

BEYOND BLACK SWAN

Positioning the law firm for the next normal

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Foreword by Richard Levick

calls9



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Foreword

When the American actress Sally Fields' grandmother, Joy Bickeley, was dying in the hospital, Sally and her mother, Margaret, were at her bedside and asked as she faded between life and death, "Where are you, Joy? Tell me where you are?"

Instead of mentioning her heroic mother or any close relative who might have preceded Joy to heaven, she instead said, "I'm with Bynum," a dashing but irresponsible scallywag who had impregnated Joy's mother, then an unwed teenager, and skipped town – or more likely was run out of town – as the story goes. We are all, it seems, chasing the love and acceptance that is just out of reach, even when we fade between one world and the next.

And so, it is with law firms, among the most challenged institutions when it comes to crisis and change. Always insecure, we just want to be loved. Loved by our clients, by the market, by laterals with portable business, and our partners, at least once a year, during review. Law firms have never been more insecure than now; when partners are only an elevator ride away from leaving, when PPP and RPP are publicly graded like so many Premiership teams; evisceration only one complaint away; and deals ever more lucrative but increasingly competitive.

After having worked with and represented over 300 law firms around the world over the last 30 years, my favourite refrain to hear is some version of, "We want to do something radical and transformative, we just don't want to get noticed." If stare decisis is the way to practice law, the unconscious thinking goes, it must be the best way to market and manage. The only challenge with this theory is that following has never a very effective way of leading.

Since 1977 when the U.S. Supreme Court decided in *Bates v. Arizona* that state bars could not prohibit law firms from marketing, law firms have increasingly thought like businesses. After decades of merger mania, they are billion- and increasingly, multi-billion-dollar corporations. But they still act like lawyers. Imagine Jürgen Schrempp, the then-CEO of Daimler-Benz who guided the merger with Chrysler, being asked “Just how many hours did you work on the line this year?” Leadership in law firms, at least by many firms, is still considered a part-time job.

Just a year or two ago, among the greatest challenges on the horizon for law firms were nascent AI technology offering the early reward of increased profitability but threatening to soon follow by consuming its way up the food chain to, heaven forbid, lawyers. Already AI is participating in minor legal matters such as parking violations. Can the practices of “form lawyers” be far behind? How long after that, when the financial pressures from corporate clients resemble what happened in the medical community? Maybe lawyers aren’t all that different from doctors and most aren’t worth \$1000 or more an hour?

The pressure of the AmLaw and other tables to be constantly more profitable cannot go on forever. Adding more lawyers to a call and raising rates each year is a financial strategy that isn’t missed by clients. It is a strategy with a limited future.

We are at a time of historic change. It is as if 1918, 1929 and 1968 have all occurred at once. A global pandemic, economic devastation, civil unrest, and in the United States and increasingly globally, a new Civil Rights movement, born of the #BlackLivesMatter movement that is requiring corporations and law firms to actually be diverse, not just symbolically so.

For a decade or more, law firms have shown their diversity largely through their summer associates and first-year classes, but for most “Big Law” law firms, diversity after year four or five is more aspiration than accomplishment. True diversity is going to threaten the recruitment strategy of seeking out exclusivity through Harvard, Yale, Georgetown and the like, law graduates and require law firms to think about recruitment strategies differently. This will require investments in state schools and Historically Black Colleges and Universities, and not only at the law school level but at the undergraduate level where many minority students need the pathway – mentoring and financial – to make law school even a possibility. As the Leadership Council on Legal Diversity points out, it is about “grit over grades.” “Exclusivity” will increasingly look like “exclusion.”

I know, I know, we have been talking about seismic changes at law firms since the first transatlantic law firm mergers and the DuPont and Tyco models. Well, here we are. The new mantra is “change, change, change” and nothing is sacred.

What about when the client has a public crisis, as is all too frequent these days? As a long-time American expatriate lawyer in the Middle East likes to say, “Lawyers need to be on the bus, but they shouldn’t necessarily be driving the bus.” The first thing to do – with litigation or crisis communications counsel part of the discussion – is to evaluate the risk. If the investor relations, reputational, brand or social risks are higher than the litigation risk, then don’t drive the bus. Saving millions in court but losing billions in market share or reputation is not a win. The role of a lawyer, at the highest level, is to be a counsellor, not an attorney.

Who better to lead the path to effective change management during this coming period of radical transformation than Paul Smith, an old friend who transformed Eversheds from a “Leeds based firm” to a global powerhouse; Patrick Dransfield, who has worked on all sides of the legal business equation in all parts of the world and worked with 20,000 general counsels through In House Community; and Adam Roney, who trained at Eversheds Sutherland and is a leader in digital transformation.

You don't have to read this white paper to manage your law firm effectively through the coming turbulent challenges and certain crises, but why would you risk it?



Richard Levick,
Chairman & CEO,
LEVICK

Introduction

Gimme Shelter

Echoing Richard Levick's thoughtful Preface: "What we crave makes us vulnerable", I am reminded of the insights of another great friend of the In-House Community, Evangelos Apostolou, who always shared with his in-house peers during our plenary sessions the craving of In-House Lawyers to be useful and to be seen as useful.

In-House lawyers delight in being asked for their legal opinion by their work colleagues outside of the legal department. And even if it is to be asked the same question on the same point of law multiple times, most lawyers want nothing more but to share their knowledge and fascination with the details and origins of a point of law. To use a film analogy popular with change management coach Trevor Faure, if not restrained, the temptation is to recite the whole film script scene by scene of 'The Usual Suspects' rather than simply point the accusatory finger and say "the conclusion of the movie is that Keyser Soze did it".

In contrast, the average IT department head, in my experience, would rather be left in peace than barraged by endless questions. But learning from the habits and attitude of the IT Department is precisely what one former General Counsel and now coach did. Anthony Wright, Head of Innovation and Design at LOD Asia, shared with

the Singapore In-House Community last year how he pulled up his desk and moved it to be next to the IT department and saw how frustrated they became when the same question cropped up twice. Immediately the question was posted up to the FAQ function on the company hub, a cogent question to the query was posted, and the IT department got on with what did it best (whatever that may be). It is precisely this inter-departmental attitude to learning that provides the impetus for real change in the legal department. Finding ways to collaborate between departments of corporations will be one of the enduring challenges in the New Dynamic of the COVID-19, as identified by retired Tokyo-based General Counsel Grady Loy on our Japan ePlenary. And the research here-in identifies that even after twenty years the basic message of the desire of In-House Counsel to receive clear, succinct and cogent legal advice is still not registering with the majority of private practice.

The In-House Community finds itself in an interesting position as the interlocutor between the in-house counsel teams and the private practice lawyers and the New Dynamic of COVID-19 has made the dissonance of two groups talking past each other even more audible than before. So, when with Calls9 the In-House community asked the simple question “What should law firms improve?” We were frankly rather surprised at both the number and the passion of the response. The first reaction is that law firms continue to have a lot that they need to improve! And assimilating and digesting available data is one first step on the road to improvement – so congratulations to those in private practice – be you a business development professional or a lawyer – for making it this far! As I have shared in previous writings, the fundamental problem lying at the heart of law firm inertia is the area so amply described by the late Chris Argyris in his epic Harvard Business School essay ‘Teaching Smart People How to Learn’.

A more nuanced and ‘big picture’ response to the data is to reflect that by the very action of response, the In-House lawyers are passionate about helping their private practice peers improve. Like the prodigal son returning to the farmstead, the amount of billable time invested by in-house counsel to provide the advice and feedback here-in is akin

to a whole pen of fatted calves. And so, this paper can be seen not only as a gift from the In-House Community and Calls9 to their private practice brethren, but also as a call to action. Only the lean and agile will survive the current global climate after all.

This final message is directly aimed at the Managing Partners of private practice law firms among you. As we are at a liminal state in the progress of humanity in general, I am like many in a reflective and nostalgic turn of mind presently. And I am reminded of being twelve and visiting my eldest cousin Roderick’s study in Lancashire (he being at university at the time) and pulling out the record sleeve of the Rolling Stones live album from 1969 “Gimme Shelter”. The final words of description said: “You are reading the notes on the record sleeve of the greatest rock and roll band in the world. Why aren’t you playing it?” In the same token, you are holding the font of knowledge regarding change management by your clients – over 80 senior in-house counsel – why aren’t you implementing them?”



Patrick Dransfield, Enabler of the [MPC](#) & Principal of [Clearway Communications](#)

Executive summary

Calls9 is delighted to have collaborated with In House Community to produce this timely White Paper on what in house clients now demand from their external law firms. The White Paper follows the webinar “Black Swan Positioning the law firm for the new normal” which discussed changes to the legal industry as a result of the COVID-19 crisis. The research was conducted with in house clients across a wide range of sectors in Beijing, Hong Kong, Shanghai, Singapore, Abu Dhabi and Dubai.

The research highlights the legal services likely to be in greater demand as a result of the crisis and also on key topics at the heart of the relationship between in house lawyers and the external law firms they use.

These include:

Effective Crisis Management: A central theme emerging from the research is that clients expect an enhanced client experience. They want their firms to have a deep understanding of their businesses and the sectors in which they operate. They want tailored advice and information that is bespoke to them.

Fees and Billing: Also, firms still have a way to go on pricing with clients still frustrated about a lack of flexibility in pricing models with a demand for greater transparency and value for money.

Focused, Tailored, Succinct Advice: Clients also want the advice they receive to be succinct. Law firms are paid for their experience and expertise and good advice is often best short, confident and simple not hidden in long wordy memos. The true test of good advice is that it can be sent straight to the client’s board without editing by in house counsel.

Efficiency and Technology:

Greater efficiency and the use of technology has been one of the main changes arising from the crisis, accelerating the digital transformation of the way in which law firms deliver their services. Remote working has increased the need for digital connectivity. Clients are increasingly used to buying services online and have greater expectations as to what good client service looks and feels like. They expect their firms to understand and anticipate their needs and to deliver a service that is unique to them.

Trust and Partnership: Finally, many things in life do not change and the survey highlights that the most productive relationships between in house counsel and their law firms are where they have developed long term relationships based on trust.



Paul Smith
Head of Professional Services
& Non-Executive Director, **Calls9**

Methodology

Poll

We invited the members of In-House Community of In-House Legal & Compliance Professionals (IHC) to share their opinion and insights about the future of the legal sector in a post COVID-19 world. In particular, our poll sample consisted of:

1

120 respondents, with **37%** of them Head of Legal or Legal Director, **30%** Legal Counsel and **20%** Senior Legal Counsel.

2

32% of the respondents work in the Financial Services Industry, **25%** in Manufacturing, 10% in Logistics/Transport and the rest **33%** in Conglomerate, ENR, F&B, Infrastructure, Travel/Leisure and Life Sciences.

3

The majority of the surveyed professionals are based in UAE (Abu Dhabi & Dubai), Hong Kong and Singapore.



Back in December 2019, we carried out a poll to find out the five practice areas in-house counsel are most keen to hire external counsel. This poll represents the pre-COVID era. After COVID struck, we decided to ask the same questions to the same group in June 2020, to establish what has changed after the pandemic outbreak.

Survey

Being “knee-deep” in the first wave of COVID-19 during the summer of 2020 we also wanted to assess what law firms need to change and improve to survive in a post-COVID world. We surveyed 70 in-house counsel using a qualitative methodology to gain in-depth insights on what the in-house counsels want law firms to improve in the “next normal”. More specifically, our survey sample included:

1

70 in-house counsel, with **43%** of them General Counsel or Head of Legal, **24%** Senior Legal Counsel, **22%** Legal Counsel.

2

23% of the participants work in the Financial Services Industry, **16%** in ENR, **13%** in other Professional Services industries and the rest **50%** in Manufacturing, F&B, Infrastructure, Life Sciences, Real Estate/Construction, TMT, Travel/Leisure, Wholesale/Retail

3

The majority of the surveyed professionals are based in Hong Kong, Singapore, Manila, Dubai and Kuala Lumpur.

Findings

The five practice areas in-house counsel are most keen to hire external counsel

According to our 2019 poll, in-house counsel sought external counsel support in Litigation, Corporate and M&A, Employment and Labour, Intellectual Property, Litigation and Alternative Dispute Resolution.

When we polled the same group of in-house counsel in 2020 about what five areas have grown the most as a consequence of COVID-19 we saw that Employment & Labour and Intellectual Property are the practice areas that have grown the most. Litigation is still first on their list, while Corporate and M&A and Alternative Dispute Resolution are still high on demand (See Figure 1).

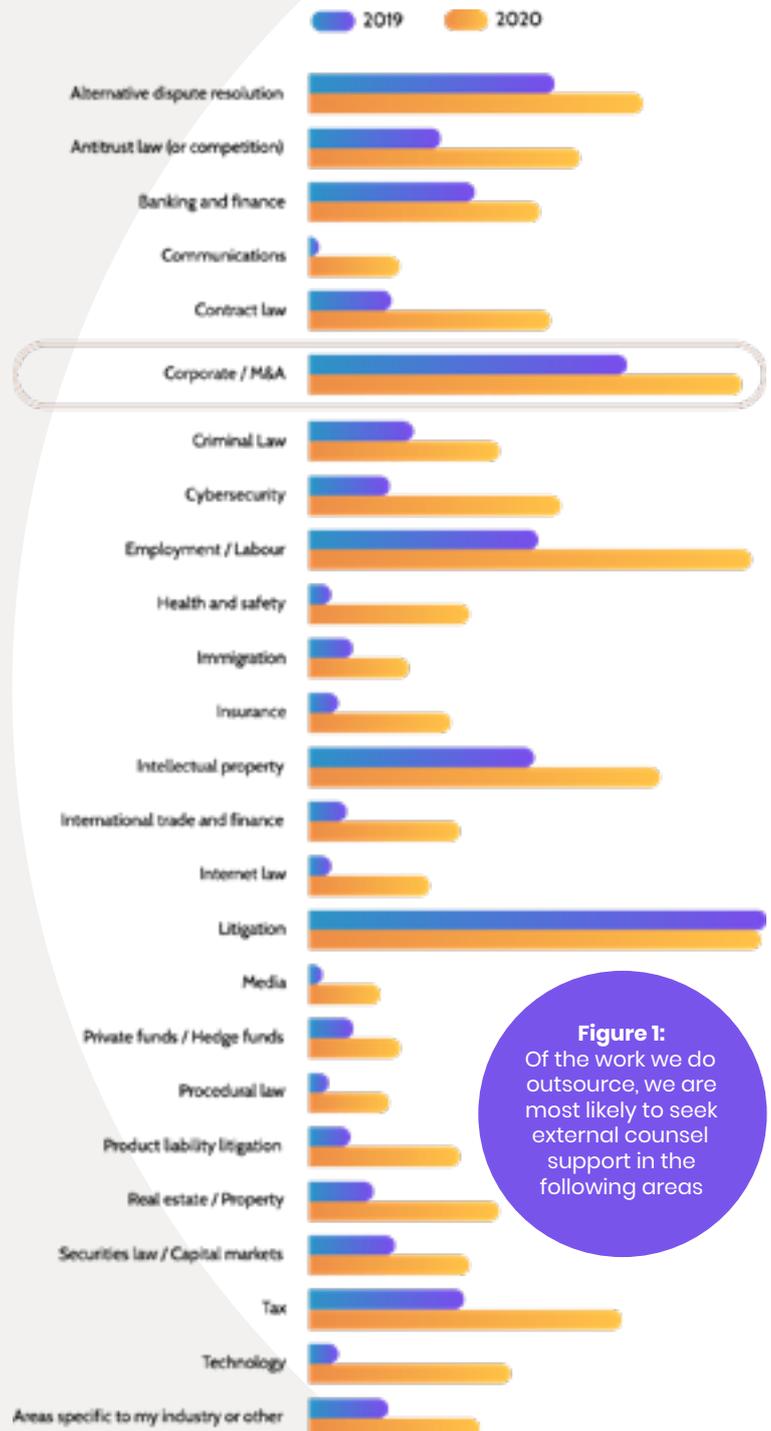
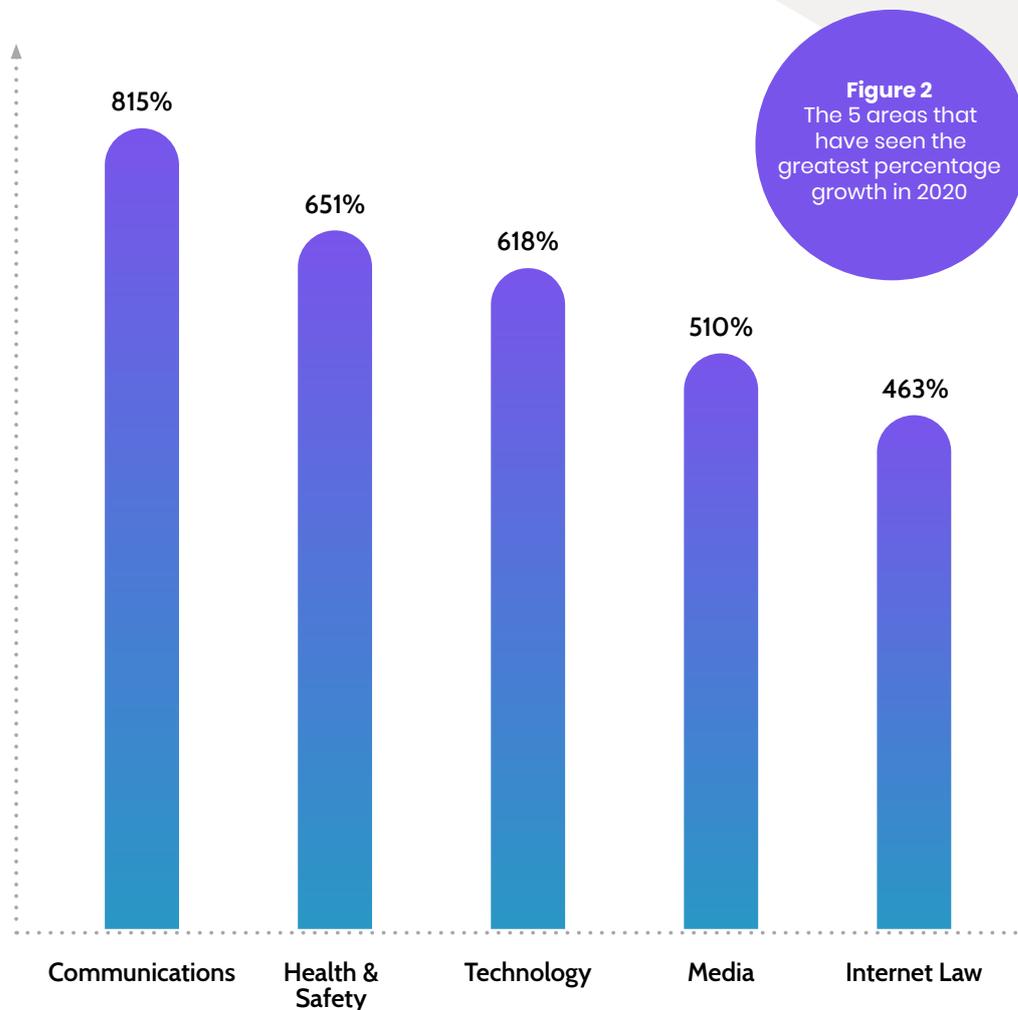


Figure 1: Of the work we do outsource, we are most likely to seek external counsel support in the following areas

The five areas that have grown most in 2020

As can be seen in Figure 2, of the work in-house counsel outsource, the areas that grew exponentially in 2020 are Communications (815% growth) that was not even thought about in 2019 but now is extremely important. Also, Health and Safety grew by 651% followed by Technology, Media and Internet Law.



What do law firms most need to improve right now?

a. Effective Crisis Management

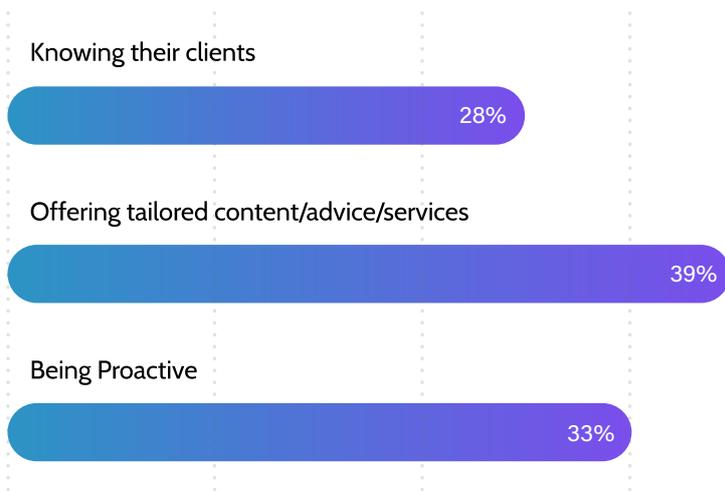
In this new reality we are living in, in-house counsel want law firms to improve in crisis management by better understanding their clients' business, knowing their needs & preferences and proactively providing tailored solutions to help them solve their problems effectively.

As a matter of fact, a Senior Legal Counsel from Abu Dhabi replied to our question with:

“Law firms need to improve in knowing their clients and clients’ needs. This would allow proactive legal responses (and sometimes anticipation) that would be very beneficial for both the counsel and the company. The outbreak of the COVID-19 in December in China should have led law firms to press the button and offer tailored services as soon as January. Rather, the industry players were the one directed the firms as to how to respond to the clients’ need.”

Knowing / understanding clients = relevant & timely response = quality = satisfaction”

Figure 3
How Law firms can improve in effective crisis management



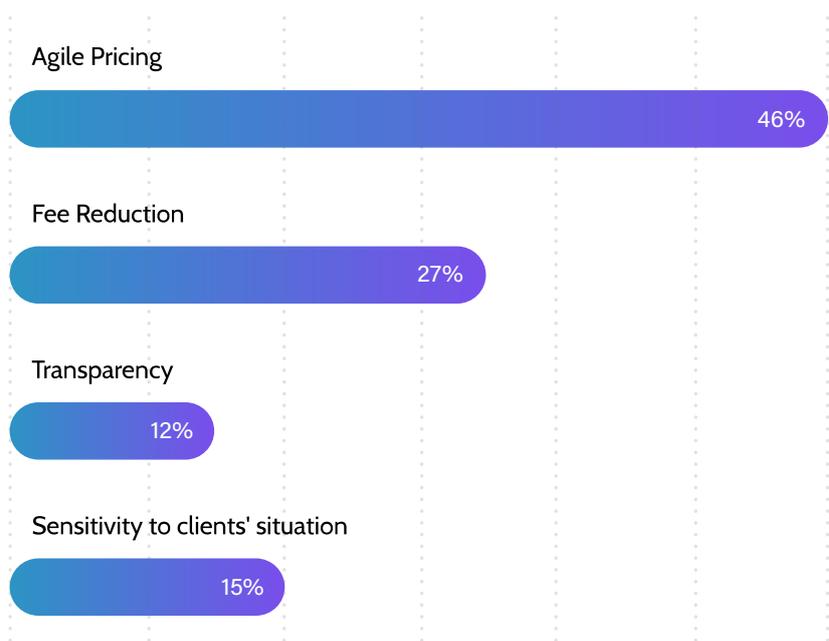
b. Fees and Billing

As most businesses have lower budgets since the pandemic started, legal clients demand flexibility in pricing as well as fee reductions. We also found that in times like these, clients want their external legal advisors to be sensitive to their situation and transparent on the way they charge for their services.

A General Counsel based in Hong Kong responded that:

“More agility in pricing. We are looking at relationship balance holistically. We like a combination of fixed fee elements and transparent, menu pricing approach for additional elements. COVID-19 has also showcased the law firms sharing of intelligence (for free) via online seminars, issue-specific guidance papers/checklists. These are welcomed and help showcase law firm expertise, added value and illustrates that they’re not always looking at making a sale!”

Figure 4
How Law Firms need to improve their fees and billing management



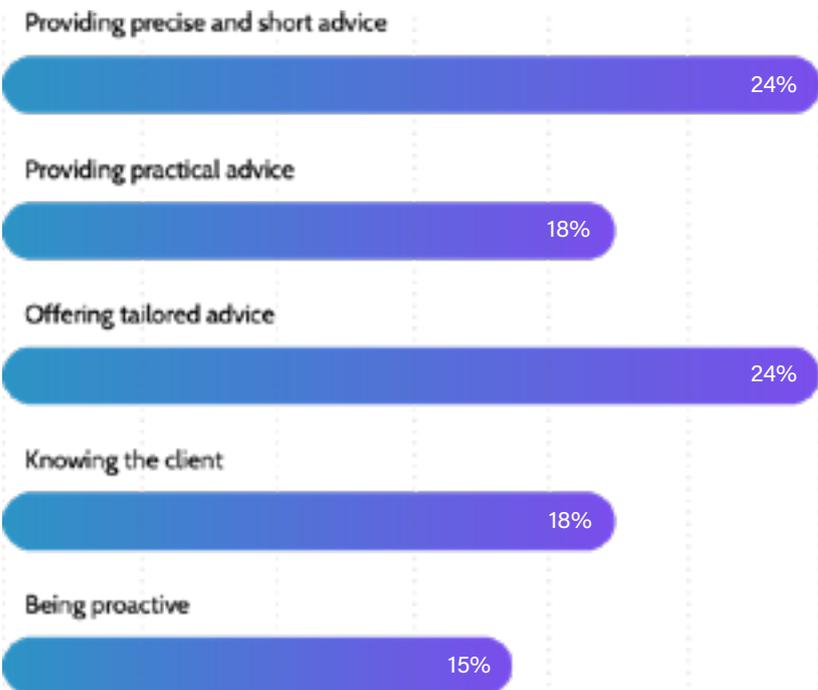
c. Focused, Tailored, Succinct Advice

Our survey results show that in-house counsel value precise, short and practical advice that is customized to their business needs and is proactively provided in order for them to plan ahead.

A Legal Counsel from Manila wrote:

“In my company, I look for a law firm that knows the intricacies of my business and can customise their services accordingly. Given the fluid regulatory landscape we are in, we are also keen on those who are able to proactively provide us with the correct information so that we can plan/change our plans as necessary”

Figure 5
How Law firms need to improve the way they advise clients



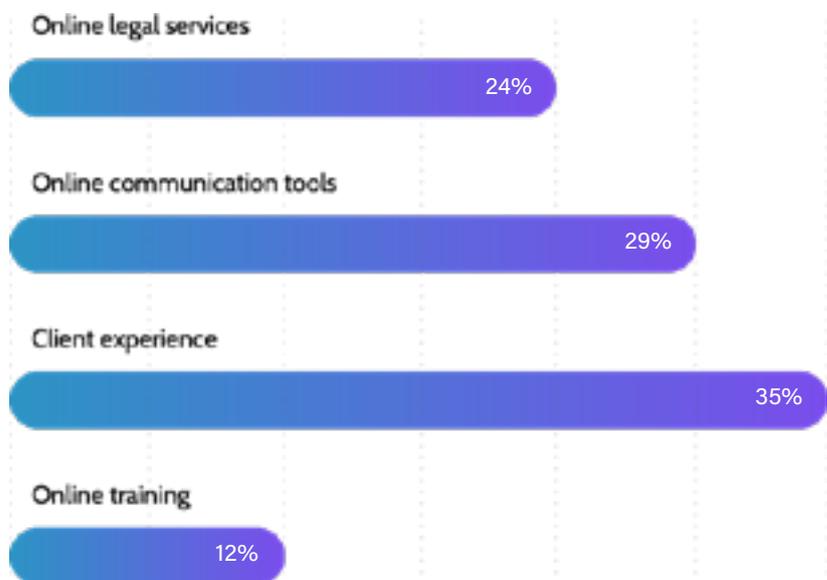
d. Efficiency and Technology

The pandemic is accelerating the pace of digital transformation for businesses around the world and as shown in our survey results, in-house counsel demand a better digital client experience including a seamless online communication and collaboration. We also found that clients want to access, buy and use legal services online as most of them are now working remotely and will continue to do so in the foreseeable future.

In fact, a Legal Counsel from Malaysia replied:

“Law firms need to be more prepared to be able to work remotely, not just for the lawyers but in terms of operational functions such as finance, HR etc. They can no longer afford to be complacent and to rely solely on hard copies or actual physical files before work can be done or processed, the need to digitise and cloud-based storage is crucial moving forward.”

Figure 6
How Law firms can improve their operations



e. Trust and Partnership

To build long lasting relationships with their clients in the current climate, law firms need to understand their clients' context - their business needs, the challenges they face, how the work and what they want to achieve.

As a Senior Regional Counsel from China wrote:

“Better understand the businesses’ new normal, and then, can make the work more client-oriented.”

Figure 7
How Law firms can improve their relationship with clients

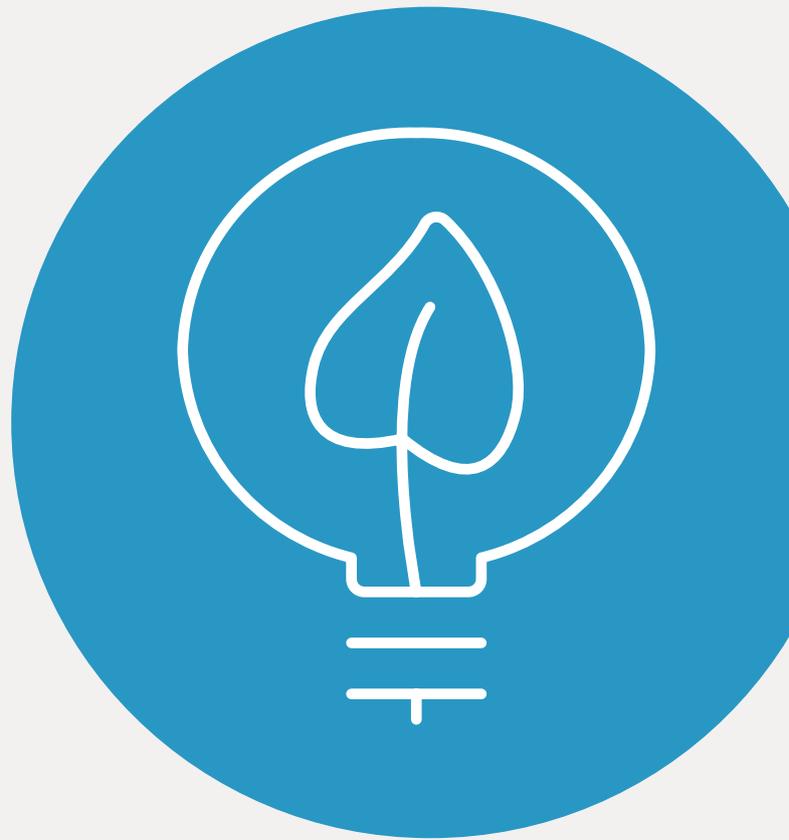


The challenge to change

There is much in this White Paper about change. The survey underscores the changes that the in-house community would like to see. As I reflected upon the findings of what the in-house community want, I was left reflecting whether anything had actually changed – the things they would like law firms to do more of and to do better hasn't really changed over the last several years. As came out of the Black Swan debate we held on 30 June 2020, lawyers and law firms are very resistant to change. In light of this, I would like to lay down 2 challenges:

To the In-House Community

As in the hit song by War, “You Got the Power”. General Counsel, especially the many thought leaders in that community, need to put more pressure on the law firms they work with to bring about the changes they want. Interestingly, we are beginning to see some of that pressure in what might be referred to (incorrectly) as the softer areas – asking their law firms about why they are not making more progress on diversity and inclusion; asking their law firms about their stance on Black Lives Matter; asking their law firms about what they are actually doing with regard to climate change.



Why aren't General Counsel putting more pressure on law firms to change the way they charge; to change the way they deliver advice; to change the way that they provide legal services. This is somewhat of a mystery. In virtually every other profession and industry one can think of, when a customer demands change, a customer gets that change. Why isn't it happening in the legal industry? Do General Counsel really want change?

To law firms

Just get on with change! I believe most law firms leaders understand many of the changes they need to make. The problem is with implementation and making change happen. I also worry that partner remuneration gets in the way of change – to paraphrase Richard Susskind – “How do you persuade a room full of millionaires to change the way they do business.”

Lawyers and law firms (and support staff) need to change and adapt, especially in this new normal, with so many of us working from home. What COVID has proven is that lawyers can change – and can change quickly – when forced

or required to do so. We have all sorted out working from home and mostly have been able to do so without issues. We have all learned to embrace, for many of us, new technologies such as Zoom and Teams (not a big step!). The situation has also highlighted that one of the challenges of working from home is good internet access. How can that be fixed when lawyers live in different places and situations? There is much that still needs to be done if we are to accommodate long-term home working, including better ways to supervise, train and mentor our people, especially for our younger lawyers. I am still of the view we need to get back into the office for most of the time – but that’s another subject.



Technology and change

For older lawyers such as me, we have also seen technology-driven change happen reasonably seamlessly in the past. I remember the pre-email, even pre-fax, world where physical correspondence and telexes were the order of the day. Change took place quickly – we embraced fax machines, even the original quirky ones that faded almost instantly. Email took over as the main communication method – who now doesn’t communicate with clients and each other primarily using email? So lawyers can and do change with technology.

Exploring resistance to change

But change that we decide upon, rather than which is forced upon us, is much harder. Lawyers perhaps seem resistant to change that is for our own benefit, both in an absolute sense and also compared to other professional service providers. Many clients comment on this, sometimes with amusement, sometimes with annoyance. As the survey results show, clients are asking us to change.

Lawyers like to use consultants to progress change. Now as I venture into the consulting world myself, I am struck by how many consultants tell stories of law firms spending significant sums on projects for change, building consensus around that change and then... nothing happens until, usually, a different consultant is appointed three years later to provide the same advice, because the problem has not gone away.

Why aren't we better at making change happen?

I think it is because we expect it to happen, rather than have to make it happen, which is what is needed. This can be done by strong management once consensus is built but, strangely, even good managers struggle and talk about "herding cats". As a group, we need to embrace change proactively. There are circumstances where we need to treat change as a "client".

For example, create an internal team, possibly with an external catalyst, to deliver change. Then give the project a client matter number so people can record their time bringing about the change. Managers should find ways to incentivise and reward behaviour

spent working towards this. Above all, we need to try to find ways of measuring change and changed behaviours. Although I am not a fan, the adage "if you can't measure it, it won't happen" has a lot of truth in it.

And let's not forget our support staff – often close to or exceeding 50% of our people. They need to change as well – especially if we are to see prolonged WFH. We need to rethink support and how it's delivered – without just switching administrative tasks to our lawyers.

Lawyers can change – they just need to be better at making change happen.



Stephen Revell
Making Change Happen Pte Ltd

Making change happen

Future Horizons

As our survey results indicate, in-house counsel demand from law firms to better understand their needs and provide improved customer experience, tailored and focused advice as well as agile pricing models. In addition to that, society is shifting due to the global pandemic that brought a plethora of health and economic challenges as well as a new civil rights movement pushing the legal sector to be more flexible, inclusive and diverse. It is absolutely clear that law firms need to change, but the questions remain: How can law firms successfully implement change? and What is the future of legal services?

As Stephen Revell mentioned, lawyers and law firms have experienced “technology-driven change” in the past and now the industry is at the gates of transformation again. But this time round, digital transformation is emerging as the main driver of change in the legal services industry. The power of digital is fuelling the “Fourth Industrial Revolution” as firstly introduced by Professor Klaus Schwab and has

the potential to improve the way people live and work around the world, creating a more democratic, diverse and inclusive society, impacting all aspects of society and business including knowledge professionals.

The future of professional services is digital. Legal services that undergo a successful digital transformation have a significant competitive advantage and the potential to enable new businesses models, improved customer experiences and better ways of working. Exactly what in-house lawyers expect from law firms. Using digital platforms as marketplaces, legal consumers can access, buy and use legal services going through a seamless personalised customer journey. Tapping into the power of data, legal professionals have novel insights about their clients’ business needs and are able to provide proactive, tailored advice and solutions to them. By transforming their traditional business models, law firms can also change the way they charge, moving from hourly rates to outcome or subscription-based models.

Successfully implementing change may be rewarding but is also challenging. Law firms and legal departments have to first adopt a culture of change, prepare their management and teams for the digital future and adopt flexible models that can change anytime to adapt to the new demands. Then, the next step is to foster a digital environment. Traditionally, law firms put pressure on their internal innovation teams which

is something that scarcely works due to the lack of people, time, expertise and budget. This is why recently we have experienced a shift towards partnerships with disruptive businesses that specialise in digital transformation. This shift has brought incredible results, innovation, agility and have helped businesses create innovative and more cost-effective propositions for their customers.

Digital transformation is not an option, it is a necessity and the phrase “adapt or die” was never more relevant. So, what are you waiting for?

Contributors



Calls9 is the digital transformation agency for professional services businesses. We deliver innovative technology solutions that enable new business models, improved customer experiences and better ways of working.

Start your digital transformation journey now.

Visit our website at calls9.com, send us an email on hello@calls9.com or find us on [LinkedIn](#) and [Twitter](#).



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