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Overcoming resistance to innovation
within the legal department



It's hard to address a problem if you aren't thinking about it correctly. If that's the case, the legal departments of the world's largest corporations may have a serious problem indeed.

The challenge that many of them face today is clear enough. Corporate leaders are pressuring law departments to manage themselves more like other business units. They are being asked to watch their budgets more carefully perhaps than ever, and in some cases to do more with less.

At first glance, the solution appears to be as straightforward as the challenge itself.

Law department leaders and their legal operations professionals are seeking innovative ways to consume and deliver legal services.

For corporate legal departments, "innovation" in delivering legal services has become a kind of talisman. A much-desired key to unlocking vast productivity at little cost.

But thinking about how to make legal departments more innovative can be a difficult endeavor. As organizations seek to encourage innovation in their legal departments, they may be tempted to think about it incorrectly in at least two different ways.

First, when we think about innovation, our minds often go directly to technology. The hardware and software. The gadgetry and algorithms. The alluring lights and hypnotic terminology of buzzwords like "machine learning" and "artificial intelligence." As flashy as they may be, however, these are not the drivers of innovation; nor are they impediments to it. People are.

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In his seminal book on change, “Beyond the Wall of Resistance,” Rick Maurer illustrates this point in dramatic fashion. He asked chief information officers at Fortune 500 companies to identify the main reason why technology projects failed. Among respondents, 80% identified human resistance as the culprit. Not the technology itself, or technical skills, or the amount of resources put into a project. Instead, Maurer says, “it’s that soft, touchy-feely, human reaction of resistance that matters.”

From this, corporate legal departments should take an important lesson:

Innovating is first and foremost a people issue. Specifically, it’s an issue of recognizing resistance and overcoming it.

Which brings us to the second way in which companies may be thinking incorrectly about innovation within their legal departments. It lies in a particular nugget of conventional wisdom – namely, that lawyers tend to be a brake on innovation.

The presumption that lawyers’ risk-averse psyches are a major impediment to innovation is accepted almost universally in legal and business circles alike. And it is not entirely without merit. In its 2018 Law Firms in Transition study, Altman Weil noted: “In 69% of law firms, partners resist most change efforts.” Note, however, that this finding applies specifically to lawyers at law firms.

While it is conventional wisdom that in-house lawyers may also tend to be a brake on innovation, the facts may not bear that out. At minimum, there are two core misconceptions in the statement as it applies to in-house lawyers. Regardless, in-house legal department leaders can adopt strategies to effectively encourage members of their teams to undertake productive innovation.





Misconception 1: In-house lawyers invariably resist change

The first misconception implicit in the conventional wisdom is that all lawyers – including in-house lawyers – invariably resist change. To understand lawyers' willingness to adopt new ways of working, it helps to consider specific personality traits associated with support for, or resistance to, innovation. To what extent are these traits prevalent among lawyers? And are these traits equally prevalent among law firm lawyers and in-house lawyers?

Sixty years ago, the Princeton, New Jersey-based Caliper organization was founded with an initial engagement to identify effective insurance sales agents. It has since administered psychological assessments to more than a million professionals and executives working across a broad range of industries. Caliper data provides insight into why lawyers tend to be perceived as a brake on innovation.

In a "The Perfect Legal Personality," a 2011 study by Caliper of 100 law firm lawyers, all judged to be "excellent" by their peers, the findings on three personality traits were particularly illustrative.

Relative to the general population, these accomplished law firm lawyers ranked in the 90th percentile on skepticism, a trait that may be associated with resisting the new ideas that innovators champion.

On sociability, the lawyers ranked in the 12th percentile, suggesting a below-average affinity for the type of collaborative teamwork that commonly facilitates innovation. The finding on the third trait, resilience, is perhaps the most counterintuitive: The lawyers ranked in the 30th percentile. To achieve breakthroughs in innovation, teams may need to first persist through, and learn from, a progression of minor failures. The relatively low resilience score may be a signal that lawyers may not be natural innovators.

The study found that lawyers' low resilience was a product of an overall negativity bias, an orientation that was also tied to the lawyers' high skepticism score. On reflection, this is unsurprising. The legal mind is trained to spot risks. Law school and legal practice enhance the brain's already highly attuned ability to notice threats and problems. The traits that make lawyers resistant to change, then, are likely the very same ones that facilitate their success as legal practitioners. It may be unrealistic to expect lawyers to bring that mindset to their legal analysis, and then simply shut it off when considering other matters, such as innovations in their workflows.

This study of law firm lawyers produced results consistent with the notion that lawyers tend to be brakes on innovation. However, data from the same study indicates that in-house lawyers score differently from their law firm peers. On both skepticism and sociability, in-house lawyers ranked closer to the median. They scored in the 70th percentile on skepticism (vs. 90th percentile for law firm lawyers) and near the 45th percentile on sociability (vs. 12th for law firm lawyers).

In-house lawyers' greater inclination to trust and collaborate suggests greater receptivity to innovation.

At least one study seems to bear that out. The law firm Thompson Hine has released two reports, one in 2017 and one in 2020, on the "innovation gap" between law firms and in-house legal departments. The latest report, "The Innovation Gap Persists," details a number of ways that legal departments are taking innovation into their own hands. By 2020, more than 40% had restructured their departments or processes, more than 60% had enhanced their project management function, and more than 30% were outsourcing work to alternative legal service providers – all up considerably from Thomson Hine's 2017 survey, "Closing the Innovation Gap," where fewer than 10% of law departments had attempted any of those innovations. Meanwhile, the report documents a dissatisfaction with the pace of innovation at outside firms.

The Caliper finding that in-house lawyers are more trusting and collaborative is also consistent with the nature of their role. The most effective in-house counsel may not be known for independently defining the "right answer" and advocating doggedly for it. Rather, they may seek to be flexible in helping their business colleagues achieve commercial goals, while ensuring that the company only incurs acceptable risks. In-house legal roles entail proximity to business operations and to the innovation that drives business success. It makes sense that the subset of lawyers displaying relative openness to innovation would be drawn to working in an in-house setting.

Misconception 2: The protective nature of many lawyers impedes innovation

In observing how lawyers respond to innovation, it is helpful to consider two archetypes: innovators and protectors. Innovators thrive on new and ambitious ideas. When dreaming up new ways of working, they make ambitious plans and pay little attention to constraints. In contrast, protectors strive to prevent loss and are more inclined to defend the status quo, reflexively resisting change.

Most lawyers have a naturally protective mindset. This may seem to fit the narrative of lawyers as a brake on innovation, and we might expect on first impression that with protectors dominating their ranks, in-house legal departments are destined to resist change. In fact, lawyers' protective nature may help organizations focus on the most fruitful areas of innovation.

For all the benefits that innovators' creativity can bring to an organization, the innovators' approach can sometimes be destructive. In his 1929 book, "The Think: Why I am a Catholic," writer G.K. Chesterton introduced a principle that came to be known as Chesterton's Fence. Chesterton described a group of innovators (or in Chesterton's parlance, "reformers") who notice a fence and fail to see the reason for its existence. Their instinct is to remove it. But if they remove the fence without first understanding the reasoning that led to its construction, they are likely to do more harm than good.



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Many of the problems innovators face in a legal system or regulated business are the result of rash intervention with insufficient consideration of consequences. If a fence exists, there is probably a reason for it. Protectors in a legal department can add value by screening proposed innovations for qualities that will make them useful in the marketplace:

- » Is the change desirable?
- » Is it feasible?
- » Is it viable from a business perspective?

While these screens will act as a brake on some forms of innovation, not all innovation is beneficial – it can be so costly, so unworkable, or so marginally beneficial that it is counterproductive.

The screening that protectors perform can act as helpful fencing, keeping the organization from pursuing unproductive projects and defining the space for fruitful innovation.



Three considerations for cultivating a team that embraces innovation

We have seen that in-house lawyers are more open to innovation than conventional wisdom would suggest and that the protector mindset can play a valuable role in screening new ideas to enhance productive innovation. What are the implications of these insights for an in-house legal department leader who seeks to cultivate a team that will embrace innovation?

We offer three considerations.

1. Classify your team members as innovators or protectors.
2. Comfort them by framing innovation in a way that makes everyone feel secure.
3. Nurture diversity of thought among your team members.

Classifying team members as innovators or protectors is a valuable framework for assessing how each individual relates to innovation and for understanding how you can tailor your approach to guiding each team member effectively. Protectors typically respond best if you make it clear that you respect their concerns. Recognize and address the pressures that make them hesitant, such as cost containment, technology limitations, or the need for compelling use cases. Communicate to the protectors that you respect their point of view and take their reservations seriously. At the same time, remind protectors of the dangers of failing to innovate.

In your discussions with innovators, honor the energy and ideas that they bring to the table, but be mindful of (well-meaning) attempts to change your strategic plan. Work to align their energy with the larger strategy that leadership has set for your organization. By channeling their creativity towards applications that the organization is likely to embrace, you can help innovators enhance the impact of their contributions. Moreover, you can help mitigate the disillusionment that results from having invested substantial energy into an initiative that turns out not to be viable.

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You should comfort your team members by creating an atmosphere in which discussion of innovation makes people feel safe. This is particularly important for protectors. Innovation can be threatening to many in-house lawyers, triggering a reaction akin to a fight or flight mechanism. Team members may fear that innovation will make their roles redundant, even if that is not the company's intention or expectation. As a leader, you should proactively mitigate these concerns by framing the subject of innovation in a way that makes team members feel secure.

Nurturing diversity of thought on your team is critical because innovators and protectors benefit from each other's presence. By assembling a team in which both archetypes are represented, there is the potential for groups to challenge and learn from each other. Some conflict may inevitably arise along the way, but ultimately your team will likely produce stronger and more sustainable innovation if both innovators and protectors influence the process.

When company leaders get the mix right and they are intentional about the approach, proactive leaders may be able to focus less on resistance to innovation in their legal departments. Instead, they might be more concerned about keeping up with it.



Contact us



Mark Ross
Principal
Legal Business Services
Deloitte Tax LLP
markross@deloitte.com



Bob Taylor
Managing Director
Legal Business Services
Deloitte Tax LLP
roberttaylor7@deloitte.com



Kimberly DeVico
Senior Manager
Legal Business Services
Deloitte Tax LLP
kdevico@deloitte.com

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