

IN-HOUSE  
COUNSEL

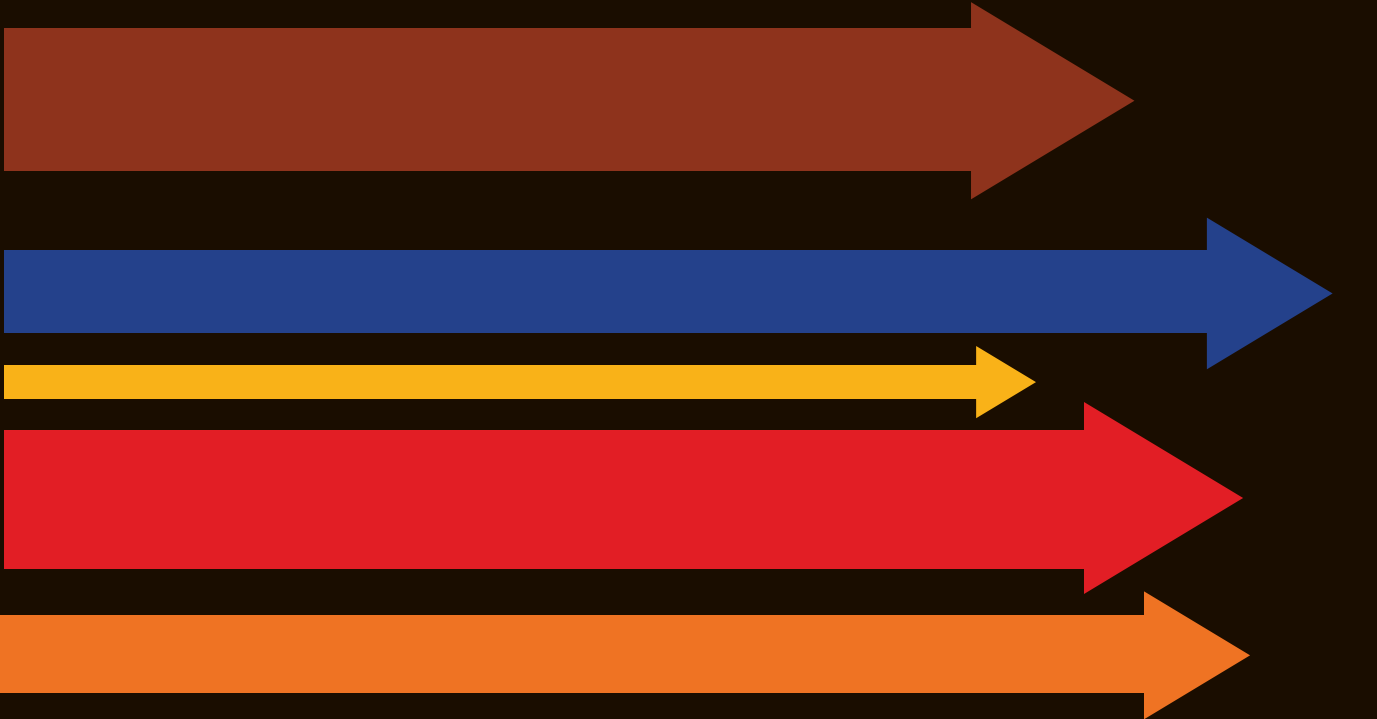
COVER STORY



# Current and future challenges

The days of moving to an in-house position to get out of the rat race and take it easy are over

**CHRISTOPHER GULY**



Five years have passed since the start of the so-called great recession marked by a massive scaling back of spending and growth. But corporate law departments here seem to have largely been spared the sting of the global economic meltdown.

Small in-house legal shops with five or less lawyers are adding junior counsel, while larger law departments are restructuring to add more practice areas, ranging from employment law to intellectual property law, according to Dal Bhathal, managing partner of the Toronto office of national lawyer-recruiting firm, The Counsel Network.

“We’ve also seen companies, which have had growth in their revenues, hire in-house counsel for the first time — and corporations with their head office in the U.S. or the U.K. hire their first Canadian general counsel,” says Bhathal, a former litigator in the United Kingdom who joined The Counsel Net-

work in 1998.

“Corporations are better understanding the value in-house counsel bring to their organizations,” she says, adding that in-house positions are in great demand.

“When I started practising law in 1992, in-house was seen as a place for lawyers who couldn’t cut it in private practice. But that’s now completely turned on its head. It’s a very competitive market; a lot of lawyers want to practise in-house.”

She says that as a result, companies hiring corporate counsel “can be quite choosy as to who to pick from a pool of more, and often, very strong candidates.”

Lawyer and legal recruiter Carrie Heller says that corporations are increasingly hiring “top-tier trained” in-house counsel and viewing their role as important to both the management and business sides of the organization.



“Corporate lawyers are advising not just on legal matters, but on strategic and corporate matters as well, and are becoming more sophisticated and specialized,” says Heller, president and founder of Toronto-based The Heller Group Legal and Executive Search Inc. “We have clients wanting to bring more of the work in-house and developing specialized practice areas internally, such as IP and employment law, and outsourcing less work, and are looking for the talent required to accomplish that.”

As project managers, in-house lawyers acquire business acumen more quickly than they would if they had chosen to work for a firm, according to Bhathal.

“It often opens up opportunities for them to go into other roles within an organization, outside of legal, such as business or corporate development, or investor relations or human resources.”

However, she adds that the workload of in-house counsel has also increased.

“Years ago, it was viewed as more of nine-to-five position. It’s not anymore.”

Warren Bongard, president and co-founder of ZSA Legal Recruitment, says the notion — viable a decade ago — that a lawyer could “get out of the rat race” of docketing hours in a firm into a “more balanced lifestyle” with a corporate law department “couldn’t be more false” today.

“To be effective, in-house counsel is going to have to work hard and be available 24/7 to their management team,” says Bongard, a former Bay Street corporate securities lawyer. “While their lifestyle may become more predictable, the reality is that in-house counsel work just as hard as if they were with a law firm.”

The Canadian Bar Association’s new president, Fred Headon — the first in-house lawyer to head the 37,000-member organization in its near-century-long history — says companies expect a quicker turnaround from their legal departments than from external counsel. “The downside is that corporate counsel may be always on call. But the upside is they are part of the team and are really involved in the operation of an organization since they know the client so well,” says Headon, assistant general counsel of labour and employment law at Air Canada in Montreal.

Heller notes that in-house lawyers are sometimes surprised by the heavy workload.

“Some have said they’re run off their feet and making less money, and want to move back to private practice. On the flip side, others have said they’re working as hard as they ever did in private practice, but absolutely love what they’re doing because they’re part of a business and not just a hired gun — and may not have taken a cut in compensation.”

She sees that “open-minded” companies that appreciate their lawyers’ skills will involve them on the business side, resulting in happier lawyers feeling more a part of the organization.

Bhathal says corporate lawyers are involved in the early stages of negotiations, deals, mergers, acquisitions and other business transactions, rather than the back-end role they played in the past of simply producing and reviewing documents.

Headon, who chairs the CBA’s Legal Futures Initiatives

team, says there’s also an increasing trend toward assigning an exclusive compliance function to in-house counsel.

“That role involves oversight on such regulatory issues as securities, anti-corruption and privacy issues and drawing attention to things that need to be improved within an organization — whereas lawyers in a more traditional function remain vigorous advocates for the client on issues like litigation,” he says. “There could be some tension between those two groups and it will be interesting to see how corporate clients respond to having two breeds of lawyers in the same company.”

However, Bongard says in-house counsel being “more integrated into senior management than they’ve ever been in the past” requires some adjustments. “They might be very accustomed to having the luxury of time to respond to a client’s request, perhaps by way of a memo after a few days. But corporations are not interested in having a lawyer research something. They want the best possible answer at that moment.”

He explains that companies “hire lawyers to be lawyers — and the best success rate is when lawyers provide good counsel while understanding the business by being more entrenched in the day-to-day operation so they can be more effective in dispensing advice and more efficient at making decisions.”

Bongard says most corporations looking to hire general counsel want lawyers with 10 to 15 years of experience practising law with the aim of having them oversee as much legal work in-house as possible. (Junior in-house counsel typically require between two to three years of practice experience.)

“There’s a large appetite in corporations to manage their legal spend, so they’re internalizing a lot of functions and having their own in-house talent manage them while also having access to these lawyers on a real-time basis.”


To meet the growing demands on corporate legal departments, companies are hiring younger lawyers who can handle more work in-house and be involved with business decisions as part of the management team, says Toronto-based legal recruiter Adam Lepofsky.

“If a CEO values legal, he or she will have an expectation that in-house counsel will not only be able to advise on a legal basis, but will also have the acumen to understand the practicalities of running a business,” says Lepofsky, founder and president of RainMaker Group and a former Bay Street corporate lawyer with Cassels Brock & Blackwell.

“The most important point for anyone moving in-house is knowing how legal is valued within the corporation, which is directly tied to the philosophy of the CEO and management team. That will determine the size of the law department; what work is outsourced; how hard the in-house lawyers will work; and the career path they have within the organization,” he says.

Corporate perceptions of in-house lawyers have changed over time, according to lawyer Anita Lerek, who runs Advocate Placement Ltd., Ontario’s first lawyer-recruitment company, established in 1989.

“In the past, everybody hated decisions lawyers made internally and legal departments were left to fend for themselves. Now lawyers are regarded as a key asset of a company and have been re-branded as talent as corporations face increasing competition and regulations.”



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**Dal Bhatla, The Counsel Network**

Yet, in-house counsel is also “threatened from within” as lawyers have to juggle dual roles, she points out.

“On the one hand, they have to be independent in providing legal advice. On the other hand, they are also employees subject to the rules of the bureaucracy. It’s like the two faces of Janus, where both roles are in conflict with each other.”

The “real disconnect,” in Lerek’s view, is between the legal and human resources departments.

“HR is often throwing around all these performance reviews and rules for documentation that are often irrelevant and unsuited to lawyers who have to provide independent legal advice while dealing with a growing hornet’s nest of anti-corruption and ethical issues.”

Compounding the problem is that in some corporations, HR only ascribes a “higher designation” to an arbitrary selection of employees (say 25 per cent) leaving other solid performers without bonuses or other perks, she says.

“That is very disincentivizing to lawyers, even if counsel is viewed as trusted. They’re feeling demeaned by all these metrics and escalating demands on them, and see themselves being mistrusted by having to constantly prove and reprove their value.”

As Lerek explains, “in-house counsel often feels that HR imposes adverse compensation standards and grids that ignore their unique legal contribution.

“The salary gap with private practice is also increasing whereas the work-life balance gap — which is supposed to be better in companies — is decreasing.”

Says Lerek, who also holds a master’s degree in sociology: “All of these factors are undermining the confidence of in-house counsel, eroding morale, reducing engagement, possibly jeopardizing the quality and independence of their advice, and ultimately increasing turnover and replacement costs when lawyers leave and go back to law firms.”

However, she points out that lawyers don’t always make a smooth transition from law firm to in-house culture.

“In a law firm, it’s all about individual achievement, while in a company it’s about collaboration and achieving the orga-

## How things are and a look ahead

According to a recent report by the CBA Legal Futures Initiative:

- ▶ In-house counsel will be exposed to the same economic, social, technological, and demographic factors affecting others in the legal profession, while also having to organize their own legal services operations to support their own companies.
- ▶ An increasing number of in-house lawyers are using their legal skills to work in other parts of a company’s operations.
- ▶ Faced with changes taking place both within the legal industry and their company’s industry, in-house counsel experience the impacts of change as both suppliers and consumers of legal services, and continue to pressure external providers to significantly reduce prices.
- ▶ Given the growing extent of decision-making in their hands, in-house counsel may continue to tighten the rationale for “buy” decisions regarding legal services. However, expanding in-house capabilities may run the risk of substantially increased costs in the long run because of training, pension and other requirements for full-time employees.
- ▶ In-house counsel may require advanced knowledge of business and commerce, likely with a specialization in another field besides the law.

nization’s goals over your own,” Lerek explains. “You win by making other people win, and a lot of lawyers brought into a company don’t start out being great team players. So they have to undergo an attitude shift to form alliances and understand the power politics within an organization.”

The great challenge for law departments over the next decade will involve how they deliver legal services internally, according to Headon, a former board member of the Canadian Corporate Counsel Association.

“The role, so far, has been to build a small law firm within the company.

But just as in-house counsel is pushing external firms to be more efficient and get costs down, there will be pressure to bear on in-house teams to also reduce the cost of their operations,” he says.

“That’s going to require us to find new ways of delivering services — and much like external firms, we will also have to embrace project management and work with others, like paralegals, more closely to find new ways of delivering services.”