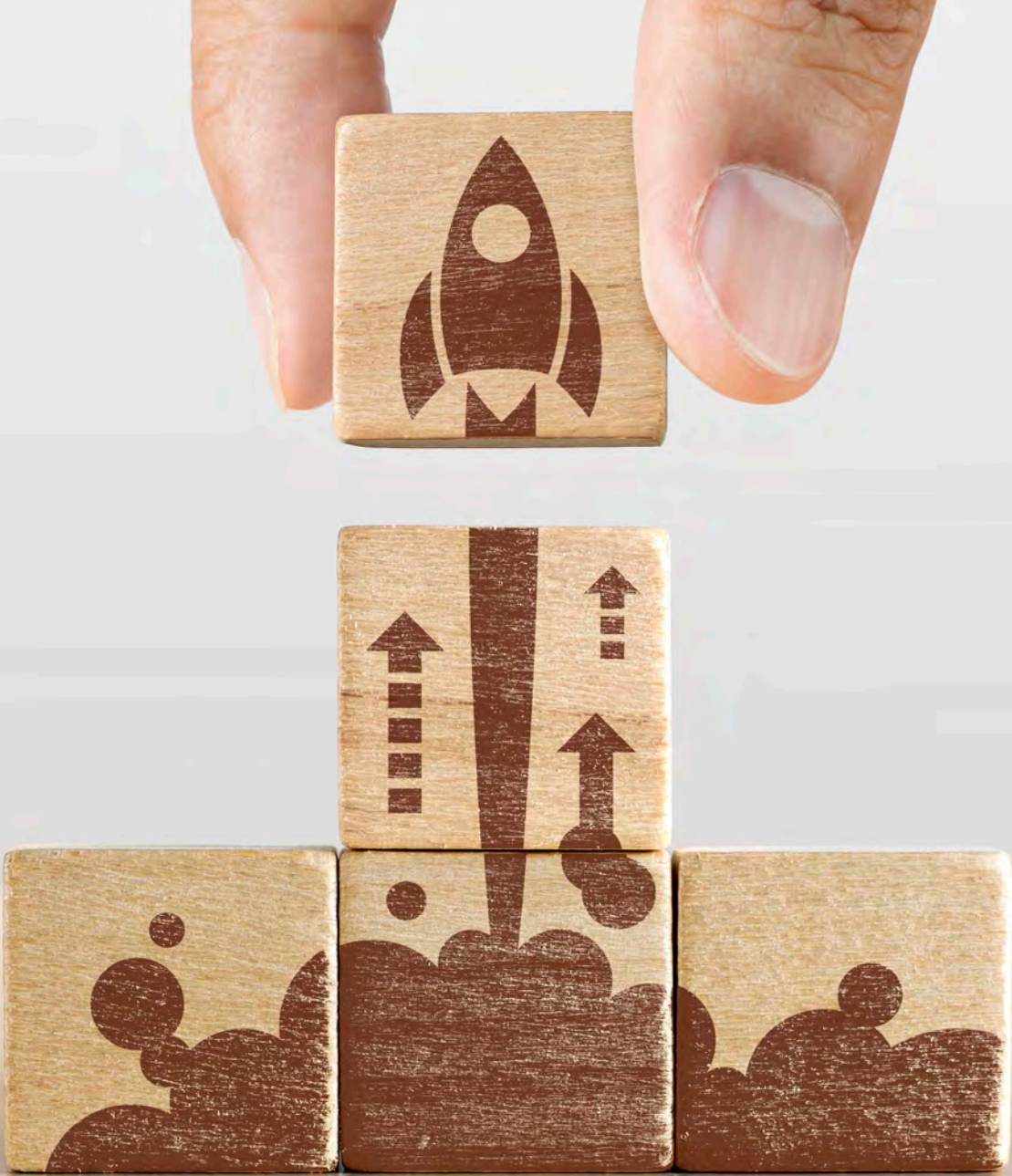


Driving Disruption in the Law Department





Executive Summary

The growth of the legal operations function in law departments has been astounding. While there were a few professionals serving in this role even in the 1980s, it was decades before there was enough critical mass to study. The first Blickstein Group Law Department Operations Survey in 2008 could only muster 34 respondents, and the only organizations or events for legal ops professionals were informal roundtables. Despite the huge contributions from the legal operations pioneers from the 1980s to the 2010s, legal ops as a discipline was underrepresented.

The most obvious evidence of the growth is the expansion in membership of the Corporate Legal Operations Consortium (CLOC), which had only a few hundred attendees when it launched its first annual conference in 2016. Today CLOC stands at 2,303 members from 1,145 companies. CLOC's influence, combined with the amazing work of industry thought leaders such as Google's Mary O'Carroll, Workday's Frances Pomposo, and Baker & McKenzie's David Cambria to publicize and build credibility for legal ops, continues to drive interest for the role. According to data from the 2018 Law Department Operations Survey, more than 20 percent of responding companies added their first legal ops professional within the past two years, and 40 percent within the past five.



Why the Rapid Growth?

While it is easy to pinpoint some of the more recent drivers for legal ops growth, law departments were forced to adopt a more operationally-focused mindset as a result of the Great Recession.

There have been a number of economic downturns since the current business relationship between law departments and law firms took hold in the 1970s and 1980s, including Black Monday in 1987, “Read My Lips” in 1991, and the Dot-com Crash in 2000. All of these led law departments to find new ways to reduce costs and they put pressure on their firms to do so as well. None, however, resulted in lasting change; everything reverted to “business as usual” as soon as the economy improved. None of the downturns were deep or sustained enough to force the C-suite to invalidate the general counsel’s two primary objections: “It’s too risky” and “legal is different.”

Through the prior downturns, while the law department did cut costs around the edges, the “legal is different” defensive shield still held. In contrast, the 2008 downturn was so severe, and efficiency and cost-cutting was considered so critical to the survival of the business at large, that the balloon popped. And since it has, C-suites have increasingly been making their law departments behave more like their other business units. This ultimately led to the rise of a profession dedicated to bringing business discipline to the law department: legal operations.

This journey toward business discipline is nowhere near complete. Not all Fortune 500 companies have a legal operations function. However, many of the companies that have a legal operations function only focus on a few of the 12 core competencies recommended by CLOC. These competencies include not only financial and vendor management (e.g., e-billing and spend management) but also technology and process support, service delivery, knowledge management and information governance, and more.

The CLOC 12 Core Competencies Reference Model



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Nonetheless, the top key performance indicators (KPIs) for legal operations professionals remain cost-focused. According to the Law Department Operations Survey, their top three KPIs are (1) total outside counsel spend, (2) actual spend vs. total budget, and (3) attorney productivity. The enduring focus on hard costs is why so much attention is paid to managing the department's relationship with and sourcing of outside counsel, finding new approaches to legal service delivery, and the use of data and analytics to measure and manage it all.





Process + Technology + Data = Disruption

While business discipline is standard operating procedure in other areas, it is quite disruptive in corporate legal departments, many of which did not even establish KPIs until a few years ago. Considering that legal ops professionals have always been cost-focused and that most of a law department's spend is on outside counsel, it should be no surprise the biggest disruption has taken place in the selection and management of counsel, making this particular change a good case study for bringing business discipline to the law department.

Until the 1990s or later, most law departments allowed their corporate counsel to hire and manage whichever outside lawyer they wanted for any particular matter. Budgets were rarely required, and there was little process or analysis behind who was chosen. The typical rationale was "this is who we've always used" or "I know this guy from law school." Over the past decade, legal operations professionals have become much more involved. According to the Law Department Operations Survey, 36 percent of legal operations professionals say they direct or manage the selection of outside counsel, up from only 8 percent in 2008. The growth of legal operations has rationalized the way law departments select counsel by adding a level of professionalism and fiscal focus not typically expected from attorneys. This more rationalized approach requires a new process, new technology, and new ways to use data and analytics.

An improved process for the selection and management of outside counsel starts with clear lines of authority. Corporate counsel must understand that they are no longer permitted to simply hire outside counsel on their own. Individuals outside the law department similarly need to understand that only the law department may engage counsel. With this critical element in place, the question is largely one of scale. A smaller law department's process may simply require all engagements to be approved by the general counsel. Another department's process might be to have legal operations or procurement involved to advise. A third might rely on an RFP led by legal operations to build a preferred network, which inside counsel may then choose from. Still, others may have secured technology solutions to underpin a competitive bidding process on certain case types and books of business. Whichever process is codified into playbooks and decision-making parameters supports this rationalized approach on a day-to-day basis for managing legal like a business unit.



Today's state-of-the-art technology allows all stakeholders from anywhere in the world – including law firms, other service providers, and appropriate members of the corporation's accounting team and business units – to be on a single platform.

Any new process frequently requires new supporting technology. For example, consider outside counsel guidelines. This well-established tool facilitates better governance and transparency. One of the first things embarked upon by legal operations professionals is to create or update a set of guidelines to exert more control over their law firm and vendor relationships. As a best practice, these guidelines not only set policy guardrails and rules, but also stand as the core set of economic constructs around how and why certain models can and should be engaged by outside counsel. These guidelines and the fee arrangements and engagement principles they support are functionally impossible to enforce without electronic review. They require a technology-enabled process for flagging, communicating with the firm, and occasionally making exceptions.

Today's state-of-the-art technology allows all stakeholders from anywhere in the world – including law firms, other service providers, and appropriate members of the corporation's accounting team and business units – to be on a single platform. This connected and integrated approach helps to minimize errors and inefficiencies as well as support greater cross-departmental visibility. It also means automatic enforcement of outside counsel guidelines, fee arrangements, budgets, and the ability to track and manage all spend. This integral functionality provides deeper visibility into actual costs and the ability to audit invoice review to support internal and external compliance requirements.

Perhaps the most valuable advantage provided by today's technology, however, is the actionable data it amasses. After evolving their departments out of a "relationship-based economy" to one where at least hourly rates are compared, legal ops professionals quickly realized that a simple rate comparison was, at best, just a starting point. Better data about what level attorney is doing what work and for how long, actual spend compared to budget, cycle time, and much more has become information that can be used to better choose the right resource for the job at the right price.

This data also provides the upper hand in negotiating alternative fee arrangements that can reduce cost or add predictability. Close analysis of the data can even lead to new models that create even bigger disruptions in the delivery of legal services. One example is the eschewing of traditional law firms altogether. Armed with data, leading legal ops professionals are finding more work that is appropriate to send to alternative legal service providers than ever before. They are also finding work, such as reviewing and negotiating NDAs and other simple contracts, that can be automated, often with the help of artificial intelligence engines. Some legal ops professionals are even analyzing their company's data to identify legal work that need not be done at all.





Eric M. Elfman and Nathan Wenzel's 7 Predictions for the Future of Legal Operations

Onit's CEO Eric M. Elfman and Nathan Wenzel, General Manager and Co-founder of SimpleLegal have each spent almost three decades in disciplines that are now known as legal operations. Based on their experiences, these thought leaders foresee continued growth in legal ops, with legal operations professionals moving well past matter management, spend management, and the selection of counsel and evolving into more strategic roles. Here are their seven predictions for the future of legal operations.

- 1. Legal operations professionals will continue to take on administrative burdens – in far more areas than spend management – in order to let lawyers be lawyers.**
- 2. Law departments will work to untangle overcomplexity in their enterprise legal management systems and return to basics that allow work to be done more efficiently and effectively.**
- 3. The use of collaboration and workflow tools will continue to grow as the legal function becomes more global and complex.**
- 4. More will be expected of technology vendors, and law departments will less frequently integrate a variety of tools and instead build platforms that handle multiple functions seamlessly.**
- 5. Legal ops professionals will engage more closely and directly with their companies' businesses units, with a heightened focus on turn time and customer satisfaction.**
- 6. Law departments will build expertise to match the pricing experts that have become commonplace in law firms. Firms currently have the advantage in negotiations and AFAs because they understand the data better; legal ops will look to even the playing field.**
- 7. Legal operations professionals – and in-house counsel – must get better at data and analytics in order to make better decisions to behave more like business units while also better serving their clients.**





Legal Community and Technology Vendors Drive Change and Innovation Together

One particularly interesting phenomenon is the trust some legal operations professionals are placing on tech providers to help them not only apply technology, but also set objectives and outline process. Some of the thought leaders at leading technology providers have been a disruptive force for decades. It is not uncommon for a legal operations professional to identify a problem and take it to a trusted technology vendor, who is likely to have worked with enough companies to have seen the problem or one like it many times before and thus has a best practice approach to it. In other instances, because these technology companies spend so much time with different clients, they can help legal ops professionals foresee potential problems and new ways to innovate and deliver more value to their stakeholders.

While almost 89 percent of respondents to the Law Department Operations Survey believe that corporate law departments will be the primary driver of innovation and change in the legal industry, it is a community-driven initiative, with legal operations professionals leading the charge. Actual “change on the ground” is coming from collaborations between legal ops, legal tech providers, alternative legal service providers, consultants, and even law firms.



Priorities by Size and Sophistication

The law department operations function has grown so quickly that it is somehow both gaining and losing maturity at the same time. Some companies are years into their transformational journey with an experienced legal ops professional who has already built a good process but is constantly looking to improve. Others are struggling to figure out where to start. Not surprisingly, each group has a different set of priorities.

Later-adopting law departments first focus on building process and controlling legal spend. They typically are smaller companies with smaller ops teams, so they require easy-to-use tools that are smart and “just work.” They are also more likely to lean on tried-and-true processes that those tools commonly support. The goal is to start applying business discipline to the law department through transparency and a demonstrable budget and outcomes, while also solving for some of the top cost-related KPIs.

Larger or more sophisticated law departments mostly have a spend management process and technology in place. They leverage the data collected by the system to facilitate better decisions. They also tend to have a broader organizational reach and are looking to expand business discipline past spend management and automate processes in other key areas, such as contract, matter or document management, ideally by leveraging the same tools or platform used for spend management.



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The Future of Legal Operations

Disrupting the relationship with outside counsel is just the beginning. Legal ops professionals are also likely to disrupt processes around information governance, risk management, intellectual property, and more. All of this is dependent on clearing two major hurdles.

1. Legal operations is growing so fast it is unclear if there will be enough talent. No business schools and almost no law schools train for legal operations, and few have the knowledge base required in both business and the law. Making it worse, some of the most talented professionals are moving to law firms or consulting practices, often at higher pay. For these reasons, we are likely to see the substantial outsourcing of legal ops (some are calling it “ops in a box”) to managed services providers who can better leverage talent among numerous organizations.
2. The other major challenge is affecting change in an area that has largely been resistant to it. Almost two-thirds of Law Department Operations Survey respondents say that their job is “primarily change management.” A lack of desire to change will make disrupting legal difficult and only possible if the right processes are supported with the right technology partner.

While the rise of legal operations professionals has made a substantial impact on basic spend management – more than 70 percent of respondents to the Law Department Operations Survey consider their electronic billing operations to be at least somewhat mature (i.e., rated as a 3 or more on a 5-point scale) – there is much more to be done toward applying business discipline to the legal function. We can expect to see:

- More work sent to alternative legal service providers and offshore legal process outsourcers.
- More alternative fee arrangements deployed for work that does stay with law firms.
- More work automated or done in the business units via self-service models.

Driven by legal operations professionals, law departments will continue to evolve. They will continue to improve in terms of spend management and the selection of counsel. Additionally, they will collaborate more effectively, manage contracts better, and work more effectively with other business units. The biggest change – and the one that is fundamental for disruption – is a new worldview where the law department is no longer considered special and, like other business departments, relies on process, technology, and data.

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