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Canadian legal landscape 2019

Issues and trends facing in-house
counsel in Canada

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Opportunities for change abound

Every two years, Deloitte sets out to understand the state of the legal landscape in Canada. Throughout 2018 and 2019, we conducted in-person and online surveys with over 200 general counsel and Chief Legal Officers (CLOs) across Canada and the US. Our aim was to gain a sense of the opportunities and challenges in-house legal teams currently face, and the strategies they're implementing to optimize legal operations.

Since our last survey, the priorities, objectives, and resourcing models of in-house legal teams have not undergone significant change. CLOs and their teams are still working to find an optimal balance between acting as strategists and innovators vs. risk managers and gatekeepers. While the CLOs of many smaller departments are juggling multiple roles from day-to-day, larger teams have streamlined operational challenges by appointing Chief Legal Operating Officers (CLOOs) and regulatory/compliance specialists to manage operations, freeing up the CLO's time to focus on strategy.



Finding balance is increasingly critical given the growing demands being placed on in-house legal teams.

According to this year's survey, insourcing is on the rise, while external legal spend is decreasing for most teams. And while we've seen a consistent increase in the use of law firm alternatives, traditional law firms still receive 85 percent of the legal spend for the organizations we surveyed.

The appetite for alternative fee arrangements (AFAs) remains strong. While organizations and law firms generally agree they need to find a balance in pricing that's fair to both parties, law firms still feel they bear the majority of risk. Law firms can better manage this risk by streamlining matter management, collaborating with alternative legal service providers to perform standardized tasks more efficiently, and implementing technology to expedite routine tasks.

In fact, in-house legal departments may expect both law firms and alternative providers to invest more heavily in technology into the future, to fill gaps in their own technology investments. While 45 percent of the CLOs surveyed said they plan to increase their technology spend in the next two to five years, it appears most were looking for standalone tools for specific tasks. And the 55 percent of CLOs that don't plan to invest appear to be relying on service providers to do so on their behalf.

As a result of this mindset, the wealth of data available to in-house legal teams remains largely untapped. They may be leaving on the table opportunities to think bigger, partner with the business at large, and obtain funding for game changing technologies such as artificial intelligence (AI), which has the ability to turn legal data into valuable insights that are highly relevant for the business.

A similar blind spot may exist when it comes to hiring practices. Though skills like data science, communications, project management, and people management are highly valued, few CLOs see a need to hire non-lawyers with these skills, on either a permanent or contract basis. They continue to prioritize lawyers with business acumen. Diversity was also narrowly defined by most CLOs as being based on gender or visible minority status, ignoring broader considerations such as educational background. This homogenous approach to hiring could introduce challenges for in-house legal teams as their organizations aim to serve more diverse markets and clients in the future.

Overall, this year's survey reinforces the tremendous opportunity that exists for in-house legal departments to enhance their **operations, talent models, and technologies**. To do so, however, they must begin to challenge the status quo, deliberately design an agile and tech-savvy legal team of the future, and seek out more opportunities to partner with the business to drive long-term strategic value for their organizations.

Today's CLOs: From risk managers to strategists

CLOs have been exercising their influence at the executive table for several years, and see themselves as contributing to the strategic direction of their organizations. Yet many CLOs told us that their legal teams would benefit from increased exposure to—and integration with—the business.

Top priorities

Similar to prior years, the top priorities for CLOs in the coming year include:

1. Regulatory compliance
2. Data privacy and security
3. Maintaining awareness of business or industry activities that could have legal implications for the organization

CLOs also once again said they're most concerned about being blindsided by unanticipated risks—or “unknown unknowns”—especially as they feel the majority of the risks they face tend to originate within the business, where they may lack full line of sight.

Regulatory compliance remains the top priority for CLOs in the coming year.

The CLO dilemma

These findings seem to indicate that there's a renewed focus on traditional "gatekeeper" issues, underscoring a predicament for today's CLOs. To wit, CLOs and general counsel are expected to simultaneously protect the organization by managing legal risks and add value beyond cost reduction by becoming more innovative and strategic.

Consider how this dilemma is playing out with regard to privacy issues. While business teams expect forward-thinking CLOs to support their efforts to leverage customer data to create competitive advantage, in-house legal teams must ensure compliance with rapidly shifting consumer privacy legislation in multiple jurisdictions, safeguard client privacy, and protect the organization's reputation by enforcing the ethical use of data.

The dichotomy between technological innovation vis-à-vis regulatory change presents a similar challenge for legal teams. On one hand, consumers and investors expect to access a vast array of information and services online, through mobile channels, and on-demand, which the business is focused on delivering. On the other, CLOs find themselves complying with somewhat outdated regulations that limit how data can be used, detracting from their efforts to act as true strategic partners to the business.

The size advantage

Attempts to become more strategic are also hampered by difficulties in recruiting the right talent, and identifying the tools and resources needed to round out legal teams. This is particularly challenging for smaller organizations, where CLOs often find themselves filling multiple roles at any given time and getting bogged down in day-to-day operations.

Larger organizations have a distinct advantage in balancing the numerous, often conflicting roles associated with leading a legal team that's integrated with the business. For instance, in recent years, in-house teams at mid-sized to large organizations have appointed CLOOs to manage the legal department and introduce day-to-day operational innovations in areas such as resourcing, talent, and spend. Similar roles are also emerging with respect to legal innovation as well as highly technical or regulatory compliance roles.

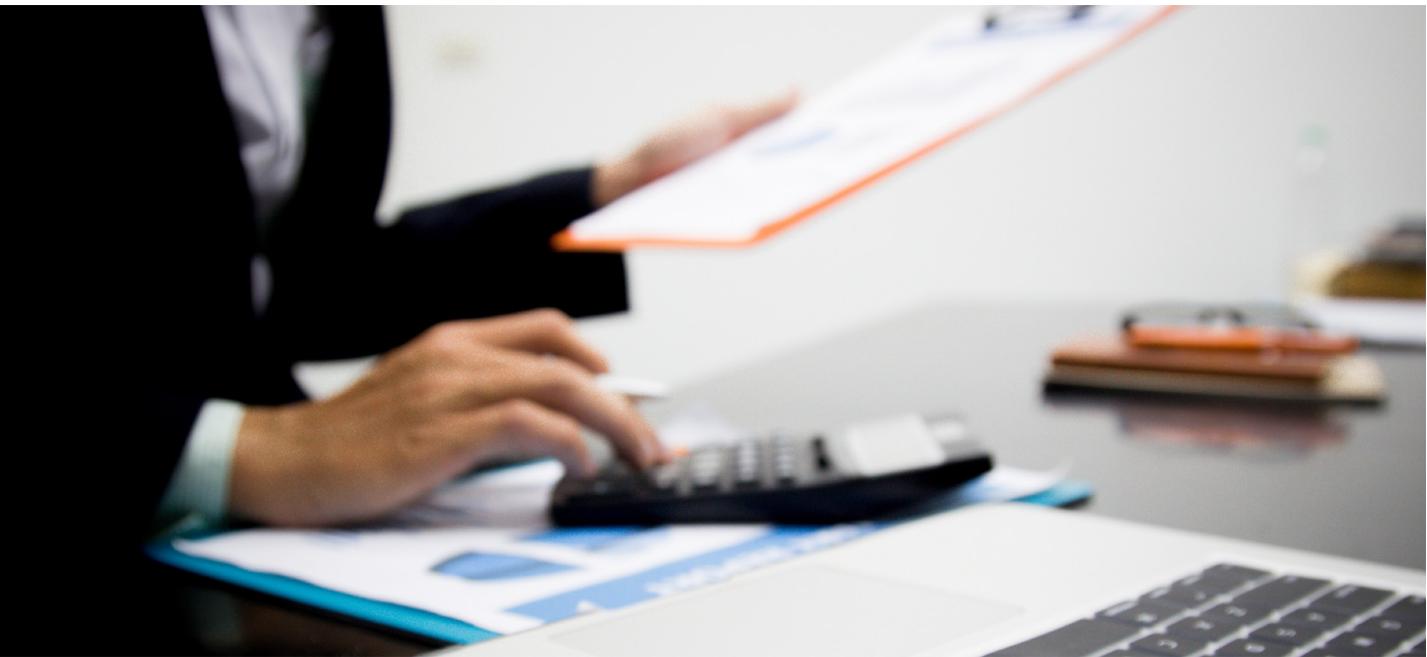
By essentially delegating sections of the overall function to other team members, larger organizations are freeing up their CLO's time to focus on legal strategy and bring it into alignment with wider business strategy.

“We spend a lot of time having discussions and making difficult decisions about the ethical use of client data. We have a lot of information about our clients and we want to use it in ways that are ultimately helpful for them. We encounter challenges in ensuring we're cool but not creepy in how we use client data, and in how we communicate to our clients.”

Trish Callon
Senior Vice President
and General Counsel,
Sun Life Financial Canada

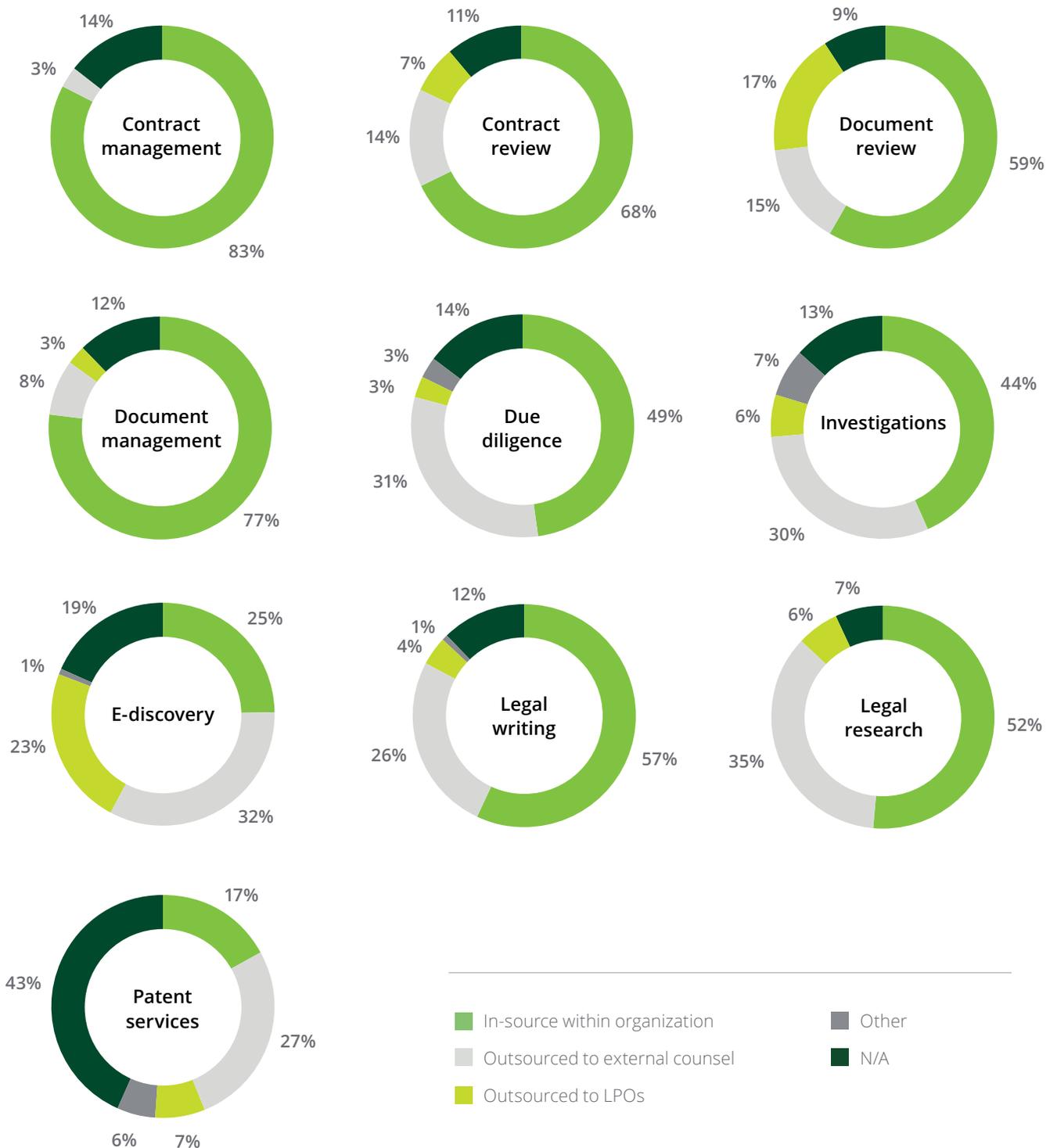


Operations: Following the money



The CLOs we surveyed continue to focus on insourcing more work, with just over 60 percent expecting to maintain or decrease their external legal spend in the coming years. Law firm alternatives, such as e-discovery and document review services, may benefit as a result—particularly as 35 percent more CLOs plan to engage them on a go-forward basis than just two years ago.

Insourcing vs. outsourcing



Law firms dominate

Despite the rising popularity of alternative model law firms and legal process outsourcers, traditional law firms continue to dominate the market, attracting over 85 percent of total legal spend for the companies surveyed. At an average of 36 percent, litigation comprises the single largest category of legal spend.

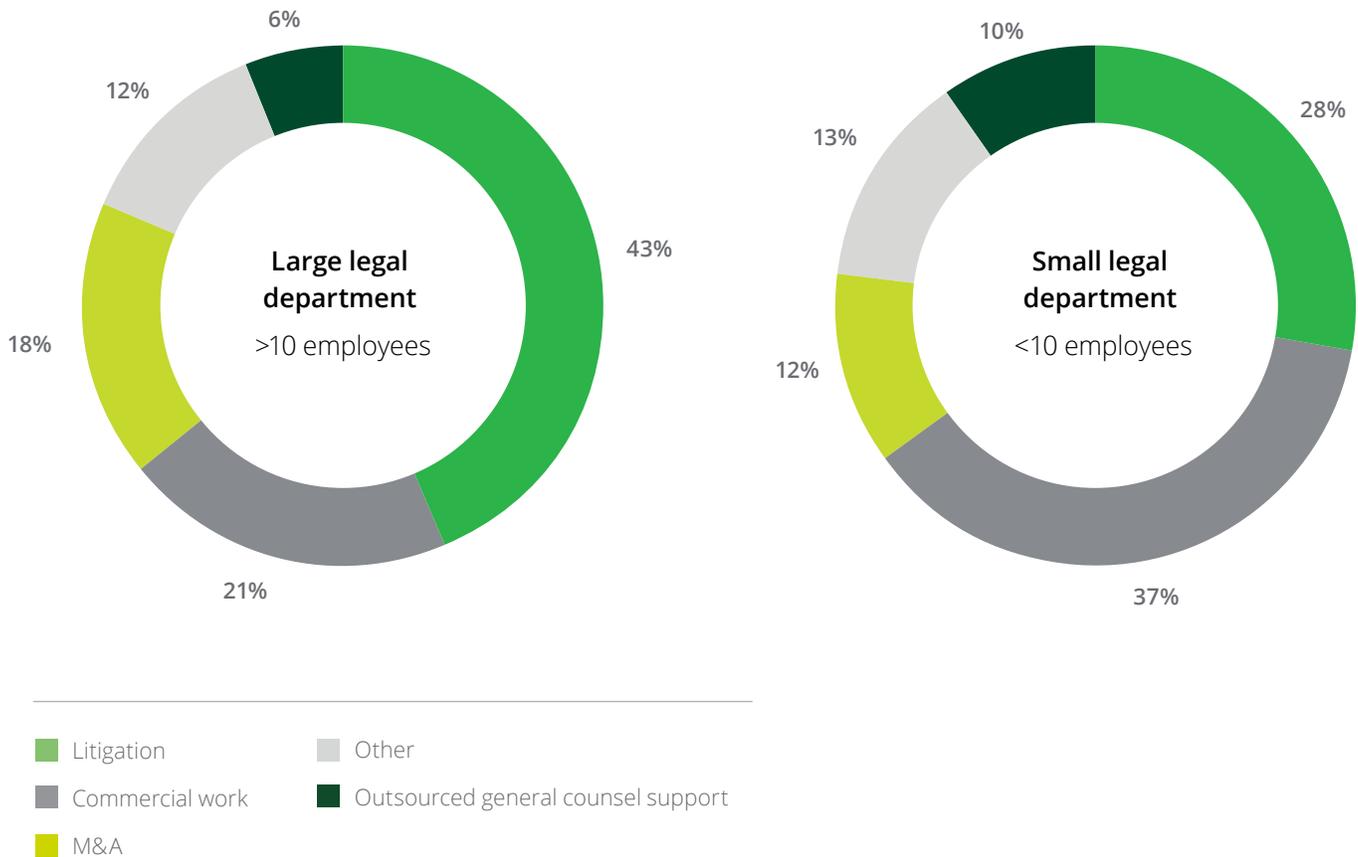
Additionally, CLOs continue to value the advice and opinion of their law firms when it comes to sourcing other service providers. In fact, just under half of the CLOs surveyed

plan to rely on law firms to identify and retain other service providers on their behalf. This highlights the influence law firms hold, and may ultimately present an opportunity for law firms to be more creative in their pricing.

Most law firms recognize that collaborating with alternative service providers can free them up to focus on more strategic, higher value work. At the same time, CLOs understand they have an important role to play in the discussion with these providers, and that their retention should not be wholly

outsourced to law firms. Rather, they value guidance from their law firms to navigate the increasingly diverse landscape of commoditized services and legal technology, while also remaining informed about the various options available to them. This seems to be in keeping with current practice given that, more often than not, changes in a law firm’s approach to legal service delivery are driven by client demand.

Spend: large vs small legal department



Alternative fee arrangements

The appetite for AFAs remains strong, accounting for 55 percent of total legal spend on average. Moreover, 75 percent of the CLOs surveyed expect to maintain or increase the use of AFAs in the coming year. Yet, there's been little to no innovation in the types of AFAs offered to in-house legal teams. As a result, flat fee and volume discounts remain the most popular choices, as in previous years.

While several CLOs indicated they're prepared to continue paying for billable hours if predictability can be achieved—even if there's a perception that the model doesn't best reflect the effort expended or true value provided—others expect law firms to come to the table with more AFA options. In fairness, most CLOs were quick to own their involvement in the AFA process, and empathized with the efforts of legal service providers to develop mutually-agreeable alternatives.

“We strive for a payment model that includes a discretionary component based on “good work”. Otherwise, you can spend so much time drafting AFA language – it’s often easier just to say to our firms “trust us”.”

Nick Henn
Senior Vice President and
General Counsel
Loblaw Companies Limited

Despite this concession, law firms have traditionally regarded AFAs with some reluctance. This is partly because gaps in tracking historical financial transactional data and a lack of investment in financial legal technology have made it difficult to develop accurate budgets and reliable pricing models. However, with the evolution of AI and other legal technologies, the attitude toward AFAs may be changing.

In light of the growing demand for budget certainty and transparency, leading law firms have begun exploring the rich landscape of legal technologies in their efforts to innovate and modernize. Using AI and similar tools, law firms can now better track data and develop pricing models that are more accurate. They can also improve margins by adopting new techniques to streamline project and matter management, which may give them greater leeway to develop mutually-beneficial AFAs.

Uncovering value

Not every law firm will be in a position to invest in legal technology in the near term. Those that aren't, however, can still enhance operational efficiency and reduce costs by implementing an alternative legal service delivery model, which will put them in a better position to offer AFAs. For example, by outsourcing lower value legal tasks to commoditized service providers, law firms can focus more intensively on higher value legal services. This empowers them to strengthen their client relationships and deliver more valuable strategic legal advice.

Either way, the pricing risk associated with AFAs can be effectively mitigated. As long as law firms make the appropriate investments to harness their data and develop accurate pricing models, employ the latest techniques to enhance matter management, and make use of available legal technologies and alternative delivery models, they can structure AFAs that provide clients with flexibility, certainty, and predictability without sacrificing their profit margins.

Technology: Invest or outsource?



In 2017, our survey found that technology was a low priority for CLOs, with over half anticipating no change in their technology investments for the coming years. This trend persists in 2019. Compared to other priorities, such as regulatory compliance, interest in technology investment remains low, with only 45 percent of CLOs surveyed planning to increase their technology investment in the next two to five years.

CLOs weighing technology investments said they face a range of challenges, including:

- Too much choice
- Perceived need for highly customized solutions
- Data privacy concerns, particularly with cloud-based or software as a service (SaaS) based systems
- Ability to “plug and play” or adapt/sync with other functions throughout the organization
- Determining accountability throughout the organization (including outside legal) for the success of implementation
- Lack of resources to reap the full benefits of technology, properly configure systems, and train legal team members

Technology innovation

Despite these concerns, legal technology continues to evolve at a rapid pace.

According to a global study¹ undertaken by Deloitte in 2018, the top three emerging legal technology trends include:

1. **AI**, which can be used to transform repetitive, low value tasks, such as standardized contracts and NDAs. For instance, chatbots with AI can dynamically answer common client questions about standard legal contracts. Similarly, contract management systems embedded with AI functionality can automate contract drafting, help select appropriate clauses, and flag potential errors. And these are just the start.
2. **Cloud storage**, which can be used to reduce operating costs, make real-time data accessible to multiple individuals in different locations, and enable timely decision-making.
3. **Blockchain**. Touted as being “secure by design”, distributed ledger-backed technology can record and legitimize transactions between various parties, allowing for the automation of contract execution.

Interestingly, many of the most promising legal technology applications go far beyond solving legal problems. They could also help CLOs deliver greater strategic value to the business by using insights gleaned from the wealth of underlying data. For instance, legal teams could use contract data to identify which contractual clauses enhance profits or which represent the greatest risk to the organization. This potential remains elusive for now, however, because that data appears to be largely untapped and possibly undervalued.

Another challenge is that legal teams must also understand what types of insight the business seeks. That’s why it’s critical for legal teams to work closely with the business teams to identify and evaluate appropriate technology investments. Beyond potentially providing CLOs with access to more funding, collaborating closely with the business can strengthen the in-house legal team’s ability to deliver the strategic insight needed to support critical business decisions.

To invest or not to invest: that is the question

Invest

Of the CLOs planning to invest in legal technology, most continue to think relatively small, confining their investments to standalone tools that address specific tasks or one-off needs, rather than ones that extend beyond legal functionality or touch other departments. While no one tool can solve all problems, legal teams would likely benefit from considering broader technologies capable of breaking down silos both within their department and across the business at large, enabling process standardization.

Questions to ask before investing

1. Does the investment align strategically?

Although CLOs are often tempted to invest in technologies that save time or automate routine legal tasks, these objectives alone may not be sufficient if they don't align to the legal department's—and the organization's—longer-term strategic imperatives.

2. Is there a business case for investment?

Even where strategic alignment exists, an investment must still provide tangible value to the legal group. This makes it essential to engage all appropriate stakeholders in advance to help calculate return on investment. Hidden costs—such as those related to implementation, training, and downtime as people learn the new technology—should also be factored in.

3. Do I have the right team in place?

Few practicing lawyers would describe themselves as technology experts. This makes it important to decide in advance who will identify the optimal solutions, work with other business stakeholders to define needs and set implementation timelines, and ultimately teach

these sophisticated machines to learn. Ideally, the teams should include representatives from across the organization to further enhance strategic alignment and process standardization.

4. Can we effectively implement?

Even with the right solution, business case, and people in place, technology implementations can be complex if they aren't properly planned and managed. To avoid common obstacles, it's critical to develop realistic implementation objectives, timelines, and milestones in advance.

5. Can we effectively train?

New technology implementations typically introduce new processes and ways of working. They're frequently met with resistance, even if they have the capacity to ultimately improve efficiency and productivity. To encourage uptake and prevent system under-utilization, organizations must provide their teams with appropriate training and support.

Don't invest

Of the CLOs that don't plan to invest in legal technology, most are relying on their service providers to invest on their behalf. These findings mirror those discovered in 2016 when Deloitte surveyed 243 major legal services purchasers from global multinational corporations.² According to that study, organizations expect their legal service providers to use technologies and shared platforms better and more broadly to enhance knowledge sharing and contract management, and to invest in AI so they can deliver commoditized legal work at a lower cost.

However, in-house teams hoping to round out technological shortfalls by relying on third-party investments must take steps to hold their service providers accountable, assess if they're using the technology to streamline low value tasks, and ensure they're passing on the savings.

Questions to ask your legal service providers

1. What was your last major technological investment, upgrade, or partnership, and what impact did it have on your ability to serve clients?

While there's no single right answer, and many tools continue to add value for years after they're implemented, a lack of significant investment within the last decade could indicate that your service providers aren't keeping pace with today's rapidly evolving technological environment.

2. How often do you reevaluate your existing technology and processes?

Given the rapid pace of technological advancement, in-house teams should expect their service providers to make ongoing investments to maintain or upgrade their technology assets.

3. How do you choose among the various options available in the market?

It's important for service providers to have the ability to separate the wheat from the chaff and identify the real value-added

features of available technologies before making their own investments. This shows that they have a finger on the pulse of industry innovations and are prepared to remain at the forefront of new technologies.

4. Can you explain how your technology solutions drive cost savings or other efficiencies for your clients?

Success stories, case studies, and real-world proof points help you ensure your service providers are capable of walking their talk. Don't hesitate to ask for references as well.

5. What are some solutions that you wish existed, or some client needs that aren't currently being addressed by technological solutions?

This question allows you to assess the strength of your service provider's critical thinking and determine if they have a real understanding of what is and isn't possible. Service providers that can answer this question are likely to be first to market with innovative ways to solve real client problems.

Talent: A narrow mindset



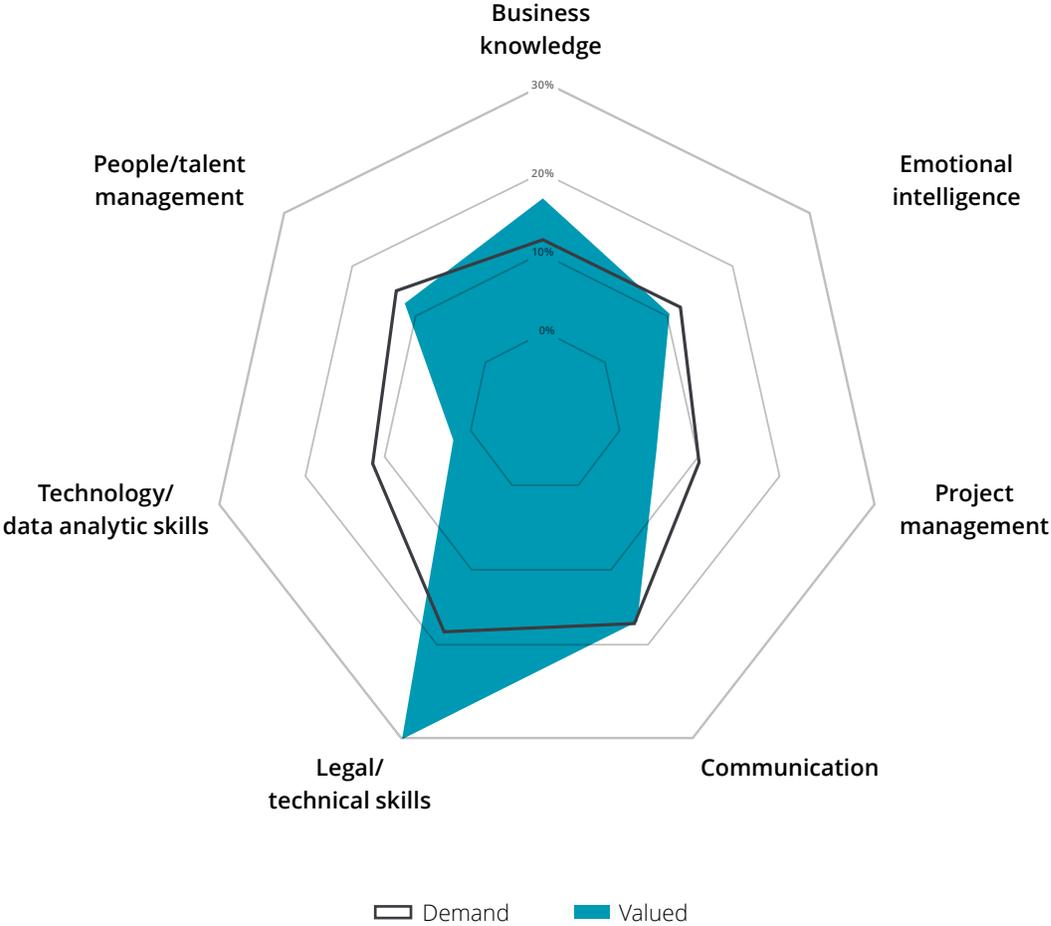
On the talent front, CLOs continue to prioritize legal/technical skills above all else. Almost none of the CLOs we surveyed plan on, or see significant value in, hiring non-lawyers (paralegals excepted), despite articulating a clear need for people with deep business knowledge and emerging skillsets, including data science, communications, project management, and people/talent management. In short, in-house teams appear ready to hire more of the same, potentially impairing the ability of legal departments to evolve from risk managers to strategic advisors.

Although some legal teams can draw from company-wide resource-sharing models to access in-demand skills, there's no perceived need for full-time, non-lawyer resources within legal departments, nor does there appear to be appetite to access these skills on a contractual or as-needed basis.

This mindset seems to extend to most CLOs' approach to diversity, which is

generally narrowly defined as gender or visible minorities rather than educational or professional backgrounds. With legal teams remaining largely homogenous, in-house departments may encounter future challenges in supporting their organizations' efforts to serve increasingly diverse customers and markets.

Demand vs. value

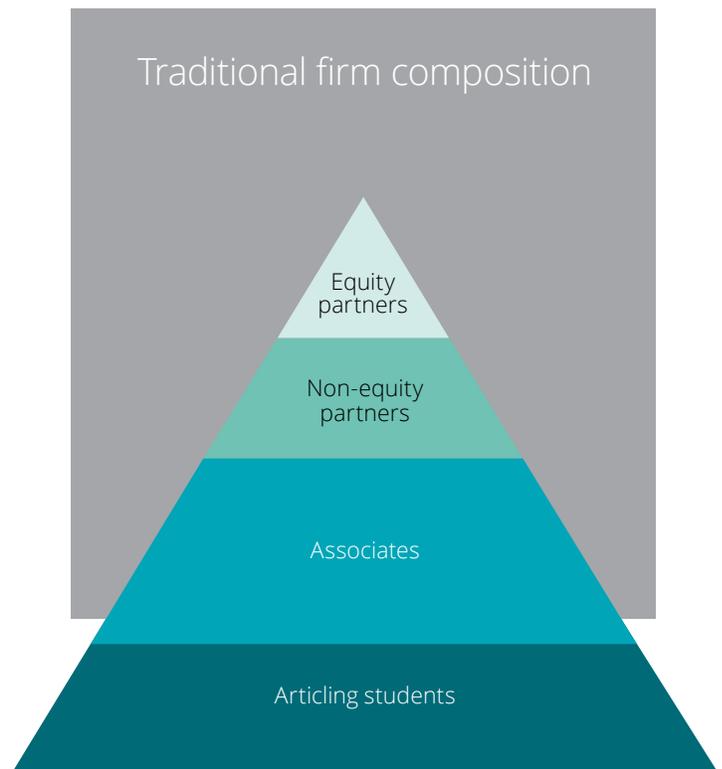


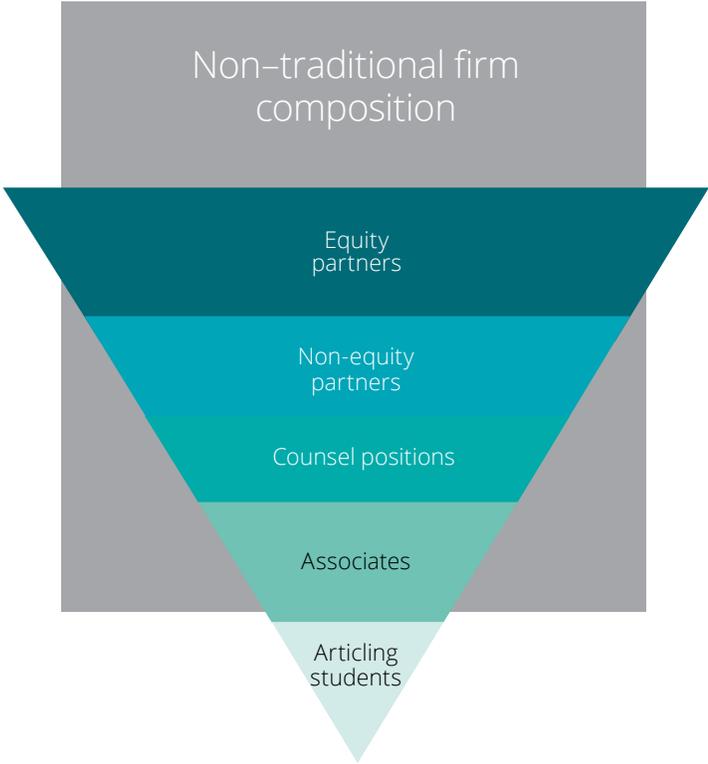
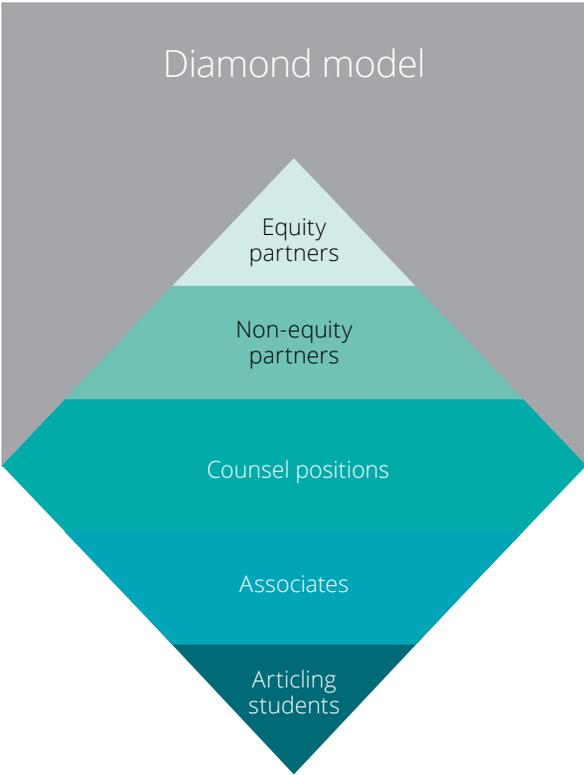
Talent approach and structure

By approaching talent in a similar way to how they approach technology investment, in-house teams may be able to source diverse talent through their external service providers. That said, only 40 percent of CLOs take diversity into account when retaining external service providers. Conversely, several law firms and alternative model firms indicated they continue to hire more talent that is diverse—including business and government relations advisors, engineers, accountants, and data scientists—in an effort to enhance their client and industry expertise.

In terms of structure, law firms are also gradually shifting the composition of their talent. Until fairly recently, most law firms adhered to a traditional “pyramid model”, with a small number of senior practitioners supported by a large base of junior lawyers. In recent years, some firms have begun embracing a hybrid “diamond model”, with a large proportion of mid-level career lawyers and fewer partners and junior associates. Now, we’re starting to see some firms evolving toward an “inverted pyramid model”, with a high proportion of senior lawyers completing the majority of work, supported by a smaller contingent of junior staff. Time will tell what impact this has on the ability of law firms to offer innovative and creative pricing.

Evolution of law firms





Time to transform?

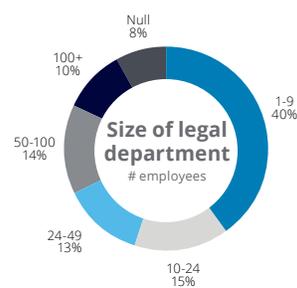
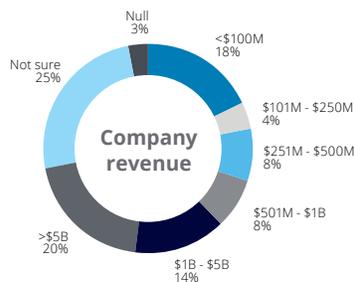
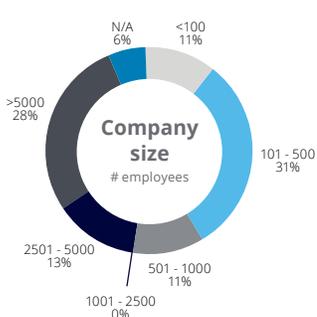
As the legal landscape in Canada hasn't shifted dramatically since our last survey two years ago, CLOs and in-house legal teams are still focused on delivering greater strategic value. This process may be accelerated for in-house teams that are willing to challenge the status quo, embrace agility, and work more closely in alignment with the business. Such teams have a unique opportunity to reconceive their processes, talent models, and technological capacity in the years to come. This is true whether they choose to implement new technologies internally or rely on their service providers to remain technologically-enabled.

To effect real change, however, in-house legal teams must articulate the role they want to perform and the value they want to deliver. Some may choose to grow larger and become more technologically adept. Others may prefer to remain small and nimble. Either way, the key to unlocking their future potential lies in their willingness to consider new ways of working in today's increasingly global, diverse, and competitive business landscape.

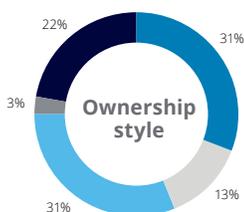
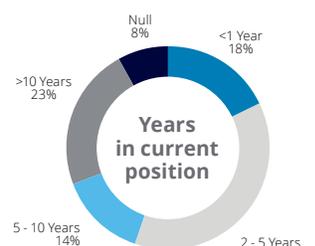
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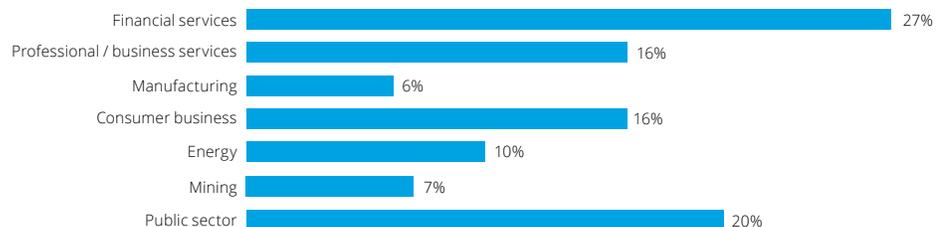
Participant profile



In house-counsel



Industry



- Listed on securities exchange in Canada
- Canadian subsidiary of a multinational organization
- Privately held
- Family owned or operated
- Government organization

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Endnotes

1 Deloitte, 2018. "What's your problem? Legal Technology."

2 Deloitte Global Study (February 2016), Future Trends for Legal Services

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