



Guide to becoming a strategic counsel:
Learning the art of engaging external solicitors

Introduction

Benjamin Brewster said: A lawyer starts life giving \$500 worth of law for \$5 and ends up giving \$5 worth for \$500. It is a sad indictment on certain elements of the legal profession that although Benjamin Brewster died in the 1880s many clients in 2015 would still agree with his sentiments.

Too many times I have heard people bemoan lawyers' fees while at the same time complaining that there is no correlation between those fees and the value of the services received. This is also a perennial complaint of in-house counsel who brief out work to external solicitors. I recall one colleague stating that when she first received an invoice from an external legal firm she felt that she had been kicked hard in the solar plexus.

It would be all too easy to blame this impression of overreaching fees on greedy lawyers who try to 'milk' their clients and care little about providing valuable legal services. However, even though there are definitely some greedy lawyers in our fraternity, the concept of valuable legal services is multi-faceted and in many instances fees charged by lawyers may indeed objectively reflect the value of the service given. The problem in these circumstances is that the value proposition is not clearly understood by the client.

In-house counsel therefore have an important role in assisting businesses to obtain valuable legal advice and services at a reasonable cost which at the same time is understood by the business to be relevant and appropriately costed.

When is it most valuable to engage external legal service providers?

When it comes to briefing out work to external services providers, what kind of in-house counsel are you? In-house counsel sometimes feel as though they play the role of double agent within a business. On the one hand they are loyal to the interests of their client, i.e. the business, and ensuring that their client obtains valuable legal advice. On the other hand there is a loyalty to one's colleagues and the legal profession as a whole. Navigating your way through these relationships can often prove tricky especially when your colleagues expect you to have their back at the expense of your client or your client expects you to forget that you are an officer of the court.

Generally when managing the relationship between external service providers and the client, in-house counsel fall into two categories:

- Strategic Counsel who engage external legal services as a resource to complement legal services being provided in-house; and
- Mail-box Counsel who receive instructions from the client, automatically outsource the provision of the advice to external solicitors and then forward the advice without review or comment to the client.

Mail Box Counsel merely waste time shuffling papers between client and external providers and thus add little value to the client. Better to get rid of the 'middle man/woman' in this instance.

Strategic Counsel tend to provide exceptional value to the client by outsourcing work appropriately, managing the legal costs effectively and ensuring that the services provided by external providers are appropriate to the client's needs.



How to be a Strategic Counsel

In order to be effective and a valuable resource to the client it is essential that in-house counsel understand the general culture and philosophy of the business including its outlook towards the market place and its risk appetite. This will dictate the manner in which legal services should be provided in order to exact value for the client.

Much has been written about how to create a legal budget and obtain 'buy in' from executives for that budget. My focus has rarely been on the budget but rather on prioritising the legal issues and risks of the business and thereafter effectively managing the legal team and external service providers to deal with those issues and risks. I find that if legal services are managed closely thereby obtaining the best value from both in-house and external legal providers the legal budget is generally well accepted and appreciated by executives.

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In-house counsel specialise in immediate advice. This means that to be effective in-house counsel should be able to address issues on the run, quickly absorb the requirements of the law and apply these requirements practically and strategically to the client's needs. This does not mean that the advice dispensed can be haphazard and lacking in thorough consideration, rather if the advice sought is not readily known or accessible a barrister or external solicitor can be utilised to research and consider appropriate legal solutions.

One of the most complex skills to acquire as in-house counsel is the ability to appropriately outsource legal services in a manner that is efficient and cost effective. This requires an understanding of the type of services sought, the most suitable service provider who can provide those services, the reasonable cost for those services and effectively communicating the needs of both in-house counsel and the client to the chosen service provider.

It is up to the individual in-house counsel to determine the most appropriate external service provider. Importantly, whoever is chosen should be able to provide relevant services efficiently, effectively and timeously without the need for in-house counsel to argue fees charged for services rendered.

Tips for Strategic Counsel

Books could be written about how to effectively manage external service providers, but in order to save time here are a few crucial tips to assist Strategic Counsel:

- Too many cooks actually do spoil the broth.
- Just because you engage a law firm with a prestigious reputation does not mean that you will receive services commensurate with that reputation – the quality of services provided depends on the lawyer providing them, not the law firm engaged.
- When engaging firms at the high end of town try to minimise the number of solicitors to be engaged in any transaction. Generally those firms propose a minimum of three lawyers per transaction. In truth most transactions only require one senior and one junior lawyer at any given time and in most cases one lawyer will suffice.
- Sometimes the best and most cost effective advice can be sought by going straight to the bar.
- Never continue to use a lawyer who is alarmist and continues to provide poor services regardless of their reputation in the market place. While consumers generally would not accept and pay for poor retail products or services, why do so many people accept poor service from solicitors, moan about the cost and still pay for the service?
- Always remember the general rule of thumb – the more extreme the methods of entertainment provided by external service providers, the more likely the service provided will be below standard. Those who provide good services tend to use their services as a marketing tool.



About the Author

ELISE MARGOW

Elise is the principal of Legally Speaking, a firm that specialises in advising client on the 'A to Z' of legal management, services and strategies.

She has broad legal and business expertise, having worked in the corporate sector for 13 years and in practice at various law firms. Elise is an alumnus of Arnold Bloch Leibler and Telstra Corporation Limited and has headed up legal, risk and regulatory teams including the team at Liberty Financial Pty Limited. In addition to providing a wide range of legal advice to her clients and reducing the legal spend of clients substantially, she has contributed on credit and due diligence committees, is a director of two companies and has company secretarial experience.

While at Liberty Financial Pty Limited, Elise was responsible for the implementation of the National Consumer Credit Protection Act 2009 and the Personal Property Securities Act 2009 across the business. She and her team worked with both the commercial and operational teams from all

areas of the business to ensure that the business complied with regulatory requirements while at the same time achieving commercial imperatives. Elise was a member of the Australian Finance Conference Legal and Risk Committee from 2009 to 2012 being actively involved in strategically analysing proposed new and amended regulations affecting the finance and banking industry.

Elise is an experienced litigator and mediator who, over the past 14 years, has focused on alternative dispute resolution techniques to assist clients and disputing parties avoid lengthy and expensive court proceedings. She has successfully assisted both her own clients and disputing parties resolve complex disputes using the combination of her litigation and commercial experience together with her pragmatic approach to the resolution of disputes. As a nationally accredited mediator Elise specialises in mediations concerning banking and finance, corporate, commercial, industrial relations and major leasing disputes.

Elise was named by The Age Melbourne Magazine as one of the top 100 most passionate, powerful and provocative personalities of 2012.

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