

Four steps to an optimized role in contracts for in-house counsel

AUTHORS



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It is no secret legal departments can be perceived as a bottleneck when it comes to their involvement in an organization's contracting process with third-party service providers.

The reality is that many legal teams today are stretched beyond capacity while juggling resourcing and budget constraints. Legal departments that take the steps needed to optimize their position as an adviser to the business will see relief from some of these pressures, as well as other lasting benefits to the department and the organization.

This article sets out four steps legal departments can take to optimize their role in the contract life cycle.

Step 1: Assess the status quo

Prepare a current-state process map. Assessing your current state can be an ambitious undertaking, but the end result will allow you to identify waste and inefficiencies (e.g., multiple touchpoints, overlapping roles, etc.). Think of this step as the gathering of the baseline information needed to justify any proposed changes. The information you should collect should include:

- what process, if any, is followed, by whom and for what reason;
- any subprocesses, such as decision trees for identifying who has the authority to execute a contract; and
- all interested parties—whether that is the legal department, an operations team, information services, your business partners in the organization, or the service provider. This step is most effective if you employ legal project management and process efficiency tools and techniques.

Synthesize the information gathered into a process map—your new aerial view of where your challenges lie. Once you have your current-state process map you can begin to identify where and why most issues occur. Common issues include:

- lack of consistency in how and when legal resources or other stakeholders are engaged on a contract;
- long pauses in the process while a specific role or resource is unavailable or unresponsive;
- variability in how much time a legal resource spends on similar matters and in what types of matters are identified as requiring legal time;
- variability in the enterprise requirements identified for similar matters; and

- immaterial matters being sent to external counsel.

Any of these or similar problems are clear signs the contract life cycle process in your organization can be better optimized. Now that you have assessed your areas for improvement, you can build customized solutions.

Step 2: Intake questionnaire

A good intake questionnaire is the fundamental building block to managing your team's role in the contract life cycle. The best intake questionnaires both identify all elements of a deal that an individual in your department needs to be aware of to accurately size the risk and the legal effort, and are tuned to your organization's regulatory and industry requirements.

The questions you ask should, at a minimum, identify the type of contract and the inherent risks presented by the deal. Within this process, be sure to develop structured workflow around the intake questionnaire itself. Consider:

- when the questionnaire should be completed;
- who is accountable for completing the questionnaire;
- who should update the questionnaire with new information or changes as the deal evolves;
- how and when the questionnaire should be stored; and
- what quality control measures should be applied.

Next, document degrees of risk to the enterprise via a triage mechanism. This can take the form of assigning values to each question and bucketing totals into risk categories (e.g., immaterial, moderate, significant) through the application of a basic algorithm.

Step 3: Legal engagement framework

Document the process for engaging a legal resource on a contract so everyone in the organization is clear on the rules. The idea is to set out the criteria for when and how the legal team is engaged depending on how the matter is categorized (further to the intake questionnaire). An organization may decide to allocate matters to the right legal resource based on the materiality of the matter.

An engagement framework, for example, might identify categories that encompass matters which:

1. do not require legal oversight could be managed by procurement and the business, perhaps within certain pre-determined criteria;
2. are outsourced to an alternative service provider;
3. are only escalated to a lawyer in respect of certain issues but otherwise handled by a non-legal resource; and
4. are exclusively reviewed in detail by the legal team (or sent to external counsel).

A basic rule of thumb, even absent any formalized engagement model, is to ensure that legal is engaged as early in the process as possible. This may even be at the business planning stage. This will not only help the legal contracts team to plan for resourcing needs before timing becomes sensitive, it will also ensure that the legal department has a better chance of identifying material risks while acceptable mitigants can still be deployed.

Step 4: Contract requirements

Document what requirements need to be included in the contract such that the amount of residual risk reflects the organization's risk appetite given the deal's risk category. Right-sizing the contract terms to the risk category alleviates unnecessary cycles of negotiation and escalation. Contract terms that are irrelevant to the particular set of facts, or incorrectly sized to the risk, can be a tremendous source of waste. Accessible, well-maintained, and annotated precedents that exist within an efficient knowledge transfer framework are effective mechanisms in ensuring alignment within the organization on contract requirements.

A final word of caution

While the steps we've outlined here can be very useful in streamlining and optimizing the legal team's role in the contract management life cycle, implementation can be challenging. If not executed properly, organizations risk overburdening teams with redundant and restrictive process (to the point of undermining efficiency goals), alienating internal stakeholders with too many procedural hurdles, and restricting the legal team's ability to apply their professional judgement.

Ultimately, the rewards that come with optimizing the legal department's role in the contract life cycle are well worth the effort. Putting this level of thought leadership and strategy into the role your legal team plays will not only ensure that your team has the capacity to service fluctuating internal client demands over time, but will secure your legal team's reputation within the organization as problem solvers and valued advisers.

About the Author

Jessica Lumière leads a team based in Torys' Legal Services Centre in Halifax that provides a suite of service offerings that leverage process and technology efficiencies designed to deliver client value. In addition to offering advisory services on how to optimize the contract management life cycle within an organization, Torys' Legal Services Centre is equipped to implement and execute new contracting processes on behalf of clients.