



THE COUNSEL NETWORK®  
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# In-House Quarterly Newsletter

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## Rainy Day vs. Day to Day: What to Keep In-House

*Cleo Kirkland, Director, The Counsel Network*

Most in-house lawyers are generalists by necessity. Intimately familiar with their client's business, they are also expected to be experts on all areas of law affecting their company's operations. When an HR issue crops up, the in-house counsel will be called-upon to opine on labour and/or employment law. If the business decides to expand and take on new premises, the finer points of real property law will come into play. And, if a dispute arises, then the in-house counsel will be looked to for an explanation of the appropriate strategy, process and costs associated with litigation.

### Jack of All Trades

As the "Company Lawyer", the client expects its in-house counsel to be able to identify any legal issue that crops up. And once those issues have been identified, an important part of any in-house counsel's role is to assess which matters ought to be handled internally and which ought

to be referred out. When it comes to getting the right blend of in-house counsel and outside legal expertise, there is no right answer. Although certainly more an art than a science, the goal should be to strike the right balance between the expertise and resources of the in-house counsel and the specialist skills of the outside help.

### Insource Day to Day Work

As a general rule, "core work" ought to be handled in-house. Far from boring or mundane, "core work" is that which is most closely associated with the business that is supported. This legal work is best suited to in-house counsel, as it typically requires high touch and ongoing relationships with the internal clients, as well as institutional and industry specific knowledge. As in-house teams grow, they expand their range of expertise, and members of the team become more individually specialised. The greater the internal expertise, the less likely it becomes that a particular



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## YOUR IN-HOUSE SCHEDULE

### **FACL: Onwards and Upwards: Transitioning In Law**

September 18, 2013, Toronto  
<http://faci.ca/onwards-and-upwards-transitioning-in-law/>

### **VBA Beer Tasting**

September 26, 2013, Vancouver

### **ACC Annual Meeting 2013**

October 27 - 30, 2013, Los Angeles  
[www.acc.com/education/am13/attend/rates.cfm](http://www.acc.com/education/am13/attend/rates.cfm)

### **ACC Leadership Dinner**

Presentation of awards, dinner and entertainment. By invite only.  
27 October, 2013, Los Angeles

### **2013 WILL Awards**

November 6, 2013, Calgary  
<http://willawards.ca/default.asp?mode=webpage&id=521>

### **FACL BC Annual Gala**

November 13, 2013, Vancouver  
<http://facibc.ca/events-2-2/faci-gala-2013/>

### **CBABC Annual Branch Conference**

November 15 - 17, 2013, San Diego  
[www.cba.org/BC/conference/](http://www.cba.org/BC/conference/)

### **FACL Annual Conference**

November 16, 2013, Toronto  
<http://faci.ca/fall-conference/>

### **VBA Annual General Meeting**

November 21, 2013, Vancouver  
[www.vancouverbar.ca/event/vba-2013-annual-general-meeting/](http://www.vancouverbar.ca/event/vba-2013-annual-general-meeting/)

### **SABA Toronto Annual Gala**

November 2013, Toronto

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matter will be referred out to external counsel, because more complex and specialised work can be done in-house.

### **Outsource Rainy Day Work**

Having lawyers who are fully integrated with the business and aligned with its strategic vision is invaluable but, regardless of the size of your company or legal department, there will be times in the life of most businesses when

additional or specialized resources are required. Circumstances where cutting-edge knowledge, broader market perspectives or rarified legal skills sets are required tend to be best handled by an external law firm. This would include more substantial litigation, larger transactional work, or highly specialised/international work where the in-house counsel lacks local presence and/or knowledge.

## Talking Points: Effective Communication with External Counsel

*Cleo Kirkland, Director, The Counsel Network*



Cleo Kirkland, Director, The Counsel Network

Communication is the most important part of any relationship and the relationship between in-house counsel and external counsel is no exception. When dealing with members of your own profession, it can be easy to assume that there will be an effortless alignment on the issues, appropriate courses of action and value of services provided. However, as any lawyer who has practiced

either at a firm or in-house well knows, there are no shortage of places for communication between external and internal counsel to break down and it is of paramount importance for both sides to approach both the relationship as a whole, as well as each distinct piece of legal work done, with an explicit and agreed upon set of goals.

### **Know Your Client**

At the risk of stating the obvious, a prerequisite for any in-house counsel being able to clearly communicate goals and objectives to external counsel, is for they themselves to be wholly familiar with their internal client's business priorities and the value it places or risk it associates with any given piece of legal work. It is often the case that a client's goal on one matter is to keep costs to a minimum, while on another matter it is to think more about the big picture, or even "bet the farm". Whatever the



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specific goals of the client may be, it is crucial for internal counsel to spend the necessary time at the outset of a file to thoroughly understand how that file fits in with the business as a whole. Only then can in-house counsel properly communicate that information to external counsel and equip them with the tools necessary to ensure they are best serving the business' needs.

### **Fees First**

At the outset of every file, even very small jobs, in-house counsel should initiate a discussion with external counsel about fees and approximate time to be spent on the matter. This exercise will help crystalize expectations on both sides and bring to the front any misunderstandings over the scope of the assignment. The more frank and precise this conversation is, the farther it will go in helping to avoid that all-too-common scenario of an in-house counsel receiving a bill from external counsel that is some multiple larger than what they were expecting. Although conversations around fees can be tense and complicated, they are ultimately in everyone's best interests.

### **Partner with External Counsel**

Ideally, the relationship between internal and external counsel should be one of peers and the evolving role of in-house counsel is making such partnerships increasingly common. Over the past couple of decades, in-house counsel positions have become far more sophisticated and

demanding. In-house and external counsel should become true partners with their law firm counterparts. Marrying up the organizational knowledge and judgment found in-house with the skill and expertise found externally, will make both sides look good and will result in seamless, value-added service for the client.

### **Hold Post-Game Debriefs**

Although forward looking file assessments are the stock and trade of most lawyers, it is far less common for a team to sit down after a project has completed and look back. But even the briefest post wrap-up analysis of your legal matters can reap huge benefits as an efficiency tool, with respect to time, as well as money. And, although some external counsel may seem resistant to hearing your feedback on a matter, find a tactful way of providing it anyway. The relationship between internal and external counsel is no different than any other relationship in that the things you avoid discussing will fester and grow. And the more internal and external counsel can openly discuss what went right and wrong on each file, the better they will do next time. More than a best practice, spending the necessary time to properly communicate business goals, explicitly discuss fees, work towards a true partnership and hold post wrap-up discussions is a critical part of any harmonious, mutually beneficial and long term relationship between internal and external counsel.



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## ABOUT TRISH FINKELSTEIN

Trish Finkelstein is General Counsel of the Heart and Stroke Foundation of Canada. Before joining the Foundation, Trish worked for Torys LLP practicing general corporate law and maintaining a pro bono portfolio working with organizations such as Right to Play. Trish studied law at UBC and was called to the Ontario Bar in 2005. Her move to the Foundation in January 2013 was a natural one allowing her to pair her legal skills with her desire to work in an organization that makes a difference in the lives of Canadians. After completing two secondments as in-house counsel to Torys' clients, Trish found her calling as General Counsel of the Foundation. She manages the legal affairs of this now national organization and runs the legal department with assistance from the Foundation's Intellectual Property Coordinator and the help of external counsel resources.



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## Profiles in Leadership with Trish Finkelstein

*General Counsel at Heart and Stroke Foundation of Canada*

*Interviewed by Cleo Kirkland, Director, The Counsel Network*



Trish Finkelstein, General Counsel,  
Heart and Stroke Foundation of Canada

### **What do you most enjoy about working in-house?**

The best thing about being in-house counsel is having the opportunity to get to know one line of business really well. Additionally, because I work for a charity, I feel a great sense of pride having a direct relationship with an organization that has such a positive impact on the lives of Canadians. Through my work, I feel that I am making great contributions to that cause.

### **What do you think are the hallmarks of a successful relationship between internal and external counsel?**

Communication is key in any relationship, and it is no different in the internal - external counsel sphere. Not surprisingly, external counsel who pick up on nuances in my communication style relate to

me much better and provide what I consider to be better service. I am more likely to give repeat business if external counsel makes my life easier.

### **Are there any practices or behaviors you have seen in external counsel that particularly annoy you?**

Yes. I often have external counsel give me a dissertation on the legal question at hand when clearly all I was looking for was a quick 'yes' or 'no' answer. I am happy for external counsel to be thorough in their work, but I also expect them to know the limits of my department (understanding that resources and time are slim for example). Having to spend an unnecessary amount of time and money on a simple matter because external counsel is being overly zealous is annoying.

### **What advice do you have for in-house counsel on how best to work with external counsel?**

The best advice I can give is to take a survey of your biggest legal needs within your organization so that you can leverage the best use of your time against what external counsel can provide. I have found that just because something could be done internally doesn't necessarily mean it should be done internally. That is to say, finding the balance between what you bring to the table as the resident expert and how outside resources can enhance that will make for a well run in-house



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department both from a legal and financial perspective.

## **What advice do you have for external counsel on how best to work in-house counsel?**

External counsel would be well served to have a good understanding of what constraints and/or pressures there are on their in-house clients in order to adjust their service to best suit the situation. External counsel might also be well served if they could adjust their communication styles to meet those of their in-house clients. For example, often what in-house counsel lacks is the opportunity to bounce ideas off other lawyers or a second pair of eyes on something for feedback. Keeping these types of interactions casual and collegial rather than strictly business goes a long way to building trust and collegiality in the internal-external relationship.

## **Bidding War: Structuring Your RFP for Legal Services**

*Cleo Kirkland, Director,  
The Counsel Network*

As most of you well know, in-house counsel are under increasing pressure to contain external legal costs. RFP's can be an effective way to drive better pricing from law firms, both for discrete pieces of work, as well as for longer term projects. But not all RFPs are created equal and the calibre of responses one gets to an RFP is, by and large, driven by the RFP itself.

What follows are three tips to help increase the quality of information you receive from law firms and position you to make the best possible choices of which external law firms to engage.

### **Quality Over Quantity**

The three most important factors you should concentrate on when constructing your RFP are:

#### **Scope of Work**

Above all, your RFP should include a well-defined scope of work, including clear instructions as to: discernible phases of work that allow the respondent to provide a framework for creating a budget; issues that may impact one or more phases; tasks that will be performed by or in conjunction with others (including internally); and, expected work deliverables (board presentations, memos, etc.) for each phase.

#### **Staffing**

Particular staffing expectations you have with respect to the assignment as a whole or discrete pieces of work ought to be explicitly set out. What areas of expertise are required? What level of experience is necessary to complete the work effectively?

#### **Questions**

Be thoughtful and disciplined about the information you request from respondents. Law firms often gripe about the masses of information they are expected to provide when responding to RFP's, even for one-off and/or mundane projects. If possible, give some thought at the outset to exactly what type of information you



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require and whether it will truly impact your ultimate hiring decision. The more familiar you are with the firms you are inviting to respond to an RFP, the less information you should need to make a decision.

### **Value: Defined**

Clearly communicating the factors that will impact on your ultimate selection is critical in all RFPs. Some of the most common considerations include: estimated fees; fee methods and rates that are proposed; staffing selections/criteria; experience of the law firm working on similar engagements; and, the use of technology to increase efficiencies.

### **The (Budget) Devil is in the Details**

Based on the scope of work you have set out in your RFP, the respondents should be asked to provide a detailed and itemized budget. Be specific about the format to assure the most meaningful comparisons between proposals can be made. Effective budget formats typically include: details of the proposed lawyers and staff for the work, including the

experience level, areas of expertise and standard billing rates of each; details on which staff members will provide service for each phase of work, the amount of time they are expected to work, and the estimated fees to be charged for that work; information on any alternative/contingency fee elements of the proposal and any applicable fee caps; and, details of expected expenses.

In addition to helping you compare competing proposals in greater depth, detailed budgets will hold the ultimately successful law firm to account and create strong pressure for the engagement to be completed within budget. It will also enable in-house counsel to track costs more accurately and offers a departure point for any future discussions about bills. In short, the quality of responses you receive to your RFP is a function of the quality of information you provide in your request. Taking the time at the outset to issue a first rate RFP will pay dividends down the road and ensure you select the right external partner to best service the needs of your client.

## SUGGESTIONS?

Do you have a topic suggestion for our next newsletter?

We would like to hear from you!

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