

New Business World, New Legal Models

Why the Evolving Business Landscape
Demands New Approaches to Legal Services

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By Susan Wortzman, Matthew Peters and Judith McKay

As business innovation and collaboration become paramount to competitive success, it is clearer than ever that organizations are not solving legal, financial or even technology challenges, but are instead solving business challenges.

By their very nature and training, lawyers are well-suited for this brave new world: issue spotters and complex problem solvers intimately familiar with the operating system of business. Make no mistake, financial systems may underpin business, but the rule of law is the system on which it operates. With that in mind, lawyers will only become more central to business operations in the future.

Legal services, regardless of the delivery method, need to be highly interconnected and aligned with the goals of the business. Organizations today do not operate in self-contained silos where business units across disciplines do not communicate. Businesses can no longer tease apart the interwoven issues such as law, cybersecurity, public relations, human resources, privacy, regulatory compliance and productivity. Thriving in this technology-driven global economy requires collaboration — with vendors, customers and sometimes competitors.

The next few years will see a rapid evolution of legal services. Tomorrow's legal services require the cross-industry perspective and practice specializations of a top tier law firm, the creativity and nimbleness of a start-up and the practicality and business integration of in-house counsel. This paper discusses the evolving relationship between business executives, in-house counsel and their service providers. It forecasts a new business model for legal services that seeks to increase collaboration, interconnectedness and responsiveness.

The evolving business landscape

The onward march to greater globalization — accelerated by, among other things, the Internet and e-commerce — means nearly every company now has international play or potential. They must now contend with increasingly stringent regulations, across multiple domains and nations, only adding to the complexity of their journey. According to Compliance & Risks, there were about 2,000 regulations globally in 2003 which has ballooned to 16,000 in 2018¹. Compliance with the specific rules and filings of each country, keeping up with new and revised regulations and shifts in regulatory interpretation is costly and difficult to manage. The stakes of non-compliance with regulation are greater than ever, including reputational impact, class action lawsuits, administrative penalties and fines. For example, organizations can be fined up to 4% of annual global turnover for breaching the EU General Data Protection Regulation (GDPR) or €20 Million. Under Canada's anti-spam law commonly known as 'CASL', \$10 Million penalties are available, even for first time violators of this complex law.



At the same time, digital transformation has made data governance, compliance, contract and litigation management even more important. More data was created in the past two years than in the entire previous history of the human race. Data is growing faster than ever before and by the year 2020, about 1.7 megabytes of new information will be created every second for every human being on the planet. Also by 2020 there will be over 50 billion smart connected devices in the world, all developed to collect, analyze and share data. The sheer volumes of data generated from transactions across now countless touch points are resulting in an exponential increase in the number of contractual

1 "Global Growth of Regulations by Region" (last visited 5 March 2019), online: [Compliance & Risks](https://www.complianceandrisks.com/global-growth-regulations-region/)

arrangements businesses need to draft, comply with and manage. Information discovery, once laborious, is now impossible for mere humans. Digitization creates tremendous opportunities to collect, analyze and monetize data using artificial intelligence but also tremendous risk if not implemented thoughtfully.

Innovation in technology has given rise to a hyper-competitive global market with constantly evolving transformational products and services. Businesses striving to compete in this environment often find themselves in unknown territory, legal and otherwise.

Not surprisingly, according to annual surveys conducted over the past couple of years, Canadian in-house counsel consistently cite managing regulatory compliance as their most pressing substantive business law challenge. Managing privacy and data security, as well as technology issues consistently rank among their top five substantive business law priorities².

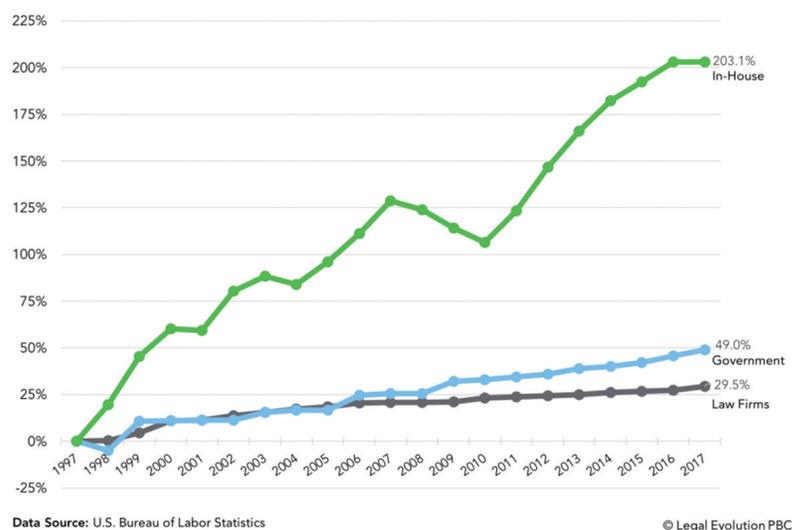
The legal industry in flux

In response to the larger business landscape, the legal industry has transformed in the past decade, especially in the relationship between in-house and outside counsel.

The modern business environment has spawned a continuous quest for practicality, efficiency and cost-reduction. In a bid by organizations to move legal capabilities closer to the core operations of businesses and increase cost effectiveness, the legal service industry has seen two significant events occur: the sharp-and-steady rise of in-house legal departments; and increased use of alternative fee arrangements, competitive bidding processes and law firm panels to reduce external legal spend.

The number of in-house lawyers has tripled

% CHANGE IN NUMBER OF EMPLOYED LAWYERS BY PRACTICE SETTING, 1997 – 2017³



The shift to in-house counsel has been remarkable. The number of in-house lawyers tripled between 1997 and 2017⁴, and grew sharply following the financial crisis of 2008. This insourcing changed not only the role of lawyers, but also brought the potential to change the very way legal services are delivered. As in-house legal departments evolved, in addition to being closer to the business, a significant focus became one of managing legal spend more closely, as a means to ensure greater value for the services delivered.

² McCarthy Tétrault, "GC Effectiveness" Surveys, 2017 and 2018

³ Bill Henderson, "How Much Are Corporations In-Sourcing Legal Services?" (2 May 2017), online: *Legal Evolution* <https://www.legalevolution.org/2017/05/003-inhouse-lawyers/>

⁴ *Ibid*



With external legal budgets becoming tighter, organizations have also begun to look to Alternative Legal Service Providers (ALSPs) to outsource legal work. Today, 19 percent of legal departments outsource to ALSPs to drive efficiency, but among the large departments this number climbs to 38 percent⁵. But the focus for many remained primarily about outsourcing to lower cost resources as opposed to real transformation of how legal services are delivered. Meanwhile, legal services have, as an industry, begun to reach the limits of both the traditional outsourcing model and RFPs to add value in the face of increasing complexity in a cost-constrained world.

In recent years, in-house legal departments have scaled significantly—some having reached the size of large law firms. With cost savings from external law firms more in hand, the opportunity to achieve cost-efficiencies by improving legal operations has been identified as another effective means to manage within restrained legal budgets. Although they value strategic and specialized legal advice, in-house departments rightfully no longer wish to pay substantial hourly rates for an ever-increasing volume of routine and repetitive work. They instead wish to focus their limited internal resources on more strategic endeavours. Consequently, finding ways to streamline, eliminate, systematize and/or automate routine legal work is of paramount importance. In surveys conducted in 2017 and 2018, it was found that the majority of Canadian General Counsel do not anticipate that their legal department will grow in the next year⁶. This resourcing restraint, combined with the increasing complexity of business issues, is a strong motivator for service delivery innovation. According to this

same set of surveys, General Counsel identified knowledge management, talent management and technology adoption as significant areas of opportunity to gain efficiency and improve operations⁷.

In this new era, greater collaboration and problem-solving in partnership between in-house and external counsel has tremendous potential to improve efficiency, increase quality and unlock value. This partnership requires harnessing the core business knowledge and practicality of in-house counsel augmented with complementary skill sets and scale offered by law firms. Together, lawyers are an effective force for informing optimal business decision-making, solving tricky business challenges and improving the bottom line despite increasing business complexity.

As businesses embrace digital transformation, the resulting global reach, as well as regulatory and legal complexities, demand sophisticated advisors with experience in both law and many other disciplines. In recent surveys, Canadian General Counsel indicated that enhancing the operation of the legal department as a strategic business function is one of their highest in-house legal department priorities⁸. Other studies confirm that in-house counsel recognize the need for law firms to play a central role in elevating the business value of legal services. Even as organizations seek to reduce legal expenditures, a 2017 survey of more than 200 in-house lawyers — the majority General Counsel or heads of legal — found they valued responsiveness, an understanding of the business and its industry, and deep specialist expertise as the most important factors in choosing an outside law firm⁹. In short: collaborative problem-solvers.

5 Casey Flaherty and Jae Um, "ALSPs: Already Here & Looking Upmarket" (20 September 2018), online: *Law.com* <https://www.law.com/2018/09/20/alsps-already-here-looking-upmarket/>

6 McCarthy Tétrault, "CoLab (TM) Design Thinking" Surveys, 2017 and 2018

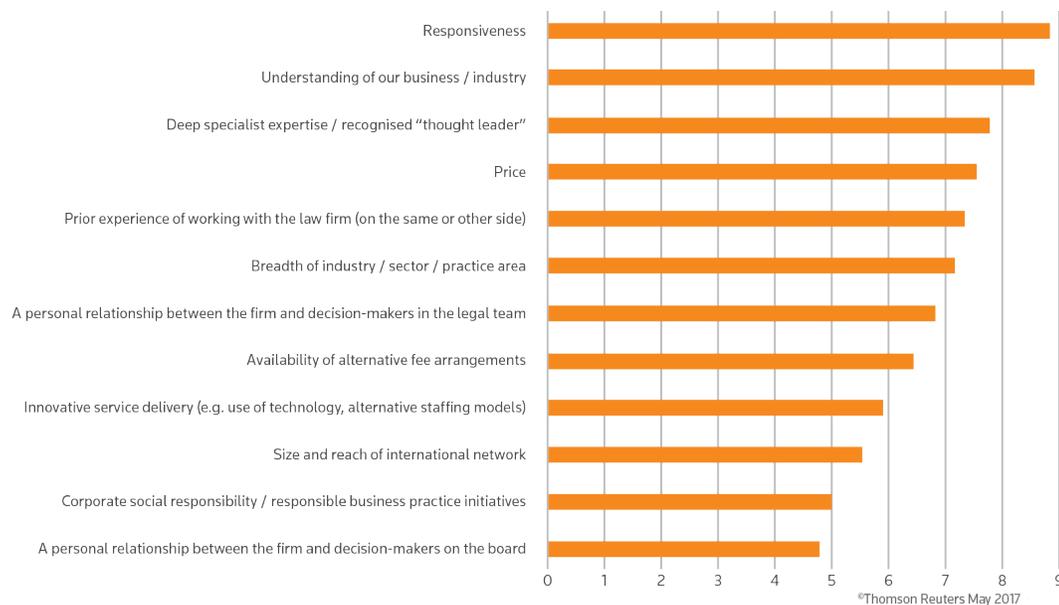
7 *Ibid*

8 *Ibid*

9 "Standing out from the crowd: What businesses value most from their law firms" (last visited 5 March 2019), online (pdf): *Thomson Reuters* <https://legalsolutions.thomsonreuters.co.uk/content/dam/openweb/documents/pdf/uki-legal-solutions/report/thomson-reuters-standing-out-from-the-crowd-legal-differentiation-report.pdf>

Important factors determining which firms are instructed

SCORED ON A SCALE OF 1 – 10¹⁰



The survey revealed that use of technology has moved well up the agenda. Innovative service delivery through technology was a more important factor when choosing a law firm than personal relationships, corporate social responsibility, or the size and reach of international networks.

According to the legal market research firm Acritas, a staggering 69% of US corporate legal departments believe they haven't seen any of their law firms or legal service providers innovate in the last 12 months¹¹. Consequently, clients are increasingly turning to alternative service providers to find the flexible resourcing, efficient processes and technology solutions they need. In order to continue to stay relevant to clients, law firms must accelerate their transformational efforts. This will not only benefit law firms and the businesses they serve, but provides exciting opportunities for the next generation of lawyers. Experience is no longer primarily gained through the "brawn" of late hours scouring through documents, but increasingly, and at an earlier career stage, through the "brainy" work of solving client problems. The advanced technology needed to perform tasks such as e-discovery shouldered by the automation of manual processes, and the abundance of productivity-enhancing applications, means that lawyers have the opportunity to adopt a more holistic and informed approach rather than be mired in paperwork.

Throughout these changes one constant remains true: the quest for greater value. New legal service delivery models are needed that provide streamlined approaches and data analytics to enable lawyers to provide increasingly cost-effective, sophisticated and strategic support to business.

Startup agility meets the traditional firm

Achieving value across the legal sphere demands new business models and an evolving ecosystem focused on collaboration — between not only in-house departments and law firms but also ALSPs, technology companies and other service providers.

To answer the needs of clients in the rapidly changing and interconnected business sphere, McCarthy Tétrault re-thought and re-imagined some of its service offerings and launched **MT>Divisions**. This prescient hybrid model combines the firm's more than 150 years of excellence in delivering legal

10 *Ibid*

11 "69% of all law firms and legal services fails to offer innovation, their clients tell Acritas" (15 March 2018), online: Acritas <https://www.acritas.com/news/69-all-law-firms-and-legal-services-suppliers-fail-offer-innovation-their-clients-tell-acritas>

services with innovative delivery methods. MT>Divisions collaborates with business and technology consultants to provide integrated solutions for clients.

This new endeavour seeks to achieve the best of two worlds: the entrepreneurial spirit, agile operations and light footprint of a start-up; and the focus on quality and calibre of one of Canada's largest, globally active and most storied law firms.

-  **MT>Divisions** represents a group of new businesses that have been either acquired or developed by McCarthy Tétrault. Each business operates as a separate subdivision and leverages business, data, technology and other consultants to provide solutions for clients. Current MT>Divisions business lines include MT>3, MT>Align, MT>Play and MT>*iplus*, supported by a lean operating platform, MT>Core.
-  **MT>Core** is the lean, scalable operating platform for MT>Divisions. It is founded on a cloud-enabled environment, supporting the HR, financial and operational needs of each new MT venture. MT>Core's sophisticated technology and nimble team of specialists ensures that MT business lines roll out and scale quickly with reduced overhead and without duplicate processes. This platform for business innovation also affords the latitude to test new technology in an agile environment before launching to the broader firm.
-  **MT>3** (formerly Wortzmans) is the leading law firm specialized in providing advice and services related to the management of digital information. MT>3 illustrates the need for a multidisciplinary approach to service delivery, bringing together litigators, technical analysts and project managers with extensive trial experience, knowledge of electronic evidence and e-Discovery capabilities. Using advanced machine learning technology, MT>3 finds the virtual needle in a multi-terabyte haystack, cost-effectively. Retaining a highly-specialized multi-disciplinary team, MT>3 extends service well beyond traditional legal advice and offers a wide range of legal, strategic and technical services within e-Discovery, information governance and technology strategy.
-  **MT>Align** (formerly MT>OnDemand) is a growing community of high-calibre independent contract lawyers supported by the McCarthy Tétrault platform. MT>Align quickly provides customized, flexible resources with both law firm and in-house experience to fit clients' unique needs. MT>Align creatively collaborates with clients connecting them with lawyers with the right mix of practicality, skills and experience, as well as innovative technology, tools and processes. Whether clients: (i) require overflow, temporary or embedded legal resources, (ii) need any level of help with projects, or (iii) wish to streamline routine high volume legal work, MT>Align offers the optimal legal support for their specific need.
-  **MT>Play** is a global gaming consultancy offering expertise on the business issues facing both the traditional and digital aspects of the gaming industry. This group advises across several areas: eSports, fantasy sports, gaming, i-gaming, lottery and sports betting. Representing yet another innovative model of service delivery, this venture, 50 percent owned by McCarthy Tétrault, provides the technical and strategic business counsel for this emerging industry, fortified with the firm's legal services.
-  **MT>*iplus*** is a re-envisioning of McCarthy Tétrault's national immigration practice. The MT>*iplus* team of counsel, paralegals and paraprofessionals take a holistic approach to the practical personal and business realities of resettling foreign talent. This wholly-owned McCarthy Tétrault division leverages cloud-based productivity applications and advanced document management and immigration tools to help clients efficiently address the processing and management of extensive immigration paperwork.

Each MT>Divisions business line, wholly supported by the state-of-the-art operations and technology platform MT> Core, employs tailored approaches to client service delivery under a unified mandate of providing quality and value.

MT>Divisions is committed to building successful partnerships with clients, including:

- Deeply understanding the business needs, opportunities and challenges of the industries served to provide customized solutions;
- Completing projects more quickly to save time, meet deadlines and increase speed-to-deal;
- Streamlining, eliminating, systematizing and/or automating routine legal work; and,
- Improving the overall quality, consistency and cost-predictability of legal services.

These businesses all contribute to the bottom line of the firm and its clients. MT>3 grew substantially after it merged with McCarthy Tétrault because clients saw the benefit of having their litigation, e-discovery and data management needs handled all under one roof. MT>3 has also continued to provide e-discovery services to other law firms, with appropriate confidentiality screens in place, because of its reputation for a commitment to excellence. MT>Align, originally conceived of as primarily a placement agency to fulfill clients' secondment needs, has expanded into client solutions such as large scale contract management projects using artificial intelligence. MT>Play and MT>iplus are more recent introductions to the market, yet already are receiving substantial interest from clients due to their uniquely integrated services.

Achieving the triple-win: a bullish future for legal services

Businesses are increasingly seeking out service providers who partner with them to provide salient and precise expertise that bridges the disappearing lines between legal, strategic and technical counsel. Cutting-edge legal service organizations that see the future and opportunities imposed by this brave new world will be the allies businesses need to achieve their goals and embrace rapidly changing realities.

Those who can cost-effectively and flexibly deliver value will achieve a triple-win for clients, the firm and its lawyers and other legal service providers. Clients will leverage a closer relationship with their service providers, finding an integrated one-stop shop that delivers sophisticated expertise and an in-depth understanding of their business. Flexible fee structures enabled by alternative service delivery models deliver greater alignment in pricing and ensure value.

Law firms similarly gain a more intimate understanding of client needs. They also have the opportunity for their lawyers to collaborate more deeply with other service providers and in-house counsel to develop effective, practical knowledge and solutions in the areas most relevant to business.

This is a historically unique time for lawyers. The opportunities to take on more meaningful work – acting as the legal brains – while innovation and automation handle with precision the minutiae, abound. Multi-disciplinary teams provide skills development and cross-organizational learning, while new resourcing models deliver a third way for legal careers to unfold. The burgeoning career path ahead combines the learning opportunities of traditional law firm work with the nimbleness of a start up and the business integration of in-house counsel. Lawyers' talent for issue spotting and complex problem solving will be enhanced by both data analytics and greater multi-disciplinary collaboration. This transformation of the legal industry will solidify the central role of lawyers in protecting and supporting the rule of law as the operating system of business. The resulting new business models will enable ongoing prosperity and success in a rapidly changing business world.

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