

ACC Value Challenge

SUMMARY REPORT TORONTO SESSION- March 31, 2009

- A. Ideas and Practices to Focus on Value:** participants at the session were asked to identify good ideas/practices they are implementing that focus on value—to help improve the value of services to corporate clients.
1. **Create clear budgets up front; follow with weekly updates-** important to set clear budgets as part of initial discussions; follow with weekly updates via email so everyone can track and so that there are no surprises.
 2. **Discuss deliverables and milestones up front-** setting expectations and goals up front helps achieve alignment and clarifies strategic path.
 3. **Share precedents and sample documents with in-house counsel so they can draft in-house-** law firms have examples and form documents that they can share with clients; leverage this knowledge to enhance efficiencies and add value.
 4. **Identify staffing mix (associate to partner ratio) as part of up front matter staffing-** in-house counsel care about the staffing mix and want to know who is working on matters; mix is important.
 5. **Fixed cost pricing by task or portfolio-** implement innovative fee structures that allow for fixed fees for certain tasks or portfolios of work; helps to incent efficiencies.
 6. **Move certain tasks in-house-** evaluate work being performed by outside counsel and determine whether it can be handled more efficiently and cost-effectively in-house.

7. **Consider off-shoring commodity-type work (e.g. litigation file reviews, etc.)-** empower outside counsel to make tough strategic decisions.
8. **Leverage and share knowledge-** law firms can provide in-house counsel with legislative and regulatory updates on issues of interest to their business; shows initiative and proactive value added.
9. **‘Create a virtual firm’ that teams specialists from various firms to work on a matter-** consider ways to team virtually with other firms so that the right people are working together on a client matter; example was given that a single firm didn’t have the desired expertise across three different areas, but the client identified lawyers with expertise in three different firms and had them work collaboratively as a ‘virtual firm’ on the matter.
10. **De-construct matters and identify tasks that can be handled more efficiently-** consider the process and steps for handling a matter and whether certain tasks may be handled by contract personnel or via near-shoring or off-shoring more efficiently and/or cost-effectively.
11. **Appoint a ‘relationship committee’-** structure relationships better by identifying at least one in-house representative and one law firm representative to work together as a committee to manage the relationship.
12. **Identify Relationship Partner within the firm; in-house counsel to decide-** in-house leaders have a strong interest in selecting the relationship partner who will help strategically oversee and/or advocate within the firm on behalf of the client; the relationship partner need not actually work on the case but needs to understand the client’s goals and the law firm’s organization to help drive value into services.
13. **Train law firm lawyers how to manage client relationships-** consider providing training to associates (and partners) on how to manage client relationships—these are skills that are not ‘taught’ in law school but important to the overall service relationship.
14. **Move away from the billable hour model-** fees should be based on achieving client’s objectives—not on hours x rate.
15. **Fundamentally change the law firm business model-** the current billable hour-based, profit-per partner incented system is not aligned with the goals and objectives of the corporate client.



16. **Explore outsourcing opportunities—for legal work and for administrative support-** consider whether there are tasks or services that could be performed by another legal service provider more efficiently and/or cost-effectively; example was given of a law firm that outsourced its administrative function.
17. **Staff to the file-**choose the right team to provide legal services on the file or matter; consider the right staffing mix—may mean more partners or more legal assistants, but depends on the matter and work that must be done.
18. **Communicate and develop the relationship-** this should be ongoing; helps to promote transparency and trust.
19. **Demonstrate a commitment to the legal service relationship; promotes sustainability-** sustainability is a shared goal; in-house counsel want law firm lawyers who understand their business and dislike ‘churn’ in staffing—it is inefficient and disruptive; for law firms, sustainability helps firms consider more creative options looking across the relationship as a whole.
20. **Set fixed fee retainers, such as monthly fees for certain types of advisory services or for entire portfolios-** allows in-house counsel to call upon law firm for ongoing support with certainty on both sides of costs for services.
21. **RFP process needs to be improved- works for some and sucks for others-** outside counsel expressed concern about RFP processes that include third party consultants and feel that the process ‘commoditizes intelligence;’ in-house counsel expressed interest and need to compare costs and service offerings among providers. Both agreed that aspects of the process can be improved.
22. **Proactively offer preventive advice-** law firms can add value by providing advice based on market practices; look for ways to advise clients on how to improve their business methods; helps to become a trusted advisor.
23. **Break billing into segments to build a base for budgets and fees-** work together to break services into segments (e.g., for litigation: pleadings, discovery, etc.) and set budgets for various segments of work.
24. **Develop in-house resources** –develop resources and knowledge-based systems to handle more in-house.



25. **Manage work proactively as a portfolio-** consider sending a portfolio of work to a firm and asking them to manage it proactively to achieve overall desired results.

26. **Send law firm associate lawyers to corporate clients on secondment-** associates receive on-the-job training and an enhanced appreciation for in-house practice and needs, and can build relationships and bring back to the firm a greater understanding; in-house law department receives on-site additional service and helps to train and nurture law firm lawyers to better align objectives.

27. **Create a budget or don't get paid-** some law departments have company processes that require budgets in order to process payment.

28. **Pay for success-** structure fees to create incentives for achieving desired results within preferred time frames; success bonuses.

B. Alternative Fee Structures: participants were asked to identify items to consider in structuring matters on a basis other than hours x rate.

1. Themes

- Sense of struggle on how to value legal work up front
- Work can't be one-off for alternative fee structures; a broader range of work helps to mitigate risks
- Need to build on relationships so both sides have a mutual trust
- Both law firms and law departments have historical data on what matters cost; they need to share it
- Desired outcomes need to be part of the conversation at the front end of the discussion; structure fees to reward for outcomes
- Leverage mutual experience- experienced counsel (both in-house and at law firms) have a 'gut feel' for what a case or matter may be worth; they should talk about it
- Constant dialogue is important- no surprises; have an evolving discussion about the way things are headed and the opportunity to assess progress on objectives



2. Checklists on Things to Consider/Practices to Implement to Help Value Work

In-house checklist:

- Benchmark the marketplace to see what the same type of matter has cost others
- Analyze in-house data from prior equivalent transactions or matters
- Get business input- what are goals (settle early, matter of principle, etc.)
- Seek competitive bids—put the matter out for tender and ask law firms to propose what they are prepared to perform the service for
- Consider defining success and including success fees or bonuses to align incentives

Law firm checklist

- Analyze law firm historical data to see what the firm's level of effort and fees were to perform similar work for others
- Assess work processes and determine whether firm can implement efficiencies (e.g., use contract lawyers, have in-house counsel handle certain tasks, staff with fewer lawyers, etc.) to pull costs out and propose better estimates based on better processes

C. **Performance Metrics:** participants were asked to identify key metrics and processes for assessing outside counsel performance.

Ideas/Themes:

-Net Promoter Score/Individual Attorney Evaluations- rate law firm lawyers on a single question: on a scale of 1-10 (with 10 as best), how strongly would you recommend lawyer 'x' to a good friend? Idea is to then subtract ratings of 1-5 (considered 'detractor' scores) from ratings of 8-10 (considered 'promoter scores'); ratings of 6 or 7 are considered neutral and don't count. Response is a useful snapshot based on a gut feel. Can compare year to year results and results from one lawyer to the next. Quick and easy to implement; both in-house counsel and clients have the opportunity to submit ratings.

-Evaluate performance on a set of criteria that might include- Responsiveness; Knowledge of Subject Matter; Knowledge of Business; Reactive/Proactive; Meeting Timelines; Meeting Budgets; Success/Outcomes.

-Law firms assess their lawyers differently than in-house counsel - law firms look at billable hours, potential to bring in clients; in-house counsel assess competencies and results



-Define success up front and set metrics from there- have up front discussions on what success means; track components to get there (e.g., is it dollars or early resolution/fast turnaround, or principle, etc.)

-Use metrics to drive law department and company to use firms that are good performers- share metrics with the firm and let them know how they are doing; drive behaviors

Processes to Consider

-Conduct after action reviews- to assess performance and solicit ideas on how things can be done better

-Meet with relationship management annually- provide feedback on how the relationship is going; level of service; areas of opportunity and improvement

-Law firms should use results to drive change and build criteria into annual reviews of associates- law firms should take into considerations performance attributes and results that are important to clients and build assessment of these into associate reviews

-In-house counsel should ask outside counsel what they could do better- as part of de-briefs, in-house counsel should solicit feedback on how they can handle matters better and how they are managing relationships, setting and managing budgets and communicating needed information

-Conduct year-to-year budget comparisons- in-house counsel can look at year-to-year historicals from a given firm and across firms to determine how the firms handled the matter and how in-house counsel budget managers performed

-Conduct regular, periodic assessments of how cases are progressing; law firms can take the lead- improve strategic involvement by outside counsel to provide input and provide guidance on the path forward consistent with client goals

-Assess the firm with opportunity for free comment on individual lawyers- a suggestion for one approach for taking a firm view

D. Law Firm Business Model is Broken- Open Discussion. Participants ended the session with an open discussion on ideas on whether the law firm business model is broken and how to ‘fix’ it. Following are highlights of some of the comments and discussion threads.

- *Law firm business model is broken; it is not aligned with business model for corporate law departments-* companies spend lots of time thinking about desired behaviors and how to incent those behaviors as part of corporate compensation mechanisms; law firms don’t think about behaviors to incent and how this fits

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with where the firm should be going: if law firms are paying for billings, then clients see a law firm workforce that wants billings to go up—which is the antithesis of what clients want. Law firms need to move away from lock-step compensation to performance-based compensation.

- *Do CLOs really care? CLOs say they want a better system but they really don't. Is this focus on value truly something that CLOs want? Yes; we are all living in a new era; technology is opening up information—law firms no longer have the 'keys to the library' and this is going to change the value proposition. The focus on value is the 'new normal.'*
- *Law firm attrition is incredibly high; no normal business would tolerate this. Additional facts that help emphasize that the business model at law firms is broken. Law firm attrition rate is incredibly high; if law departments or companies had that type of attrition rate, legal or business managers would be fired and red flags would go up suggesting that the model to attract and retain talent is broken; diseconomy in retention.*
- *Companies are going through a difficult time and things are disappearing in-house; law firms are sending rate increase letters—there is a disconnect. Law firms need to appreciate the 'new normal' that law departments are operating under and be sensitive to this.*
- *Why do law firms need fancy buildings, décor and art; in-house counsel have streamlined—why not law firms? Some law firms have long term leases that don't allow them to move space quickly; others are moving towards single-size offices.*
- *Consider mapping law firm processes and understanding the white space between value components—outsource or eliminate work that is not within the firm's core bailiwick. Process mapping doesn't need to be a formal six sigma exercise; simply look at work the law firm performs and assess whether it is being handled the most efficient way; take steps to improve efficiencies, eliminate or send elsewhere work that can be handled more efficiently and cost-effectively.*
- *Management structure of firms doesn't allow firms to react quickly or be very nimble; it is difficult to react to turmoil when you don't have any levers of power. Decision-making power within firms is dispersed; changes in structure and models take time. Example of an aircraft carrier—they are turning the wheel all the way but it takes some time to see any movement.*
- *Law firms need to consider the long term and what this means. Currently, revenue is driving lawyers; if change to value, then looking at profitability as a business and changing the model and structure.*



- *Be ahead of the pack in focusing on value—it would be an interesting place to be out front.*
- *Relationship managers are very important; advocate within the firm for performance assessments of those managers.*
- *Firms are structured to encourage lawyer rather than law firm relationships; if firms structure to sell the firm, then the model can change.*
- *Law firms need to change if they want a piece of the market.*

