

How Corporate Counsel Challenged Law Firms

2009 was reputed to be the worst for budget-slashing and layoffs in recent memory in the legal industry. As companies struggled to keep afloat while the markets were crashing, clients' legal budgets were slashed by any figure from 5 to 20%, with increasing pressures to reduce legal spend. Corporate counsels' response through the ACC Value Challenge to law firms was: "Show me the value".

Towards the end of 2008, the ACC Value Challenge had been launched to address the concerns that in-house counsel had with the traditional business model long held dear by their counterpart external counsel.

For many years previously, there had been much chatter in the corporate fraternity about bringing costs in line with value as regards services rendered by external counsel.

However although 'value' remained a hot topic in corporate circles, it was not until the recession kicked in by 2009 that corporate counsel really got down to business, seriously challenging the billing model, and experimenting with creative alternatives to re-align costs with value.

Since a legal department's success in the eyes of its CEO is measured by the value it adds to the company, it is no surprise that 'value' is the major driver in the call for change. Providing value, value added, value add-ons are now standard vocabulary in the negotiating arsenal of corporate counsel in the new client driven marketplace.

For the first time, the value propositions of law firms were held up to public scrutiny in the technologically-enabled medium of the ACC Value Index and external counsel were alerted that they might not be driving that bus (er, BMW) any more.

The Association of Corporate Counsel (ACC) describes itself as "the world's largest organization serving the professional and business interests of attorneys who practice in the legal departments of corporations, associations and other private-sector organizations around the globe". Credited with "25,000 members employed by over 10,000 organizations in more than 70 countries", when those members decide to speak up and deliver a common message, the law firm community would be wise to start paying attention.

The Value Challenge is an initiative to "revolutionize the legal services marketplace by promoting dialogue among corporate counsel, law firms, law schools and others" interested in driving the alignment between cost and value. One objective is to develop metrics for corporate counsel to assess their legal service providers and to create tools to share those findings within the client community. Coupled with training exercises to hone management and business skills, it would send the message to the C-suite that legal departments are fully on board with the corporate vision for driving profitability by improving business efficiencies.

The most significant tool to emerge out of the Value Challenge is the ACC Value Index. It is an online forum where corporate counsel get to rate external counsel in six categories and the ratings are shared by members. Analogous to “product review” websites, it could provide a useful reference for the selection of external counsel as members are encouraged to provide explanatory comments for their ratings. It is also a good place for law firms to find out how they are perceived by clients.

More than law firm-bashing, the ACC cautiously points out that content has been fairly balanced so far in that it reveals those firms which apparently “get it”, with respect to the value that clients expect to receive.

What better and freer advertising than peer reviewed commentary (when it’s good). Of course it works the other way around too...

While participation appears sparse so far (2783 evaluations of 855 firms as at August, 2010, remembering that the ACC’s 25,000 members come from 70 countries), the statistics point to an interesting observation. While the rating criteria of “expertise”, “understanding of objectives”, and even “communication”, got decent scores of 4.4 + out of 5, “predictability of cost” and “efficiency/process management” lagged behind at 3.9 and 4.1 respectively.

It is therefore no surprise to find out that corporate counsel are concerned not merely with price, but with the predictability of cost.

This was one of several issues addressed at the Law Firm Evolution Conference concluded in March, 2010 at the Georgetown University Law Center.

The conference was sub-titled “Brave New World, or Business as Usual”, and considered adjustments by Big Law to prevailing market conditions. Speakers and panelists drew on new trends happening globally in the legal industry and wondered whether the new “efficiency” business practices by law firms herald a wind of change which would benefit corporate law departments or whether it’s only a temporary disruption to the traditional law firm business model.

What emerged out of the conference was that external market forces have catalyzed the recent commoditization of certain types of legal services. While the bespoke nature of legal services will always (in the foreseeable future) be the core business of the law firm, the rise of outsourcing services over the last year has had a disruptive (good disruptive) effect on business strategy.

The increasing pressure brought to bear by general counsel upon law firms for transparency in billing and more value for cost has led some of the major law firms in the UK and US to rethink their value proposition. At least one US law firm Drinker Biddle & Reath, created for the first time the position of Chief Value Officer as a direct result of the firm’s buy-in to the Value Challenge. The intent is to institute business efficiencies to create more value and predictability for clients. A few corporations took the unprecedented step of reviewing and reducing their panels of law firms in an effort to clean up and streamline the complex assortment of external counsel for various legal needs. Perhaps the most quoted example is in 2006 when Tyco in the UK reduced its panel of 250 law firms to just one - Eversheds. The arrangement must be saving Tyco a bundle since the agreement with Eversheds was recently renewed for a third time.

It was these kinds of shifting attitudes that spawned the development of the outsourcing market.

Some of the issues which forced law firms to reconsider the way they do business happened when general counsel started questioning the composition of fees. One sore point is not just the number of hours billed, but the fact that junior associates are often billed out at rates anywhere from \$300 plus, per hour for low level work that could equally be done by a non-lawyer at a lower charge out rate. Conversely, partners and senior associates bill at costly rates for lower-end work that could be handled by a junior associate.

This was the scenario in 2009 which provided a fertile breeding ground for the growth of the legal process outsourcing industry. Firms were under pressure from corporate clients to find ways to compete on price and value and legal outsourcers had the means to provide those ways.

Perhaps the most significant trend was the rise of off-shore outsourcing in India where new outsourcing firms, staffed with lawyers and support staff began to offer the lower end repeatable legal work at far cheaper rates than in North America and the UK.

Right on cue in 2010, a sprinkling of onshore outsourcing companies in both North America and the UK are beginning to enter the market with a variety of offerings designed to take over the grunt work in high volume processes such as document review and assembly, legal transcription, legal research, e-discovery and other aspects of litigation support and readiness. 2009 to 2010 has also seen a rise in the number of legal management consultancies offering higher end strategic and risk management services aimed at the managing partners and CEO's of law firms, and general counsel as well.

The message to Big Law is becoming clear. Profitability rests not only upon the rainmaking capabilities of counsel, but upon a revision of business processes for maximizing of efficiencies and delivering more value for cost.