THOMPSON HINE

CLOSING THE INNOVATION GAP

Survey methodology

This survey is based on responses from 183 in-house counsel and other senior business executives at 176 companies and financial institutions. Of the sample, 90% work as lawyers—general counsel or their senior deputies. The remainder of the sample consists of chief executive officers and others directly involved in the hiring and retention of outside law firms. The research sample includes large and small businesses: 46% have annual revenues greater than $1 billion, 30% have annual revenues between $100 million and $999 million, and 24% have annual revenues of less than $100 million.

ARE LAW FIRMS INNOVATING?

We live in an age that demands innovation. Like it or not, prepared for it or not, the legal market is changing around us. At Thompson Hine, we have embraced that change. Over the past three years, we have dramatically altered the way we provide legal services to our clients—but we know there is more to do.

We are not alone in our efforts. Indeed, Altman Weil reports that fully half of law firms they surveyed say they are engaging in innovative experiments of one sort or another. But what is actually being accomplished? Where are the measurable results versus just declarations of good intentions?

To gauge the state of innovation in the legal market, we decided to ask the group most interested in better service: in-house counsel. We commissioned detailed surveys and interviews of in-house counsel and other senior executives at 176 companies. This is what we found:

- Corporate counsel said that they do not see much actual change. Only a handful—4%—said they had seen "a lot" of innovation from law firms.
- Not even three in ten—29%—reported that their firms provided them with any "significant" changes to help alleviate the pressures they faced.
- In-house counsel were not reluctant to acknowledge improvements. They just had little to report. Only 38% had received better budgets or plans from their outside firms. Fewer still—34%—saw their firms produce better work processes.
- Rather than wait for outside firms to change, legal departments are changing by themselves. Nearly half—47%—have instituted their own process reforms, adopting a wide variety of knowledge management and preventive law tools.

Our findings highlight what we call the Innovation Gap, a discrepancy between promises and delivery. According to the clients, the Gap exists across the board. Law firms—and some vendors—boast about their new technology, but apart from e-discovery and contract management, clients see little impact on their matters.

Corporate counsel say that many of their law firms fail to prepare useful budgets, fail to plan their engagements, and fail to apply knowledge management and process management systems. These are missed opportunities.

We think law firms build healthier relationships with their clients when they deliver more transparency on pricing, more collaboration between inside and outside counsel, and a clear alignment between client goals and lawyer efforts.

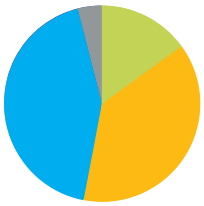
Every day, we are working to close the Innovation Gap. We hope you find this survey informative, and we invite you to join the innovation conversation. Please let us know what's on your mind, and we'll share what has worked for us and what could work for you. You can reach us at Innovation@ThompsonHine.com.

Thompson Hine LLP
Always Innovating

MEASURING THE INNOVATION GAP

Everyone knows innovation when they see it: that moment when a fresh idea is joined to clever execution. Innovation takes many forms, from tweaking an ordinary process to developing a new paradigm. For lawyers, the gamut might run from an electronic filing tool to an artificial intelligence device that provides answers to legal questions. They all count as innovative. We asked in-house counsel a general question about innovation in their law firms, and the answers were eye-opening.

Over the past three years, how much innovation have you seen from law firms?

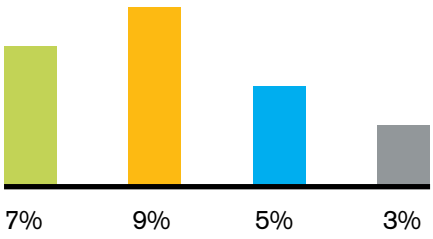


None	15%
Hardly any	38%
A little	43%
A lot	4%

These are stunning results. A majority reported seeing no or hardly any innovation. A plurality saw only a little. For 96%, innovation was rare or nonexistent.

We asked another question that invited a more granular response. Over the past three years, had law firms done anything "significant and different" to help alleviate "the pressures" that the in-house lawyers were facing? This was purposely broad, an invitation to sweep in anything significant. The response: 29% said they had received some assistance.

The 29% characterized law firm actions taken to alleviate the pressure as:

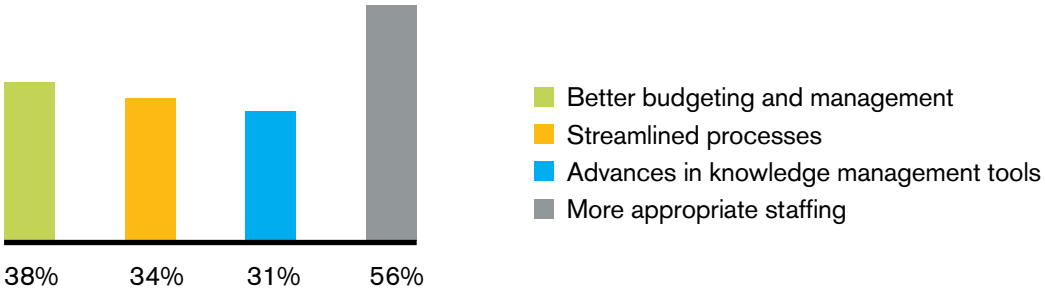


Fully 70% of clients could not cite a single example of "significant" change over three years of work with their law firms.

For the in-house community, innovation remains an unkept promise. In our survey, corporate counsel reported seeing little or no improvement in how law firms deliver services. We did not reach that conclusion lightly. In our survey, we asked several questions about what they had seen or experienced in an effort to capture as much positive feedback as possible. In-house counsel were consistent in their responses. For most, innovation was not a factor in their relationships with law firms.

Another question used prompted answers. We set out four categories of law firm activity and asked whether in-house counsel had seen improvements or changes from any of their law firms. The responses were more positive, but still disappointing. In three of the four categories, a majority of in-house counsel reported again that they had not seen any signs of improvement.

What specific improvements have you seen from your law firms?



In practice, "more appropriate staffing" meant a variety of things, including reducing the size of their teams. Corporate counsel liked firms that carefully matched the experience level of the lawyers to the tasks at hand. In the in-house lawyers' eyes, those were steps forward.

Fault on both sides

Why has there been so little movement forward? Corporate counsel saw two culprits: the law firms and themselves. Nearly 64% blamed firms that have been slow to change. And almost 45% admitted that they were culpable for not demanding more change. In truth, they have been too busy trying to get problems solved to spend time cajoling law firms to fix service delivery platforms.

The legal market now sits in an awkward and unsustainable position. Most law firms remain mired in the practices of the past even though at least half promise and promote innovation. Corporate counsel hear all those well-intentioned promotions, but they don't see much action. As one client noted: "Throwing around concepts such as artificial intelligence or blockchain without really understanding them is of marginal utility."

DROWNING IN WORK: THE IN-HOUSE LEGAL MARKET

While legal departments vary by size, appetite for change, responsibility, and reach, in-house counsel share two overwhelming pain points: increasing workloads and tight budgets.

It likely will only get worse as the world grows more complex and connected and in-house counsel face more legal demands. Government regulations and their accompanying compliance obligations multiply. Commerce spills across all borders. And in-house lawyers struggle to keep up.

> **"My biggest problem is getting everything done."**

74% of in-house counsel listed managing increased workflow as one of the main internal challenges

52% operated with the same budgets

32% operated with reduced budgets

Staying above water

Faced with a do-more-with-less imperative, in-house counsel are addressing their problems themselves. Almost half—47%—reported changing how they work internally. They have improved their processes, turning to checklists, templates, and aggressive project management initiatives. "We've invested more in technology to stay above the water," one general counsel said. "We've automated some processes and simplified others." Also, they have recognized that the easiest problem to solve is the one that never arises. So they have launched a variety of preventive efforts, analyzing their operations for troubling patterns and acting to fix them.

Corporate counsel have learned from the most client-friendly outside law firms. They are talking with *their* internal clients about business goals and how in-house lawyers can help achieve them faster, better, and cheaper.

This broad wave of in-house activity has put many legal departments ahead of their outside law firms. On both "operational" and "routine" matters, corporate counsel reported that they were 10% to 25% more likely to use knowledge management, project management, and process improvement techniques and tools than their outside counsel.

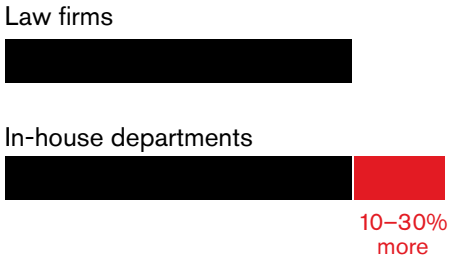
New service providers surface

Some in-house departments have begun to look elsewhere for help. At least 18% have hired legal process outsourcers (LPOs) for tasks they described as "routine" or "repetitive." This is a small but important development. Companies of all sizes can now purchase legal process services from vendors other than law firms.

At present, LPOs represent only a tiny part of the legal market. Of the 82% yet to retain an LPO, half said they were unaware of either LPO services or their value, while a quarter had not seen a reason to hire them. Over time this will likely change.

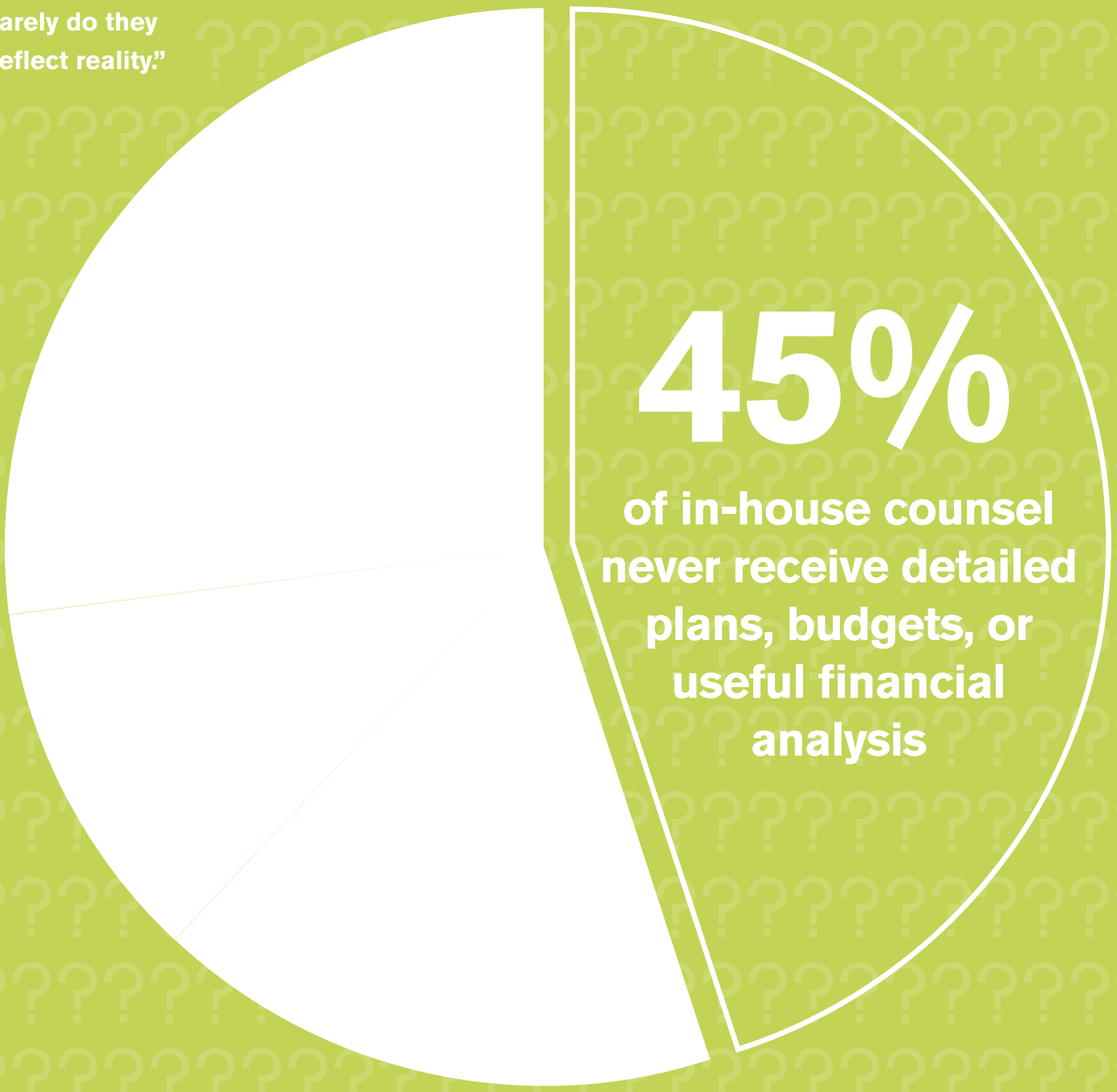
"We've invested more in technology to stay above water."

Adoption of new process techniques and tools



DEMYSTIFYING THE LEGAL SPEND

“Many attempt [budgets], but rarely do they reflect reality.”



45%

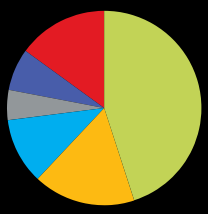
of in-house counsel never receive detailed plans, budgets, or useful financial analysis

In-house counsel are intensely concerned with their spending. They want predictability about costs, and they want to measure ROI. Unfortunately, many law firms still do not provide detailed plans, budgets, or useful financial analysis. This failure to meet basic financial reporting standards is an artifact of another age—and a reason the once-sacred hourly billing model faces increasing pressure.

Budgets wanted

Planning for and monitoring spending requires a suitable budget. But our survey showed that most law firms don't provide one, or only provide information one responder called "perfunctory." Several clients said the budgets they received were not detailed enough to be useful.

What percentage of your outside firms provides regular updates on their spending against budgets (and their progress against plans)?



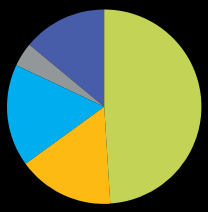
None	45%
1–25%	16%
26–50%	11%
51–75%	4%
76–99%	5%
100%	15%

What set apart those in-house counsel who always received detailed budgets from the majority of their peers? The ones who always received detailed budgets **required them**. Their answers were all variants of "We make them do it!" In these situations, refusal was not an option. "For us, a budget is a gating item," one general counsel wrote. "If they do not comply, we get another firm."

Analysis MIA

Budget-conscious legal buyers—who often must justify their spending to executives and boards of directors—said they'd appreciate board-ready analysis of their law firms' work and its true costs. Our survey showed that few law firms have stepped up to give clients this information.

What percentage of your outside firms provides analyses of their spending that you find helpful or useful?



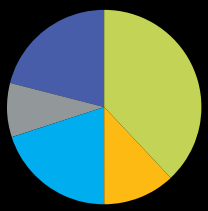
None	49%
1–25%	15%
26–50%	16%
51–99%	3%
100%	13%

These are disappointing responses. Some may be explained by the fact that many firms are hired for single matters that do not lend themselves to prescriptive analysis. For the rest, it represents a missed opportunity. A thorough, timely spending analysis can help clients identify bottlenecks, manage expectations, measure performance, and project future costs.

AFAs likely to rise

We asked corporate counsel how many of their matters were billed by means other than hourly. While few reported that they currently use alternative fee arrangements (AFAs), a majority—56%—said they expect to increase their use of AFAs next year. The balance said their use of AFAs would be flat. No one was planning to cut back.

What percentage of your outside counsel spending is handled under alternative billing arrangements (such as fixed fee, contingency, or bonus), excluding pure discounted rates?



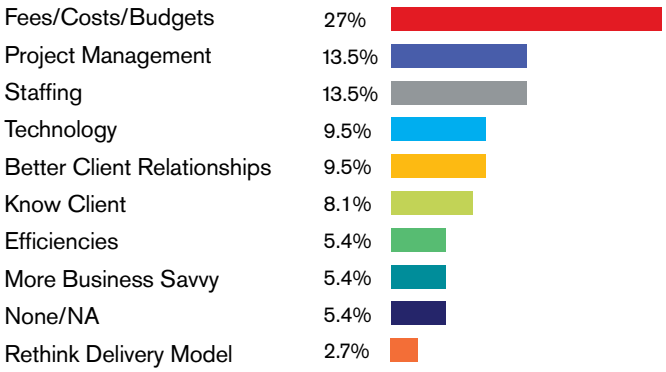
None	38%
<5%	12%
5–10%	20%
11–20%	9%
>20%	21%

For some in-house counsel, use of AFAs is a cost-saving effort. Two-thirds reported that AFAs saved them 5% or more. But AFAs can also help in-house counsel measure the value of an engagement, because they are not paying for the time spent on a matter but for the results achieved.

WHAT DO GENERAL COUNSEL WANT?

There's no mystery about it. General counsel want change—the kind of change that's reinventing industries from retail to travel to medicine.

What practical improvements or innovations would you like from law firms?



*Some responses encompassed more than one category. Those responses have been counted multiple times.

"Rethink the entire way of delivering services. You see it happening in every other industry every time you turn around."

Change through innovation

The call for change in legal services is universal—only 5% of survey respondents said they are content with the status quo. Seeing the ongoing transformation of other industries, general counsel want to use new technologies and business models to make legal services better and faster, with more predictable costs.

But there was no agreement on a single pathway to change. Some respondents looked to technology solutions, like programs that enhance lawyer-client collaboration, predictive analytics for litigation outcomes, or "software to track matters and monitor spending against our budget." Others focused on managing costs through fixed fees or value-based structures, or by leveraging lower-cost staff and reducing costly partner hours. Still others requested new service models, including "provision of tools/templates… for standardized matters," and "[a] service to provide affordable temporary assistance to alleviate bandwidth issues."

Clearly, the time is ripe for transformation. Disruptive innovation in other markets will inspire change, perhaps sparking broad implementation of automation, artificial intelligence, or data analytics. Today, the doors are wide open for innovation. Smart law firms and their clients will come together to talk, listen, design the future—and close the Innovation Gap.

The Thompson Hine Approach

Thompson Hine is committed to real innovation that allows us to deliver what our clients want, at an appropriate cost. Using our proprietary SmartPaTH program, we work closely with our clients to plan, budget, staff, manage, and monitor engagements.

We begin each engagement with a detailed scoping conversation, follow up with detailed budgets based on real data, and offer a robust variety of AFAs. We end each engagement by measuring our results against concrete goals. To learn more, visit ThompsonHine.com/innovation

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