



IN-HOUSE ARE TAKING CHARGE

LEGAL DEPARTMENTS
ARE BRINGING
MORE WORK IN,
CHALLENGING THEIR
EXTERNAL FIRMS TO
DO BETTER, AND
EXERTING MORE
CONTROL.

BY JENNIFER BROWN

The common refrain you will hear from in-house counsel these days is whenever possible they are bringing work in-house as opposed to sending it out. If they are sending work out, it's for complex files or specialized one-off projects involving litigation, tax, or intellectual property matters. Even then, they may well be breaking down a litigation file and managing some aspects of it themselves to cut costs, sending only the most complicated aspects to external law firms.

As has been the case in the last few years, the 2012 *Canadian Lawyer* Corporate Counsel Survey once again reflects that trend. Of the 225 respondents from leading Canadian corporate and governmental legal departments, 51.4 per cent said their

budgets stayed the same and if external spending changed it was largely (40.8 per cent) due to an isolated or one-off project.

For those who had changes in their budget, 42 per cent said they brought more work inside in 2012, and if the economy declines, 55.3 per cent say they will bring even more work inside. Even if there is an improvement in the economic forecast, 66.2 per cent said they don't plan on sending more work outside the department — up from 61 per cent last year. As well, 62.7 per cent said they plan to implement new arrangements to get more value from the firms they deal with, up from 57.4 per cent last year.

"The figures point to a change in the operating model in many companies," says Simon Fish, executive vice president and general counsel with BMO. "More work is being in-sourced than in the past and in response to that we are seeing some growth in legal departments with increasing complexity to matters that were traditionally outsourced."

Fish says, in particular, in-house departments are improving their capacity to take on litigation support work that can be costly, leaving the trial work to outside lawyers. "More consideration is being given to the kind of work being sent out. In-house departments have more tools available to them and there is constant demand to prove the value the department is delivering."

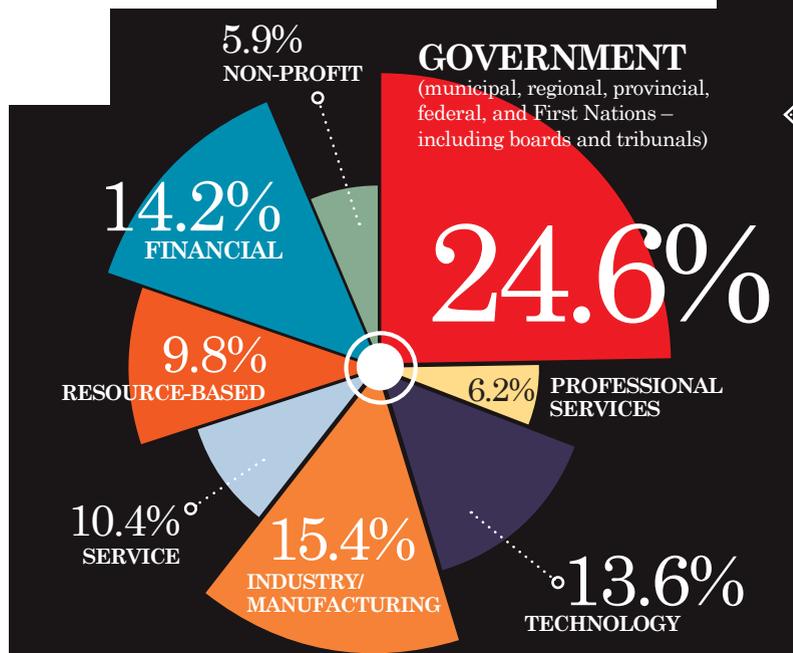
The trend is being

observed across the country says Grant Borbridge, Chairman of the Canadian Corporate Counsel Association and executive vice president investments and chief counsel with Emergo Group of Companies based in Calgary. "What we hear from our membership is that the requirements on the legal departments are becoming greater and greater and more work is staying in the department. There's a reason for that and it's to keep costs down. I don't think the equivalent expense for any in-house counsel is going to be \$750 an hour and for a good securities lawyer that's what you're going to pay."

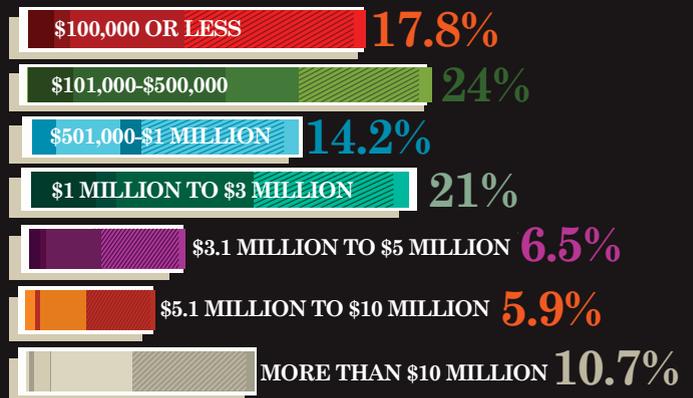
Another factor, says Kate Chisholm, senior vice president, general counsel and corporate secretary with Capital Power Corp. in Calgary, is that in her opinion the quality of legal work by internal counsel and external counsel is increasingly becoming equal. "Except in some specialized areas you can get fairly high quality legal done work in-house versus from a firm," says Chisholm. "I know I can provide legal resources internally for an all-in cost of less than \$100 an hour versus what I'm paying external counsel. . . . If you are quite satisfied the quality of work you're getting internally is sufficient, it becomes sort of an obvious improvement you can make."

Responses to the survey came from a cross-section of departments with 10.7 per cent from legal departments with \$10 million or

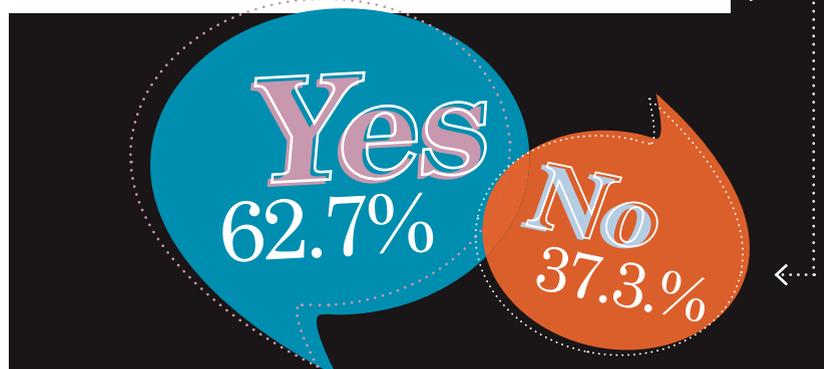
WHAT SECTOR IS YOUR COMPANY/ORGANIZATION IN?



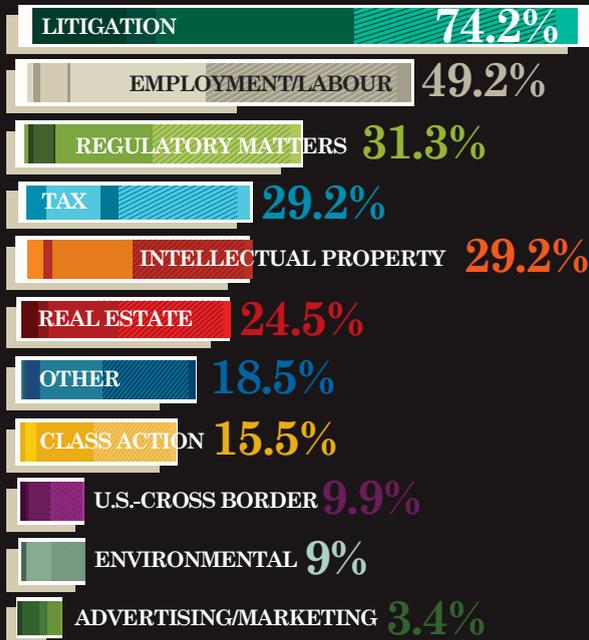
WHAT WAS THE EXTERNAL LEGAL SPEND FOR THE CANADIAN LEGAL DEPARTMENT LAST YEAR?



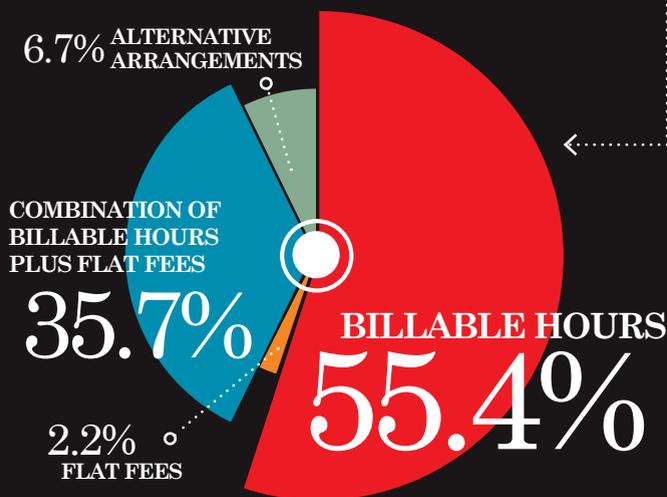
ARE YOU LIKELY TO IMPLEMENT NEW ARRANGEMENTS TO GET MORE VALUE FROM THE FIRMS YOU DEAL WITH?



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



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



more in legal spending in the last fiscal year, 21 per cent spent between \$1 million and \$3 million, 24 per cent spent between \$101,000 and \$500,000, and 17.8 per cent spent less than \$100,000 in legal costs.

Half of the respondents were from small legal departments with fewer than five lawyers. Responses came from a variety of sectors: 24.6 per cent from government, 15.4 per cent from industry and manufacturing, 14.2 per cent from financial services, 13.6 per cent from technology, and the balance falling in under services (10.4 per cent), resources (9.8 per cent), professional services

(6.2 per cent), and non-profit (5.9 per cent).

Litigation was the No. 1 area of practice corporate counsel outsource at 74.2 per cent but that's down from 80.2 per cent last year. Employment and labour law was the second highest at 42.9 per cent. Regulatory matters came in third with 31.3 per cent, down slightly from last year which was 36.8 per cent.

The size of in-house departments appears to be staying static, with 49.1 per cent of respondents indicating there was no change in the size of their team over the past year, and if the department did grow, 30.8 per cent said it was because

SURVEY SAYS . . .

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

COMMENTS FROM SURVEY PARTICIPANTS

- Combination of billable hours at reduced rates, limitation in partner's time in any given matter, and better use of paralegals. No student, articling, or less than two-year associate can clock hours unless pre-approved.
- Billable hours but with loyalty discount.
- Billable hours with percentage reductions when billings reach pre-agreed thresholds.
- Rate discounts and caps on annual billable hour increases.
- Cap on hourly fee.
- Billable hours and matter estimates in writing.
- Billable hours with a discount.

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there was more work to be done. However 11.8 per cent indicated their departments had shrunk and 8.3 per cent noted growth meant they had filled positions that were left vacant.

As in past years, awareness and concern over costs was the No. 1 area corporate counsel identified where firms can improve their working relationships with in-house legal departments at 46.6 per cent, followed by “be more practical” at 30.4 per cent and “be more concerned with results” at 35.1 per cent.

However, as much as the majority of in-house counsel indicated they want to pursue alternative billing arrangements and get more value, most said they still default to hourly billing — 55.4 per cent said the billing arrangement they have with their primary law firm is based on billable hours (up from 50.5 per cent last year) while 35.7 per cent is based on a combination of billable hours plus flat fees (down from 42.9 per cent last year). Just 6.7 per cent said they had alternative arrangements, the same as last year. Some survey respondents indicated they are negotiating various forms of discounts with their firms.

“It doesn’t surprise me because it’s the easiest,” says Borbridge of the number using billable hours. “It’s simple, everybody knows how it works, and I’m not sure we can reasonably expect that law firms are going to put together arrangements that will reduce their revenue over time. They might find ways to do more work for us for the same amount but it’s not in their interest to reduce their own revenue.”

When it comes to re-

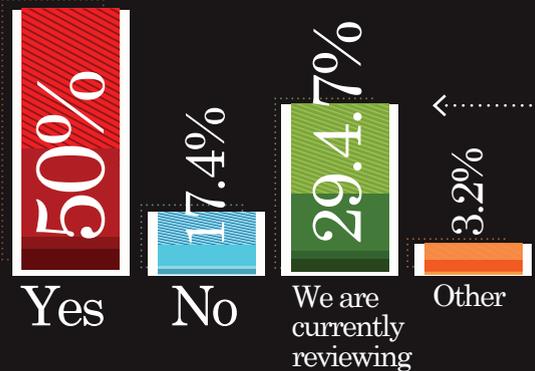
packaging how law firms charge for their services, Borbridge says it’s more likely firms will assist in managing costs rather than reducing them. “There might be ways to monitor the legal cost more accurately so that they might say, ‘hold on, lets not proceed on this portion until we know we absolutely have to,’ and that makes sense to me. I think that’s something law firms can provide but I don’t think we’re necessarily seeing a big change away from billable hours.”

Chisholm opines that few corporate clients are paying rack rate anymore but she questions whether discounts are really discounts at the end of the day. “They may be paying a billable hour and we can go back and forth over the utility of a discounted billable hour — a lot of people including myself have some cynicism in that regard. I think if you get a 15-per-cent discount sometimes lawyers are at least encouraged by their business model to charge 15-per-cent more hours to a file.”

She does see a significant increase in the use of flat fees applied to parts of a litigation file; for example, if enough is known about the file to know how many witnesses are going to have to be examined for discovery. Quite often exchange of pleadings can also be charged by flat fee.

Ultimately, it’s the entire billing/relationship model that needs to be addressed, she says. “Inevitably where the business model wants to take us is that there is some risk shared by the client and the external firm because as long as the external firms continue to bill by the hour and reward their lawyers for the number of hours billed, those external lawyers are

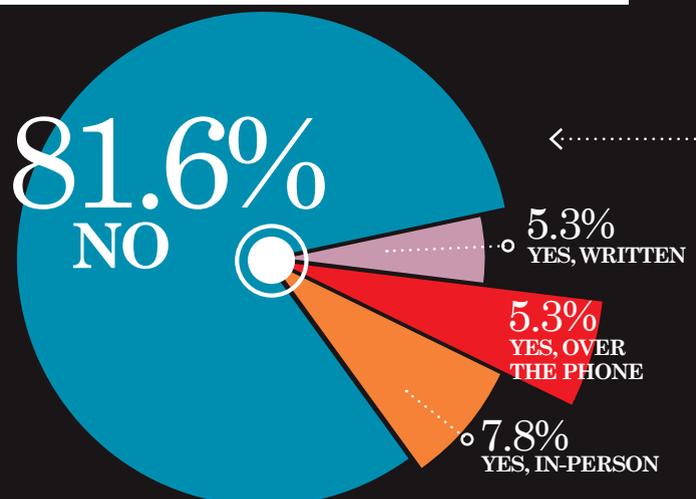
ARE YOU SATISFIED WITH YOUR CURRENT BILLING ARRANGEMENT?



ARE YOU ASKING THE LAW FIRMS YOU DO BUSINESS WITH TO PROVIDE A DIVERSE ROSTER OF LAWYERS AS PART OF AN OVERALL DIVERSITY STRATEGY IN YOUR ORGANIZATION?



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



going to be fundamentally operating in a conflict with their client's best interest in this way," says Chisholm.

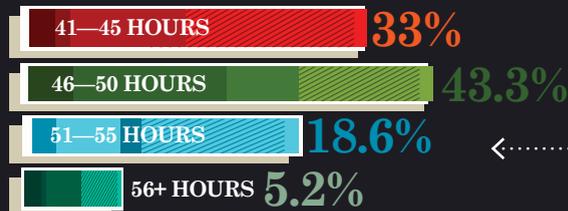
Borbridge agrees law firms have to look at how they provide the value in-house counsel needs today. "I believe law firms are starting to understand the best part of the relationship management they can maintain is to make the in-house counsel's job easier and that is on all fronts. Yes, make the work happen well but that's only part of the job — make it happen well and within budget."

It would appear formally measuring the relationship still isn't a priority for firms. Of the more than 200 respondents, 81.6 per cent said their top law firm had not asked them to complete a written, phone, or in-person satisfaction survey in

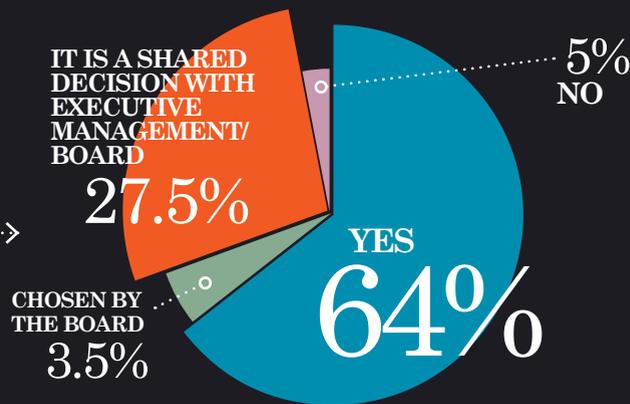
the last 12 months. However that doesn't mean the firms aren't getting appropriate feedback, says Borbridge. "I have not been asked to do a survey of that sort, but I also believe that my relationship with the firms who do work with us is close enough as a general rule that if I had an issue or a problem I would call them and let them know," he says.

Chisholm has been doing her own quality surveys with the top five firms she works with over the past 10 years. "I'm held accountable for the quality of the legal services the corporation gets so I'm interested even when they're not, and my surveys are getting better and better," she says. "I also survey the external lawyers about how my company can become a better client." 

WHAT IS THE AVERAGE (ACTUAL) WORK WEEK FOR MEMBERS OF THE DEPARTMENT?



DOES THE GENERAL COUNSEL HAVE THE AUTONOMY TO SELECT FIRMS OR ARE THEY CHOSEN BY THE BOARD?



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