

Canadian Lawyer's annual corporate counsel survey shows keeping work in-house and budgets in line remain the top priorities as the economy keeps everyone guessing.

PREPARING FOR **UNCERTAINTY**

By Jennifer Brown



A

s Canada fights to stay out of a looming global recession, it seems corporate counsel are preparing for the worst with plans to bring more work in-house even as they expect to see an increase in the amount they will be challenged to do

in the coming year, according to the annual *Canadian Lawyer* corporate counsel survey.

With continued uncertainty in the market, if the economy continues on a downward trend, 64 per cent of the 137 respondents who came from leading Canadian corporate and government legal departments say they will bring more work into their own department. Even if there is an improvement in the economic outlook, 61 per cent said they will not send more work outside their organizations, and 57.4 per cent said they will be implementing new cost-cutting measures with the firms they currently deal with.

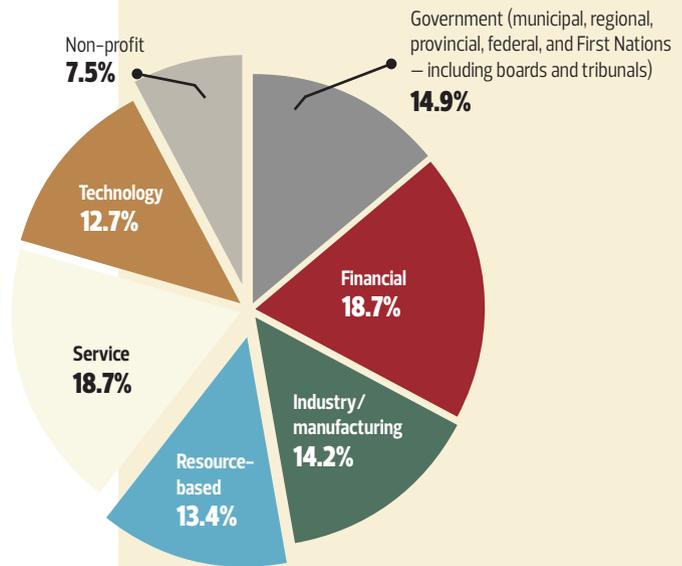
In fact, awareness of and concern over costs was the No. 1 area corporate counsel identified as something firms can do to improve their working relationships with in-house legal departments.

Of those responding to the survey, 83 per cent say any perceived improvement in the economic climate in 2011 had no effect on their legal department spend. In terms of external legal spend, 53.3 per cent said their budgets did not change over last year while 38.3 per cent said it was higher. When it came to their department's budget, 45.1 per cent said they saw no change while 34.5 per cent saw it increase and 20.4 per cent saw a reduction over last year. For the 38.3 per cent who did see an increase in external legal spend, 45.7 per cent said they attribute changes to their spending to more work being sent outside the organization. But on the internal staffing front, 48.5 per cent said there was no change in the size of their legal department over last year, while 31.3 per cent said their department grew as there was more work to be done; however 17.2 per cent said their legal department actually shrank.

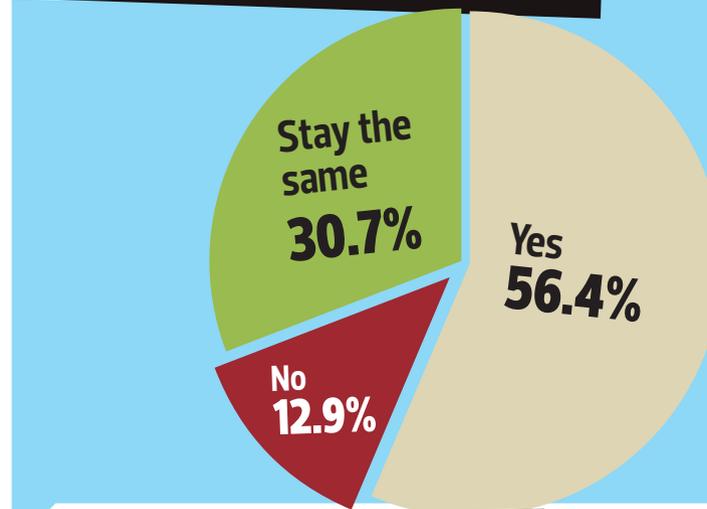
Keeping work in-house is a trend also noted by recruiters such as Robert Half International Canada, which recently issued its hiring index specific to the legal community. "We have heard from corporate GCs that they would look to bring work in-house rather than farm it out," says John Ohnjec, division director with Robert Half Legal in Canada. "They're still being very cautious — nobody is really making those full-fledged dives into bringing on two or three counsel in-house either — they are taking a measured approach and looking specifically to the type of work that needs to be done."

According to Ohnjec, hiring is happening for specialty areas such as litigation and intellectual property. "I think everybody realizes we aren't going to catapult out of the tough times we've had in the last couple of years, and

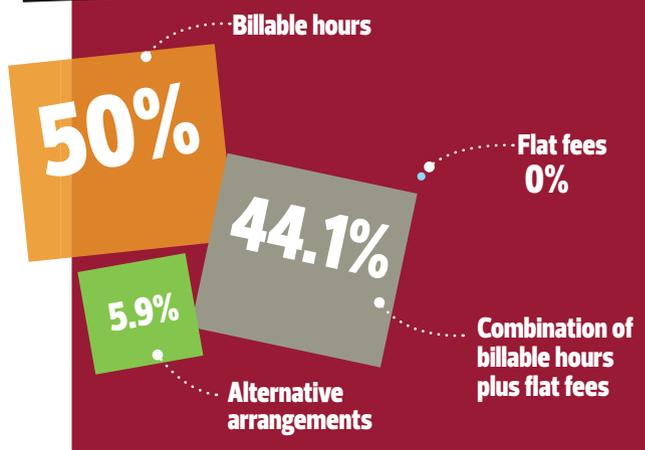
WHAT SECTOR IS YOUR COMPANY/ORGANIZATION IN?



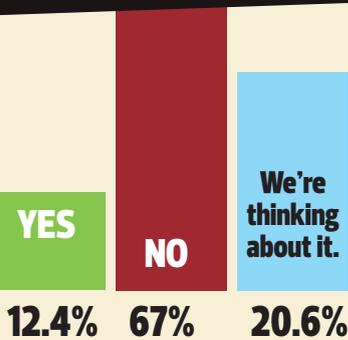
IS THE VOLUME OF LEGAL WORK LIKELY TO GROW FOR YOUR COMPANY IN 2012?



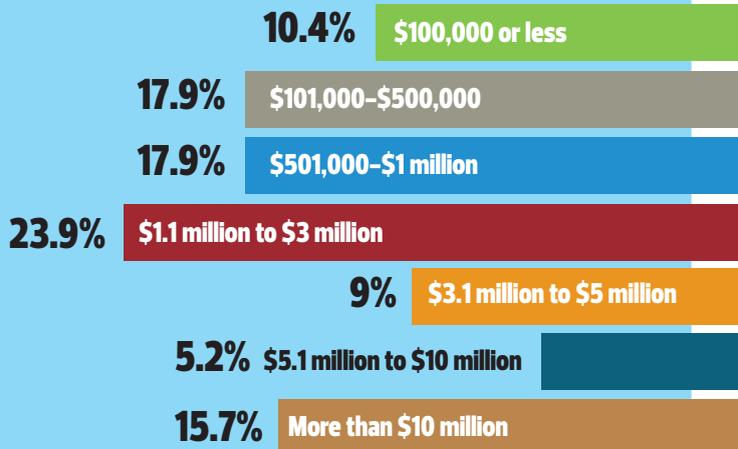
WHAT TYPE OF BILLING ARRANGEMENT DO YOU HAVE WITH YOUR PRIMARY LAW FIRM?



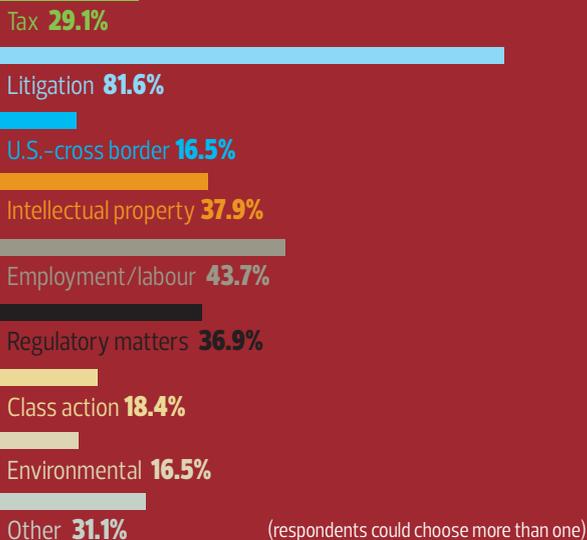
ARE YOU ASKING THE LAW FIRMS YOU DO BUSINESS WITH TO PROVIDE A DIVERSE ROSTER OF LAWYERS TO WORK WITH (I.E. REDUCED HOURS, WOMEN, VISIBLE MINORITIES) AS PART OF AN OVERALL DIVERSITY STRATEGY IN YOUR ORGANIZATION?



WHAT WAS THE EXTERNAL LEGAL SPEND FOR THE CANADIAN LEGAL DEPARTMENT IN YOUR LAST FISCAL YEAR?



WHAT ARE THE AREAS OF PRACTICE YOU CONTRACT OUT TO FIRMS THE MOST?



even though we may have a quarter where hiring increases, it could be followed by another that doesn't show positive results," he says.

In fact, litigation was the No. 1 area of practice corporate counsel outsources, with 82 per cent of respondents putting it in the top spot, followed by labour and employment law, intellectual property, and regulatory matters.

Responses to the survey came from a cross section of departments with 15.7 per cent from legal departments that had \$10 million or more in legal spending in the last fiscal year, 17.9 per cent spent less than \$1 million, and 23.9 per cent were from departments that had between \$1 million and \$3 million in legal costs.

Almost half of the respondents were from small legal departments with fewer than five lawyers. There was a fairly even distribution of responses from the various sectors: 19 per cent coming from financial institutions and another 19 per cent from the service sector while government, industry/manufacturing/resource-based industries and technology

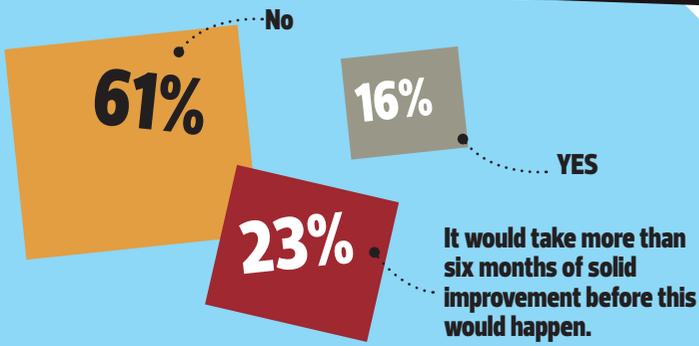
“We’re not looking for law firms not to make money but we’re looking to make sure they’re delivering value for money. We want to see a healthy legal industry because that will ensure good competition.”
 Sanjeev Dhawan, Hydro One Networks

companies fall in under 15 per cent with 7.5 per cent of survey respondents coming from the non-profit sector.

When it came to listing the things firms can do to improve their working relationships with their clients, at the top was a desire that firms become “more concerned with costs” (58.6 per cent), followed by “be more proactive” at 31 per cent, and “be more commercial/practical” at 29.9 per cent. Some survey respondents commented that they would like their firms to: “make an effort to understand our business and industry” as well as “communicate better — return calls, report progress,” and “raise legal issues that we have not identified,” — which was interesting when contrasted with the fact that 74.5 per cent said they do not involve their primary law firm in internal risk-management strategies.

Interestingly, topics that have been hot-button items on the legal seminar circuit such as diversity in hiring, alternative billing, and outsourcing offshore did not show up as items resonating much with in-house counsel in Canada, according to the survey findings. For example, despite the various efforts afoot here to promote diversity in the legal profession, 67 per cent of respondents said they are not asking the law firms they do business with to provide a diverse roster of lawyers to work with (i.e. reduced hours, women, visible minorities) as part of an overall diversity strategy in their organization. However, 21 per cent said they are thinking about it and 12 per cent are

IF THERE IS AN IMPROVEMENT IN THE ECONOMIC FORECAST WILL YOU SEND MORE WORK OUTSIDE YOUR DEPARTMENT?



starting to ask the question. One survey respondent said in response to the diversity question: “We expect the best/most appropriate person for the job regardless of sex, race, etc.” While another said: “We support diversity, but will use a carrot rather than a stick approach.”

Leaders in the profession say it’s not a surprise these issues still appear to be in their infancy. “What you’re seeing is the awareness and acceptance of those issues is developing and then it takes some time to get them implemented,” says Fred Krebs, former president of the Association of Corporate Counsel and now an adviser with Washington, D.C.-based Clearspire Service Co. LLC.

On the diversity front, some say it shows in-house counsel aren’t paying enough attention to the issue. “It seems we as in-house counsel aren’t doing enough to insist on diversity and inclusion,” says Sanjeev Dhawan, president of the ACC Ontario chapter. “Obviously as purchasers of legal services and collectively as corporate counsel we have clout so we need to find our collective voice and find ways of using it as we are trying to do with the ACC Value Challenge on the issue of fees.”

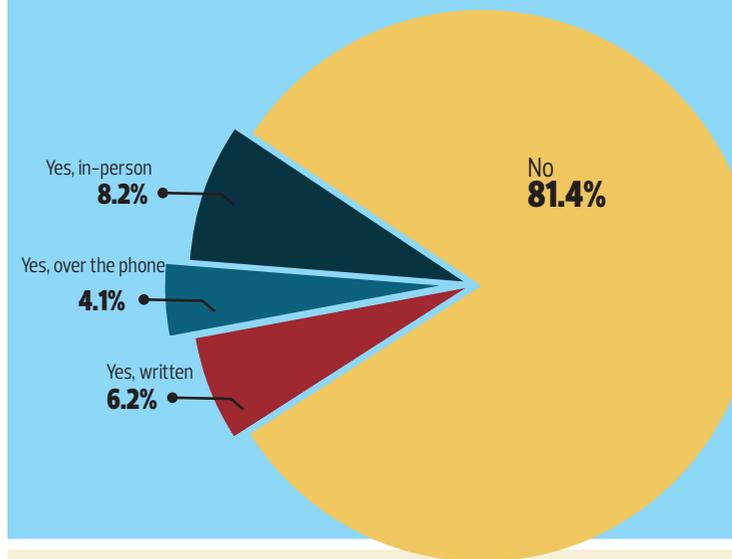
When it comes to alternative fee arrangements, 50 per cent of corporate counsel who answered the survey said billable hours is the arrangement they currently have with their outside firms, while 44 per cent said they have a combination of billable hours and flat fees. Alternative arrangements made up 5.9 per cent. “It’s definitely a start,” says Krebs. “What it may indicate is they have a higher level of satisfaction with their outside firms. I’ve heard GCs speak to a high level of dissatisfaction that law firms aren’t getting it — if you aren’t seeing it is it a matter that the law firms aren’t providing alternative arrangements or the purchasers aren’t asking for it?”

In terms of measuring the relationship between firms and in-house counsel, it seems taking stock of the relationship is still not a major priority with 81 per cent saying they had not completed a written, over-the-phone, or in-person satisfaction survey in the last 12 months. The good news is that the number of no answers is down from 85.5 per cent last year but overall doesn’t say good things about law firms’ communication with their clients. “I would also say that it is something that you should do at least on major items, after a transaction, or as an after action report so you know the lessons learned,” says Krebs. “There’s so much talk about knowledge management

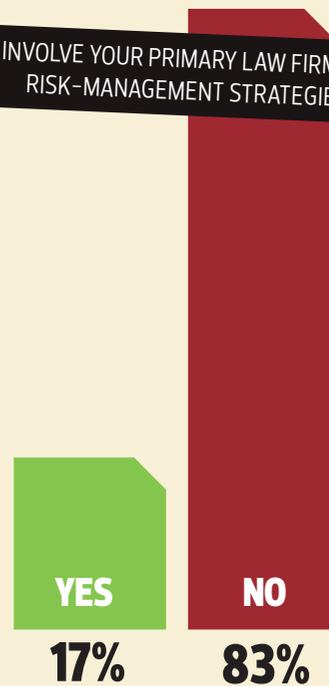
WITH CONTINUED UNCERTAINTY IN THE MARKET, IF THE ECONOMY DECLINES WILL YOU LOOK TO BRING MORE WORK IN-HOUSE?



HAS YOUR TOP LAW FIRM ASKED YOUR LAW DEPARTMENT TO COMPLETE A WRITTEN, OVER THE PHONE, OR IN-PERSON SATISFACTION SURVEY IN THE LAST 12 MONTHS?



DO YOU INVOLVE YOUR PRIMARY LAW FIRM IN INTERNAL RISK-MANAGEMENT STRATEGIES?



DO YOU FEEL THAT AN IMPROVING ECONOMIC CLIMATE HAD AN EFFECT ON YOUR LEGAL SPEND?

Yes **25.5%** No **74.5%**

HAVE YOU SECONDED LAWYERS FROM YOUR LAW FIRMS?



these days and an after action report is a critical component of that. It's potentially a very powerful tool."

When it comes to alternative fee arrangements, Dhawan of Hydro One Networks suggests progress is being made. "I think the hourly rate wall has been knocked down. It may still be standard in some cases but it's clearly fair game to question it — especially now with global companies they can shop for legal advice across borders. We've seen the rise of offshoring of legal services but there's also near shoring and other options we've seen as a result of change in technology.

"We're not looking for law firms not to make money but we're looking to make sure they're delivering value for money," says Dhawan. "We want to see a healthy legal industry because that will ensure good competition."

That said, it should be of interest to law firms that more than half of corporate counsel who answered the survey said they plan to review their working or financial arrangements with their top law firms in the next six to nine months. That's of particular interest when you consider that more than 70 per cent of those who answered the survey felt that other firms, or their top firm's nearest competitor, could do most of their work "equally well." However, they don't seem that motivated to make change when you consider just 26.6 per cent said they have replaced one of their top outside legal service providers in the last two years. **Q**

mccarthy tétrault

After more than 45 collective years of excellence in family law at McCarthy Tétrault LLP, **Gerry Sadvari** and **Stephen Grant** are opening their new practice in January, 2012. They will continue as litigation counsel as well as conducting their mediation/arbitration (ADR) practice.

Gerry and Stephen are both Fellows of the American College of Trial Lawyers and have been ranked "Highly Recommended" by *Lexpert Magazine* fifteen times. Stephen is also a recipient of the Law Society Medal and the editor of the *Advocates' Journal*. Both have taught and written extensively on family law and have acted as counsel in many leading family law cases.

The entire team at McCarthy Tétrault wishes to thank Gerry and Stephen for their years of outstanding service and dedication to our clients and firm. Not only has it been a privilege to work with Gerry and Stephen, it has also been a lot of fun. We wish them well in their new home.



www.grantsadvari.com

152 Davenport Road, 2nd Floor, Toronto, ON M5R 1J2
416-238-7899

Gerry Sadvari gsadvari@grantsadvari.com

Stephen Grant sgrant@grantsadvari.com