spend.
What actions can you take after a legal spend assessment?

After we learned more from our data about the realities of our current state, we began to consider the various options for enhanced management across the spectrum of our outside counsel engagements. While there were many potential opportunities, we had to prioritise and sequence our efforts based on our goals and constraints, understanding that not every winning strategy can be implemented at once. Some areas for consideration brought to light by our legal spend assessment included:

- **Additional data cleansing:** Incorporation of additional data sources and focus on frequent data cleansing will provide our team with the basis for effective dashboard creation allowing us to continually monitor legal spend and key performance indicators.

- **Data enrichment:** To better track and manage legal spend, there are additional qualitative elements that could be tracked to help enrich the data. Examples of these include identification of matters with alternative fee arrangements and tagging individual matters to track risk and complexity.

- **Legal bill review:** One of the easiest ways to control legal spend is through legal invoice review. By applying a process for reviewing invoices for compliance with outside counsel guidelines and billing policies, our team would be able to not only identify potential reductions and cost savings, but also gain more insight into the work being provided by our outside counsel.

- **Legal operations:** Identifying opportunities through analysis of our data is a great first step; however, legal operations process enhancements are often required to continually execute on objectives and monitor performance against goals. Establishing and adhering to workflow for new matter intake, rate approvals and timekeeper control are just a few areas where we could enhance our operations and drive sustained performance.

- **Change management:** By leveraging our clean and now readily accessible data, we have the opportunity to drive important change management initiatives such as the implementation of performance metrics and the establishment of a preferred panel of outside counsel providers. Additionally, our underlying spend data will be invaluable in supporting the law firm selection process during any future RFPs and rate negotiations, as well as managing matters against scope changes.

Strategic actions

Take what you’ve learned from your metrics to implement relevant strategies.

<table>
<thead>
<tr>
<th>Legal spend management initiatives</th>
<th>(Radius of bubble indicates relative savings)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Refine outside counsel guidelines and implement invoice review</td>
<td></td>
</tr>
<tr>
<td>2 Law firm selection and management</td>
<td></td>
</tr>
<tr>
<td>3 Rate and timekeeper management</td>
<td></td>
</tr>
<tr>
<td>4 Matter level budgeting and project management</td>
<td></td>
</tr>
<tr>
<td>5 Unbundling / Alternative sourcing strategies (including contract lawyers + managed services)</td>
<td></td>
</tr>
<tr>
<td>6 Panel / Convergence strategies</td>
<td></td>
</tr>
<tr>
<td>7 Law firm relationship management</td>
<td></td>
</tr>
</tbody>
</table>

Why should you regularly reassess legal spend?

A legal spend assessment is only the beginning. The risks that can be identified, questions that can be answered and opportunities for managing outside counsel that can be derived from assessing spend data further highlight the need to continually monitor and enhance the information and supporting processes. Having performed a spend assessment, we feel well equipped to measure key performance indicators and trends that will help us identify risks, proactively adjust plans and quickly respond to potential issues. We can also use the resulting data to conduct regular business reviews with our law firms and continue to enhance successful relationships.

Ultimately, the minimal time and effort invested to assess our legal spend data has significantly influenced our team’s ability to provide insights, make recommendations and get people to the table and interested in discussing change and how legal might further demonstrate value to our company. This powerful development, substantiated and facilitated through facts and data, is why we strongly suggest that corporate legal professionals invest in a legal spend assessment.

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Lisa Kremer Brown

As the Managing Director, Operations & Strategy, Law and Corporate Affairs at Starbucks Coffee Company, Lisa is tasked with simplifying the business of law and corporate affairs. Having previously held the role of Director, Finance and Portfolio Management, IT, Lisa has previously held roles with Colliers International, T-Mobile and the American Red Cross.

Vince Vetri

Following senior roles at PricewaterhouseCoopers, KPMG and Baker McKenzie, Vince now holds the position of Director, Strategic Analytics and Reporting, Legal Business Solutions, at Elevate Services. Elevate provides consulting, technology and services to legal departments and law firms and is dedicated to enhancing the resources and capabilities of legal departments and law firms.
LEGAL OPERATIONS FOR THE SMALLER TEAM

Drawing inspiration from Reebok to Nike via Ford, Jobs and other great trailblazers, Maria Polczynski addresses the challenges associated with legal operations management for the smaller team.

A quarter of a century ago, best practice for running an in-house legal department was encapsulated in the Reebok Rules.¹ Nowadays, many of these rules are so universally accepted that they have become clichés: learn the business, get a seat at the table, be a problem solver, don’t say “no”, focus on what is important, be proactive and available, input early, give answers, get to the point.²

When discussing how their teams enhance their legal service function, in-house counsel, particularly in smaller teams, often still talk in terms of the Reebok Rules. Yet in the last 10 years, the Reebok Rules have been criticised as insufficient for the modern period:

[the writer] omitted any Rules related to the use and management of outside counsel; said nothing about cost control; nor even whiffed at benchmarks. His rules slight technology (except a side mention of a coffee maker and telephone) and he neglected any mention of either training and knowledge management or the scope of responsibility of the law department.

... Promulgated during a kinder and gentler era for law departments, ... the Rules remind us of unhurried lawyers who stick to practicing law, know clients personally, and befriend them with trust and avuncular wisdom.³

I believe we can continue to value the Reebok Rules for the “practice of law”, while recognising that they did not target, and so do not (for the most part) address, the “business of law”.⁴ It is the business of law that is captured in the new discipline of legal operations management.⁵

Big players’ legal operations functions

Three years ago, I found myself at an international roundtable on value in legal services delivery, sitting beside four members of the legal operations leadership team of a global insurer.

This team had massive resources, enabling them to introduce extensive infrastructure for data capture, reporting and management systems and analytics to gain deep insights and demand strong disciplines from their external providers. That level of resourcing made sense when their employer's legal department was encapsulated in the Reebok Rules. From the in-house perspective, the practice of law can be seen as the subject matter of the Reebok Rules and the “business of law” is the distinction in a private practice context. From the in-house perspective, the practice of law can be seen as the subject matter of the Reebok Rules and the “business of law” is the substance of the respective rules, but in the headline language of Douglass they were: Learn the business (Rule 7); Lawyers should attend all key business and staff meetings (Rule 1); Be a problem solver (Rule 12); Eliminate the ‘no word from your vocabulary’ (Rule 2); Stay focused on what is really important (Rule 13); Be proactive (Rule 19); Be available (Rule 16); Learn about problems early (Rule 5); Give answers, get to the point (Rule 22).⁶

The same question arose for many at the 2017 Association of Corporate Counsel Australia National Conference, when we heard from Richard Dammery, the General Counsel of Woolworths, whose legal team were amongst the ACC’s 2017 Value Champions. This Australian-based legal transformation case study was on a smaller scale than the global insurer, but still had a budget in the tens of millions of dollars. His team’s transformation was multifaceted, but the key elements included:

• installing a new legal management system granular reporting capability
• requiring external legal advisers to adopt standardised invoice practices—as part of an external partnering framework
• recruiting a dedicated legal operations manager.

What these big legal teams have achieved is inspirational and well worth hearing about. Nonetheless, examples on this scale can leave smaller teams (let alone sole in-house counsel) feeling daunted.

Challenges for smaller teams in achieving meaningful legal operations enhancements

The small team’s constraints in terms of resources and lack of market leverage are very real—with operational improvements a classic challenge of the “important, not urgent” quadrant of work⁶, reverberating with the refrain “I’m/ we’re just too busy”.

With great empathy for those who repeat this refrain, it is a fair response on any given day or week and sometimes even for a testing month. However over any calendar quarter it signals poor prioritisation or perhaps a lack of the courage needed to pursue a proactive agenda in the face of others’ demands.

Sometimes we comfort ourselves by the thought we are performing well in terms of the Reebok Rules. We reflect on the inherently qualitative nature of our legal team’s value-add and the good understanding of that by key leaders we work closely with. The smaller the business and legal team is, the more likely these comforts hold truth, but... what small business has no growth ambitions?

All around us, teams are expected to improve continuously in performance, productivity, quality and speed—particularly the good teams. Without new methods in the legal team, we are simply running ever faster on the hamster wheel.

If you also do what you always did, you’ll always get what you always got.

Henry Ford

Footnotes

1. Jack Douglass, Vice President and General Counsel of Reebok International Ltd, Reebok Rules ACCA Docket, Spring 1992: http://www.acc.com/committees/ninct/upload/the-reebok-rules.pdf. Under Douglass’s successor, the Reebok Rules were augmented by the Reebok Litigation Rules, which address legal operations issues, such as external panel firm engagement.

2. The summary sometimes diverts from that of Douglass to reflect modern terminology and the substance of the respective rules, but in the headline language of Douglass they were: Learn the business (Rule 7); Lawyers should attend all key business and staff meetings (Rule 1); Be a problem solver (Rule 12); Eliminate the ‘no word from your vocabulary’ (Rule 2); Stay focused on what is really important (Rule 13); Be proactive (Rule 19); Be available (Rule 16); Learn about problems early (Rule 5); Give answers, get to the point (Rule 22).

3. General Counsel Metrics – Law Department Management blog – Rees Morrison - https://www.lawdepartmentmanagementblog.com/fifteen_years_l/. The detail of this criticism can be argued to be unfounded as the rules do include material about cost control, for example, Rule 13 – Stay focused on what is really important (which includes a story about an external lawyer’s insensitivity to costs) and Rule 17 – Legal work and the Bell curve – not every job requires an A effort.

4. The useful distinction between the ‘practice of law’ and business of law was drawn by Colin Jasper of Jasper Consulting (now Positive Pricing) at the Law-Counsel of Australia’s World Masters of Law Firm Management Conference in February 2015. Jasper applied the distinction in a private practice context. From the in-house perspective, the practice of law can be seen as the subject matter of the Reebok Rules and the “business of law” is nowadays increasingly called legal operations management.

5. Although several of the Reebok Rules appear to contain the genesis for elements of the legal operations discipline.

6. The Eisenhower Decision Principle—in a decision matrix, popularised in Stephen Covey’s The 7 Habits of Highly Effective People
To help smaller teams commit to improving their legal operations without the turbo-charged resources of large teams takes a lot of persistence. Below are some of the challenges, with ideas for a small team response and inspiration from well-known trailblazers.

**Challenge #1: Where to start?**

It is not a lack of ideas on how to improve delivery of legal services that challenges the smaller team but rather the superabundance of information. It is a job in itself to organise this information to obtain the perspective needed to decide priorities.

Happily, the legal operations industry has mapped its own landscape. For Australian in-house lawyers, the two most comprehensive classifications of legal operations have been developed by:

- **Association of Corporate Counsel’s (ACC) Legal Operations maturity model** – that tabulates early-stage, intermediate and advanced indicia for each of the 15 components of legal operations.  
- **Corporate Legal Operations Consortium (CLOC)** – with its distinctive clock-shaped outline of 12 key components of legal operations.

Use one of these outlines to give yourself the vantage point needed to assess your legal department’s situation—so you can plan.

Consider also joining at least one of these industry organisations, which represent excellent return on investment.

**Challenge #2: Too much to do**

Be ambitious in your plans, but realistically so.

One of the great execution traps is to plan too many actions at once. Instead, commit resolutely to a manageable number of achievable objectives within a fixed timeframe. This may be only 1 to 2 in a year. Then, do something specific, persistently, to make them happen. If a roadblock halts one for 4 months, put it on hold and substitute another that can be done in the 4 months, but don’t start too many things at once.

This is actually MUCH HARDER in practice than it sounds but is essential for the small team.

I’m proud of as many of the things we haven’t done as the things we have done. 
Innovation is saying no to a thousand things.

Steve Jobs

**Challenge #3: Balancing the plan with capitalising on opportunities**

Without stepping back at all from Challenge #2, small legal teams cannot afford to be anything but opportunistic. Meeting challenges #2 and #3 together has two parts.

First, self-made opportunities, through continuous improvement, should be a way of life. If you have already prepared advice on a topic, with a little reworking it could live again as a reusable tool for non-lawyers, a training guide, a news update, a FAQ, and so on. Reusing work already completed maximises impact relative to incremental effort. This can be managed as part of the BAU—without drag on the strategic plan.

Second, an unexpected opportunity from an external provider may help to achieve a goal in the long-term plan ahead of time—and provide an easy win. Therefore, by all means exploit it, if this does not distract you too long from your planned priorities. However, do not respond to providers with their innovations at the expense of your own strategic plan. Stay pro-active. Even freeware comes with an opportunity cost—and what a large team has capacity to absorb in augmentation to their plan may replace the plan in a small team.

**Challenge #4: Keeping up with the changing legal marketplace**

Keeping track of the modern dynamic legal landscape is next-to-impossible, but happily we don’t need to know everything at once—just what is relevant to our plans now. Therefore, identify the specialist sub-set of service you need and the number of providers for that service. Then, approach them to see if they have special offerings for smaller legal teams. Some of them certainly will.

Similar to Challenge #1—use secondary sources to identify trends and categories of new services available to you and the service providers in each. For example, in the legal technology world:

- Thomson Reuters Legal Tech Start-up Landscape
- LawPath’s Australian Legal Tech Startup Market Map
- The Legal Geek Start-up Map

These sources sometimes track more than the pure legal technology space and increasingly BigLaw mimics and develops new model options also—so it is also worth asking specific questions of your traditional providers.

**Challenge #5: Innovation and metrics on a $0 budget**

Much ‘innovation’ involves automating processes. This can be great and provide an immediate improvement but can also be a lost opportunity if not preceded by process improvement.

With reference to the diagram below, a well-funded team may be tempted to improve from starting point A by applying technology. However, point C represents the desired end-state of maximum efficiency. Once at point D, you cannot progress to point C except by going back to A and then through B.

The absence of a technology budget forces the smaller team along the x-axis. The team may not get to point C in the short-term, but will reach its launching point, point B. From there, automating the simpler process will cost less when the opportunity to automate comes.

I’m serious about innovation. The way to go is to automate tasks which you can repeat. I’ll automate anything which I can repeat, however much manual intervention I have to do to get it done.

Jeff Bezos

Pending the desired technology support, small teams should consider the existing organisational technology. Much process improvement can be achieved with creative use of systems designed for project management, risk management, customer complaints handling, collections or risk management functions. For matter management, project portfolio management, HR or customer relationship management systems may be of use.
With scalability less of an issue in small teams, even Excel or Access provide a strong starting point for data capture. From experience, for a team of up to 15, an Excel spreadsheet with the right headings can be stable with up to 3 years’ worth of matter management information in it. Clever use of headings and disciplined adherence to procedures can capture the same information that is captured by more specialised systems. Admittedly, reporting is much more labour intensive, but the information is there—and can later be translated to a system as it becomes available.

Challenge #6: How to find the time to execute?

If you find legal operations a chore, there will always be great reasons not to get to it. Therefore, find a small bit that intrigues or interests you or a team member and start (or have them start) with that. Even if it is not the most strategically useful action, it will be progressed because of that interest—and something that is of marginal benefit is completed does more good than something of potentially great benefit that is not completed.

The scope of legal operations is so broad (see Challenge #1) that there must be some component of it that at least intrigues the modern in-house lawyer. Find it—and get started. Try hard to avoid the lawyer’s curse of perfectionism. Apply the 80/20 rule. Then, produce a useful draft of the ultimate output into use—say as a pilot in a limited environment—and be willing to learn from the lived experience to improve it on the go. Nowadays, this has the wonderful title of “minimum viable transformation” in IT but sounds like good old-fashioned experimenting on a cost/benefit basis.

Challenge #7: Persistence and patience

The challenge of persisting in the face of all other challenges is perhaps the greatest challenge of all. The returns rarely happen in giant leaps forward. It is little by little that we change, mindful that we have to win hearts and minds to do so. It takes time for the cultural changes required to occur so that legal operational changes are not seen as a withdrawal of the personalised professional service of the trusted adviser and the benefits of the Reebok Rules. Therefore, be patient in terms of realising the benefits.

Challenge #8 – How to get started

The way to get started is to quit talking and begin doing.

Wait Disney

To move beyond the Reebok Rules and get off the ‘too busy’ hamster wheel: Just do it!

Footnotes

1. The 15 components are: • Change Management • Compliance • Contract Management • eDiscovery • External Resources Management • Financial Management • Information Governance (Records Management) • Internal Resources Management • Intellectual Property Management • Knowledge Management • Metrics and Analytics • Project Process Management • Strategic Planning and Legal Operations Leadership and • Technology Management – see https://www.acc.com/a/public/Program/ material/loader.cfml?csModule=security/getfile&pagelid=1463318&recorded=1

2. CLOC is a US-based industry association open to membership by corporate counsel, which set up its first Australian branch in Melbourne in late 2016. See further https://cloc.org/

3. The 12 elements are: • Strategic Planning • Financial Management • Vendor Management • Data Analytics • Technology Support • Legal Support Models • Knowledge Management • Professional Development and Team Building • Communications • Global Data Governance/Records Management • Litigation Support and • Cross-Functional Alignment. See diagram Slide 4 of CLOC: Reshaping the Corporate Legal Services Industry presentation slide pack by Conne Brenton, CEO & Chairman BCD Jeffery Franke, Leadership Team & BCO October 2017 at http://www.legalexecutiveinstitute.com/wp-content/uploads/2017/10/1045-am-CLOC Reshaping the Corporate-Legal-Services-Industry.pdf

4. This may be particularly apt for readily-accessed web-based targeted services run on third-party systems, such as the now well-established Plexus Promotions Wizard app http://www.plos.com.au/promotion-wizard, or for a new model pricing that doesn’t need a system, but beware of the investment in time, even for the ‘free’ options.

5. The key information, other than the matter description and responsible internal lawyer, includes business unit serviced, two levels of type of legal work (headline area, such as litigation and type, such as IP), external lawyers and their pricing—both estimate/quotes and invoices, with a ‘variance’ field. A general comments section can be useful—especially for warnings and cross-referencing to other files—and if you are a little more ambitious, a heading to check yes/no as relevant to one or more major organisational initiatives or values is great for specific alignment reporting, if your organisation is prone to that.


Maria Polczynski

Now General Counsel at oOh! Media, Maria previously held senior in-house roles including Head of Group Legal at Bendigo & Adelaide Bank. Maria has a deep understanding of the delivery of legal services and regulatory support and has served as both the national and Sydney Chair of the Financial Services Committee of the Law Council of Australia.

Maria is a current committee member of the New South Wales division of ACC Australia.
LEGAL INNOVATION ON A SHOESTRING: HOW TO INNOVATE ON A BUDGET

Legal teams must cut costs. But how can you innovate with no time and no money? In-house lawyer, independent director and blogger, Verity White shares her tips.

$0. Is this your legal team’s software budget?

If it is, you’re not alone. The 2017 ACC Trends survey reported that nearly half of legal teams have no money in their budgets for software. The 2017 ACC Australia Benchmarks & Leading Practices Report revealed that sixty percent feel pressure to reduce legal costs and twenty-five percent state there is pressure to minimise cost increases.

Despite this, over seventy-five percent of in-house internal spend is still allocated to lawyer salaries and related costs. In comparison, legal departments are spending a mere four percent on technology and just three percent on improving workflow.

Australian and New Zealand in-house lawyers reported spending approximately half their time on work that is of low importance or low value but that is urgent.

Breaking these survey results down, this means that in-house legal teams are spending one third of their legal budget on work that is of low value or low importance. That is an incredible amount of money!

...in-house legal teams spend one third of their legal budget on work that is low value or of low importance...


Does lack of money and time mean legal teams can’t innovate? Not at all! In fact, it can make you smarter, leaner and faster about how you look at innovation.

People not tools

People not tools is a key feature of the Agile Manifesto1 for software development and it applies to legal innovation also. You need to focus on solving problems for people rather than getting fixed on a particular tool or application.

Tools that don’t solve problems won’t get used.

It doesn’t matter what you have in your tool belt, if tools don’t work for the people they are intended to help, they are of no use. When it comes to innovation, you need people with the right attitude. It’s not magic tools, but people that will inspire, encourage, demonstrate and innovate to entice others on the innovation journey.

Don’t get me wrong, tools are very important and the right tool for the job makes a world of difference. However, when it comes to launching innovations or trying new things, stay away from the shiny, expensive tools job makes a world of difference. However, when it comes to launching innovations or trying new things, stay away from the shiny, expensive tools.

Get clear on what you need

What problem do you want to solve? What do you really need a potential tool to do (versus what would look cool or be nice to have)? Before you ask anyone to build or investigate anything, get it clear in your own team what outcomes you want and the priorities of those specific features. It would be nice to have a tool that spits out a Word Doc after assembly … but it’s not a necessity.

The smaller your must have list, the faster the build and the cheaper the price tag.

Build and test a prototype

Car designers build real-size clay versions of cars and show them to potential drivers to test reactions long before they set up the equipment required to actually construct a car.2

Cars are expensive to make and so too is innovation. Even if you aren't spending money to buy software, you are spending your time to investigate and problem solve. And, while you’re investigating, the day-to-day work keeps rolling into your inbox.

A small amount of low code, analogue upfront work to prototype and iron out issues will mean that it will be faster and cheaper to build the real deal. Produce a storyboard of your innovative app or use phone frames with pictures to visualise what you would like a potential app or tool to do.

Don’t wait for the perfect tool to start innovating, start drawing out your ideas and workflow so you can test and perfect your prototype tool now.

This may mean using a whiteboard or just pens and paper … you could create a presentation or just jot things out in a Word document. However they guide you through (and charge you for!) work you really could do on your own.

Do an audit

Have you ever gone shopping and purchased a new item only to bring it home and realise you already have one (or two)?

Waste not, want not.

Innovation gets expensive if you’re inefficient. While your ideas might be groundbreaking and special, it is unlikely that someone, somewhere in the organisation hasn’t thought of trying something similar.

Look outside the legal team and make nice with your IT department. There might be spare licences for amazing programs or your IT team might have already built something you can use off the shelf or tweak to solve your problem. You won’t know until you ask!

Want to innovate but not sure where to start?

Ask your IT team about software and other applications you may already have access to. Ask them, do we currently have any applications that can …

- Automate workflows?
- Assemble documents?
- Create webforms?
- Make quizzes or surveys?
- Create, edit and manipulate PDFs?

Additionally, ask about spare or more advanced licenses for Microsoft 365 and other enterprise software. If you clearly outline the problem you are trying to solve, you might be surprised with what free programs you uncover that could help the legal team solve problems.
Innovation is an attitude, not an app.

Use what you have

There are lots of functions in tools we use every day that we don’t yet use in full. While your team might have a $0 software budget, it’s almost guaranteed that you have access to Word processing software and other company-wide applications.

I have been a big fan of DocuSign—an electronic signature application—for a long time. Despite having an ‘all you can eat’ type licence and investing in DocuSign’s Australian entity, the Telstra legal team and wider company previously made only minor use of this powerful tool until champions throughout the company began to encourage and demonstrate its myriad of uses.

To increase uptake of this productivity powerhouse, the Automation stream of the Telstra Legal Innovation Forum championed DocuSign throughout the Legal team. Over the past eighteen months, we have held one-on-one coaching sessions as well as intensive training for a larger group of AutoMates (our team name for automation savvy lawyers!). We are now making full use of the amazing features of DocuSign to automate Settlement Agreements, Novation Agreements, Consent and Release Forms, and documents and processes.

How to talk to your IT department

IT departments are interesting and delicate. Depending on how motivated your IT department is, they can be a fantastic ally in your innovation aims. Speak with IT—take them out for coffee or lunch in exchange for answers to your many questions.

FUNCTIONAL REQUIREMENTS

These are questions for yourself, your team and the end users.

- What do we want the technology or tool to actually do?
- What problem are we trying to solve?
- Who is this tool for?

NON-FUNCTIONAL REQUIREMENTS

These are questions for yourself or for the IT team.

- What does your organisation need for security and system compatibility?
- Where can we store data? Specifically ask about Amazon Web Servers—lots of apps use AWS to store data, which IT departments don’t like.
- Do we have a Data Classification Policy? This will help you decide on what kind of information you can put through what tools.

NO CASH TO SPLASH

Attend every free CPD session you can on innovation (Check out the ACC member events https://acla.acc.com/events) and set up a shared space for innovation ideas. Just having time to brainstorm innovations and discuss improvements can create amazing (cheap) ideas.

Learn every feature of Microsoft Word—there’s lots of included features you can use to create innovative contracts, advice and guidelines.

Use the checklists above to talk to your IT team about current applications and programs you could use or re-purpose to solve your problems.

SOME CASH TO SPARE

Your budget needs to stretch so make use of multi-purpose applications that help with automating workflow, minimising risk and empowering clients such as electronic signature platforms (e.g. DocuSign).

Speak with colleagues in other organisations and at CPD events to see what kinds of applications they are using or testing. Learn from their mistakes if possible and use the connections they have developed to negotiate on pricing.

With your list of problems to solve and your checklist of IT requirements, contact at least three different providers and ask them to show you how their tool might solve your problems whilst meeting IT’s requirements.

CASH TO BURN

Just because you’re cashed up, doesn’t mean you should go straight to the checkout on the latest greatest tool. Consider spending your budget on in-house training on innovation to increase the innovation mindset in your legal team.

Invest in greater features of tools you know and love—such as Office 365 or DocuSign—to increase collaboration and innovation with these off the shelf but somewhat expensive tools.

Solve a big, hairy problem. Once you identify a problem that needs solving and you have done the basic work to sketch out innovations, think big to have an impact. It might cost but the value return could be huge.

Just as paying for a gym membership doesn’t make you fit, investing in tech doesn’t make you innovative. Innovation is an attitude, not an app.

With more and more studies showing collaboration and innovation helps increase productivity growth (in one Australian study, by 4.1 percentage points3), the real question for legal teams is, can you afford not to invest time, energy and (gasp) money into innovation?
Stretchy investment pieces

Once you are clear on what you need, invest your shoestring budget where it will get you the most bang for your buck and stretch with you as your skills increase. This means looking for multi-skilled applications such as DocuSign that you can add functionality to as you need it.

Don’t try to buy a piece of software to solve just one problem (unless the problem is big enough!). Think about what kind of return on investment your company expects from technology.

Negotiate and ask for added value

This might not be news but generally you should never accept the first price you’re offered. There are lots of reasons and levers you can use to negotiate down pricing, especially if your company is large or you think there is a large scope to replicate successful innovations.

You could offer to participate as a case study or do a testimonial for a discount. Alternatively, if there is no room to move on pricing, ask the provider to include training, templates, maintenance, monthly check-ins, ad hoc trouble shooting or whatever other services your team would find useful depending on your priorities.

A small-time investment from the provider can work wonders for increasing take up of innovation in your organisation.

Do not accept just one rose

Just like singles on dating shows, often legal teams fall in love with one provider or one application and fail to shop around or seek out more quotes. While many apps are unique in different features, there is a lot of overlap between offerings. Speak to several players and create some competitive tension.

Not only are you learning more about other potential functions and benefits that could solve your team’s problem, with more information you can ask more intelligent questions. When you are informed and market savvy, you are better armed to spot a good deal.

Free or low-cost innovations you can do on a shoestring budget

<table>
<thead>
<tr>
<th>INNOVATION IDEA</th>
<th>TOOL</th>
<th>HOW</th>
<th>SKILL LEVEL</th>
<th>COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Easy to read, likeable contracts</td>
<td>Microsoft Word (Review tools, templates)</td>
<td>Structure your contracts for productivity. Improve your formatting game with templates—free and online.</td>
<td>Basic – Mid</td>
<td>Included in basic licence</td>
</tr>
<tr>
<td>Reduce that low value work with easy to follow guides</td>
<td>Microsoft Word (SmartArt)</td>
<td>Create clickable infographic and flowcharts with SmartArt and hyperlinks to other resources.</td>
<td>Mid</td>
<td>Included in basic licence</td>
</tr>
<tr>
<td>Secured template agreements</td>
<td>Microsoft Word (Developer Mode form fields)</td>
<td>Locked down contracts with only certain form fields available for editing.</td>
<td>Mid – Advanced</td>
<td>Included in basic licence</td>
</tr>
<tr>
<td>Feedback from clients and other lawyers</td>
<td>Google Forms</td>
<td>Develop quick and easy surveys to test innovation ideas and gather feedback on work. Be aware of data security and information classification though.</td>
<td>Basic</td>
<td>Free</td>
</tr>
<tr>
<td>Guided work flows and approval processes</td>
<td>DocuSign (Templates)</td>
<td>Control document workflows so contracts are quickly signed and go through appropriate approvals.</td>
<td>Basic – Mid</td>
<td>Included in basic licence</td>
</tr>
</tbody>
</table>

Innovation on a shoestring

Remember you are never ‘done’ with innovation. Make sure you ‘infuse every initiative’ with an innovation lens to ensure your legal team is continually adding value to your business. When you see results from low-code innovation, you can develop the business case to increase your budget for new innovative tools.

Footnotes

ACC Australia National Conference 2018

14-16 November 2018
Brisbane Convention and Exhibition Centre, QLD

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THE RISE OF BIG DATA

Founder and CEO of Xakia, Jodie Baker discusses the concept of Data-Driven leadership in a data-rich world.

The rise of Big Data has ushered in an era of data-driven leadership. Data—both big and small—is the new language of corporate boardrooms and CEOs are demanding fluency from all members of their leadership teams, including General Counsel and their Legal Departments.

In a 2016 global survey by McKinsey & Company, thirty-eight percent of responding CEOs indicated that they were leading data and analytics initiatives in their companies. A more recent (August 2017) survey by KPMG found that CEOs worldwide rated “becoming data-driven” as a top-three priority.

Even moderately advanced legal departments likely have access to large quantities of data and scores of spreadsheets. Taking it to the next level, however, involves developing the skills and identifying effective resources that can help, as The Economist described, “extract the nuggets of gold hidden under the mountains of data.”

Legal operations or Legal Department management have existed for decades in some circles; however, it should be no surprise that its more recent and far more significant growth trajectory coincides closely with the rise of data-driven organisations. The ACC features its own popular section dedicated to legal operations and the Corporate Legal Operations Consortium has grown to over seven thousand members representing thirty-seven countries on five continents.

The size and scope of legal operations functions remain widely varied. However, no matter where your department might fall on that continuum, adopting a legal operations mindset can help you address two critical questions: What do CEOs want from the legal department and what do CEOs want from data?

What CEOs Want from the Legal Department

While every situation is influenced by unique factors, when it comes to Legal Department performance, research by legal consulting firm Altman Weil provides valuable insights about what really matters to CEOs and corporate board members. In its 2017 Chief Legal Officer survey, Altman Weil asked respondents to rank Legal Department activities from most valuable to least valuable as seen by the CEO and board. Top priorities emerged as follows:

1. Advising company leaders (70.2 percent).
2. Supporting business objectives (67.8 percent).
3. Managing legal risk (56.4 percent).
4. Offering availability and responsiveness (51.2 percent).
5. Controlling legal spend (28.9 percent).

Responses to the Altman Weil survey tracked closely with responses to a 2016 survey conducted by New York Stock Exchange Governance Services. In this study, when U.S. corporate directors and executive officers were asked what GC functions are expected to add the most value to the board in 2020, 79 percent of respondents cited, “acting as an adviser to the board” and 73 percent said, “acting as an adviser to the CEO.”

As CEOs and boards continue to advance decision making that is informed by rigorous data analysis, Legal Departments have a tremendous opportunity to harness their own data and deliver metrics that illustrate performance, value and future risks and opportunities.

What CEOs Want from Data

Perhaps the biggest challenge for legal departments that want to seize the data(s) is determining which metrics are most valuable and identifying best practices for consistent collection and reporting. Proactively engaging with your CEO on this topic will serve as a strong signal that you’ve ‘got it’. However, you should be prepared for those exploratory discussions by having a basic understanding of what the CEO’s needs might be. Here is the opportunity to present options leveraging data you already have and already know, and then to refine your reporting based on further guidance from the CEO.

What’s the least complex model that would improve our performance?
analytics can be complex and intimidating; however, an experienced technology partner can help you work through how to get started and create a simple foundation that will be scalable for future initiatives.

CEOs who want a comprehensive view aim to combine top-level legal department analysis with data from other departments. Imagine, for example, how powerful legal risk analysis could be when combined with product development and customer satisfaction metrics. It is important to understand that from the CEO’s perspective, legal department data will be used in a broader context with company-wide data. Legal department leaders will want to examine their specific data at a more granular level, but they must also identify those key metrics that CEOs and directors can fit together with other information from around the company to help inform big picture strategy for both risk and opportunity.

Raising the law department’s profile

The challenge is not necessarily that legal doesn’t have valuable information, it’s that they are not measuring and reporting it.

An in-house community benchmarking study by the GC350 found that forty-four percent of respondents said they don’t have a high profile within their companies and that their top tactic for sharing their accomplishments is “attending other team’s meetings.” In the same survey, seventy-seven percent of global companies said they don’t measure the value delivered to the business by the legal department. The challenge is not necessarily that Legal doesn’t have valuable information, it’s that they are not measuring and reporting it.

That said, a number of industry leaders are having impressive success using data to inform decisions and operate more efficiently and effectively. This is especially true for companies with large litigation dockets; however, there are numerous examples of companies combining legal project management and data analysis across the breadth of their operations, not just in litigation.

Since 2012, the ACC has recognised the best of the best with its annual Value Champions award. This is not a popularity contest by any stretch. It involves a rigorous application process and a multistep review by a panel of highly qualified judges. The ACC receives dozens of entries each year and awards ten to twelve companies who have been the most innovative at “cutting costs, increasing predictability and achieving better outcomes.”

Last year, for example, Australia’s Telstra earned the Value Champion designation. Under the leadership of General Counsel Mick Sheehy, the telecommunications company has been working on legal department operational improvements since 2013, according to the ACC’s summary of the award winners. What started as LPM innovation around transactional improvements at a local level was “supercharged” through design thinking and collaboration with Telstra outside counsel from Herbert Smith Freehills. The company focused on improving, among other things, the time its in-house lawyers were spending on internal meetings, time spent gathering and reporting information for internal communications and streamlining the creation of non-disclosure agreements.

With significant progress being made, Sheehy told the ACC that his department will now be looking at “bigger and bolder” initiatives, such as developing a triage system, establishing key data and metrics and workflow automation.

Among the inaugural winners of the Value Champion award in 2012 was global pharmaceuticals giant GlaxoSmithKline (GSK). While GSK’s reported success was impressive in scope, one key metric stood out. Through an initiative that began in 2008 under the leadership of General Counsel Dan Troy and head of U.S. litigation Bob Harchut, GSK legal partnered with IT, finance and procurement to make significant changes in how the company was paying for legal services. The challenge was to move all outside counsel assignments throughout the world to value-based fees whenever feasible.

According to the ACC, Harchut hired two financial analysts—not lawyers—to help the department establish and track metrics and monitor success. The results by 2012? Well, those speak for themselves. GSK’s external spend with value-based fees increased from 3 percent to 68 percent and the company reported estimated savings of $21 million.

If you feel like your department’s challenges may be too big, consider insurance giant AIG, a 2014 Value Champion. According to the ACC, the company works with more than 1,200 individual law firms on behalf of ninety million clients in ninety countries. In 2012, AIG created a Legal Operations Center (LOC) that included a Process & Information Excellence Team. The team developed in-depth legal analytics capabilities and systems backed by self-service dashboards that allowed users to create custom reports and compare law firms across similar matters using real-time data, according to the ACC.

Similar to GSK, the size and scope of AIG’s initiative is impressive and game-changing. The company estimates that the LOC’s work resulted in savings of more than $200 million in 2014 alone.

There is an obvious common thread that runs through virtually every Value Champion story. Winners identified innovative ways—some simple, some highly complex—to harness the power of their data and develop metrics through which improvements, no matter how incremental, can be measured and reported.

Make your case

Data-driven decision making is not a passing fad. CEOs will continue to put downward pressure on all departments to step up their game and demonstrate how they are innovating and delivering value in measurable ways.

Lawyers and legal departments thrive on evidence and it’s time for you to demonstrate how they are innovating and delivering value in measurable ways. Lawyers and legal departments thrive on evidence and it’s time for you to demonstrate how they are innovating and delivering value in measurable ways. Lawyers and legal departments thrive on evidence and it’s time for you to demonstrate how they are innovating and delivering value in measurable ways.

Identifying an industry partner can be a great place to start or to help accelerate progress you may already be making. Find a partner with the consultative expertise to help you develop a strategy and the technology platform to help you execute it.

Your CEO will thank you.

Jodie Baker
An innovator, entrepreneur and business builder, Jodie combines her legal and financial services background to focus on building tools to manage the business of law. She is the Managing Director of Yaxia Technologies, an automated data capture and matter management software, purpose built for in-house corporate legal teams. Jodie is also Deputy Chair of the Australian Legal Technology Association, dedicated to providing a community to Australian legal technology companies for information sharing, collaboration and building the presence of Australian legal technology on the global stage.
A company collects the data of its employees throughout the employees' lifecycle—beginning with recruitment and concluding with resignation, termination or retirement. The data is collected and processed at all stages. Many organisations are deploying new digital HR technologies to better manage and support the entire employment life cycle, including in the cloud to analyse data that can lead to HR improvements.

The rapid adoption of new technologies in the workplace has been useful in detecting the loss of intellectual property or data breaches by an employee. What's more, there are now predictive analytics and location data from smart devices that improve employee productivity. However, these technological developments are sometimes seen as intrusive and pervasive ways of cheaper monitoring and have raised concerns and challenges about employee privacy and data protection.

Such technology does not give unfettered powers to employers in name of legitimate interest under the new EU General Data Protection Regulations (GDPR). In many cases, monitoring every online activity of an employee's communication has been held to be disproportionate and unreasonable when compared to employer's interest to protect the company's IT systems from being damaged or liability being incurred by the company for illegal online activities.

For example, the Bărbulescu v Romania case reviewed the dismissal of an employee of a private company after they monitored his electronic communications and accessed his content without providing any prior notice of monitoring. The European Court of Human Rights (ECHR) found that there had been a violation of Article 8 (right to respect for private and family life, the home, and correspondence) of the European Convention on Human Rights. Furthermore, they decided that the Romanian authorities had not adequately protected the applicant's right to respect for his private life and correspondence. The authorities had failed to strike a fair balance between the interests at stake.

In this case, the ECHR noted that an employer's instructions could not reduce private social life in the workplace to zero, or the right to respect for private life and the privacy of correspondence continued to exist, even if these policies might be restricted insofar as it is reasonable and there exist legitimate reasons to justify monitoring.

In Romania's case, the ECHR curtailed the powers of employers monitoring their employees' communication after making an assessment of the legitimate interest and finding it excessive. In another recent case, ECHR held that the scope of monitoring and the degree of intrusion into an employee's privacy was reasonable and within the legitimate interest of the employer.

In the latter case of a decision by ECtHR (reported in BBC News), an employee was fired by SNCF, France's national rail company, based on a search of the employees' computer in his absence, wherein SNCF found pornographic images and videos, as well as forged certificates. In its ruling, ECHR held that there had been no breach of Article 8 of the EU Convention on Human Rights and that the domestic courts had examined the employee's right to respect for private life and did not exceed the "margin of appreciation" available to them. ECHR agreed that the files had not been identified as private and SNCF had been legitimately ensuring that its computer was being used in line with contractual obligations and the applicable regulations and found the employee committing a serious breach of SNCF's professional code of ethics.

These two cases provide guidance to an organisation that the dismissal of its employees that is justified based on an employee's monitoring will depend on both the nature of the conduct and how it will materially affect the employee's employment under the GDPR.

Many companies use social media to recruit prospective candidates and assume that since the profiles are publicly available, such as LinkedIn, Facebook or Twitter, they can process this data for their background checks. It is possible in countries like India and Singapore to use personal data that is publicly available. However, for employees covered under the new GDPR, a legal ground is required for processing even publicly available data in social media for legitimate interest. For example, if the employer wants to assess risks regarding candidates for a specific function, then the candidates must be informed of any such processing before they engage in the recruitment process.

Under the existing European Union Directive 95/46/EC, the employer must follow the fundamental data protection principles when processing personal data in the employment context, namely necessity, purpose specification, transparency, legitimacy, proportionality and security. These fundamental principles are further strengthened with additional requirements under the new GDPR and the employer must now comply with the following principles before processing the data of an employee:

1. **Legal basis**: Working Party 29 in its opinion 8/2001 and 2/2017 has clearly mentioned that consent cannot be the legal basis of processing data of employees as consent cannot be freely given due to the nature of the relationship of employer and employee. Hence, obtaining consent in the employment contract for processing employees' data and monitoring employees' communication may not be valid unless a specific and informed indication of the employee's consent is obtained. A legal basis will be when processing is necessary for the performance of an employment contract to meet obligations such as protecting the safety of business assets or intellectual property rights or complying with legal obligations such as paying salaries, tax calculation, social security payments and so on.

2. **Legitimate interest**: To determine the legitimate interest of the employer, employees' data processing should be strictly necessary for a legitimate purpose and proportionate to the business needs. When deploying technologies for monitoring or tracking employees, the organisation must first consider the specific reasons justifying the introduction of the monitoring measures; second, whether the employer could have used measures entailing less intrusion into the applicant's private life and correspondence; and third, whether the communications might have been accessed without the employee's knowledge.

3. **Transparency**: It is important for companies to follow transparency principles by informing the employees of the existence of any monitoring, the purpose of monitoring and any other information for fair processing, such as implementing an employee monitoring policy or providing prior notice to employees about the nature and extent of the monitoring.
4. **Privacy by design:** GDPR requires employers to implement privacy by design at the time of development of workplace technologies to determine the degree of intrusion of employees' privacy and consider data minimisation.

5. **Privacy impact assessment:** GDPR requires employers to carry out the impact assessment when deploying new technologies to determine whether the monitoring is reasonable and fair. For example, when an employer deploys mobile device management to locate devices in real time, an assessment should be made to ensure that the data processing complies with the principles of proportionality and subsidiarity.

Today’s organisations are using cloud applications to manage employee data with data centres located outside of the European Union and are thus required to comply with the GDPR. In such cases, the organisation is required to ensure that an adequate level of protection for the transfer of data outside of the European Union and subsequent access by other entities within the group remain limited to the minimum necessary for the limited purpose. Similarly, if a company is using online office applications that process personal data, it should allow employees to save their personal data in a folder marked as ‘Private’ and should not access such files without prior written notice and in presence of the employee.

Hence, under the GDPR, the authorities are giving prevention much more weight than detection, and have clarified in many occasions that the interests of the employer are better served by preventing misuse through technical means than expending resources on detecting misuse. For example, prohibited use of the internet can be prevented by blocking certain websites rather than continuously monitoring all communication, which may be disproportionate and will not be a legal ground under legitimate interest.

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**Footnotes**

1. 2016 ECHR 61
4. Working Party 29 Opinion 2/2017 on data processing at work

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**Kavitha Gupta**

Kavitha Gupta is on the steering committee of the ACC India Corporate Counsel Forum and senior legal counsel in the Aviation Industry. She has nearly 15 years of experience in the technology industry and was previously with Hitachi Consulting as their senior legal counsel while overseeing the legal, risk management, and corporate governance aspects of the company’s business for the APAC region. She also worked with Wipro Ltd. handling global compliances for Americas and commercial IT contracts. She’s a certified privacy professional (CIPP/A) from IAPP.

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MANAGING A LEGAL DEPARTMENT

The only constant of legal department management is change. Jiaxing Zhou shares his insights towards effective legal department management.

Maintaining an enduring legal function in a financial institution is not easy. It involves leading a vital team of legal professionals, managing the legal risks in a changing legal and regulatory environment and accommodating the business needs of a dynamic organisation in a dynamic industry. While the task has become more and more challenging, the emergence of innovative technology may help alleviate the pain.

People orientated management

There is no doubt that people are the most important and valuable resource in an in-house legal function, thus managing a legal department is to ensure the team can provide the right expertise across the organisation and, at the same time, provide individual legal professionals with the opportunities to develop and progress in their careers to maintain the stability of the team.

Recruit and retain the right persons

A good first step to achieve this goal is to recruit the right persons. The right candidate must be proper and qualified, but do not simply look at people’s PQE. Senior lawyers are not always the right candidates but they are always expensive. Look at a candidate’s attitude, whether he or she is earnest to assist beyond his or her own scope of duty, whether he or she is well regarded by his or her former employers and colleagues. People will become more senior and experienced but can hardly change their attitude from negative to positive. Therefore, hire different levels of people and allow them personal growth and career development. Identify their strength and weaknesses. Encourage and provide opportunities to junior employees to perform the job of senior colleagues and prepare junior employees to fill up senior positions that will eventually become vacant. This can motivate and retain good and competent professional staff, particularly in legal departments where promotion prospects are limited.

Cultivate good working relationships

Some people leave not because of a lack of career development, but because of bad working relationships. Bad working relationships can lead to high staff turnover, which not only has negative impact on the continuity of the legal function, but also significantly increases recruitment cost. Research shows that the most important reason why people stay in their job is a good relationship with their manager. This requires the head of the legal department to provide not only technical support when needed, but also a certain amount of emotional support to the team, i.e. spend regular quality time with the team individually and show a genuine interest in their career development, and offer each individual team member a personal development plan and a career path to aspire to, keeping the team motivated and engaged.

Stay alert to changes in legal and regulatory framework

The primary function of a legal department is to manage and minimise legal risks in a changing legal and regulatory environment. Regulatory changes are happening and proceeding around the world at an unprecedented rapid pace and on an unprecedented scale. Coping with the huge volume and complexity of new regulatory requirements is a challenging task to in-house counsels, in particular those in financial institutions.

In Hong Kong, we see a more proactive SFC than ever before. The SFC has adopted a new real-time regulatory approach to strategically combine their expertise and resources while front-loading regulation via earlier, more targeted intervention to monitor listed companies and licensing corporations and has become more and more rigorous in taking enforcement actions. As legal counsels, we need to stay alert to the changes in the regulatory environment and prepare our client departments and the organisation for such changes. For example, where necessary, go through the due diligence process and documentation procedures with your corporate financing department to ensure they are able to demonstrate compliance, provide training to refresh their compliance knowledge and enhance their awareness to a rigorous regulatory environment. Do not wait until the SFC is coming to your door for inspection.
Legal department management is never easy, but it is rewarding when you see your juniors grow with the company, when your business units propose a toast to you for your assistance in achieving their business goals and, most importantly, when you become a vital and increasingly important function of a dynamic and growing organisation that is stepping into and establishing itself in more and more markets.

Accommodate the business needs

The importance of serving and accommodating the business needs of client departments and the organisation at large can never be overestimated. To do the job well, in-house counsels must not only understand the current business operation of the client departments, but must also be well informed of their development strategy and anticipate future changes to their products, services and markets. To alert them in advance of the legal risks associated with their business plan, assist them in addressing the issues and striking a balance between achieving business growth and minimising legal risks. They will appreciate your advice much more when you raise it at a preliminary development stage when there is still much room for adjustments rather than at a final stage when they have committed themselves with little room for negotiating changes.

Application of technology

The emergence of innovative technology is impressive. It helps streamline documentation and record keeping. The application of artificial intelligence (AI) in the legal area has been a hot topic, and indeed it can improve work efficiency and have a positive influence on the management of the legal department. One example is digitalisation of all contracts. In the past, legal assistants had to manually extract data from paper contracts. When the volume of documents was huge and the duration of the project was long, there was difficulty in ensuring work quality across time and teams. People do make mistakes and overlook one thing or another, especially when they are tired and the task is repetitive and appears trivial. With the advance of digital technology and the resulting reduction in storage costs, more information is being collected and digitalised for data compilation and mining. Access to this information and the ability to analyse it effectively is a new and superb opportunity to deliver value.

Automation and AI-based applications, if used astutely, can make the discovery of a wide variety of useful information quicker and more accurately. A combined approach to discover and format this information is of real commercial benefit: consistency of outcomes is much easier to achieve and decision-making processes will be sped up and more consistent because decisions will be based on similar data sets used across the company rather than on one person’s hunch.

Conclusion

Legal department management is never easy, but it is rewarding when you see your juniors grow with the company, when your business units propose a toast to you for your assistance in achieving their business goals and, most importantly, when you become a vital and increasingly important function of a dynamic and growing organisation that is stepping into and establishing itself in more and more markets.

Jiaxing Zhou
JOE Zhou is the Head of Legal Department of CICC Hong Kong as well as the Joint Company Secretary of CICC. He is sitting in the Board of Directors of ASIFMA and acts as the Co-Chair of its China Capital Market Committee. He is qualified in China, England and Wales and Hong Kong.

Across the Shenzhen River, China is finalising data protection law and codifying regulation on the transfer of important data across the Internet. Turning to the overseas markets, with the recent implementation of the MiFID II regime, the coming into force of the General Data Protection Regulation and a tightening money laundering and sanction law, the job of in-house counsels can never be confined to specific areas of practice or jurisdiction. It is us, the in-house counsels, who should identify and assess the legal risks and impact on the organisation, advise the affected business units and the management, and propose and implement practical solutions.
INNOVATION AND THE LEGAL SERVICES
SUPPLY CHAIN

Beaton Global outlines the latest research on how your peers manage and what they think about innovation in their legal department.

Previous contributors to Association of Corporate (ACC) Counsel publications have noted the growing importance of in-house counsel, transitioning from being ‘just lawyers’ to becoming increasingly senior members of the strategic leadership team in organisations and government departments. This has been driven, in part, by the increasing prominence of commercial ethics, the widening reach of in-house teams across organisations as more departments find themselves facing compliance risks and the continuing need for legal expertise to traverse the ever-changing political and legislative landscape.

In addition to a seat at the table, you and your team will need to start considering the issue that defines the priorities of many in senior leadership positions ... innovation:

- How are you managing innovation in your department?
- Are you delivering increased value to your end-customers through innovation?
- How are you encouraging your outside counsel to innovate?

Our recently released report on “Client-led Innovation in Legal Services” sheds light on these issues. Based on a survey of clients of the leading Australian law firms (one third of respondents were corporate counsel), this research explores the relationship between innovation and the legal services supply chain.

In the context of this report, we have defined innovation as: “Implementing an idea which addresses a specific need and delivers value for both their clients and the law department”.

Change in the law department

Everyone recognises that innovation is important. When asked to indicate how much they agreed that their organisation as a whole encourages innovation, it was found that fifty-six percent of in-house lawyers strongly agreed compared to forty-six percent of staff outside the law department (such as CEOs, board members and managers). This suggests that corporate counsel have a heightened awareness of the pressures on them to innovate and deliver more value to their organisations.

Beaton Global has previously argued that corporate and commercial legal services was in the buyers’ market stage of the industry lifecycle. New forms of law firm competition and technological augmentation and substitution of lawyers’ services have given in-house lawyers the power to put downward pressure on prices and demand more-for-less. As those most involved in this shift in consumer power dynamics, you and your team will need to start considering the issue that defines the priorities of many in senior leadership positions ... innovation:

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This may explain why, when asked whether they agreed that their law department encourages its staff to innovate, only sixteen percent of colleagues outside the department strongly agreed. This is in contrast to the forty percent of in-house lawyers that strongly agreed. Crucially, when asked whether they believed their law department encouraged its external law firms to be innovative, thirty-five percent of both in-house lawyers and others strongly agreed.

If that was not alarming enough, our research shows that law firms are not regarded as innovative to begin with. Our beatonbenchmarks data, which is based on an annual survey that we have sent every year for the past fifteen years to the clients of professional services firms (which many ACC members may have completed over the years), shows that clients rank innovation as the poorest performing attribute for half of the law firms in the study.

That is, your colleagues outside the law department believe that any innovation of their legal work predominantly comes from law firms and not their own corporate counsel team, while also believing that law firms are not very innovative at all.

This highlights the magnitude of the challenge facing in-house lawyers for recognition of their innovation efforts and value-add. How are you managing innovation in your department?

Do you have an innovation framework in place to encourage new ways of thinking? There is a myriad to choose from: Agile, design thinking, intrapreneurship, using incubators and open innovation, to name a few. Based on our experience in advising law and other professional services firms, as well as this research, we at beaton would advocate for a framework of innovation that puts consumer needs at the centre of the process. We have called this client-led innovation.

Adding value for the client

Whether your clients are internal stakeholders or external end-customers, innovation should be driven by addressing their specific needs. Often firms are advising respond to this by objecting, “that does not improve our bottom line!” They argue that innovations that prioritise the firm’s needs, such as lower overheads or greater efficiency, result in savings that can be passed on to the client making them more satisfied with their service.

Not only is this not necessarily the case (this report found that innovations leading to lower fees were not a strong influencer of firm use and our beatonbenchmarks data have consistently shown that lower costs are not a driver of client satisfaction), but we would respond by saying prioritising clients’ needs will better improve the financial position of the firm. Meeting client needs can differentiate you from your competitors, which leads to greater client satisfaction and an increased prospect of repeat use, as well as a greater likelihood of the client recommending your firm to others, thus forming a virtuous cycle.

We would argue that this same logic applies to law departments. Meeting the needs of internal and external clients substantially increases the value of your work and your department. This study found that twenty percent of the most innovative solutions of law departments were implemented to address client needs. Some examples of these motivations were:

- “Company focus on sustainability and customer needs”
- “Excellence and speed in service to clients and end-customers”
- “Efficiency, customer satisfaction – improving understanding and therefore positive perception of outcomes”
Managing your outside counsel

Of those thirty-three percent that said innovation was important to their KPIs, eighty-eight percent indicated that advice from their outside law firms was very important and forty percent said it was important. In many instances you can, and should, be using your law firms as an invaluable resource to assist in your innovation activities.

If your goal is to meet your clients’ needs and your law firm’s goal is to meet your needs, then by the law of transitivity, your law firm’s goal should be to meet your clients’ needs.

Has your outside counsel asked you how they can innovate to better suit your needs? This study found indications that this was not happening, with three in four respondents indicating that they could not name a single outstanding example of innovation from a law firm they knew. As discussed above, clients of law firms have much higher purchasing power than they have ever had. You should be exercising this power and suggesting to your outside counsel how they can better serve your needs (and thereby your clients’ needs).

Without this guidance from you, their clients, law firms will continue to make their innovation investments in legal technologies. While there are many dividends to the digitalisation and digitisation of legal services, many clients do not believe technology alone is innovation. When asked to describe law firm activities that they considered innovative, just fifteen percent indicated something to do with technology alone. When asked to describe law firm activities that they considered innovative, just fifteen percent indicated something to do with technology alone. Some suggested that such innovations were mostly marketing gimmicks that did little to add value to the service being provided by the firm.

In contrast, when respondents to the survey were able to identify an outstanding example of innovation by a law firm (three in four could not), forty-seven percent indicated that advice from outside law firms on new technologies and processes.

Innovation workshops, such as those offered by beaton (which includes copies of the full sixty-four page report), can help identify your needs and facilitate the co-development of solutions that add value to your department, organisation and end-customers. Our experience indicates that innovations developed using our framework have much higher success rates.

The question is not whether your outside counsel is innovating, but whether they are asking you how they can innovate and how they can help you innovate.

Conclusions

The legal services industry lives in times of great change. While the dynamics between BigLaw and NewLaw firms play out, corporate counsel are gaining in stature and assuming positions on the strategic leadership teams of their organisations. This newfound authority carries with it many responsibilities, chiefly among them is to innovate and deliver added value.

Our recently released report into “Client-led Innovation in Legal Services” found that for many in-house lawyers, their colleagues have yet to recognise the relationship between the law department and innovation. We argued that the best way to achieve this was through listening and addressing the needs of your internal stakeholders and external end-customers. Although only one in five respondents engage in this kind of innovation, we anticipate this number will grow as more corporate counsel assume leadership roles.

One way to accelerate this process is by leveraging the existing relationship between you and your law firms. Collaboration and co-development of innovative solutions is in the best interests of your firm, you and, most importantly, your end-customers.

Footnote

2. On a scale of 0–10, they rated from 8 to 10.
3. ‘General Counsel should be more demanding’ (2016), Dr George Beaton, The Australian Corporate Lawyer, Volume 26, Issue 4.
4. On a scale of 0–10, they rated from 8 to 10.
5. On a scale of 0–10, they rated from 6 to 7.

By arrangement with beaton, if you or your law firms would like to purchase a copy of the “Client-led Innovation in Legal Services” report or would like to arrange to have an innovation workshop to identify and address your needs, email compass@beatonglobal.com

Mention this article to receive a 10% discount.
COMMUNICATING THROUGH A CRISIS: THE COST OF NOT SAYING SORRY

In this age of round-the-clock company scrutiny, we see almost as much focus given to how a company handles a crisis as the crisis itself.

With turbulence in our world growing and the ‘always on’ nature of the news, the potential for crisis has become an almost daily consideration for business. Globalisation, investor activism, regulatory change, political and cyber risks are all contributing to increasing business vulnerability and the need for Boards to carefully consider their ability to respond effectively.

**Anatomy of a crisis – research study**

With this in mind, FTI Consulting has undertaken a piece of proprietary research of approximately one hundred recent incidents that have made the headlines. Our objective was to shine a light on these crises and assess how they played out with a view to helping businesses successfully navigate future disruptive events of their own.

The crises we reviewed span the last twenty years and include oil spills, cyber hacks, plane crashes, cases of fraud, product recalls and many more. We were interested to see what patterns emerged from these events—patterns that might be instructive for Boards and communicators when facing their own crisis scenarios.

**Our findings**

1. **Existential impact**

As we all know, the effects of a crisis can be significant and long-lasting. Therefore, we started by analysing just how significant that impact could be. The findings revealed that in fourteen of the one hundred cases, the crisis event had been so catastrophic that they had resulted in companies ceasing to exist. Additionally, in almost a third of the one hundred cases, a senior executive of the company lost their job. This idea of a sacrificial lamb is nothing new, but such a high number suggests that Boards’ tolerance for missteps is low.

2. **Impact on share price**

Next, we wanted to analyse the typical course of share prices in the aftermath of a crisis to see whether any trends could be seen. The typical pattern is to see a big drop in share price at the end of day one. This continues through the first week and only starts to plateau after a month or so.

However, we saw huge discrepancies in the way that share prices behaved following different types of crisis.

For example, as the chart below shows, a month after a crisis event had become known, the average share price decline across cases of systemic financial mismanagement was seventy percent, whereas individual corruption cases showed a decline of just five percent.

In terms of recovery after a crisis, those same cases of mismanagement were still, on average, sixty-three percent below their origin after three months, whereas individual corruption cases had recovered most of their value, on average, sitting at just 1.9 percent below their origin.

3. **Media coverage**

And what about media coverage? Instinctively, we know that a crisis would dramatically increase the media’s interest in a company, but even we were surprised to discover by how much.

Our study found that in the month after a crisis, a company could expect to receive almost thirty-five times the amount of media coverage than the month beforehand. In terms of social media impact, the post-crisis month saw, on average, two hundred and eighty times more mentions than a month before the crisis.

These are significant numbers. Indeed, the magnitude of traditional and social media interest around these events begins to shed light on another central learning from our study, namely the intangible impact of a crisis beyond clear and well-understood value proxies such as market capitalisation. This goes to the heart of the unseen element of crisis preparedness and management that all boards need to consider. Are they geared up for this kind of onslaught? Are there relevant processes in place? How can they best respond and continue to protect the day-to-day operations of their business?

In terms of share price impact, we discovered that around $200bn of value was lost as a result of the crises we analysed. In addition, nearly a quarter of the surviving public companies in the study (twenty-three percent) failed to recover their share price to pre-crisis levels in the time since.

### Key findings:

- $200bn of market value was lost in the 100 cases studied.
- Fourteen companies went out of business and in 32 cases a member of the senior management team lost their job.
- Companies can expect a thirty-five times increase in media coverage following a crisis event—for social media, it’s even more.
- Companies are hit much harder where the public perceive a degree of culpability on the part of management.
- The financial cost of not saying sorry—measured in terms of share price impact—easily outweighs the total cost of litigation.
4. Culpability

As we began to see variations in the way that different crises behaved (when we cut our media analysis by crisis type we discovered that it showed a similar pattern to share price impact), we began to wonder whether companies are hit harder when external audiences perceive a culture of mismanagement. In other words, were investors hitting the share price more heavily or does the media apply more scrutiny to events where management is perceived to be to blame? Clearly, the degree of culpability in crisis situations contains a heavy degree of subjectivity from the outside looking in but our analysis did show that in crises where the management is deemed to be at fault those instances are punished more heavily.

Impact of crisis depending on perceived culpability

5. Saying sorry

We finally turned to the all-important issue of ‘the apology’. Many CEOs instinctively feel that it is right to apologise but some are advised that they should not. The argument against apology is that it is tantamount to an acceptance of guilt and that it opens the door to potential litigation. Reputationally, however, the lack of apology can have a significant influence on the credibility of management and the reputation of the wider firm. Therefore, do apologies work?

Interestingly, apologies were found to be relatively few and far between in our study. Indeed, we found evidence of a public apology in only thirty-seven of our one hundred cases. We also found that most of those apologies arrived slowly—only sixteen of the thirty-seven apologies were issued within two weeks of the crisis incident becoming known to the public.

The main charge against the apology is that it can be bad for business—that it can lead to protracted and expensive legal liabilities. We wanted to see whether there was some way of comparing the financial impact of apologising with the impact of not apologising.

The most effective way to do this was to compare the total cost of litigation and compensation, for as many crises as we could, against the relative value destruction in terms of market capitalisation for those companies. We considered the damage to the value of the owners’ shareholdings to be the best proxy for reputational impact under these circumstances (although it is fair to note that the cost of litigation will impact share price itself).

We discovered thirty-seven crises where the cost of litigation was publicly reported. The total cost of litigation and compensation relating to those crises was $66.73bn. This compares to a total destruction in market capitalisation for the same businesses of $138.36bn.

By this measure, it could be argued that if you don’t apologise, you will double your litigation costs in terms of value lost.
Conclusion

When starting this project, we expected some of our intuitions about crises to be confirmed. We expected share prices to take a hit and the events we surveyed to be a lightning-rod for media coverage. The research supports these views, but the depth and variety of the impacts we saw surpassed our instincts. The three most significant learnings can be summarised as follows:

- Boards need to consider the impact of not apologising in a crisis situation. The effect of reputational damage in terms of share price destruction easily outweighs the cost of litigation.
- The crises that hit hardest are those where management is clearly culpable or endemic cultural decay is evident. For example, the report suggests that culture and effective employee engagement are even more important than planning for cyber risks.
- Companies need to be prepared for the explosion in traditional and social media interest that will come their way in a crisis situation. Does the company have the necessary teams and structures in place to cope?

We anticipate that the findings here will lead companies to think more carefully about how they prepare for their ‘nightmare scenarios’ events. Are they ready? Are they taking these issues seriously enough? Prevention, as we all know, is always preferable to cure.

Original article authored by FTI Consulting’s James Melville-Ross, Senior Managing Director, and Adam Davidson, Director.
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ACC HONG KONG: ENCOURAGING THE DELIVERY OF PRO BONO LEGAL SERVICES IN HONG KONG

By Sharyn Ch’ang, Davyd Wong and Jessica Lai

On 27 March 2018, the recently formed Pro Bono Legal Services Sub-committee of the Association of Corporate Counsel Hong Kong (ACC Hong Kong) co-chaired by ACC Hong Kong Board members Sharyn Ch’ang (PwC) and Davyd Wong (HK Monetary Authority) hosted its inaugural Hong Kong Pro Bono Legal Services Stakeholders Summit.

The Summit brought together for the first time, core stakeholder groups from various sectors of the Hong Kong legal and NGO community for the purpose of exploring areas of mutual cooperation toward the shared goal of improving access to justice and legal services capacity building in Hong Kong. Participants included prominent NGOs – Hong Kong Centre for Pro Bono Service, PathFinders, Society of Community Organisations, HER Fund, PILnet, Help for Domestic Workers and the Justice Centre, the Hong Kong Law Firm Pro Bono Roundtable represented by international law firms Ropes & Gray, DLA Piper and Davis Polk, and Mr Richard Yip of Denis Chang’s Chambers, representing the Bar Association of Hong Kong.

A unique challenge for in-house counsel

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Currently, Hong Kong qualified in-house counsel are restricted from providing direct legal advice and representation to clients other than their employer in Hong Kong as a result of the way solicitors are regulated and insured.

Under the Legal Practitioners’ Ordinance (Cap 159) and the Solicitors (Professional Indemnity) Rules (Cap 159M), solicitors who hold themselves out for the delivery of legal services must maintain professional indemnity insurance and comply with other professional obligations. In-house counsel cannot access the Law Society of Hong Kong’s professional indemnity insurance scheme because it is limited to law firms. The Law Society is empowered to grant exemptions and it has established a process by which in-house counsel can seek permission to represent pro bono clients. However, the onus is on the individual in-house counsel to obtain professional indemnity insurance to support their application as well as being able to show that they continue to fulfill their other professional obligations. The cost and time involved in seeking to fulfill these criteria and the process to obtain an exemption are significant barriers to in-house counsel providing pro-bono legal services. Being volunteers, their preference is to devote the limited free time they do have, to making a hands-on, professional contribution to those in need in Hong Kong, and this pre-requisite represents an understandable deterrent. The problem is not unique to Hong Kong, but such barriers no longer exist in other common law jurisdictions, such as Australia and Singapore, given proactive regulatory changes by their respective Law Societies.

According to ACC Hong Kong Vice-President and Sub-Committee Co-Chair, Sharyn Ch’ang:

As lawyers, we’re in a unique position to assist with addressing access to justice issues. It’s great to see that law firms are increasingly committed to the delivery of pro bono legal services. However in-house counsel are not in the same position as private practitioners, albeit equally passionate to assist, and with skills to offer.

With the establishment of our Pro Bono Legal Services Sub-committee, ACC Hong Kong is embarking on a path to explore ways for our members to participate in meaningful ways to help people in need on a pro bono basis.

Hong Kong in-house counsel can and in some cases do avoid a Law Society exemption by leveraging their professional expertise by providing support on a pro bono basis in areas that do not constitute the direct provision of legal advice or representation. Examples include legal research, client interviewing techniques, and providing general training updates on the law or crisis management. However, given the Legal Practitioners’ Ordinance, even these opportunities are probably not well understood across the in-house legal community.

ACC Hong Kong’s Inaugural Pro Bono Legal Services Summit

Recognising this growing interest in pro bono legal services amongst its membership base, and the need for broader education and awareness regarding pro bono opportunities across the Hong Kong in-house legal community more generally, ACC Hong Kong’s dedicated pro bono sub-committee is exploring various models of pro bono legal service delivery to harness the expertise of in-house counsel. This was the basis of an engaging and informative summit dialogue amongst the stakeholders.

During the summit, various interesting proposals for pro-bono service delivery surfaced including:

• A partnership involving a law firm and in-house counsel to combine their professional skills to serve a law firm pro bono client. This already happens on a limited basis to some extent today and therefore, is a workable model for further exploration with law firms who are open to collaborating with in-house counsel
• The capacity of in-house counsel in meeting the resourcing and skills training of social and crisis workers;
• Utilising in-house counsel to assist community organisations with their internal governance, compliance and controls in a way that does not contravene existing legal practice restrictions;
• Avenues for in-house counsel to play a more specialised role in the existing corporate social responsibility (CSR) programs of their own employers, particularly to raise awareness of the opportunity for in-house counsel to assist NGOs support their organisation’s CSR initiatives.

The Summit was followed by dinner where special guests Mr. Philip Dykes SC, Chairman of the Hong Kong Bar Association and Ms. Serina Chan, Law Society Councilor and Chair of the Law Society’s Pro Bono Committee, spoke about the pro bono work of the Bar and Law Society respectively.
**Practical outcomes**

The first project discussed at the Summit which the ACC Hong Kong sub-committee is now actively pursuing, is the production of a *Guide for In-House Counsel on Pro Bono Legal Services in Hong Kong*. In partnership with DLA Piper Hong Kong, the guide, which will be the first of its kind for Hong Kong, will cover matters for in-house counsel such as how to establish an in-house pro bono program. It will also explore the insurance and regulatory issues that are applicable to Hong Kong lawyers seeking to provide pro bono legal services, as well as guidance on securing internal and external stakeholder buy-in to support in-house counsel participating in pro bono programs.

Following the success of the summit, a number of community organisations that attended the summit have agreed to feature in the guide to raise awareness of the mission and need for various legal or law related services by these NGOs. The development of this resource is a major undertaking for the sub-committee and is targeted for launch by ACC Hong Kong in September 2018.

Co-chairs Ch’ang and Wong are buoyed by the success of the Summit, which reinforces ACC Hong Kong’s commitment to facilitating the provision of pro bono legal services in Hong Kong. The summit also highlighted the growing recognition that in-house counsel are keen to leverage their legal skills, on a pro bono basis. Awareness raising, education and support is therefore a critical success factor in which ACC Hong Kong can take a leadership role.

**Beyond the Summit**

Looking ahead, the sub-committee is also working with a number of the summit participants and others to support the 7th Asia Pro Bono Conference 2018, to be held in Hong Kong for the first time from 25 to 27 October 2018.

In a similar vein to the summit, the Asia Pro Bono Conference brings together legal practitioners, academics, students and other stakeholders from across the Asia Pacific, to collaborate and advance the pro bono movement. ACC Hong Kong is proud to be an official conference supporter and encourages all ACC Hong Kong members who have an interest in serving the wider Hong Kong community to participate in the conference. For more details, please visit: www.probonoconference.org.

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**ACC Hong Kong’s Inaugural Pro Bono Legal Services Summit**

ACC Hong Kong’s Pro Bono Legal Services sub-committee aims to encourage and assist our members who wish to provide pro bono legal services to needy institutions, individuals and not-for-profit enterprises. The sub-committee’s objectives are:

1. To understand the status quo for in-house counsel to provide pro bono legal services in Hong Kong;
2. To communicate that knowledge to our members and facilitate participation via production of guidance materials, resources and delivery of educational seminars, with relevant information made available on the ACC Hong Kong website;
3. To try to connect our members who are keen to provide pro bono legal services with those who have little or no means to afford legal services; and
4. To serve as a voice for our members on policy and law reform issues that affect in-house counsel’s ability to provide pro bono legal services.

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Cybersecurity Spending on the Rise for Corporate Legal, ACC Foundation Cybersecurity Report Finds

More than forty percent of in-house lawyers stated their companies plan to change data security standards, notification procedures and incident response plans because of the upcoming European Union General Data Protection Regulation, according to the Association of Corporate Counsel (ACC) Foundation: The State of Cybersecurity Report. Released by the ACC Foundation, which supports the mission of ACC and underwritten by Ballard Spahr LLP, the report incorporated data and insights from more than six-hundred in-house lawyers at over four-hundred companies in thirty countries.

In-house lawyers anticipate that their role in cybersecurity prevention and response, as well as cybersecurity budgets, will increase over the next twelve months. In fact, sixty-three percent of respondents noted growth in company funds dedicated to cyber incidents, compared to fifty-three percent in 2015. Chief legal officers and general counsel at large companies are also more likely to serve as members of a data breach response team than those at small companies.

The report further underscored the importance of company-wide preparation and awareness to thwart the possibility of a breach. Among organisations with a total gross revenue of $3 billion or more, sixty-two percent track mandatory training and attendance for all employees, fifty-eight percent test employees’ knowledge following required training and forty-five percent hold simulated response drills. Additionally, fifty-seven percent reported their company is covered by cybersecurity insurance—up ten percentage points from 2015.

Recent Global Advocacy – India and the United Kingdom

ACC recently submitted comments to the Government of India on the Whitepaper of the Committee of Experts on Data Protection Framework for India, encouraging the government to develop clear standards to regulate cross-border transfers of data and avoid policies that could disincentivise corporate compliance with new privacy requirements.

Working with the India Corporate Counsel Forum and Compliance and Ethics Committee on the comments, ACC noted that India’s data protection law should facilitate efficient cross-border data flows, as barriers would be a hindrance for global businesses. ACC also recommended that India follow a similar approach to Canada—adopt a flexible method to consent requirements by only requiring express consent for handling sensitive personal data. Further, ACC advised that liability for harm caused by a data incident should be based on an organisation’s failure to implement the necessary protection measures, rather than subjecting data controllers to a strict liability regime.

ACC also submitted comments to the United Kingdom Financial Reporting Council (FRC) on revisions to the UK Corporate Governance Code and Guidance on Board Effectiveness—urging the FRC to incorporate a recommendation on the role of the legal function in influencing corporate culture.

Legal and regulatory matters are increasingly central to the implementation of business strategies. Inclusion of the law department in the development of business decisions signals to the company’s stakeholders that ethics, compliance and other legal risk considerations are top priorities for the company. In its comments, ACC applauds FRC’s direction to boards and chief executives to consider how they are promoting corporate culture within their organisations, but further advocates that the general counsel’s seat at the executive leadership table is similarly critical.

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