Make or Buy? 10 Hidden Tigers


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A core challenge for law departments is to do more, do it more quickly, and keep costs down. One opportunity is the "make or buy" decision: selecting an optimal mix between insourcing and outsourcing legal work.

A common refrain goes something like this: "We spend $X million on outside counsel every year; we could buy in a lot of lawyers for that money."

Taking on more in-house counsel can be sensible, yet analysis based on immediate headline outside counsel costs rather than on the ultimate impact of the "make or buy" decision risks failure. Factors sometimes overlooked include:

1. True employment costs. Never simply divide the annual cost of outside counsel by the average salary figure of in-house counsel to get a notional law department size. Factor in the costs of supervision, training, support services, leave, superannuation, office space, hardware, consumables, departure costs, and more to get the real cost of hiring another lawyer. A common rule of thumb is to apply a multiplier of 2.5. That is, two and a half times salary (some say up to 4 times).

2. Apples and oranges. Say you have 5 lawyers, and decide you need 35 to do most of the work in-house. Sure, you want a range of experience levels, just like a law firm, but can you really find that many people at the top of their game at each level, living nearby? And if not, at least know the extent to which your new team truly matches what you could get from outside firms.

3. Empires and bureaucrats. Significantly increase the size of any team and management complexities increase. More lawyers will have management responsibilities, and time spent on communications will increase. Interoffice emails coordinating efforts, team meetings, full department meetings, and team-building activities represent more time managing, not lawyering.

4. Peak staffing problems. You hire enough lawyers to do most of the legal work yourselves. Yet when work tapers off, the in-house team still needs to be paid. That's when you realize why few companies are in the business of being law firms on top of their usual business. If, however, the legal team seems always to be operating at full capacity, other alarms should sound (see #5).

5. Feeding the beast. Sometimes, more lawyers inadvertently create more legal work. To begin with, this is valuable—new compliance programs, for example, can identify previously hidden risks. Yet lawyering every conceivable legal issue to death will increase legal costs and may irritate businesspeople who perceive lawyers lurking behind even the simplest transactions.

6. Culture-shift risks. If "doing the work ourselves" becomes the new mantra, experienced in-house counsel previously managing the most senior law firm partners may feel pressure to draft day-to-day contracts. It's like riding a bicycle, right? Yet the most senior doctors seldom mix general drug dispensing with their usual brain surgery, abstaining from something on which, frankly, they're no longer up to date. Law departments aren't immune from these risks.

7. Relationship-drift costs. If the law department shifts to doing all the day-to-day work, the relationships and skills for managing outside counsel become less honed, the understanding of (and passion for) your business by outside counsel dwindles, and "rack rates" replace "relationship rates."

8. Smarter lawyers, not just more. You can get more lawyers to do legal work. Or you can work smarter: Leveraging expertise or truly focusing resources on preventive law can result in less legal work overall. For example, you might devote more resources to training businesspeople and giving them the guidelines and tools they need to navigate and avoid legal issues.

9. Better-chosen tools. Plenty of tools help law departments save money, but there's no point in having bells and whistles that are seldom used. There was a time when leading law departments also helped develop matter management systems, but with hundreds now available it's almost inconceivable that modern departments should in effect pay development costs or endure the development process. It's now possible to assess, select, and implement and save money immediately.

10. Collaboration. Don't do it alone. Draw on your colleagues, industry resources, and outside consultants to help make good long-term decisions. And include your law firms early; they might feel threatened, but they might also help streamline your costs while maintaining relationships of mutual value.

"Make or buy" decisions that address issues beyond the obvious, supported by improved operating methodologies, can reduce legal costs and provide a stronger base to decide whether, and how many, lawyers to add.

The author thanks John Fraser of Catalyst Consulting for his comments.

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