

Legal Week

The axeman cometh

The phrase 'work smarter, not harder' may be reminiscent of the sort of glib mantra that once gave management consultants a bad name — the rather patronising implication being that employees could become so much more productive if only they would give a bit more thought to their work processes. But, for the in-house lawyers among the panellists at Martindale-Hubbell's latest Counsel to Counsel forum, held in Singapore, the opportunity to meet their counterparts to exchange ideas and share best practice on such a theme was just too good to miss.

The initial discussion revealed the pressures many were feeling in the post-Enron era. As economic conditions have tightened in many markets, departmental budgets are more tightly controlled than ever, while workloads have increased, markedly so in the areas of risk management, compliance and corporate governance. With reams of legislation complicating the regulatory environment of just about every significant jurisdiction, in-house counsel are being asked to 'do more with less' by their employers just to keep on top of it all.

Traditional cost-cutting methods, such as reducing staff or asking outside counsel for discounts, can undoubtedly result in financial savings. But there is a limit, and such ploys do nothing to reduce the workload of the in-house lawyer.

One panellist lamented the fact that while lawyers in private practice can, to some extent, control their workloads — by increasing their premiums, for example, or by hiring more lawyers — most in-house lawyers are not in a position to do so. It can be difficult to say no to internal clients.

But other panellists pointed out that strict costing of internal legal work, perhaps supported by timesheets, can make a big difference.

"I subscribe to the view that, when you have a resource, and nobody pays for it, it gets abused," said Timothy Goh, general counsel of Jurong Consultants. "The smallest thing and they pick up the phone and say, 'I need a lawyer'. Adding a cost element can concentrate the mind wonderfully."

But the panellists agreed that the cost element must not be allowed to deter internal clients from seeking legal advice where necessary, particularly where compliance issues are at stake.

Bernard Tan, legal counsel at IBM, suggested that in-house lawyers should aim to focus on advising on matters relating to the core business of their employer — other issues could be outsourced.

There was also some discussion about the advantages of training up non-lawyers — right up to those at board level — to give them a better understanding of how legal issues, especially those relating to corporate governance and compliance, can affect them. Although time-consuming, this pro-active approach can prevent problems arising further down the line.

It was also suggested that people on the business side take responsibility for project managing the negotiation of their contracts, rather than 'dumping' this role on the legal team. Indeed, one participant explained how her company has put a lot of effort into producing standard documentation so the legal department need only be involved when this is significantly deviated from.

Of course, such an approach will not work in every industry: counter parties, quite rightly, will often refuse to do business on the basis of another party's standard terms and, in any case, such terms may be inadequate when it comes to doing business in other jurisdictions. Another danger is that the documentation may not be appropriate to a similar, but altogether different, transaction and non-lawyers may not be aware of this. The context is crucial.

Jeffery Tan, president of Motorola Singapore, suggested "using a lot more paralegals", who could be trained up to ensure they were of high enough quality to be relied upon for the more standard documentation. Although another panellist pointed out that this was less practical in more specialised areas, such as banking.

Tan also reiterated a point often highlighted to law firms by their clients — that legal support should be pragmatic and commercially orientated. Due to time constraints, in-house lawyers often have no option in this regard, but their role in advising businesses on a day-to-day basis does give them an important perspective.

But, in spite of all the talk of pragmatism, the panellists were not always in favour of short cuts.

When asked what kept them awake at night, the common theme — apart from jet lag and late night conference calls — was the fear of non-legal colleagues getting into trouble as a result of failing to consult them. As one panellist put it: "When senior people with a lot of business experience and some legal knowledge think that because [something has] been done before, it can be done again, although it was previously done 10 years ago and in a different jurisdiction, this can be a problem."

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