

Legal Project Management



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Introduction

Legal Project Management adapts traditional project management principles to the purchase and management of legal services to create a complete management approach calculated to match and exceed the client's expectations of his or her lawyer.

After a brief consideration of the principles of project management this article considers the purchase of legal services by a client the incidents of that purchase and their management.

The contract by which the purchase is required to be recorded in is usually described in Anglo-Australia jurisdictions as a retainer. A solicitor's freedom to agree upon the terms of the retainer, particularly terms as to costs, is relatively recent and still subject to regulatory restraints.

The retainer is nonetheless the principal means of:

- securing a satisfactory relationship with a client by aligning the commercial interests of client and solicitor;
- incentivising the solicitor's overall performance.
- treating a law firm as a seller like any other seller. With such a seller the commercial buyer would:
 - make his or her choice by competitive tendering on evaluation criteria including price, qualifications and experience;
 - negotiate a service agreement fair or favourable to the buyer; and
 - manage the delivery of the services so as to ensure the buyer's recorded expectations are met.

Project Management and Legal Project Management

Effectively project management comprises project management, analysis management and information management.

Project Management: A project, by definition, is something that produces desired outcomes, is unique, novel, and has a beginning and an end. Any legal matter regardless of size, type or complexity fits these criteria, and would benefit by the application of project management principles and techniques.

Analysis Management: The analysis of facts, incidents and events as they relate to time and legal issues are central to all matters. To complete analysis management requires supporting procedures and tools.

Information Management: A wide range of systems for the management of information are available. These systems are all suitable for the sorting, searching

and the categorisation of documents, however, they only have a limited function for the analysis of information contained in the documents.

Diagrammatically the interrelationship of these elements can be shown in this way:



The potential benefits to be obtained by a sophisticated commercial buyer of legal services and his or her solicitors from use of a legal project management framework include:

- better advice and accountability;
- improved matter planning;
- improved performance against defined scope of work and budgets;
- competitive advantage and improved financial performance.

The Commercial Buyer

Increasingly the sophisticated commercial client, with the help of techniques deriving from the construction industry such as tendering, contract establishment, contract administration, and project management, is striving to manage the solicitor-client relationship from beginning to end as a single dynamic relationship so as to optimise performance including cost.

There are at least three stages in the evolution of this integrated management of legal services. Clients may be in one or more of these stages of management of their solicitors;

- The client in the first stage makes unco-ordinated and haphazard attempts at containment of cost. He or she manages the relationship by crises such as an extraordinary bill or a poor result and the principal tool of management is the termination of the solicitor. Until he or she uses that tool both client and solicitor see the client's job as being to pay the bill.
- The client in the second stage may negotiate a retainer and will monitor cost but usually fails to co-ordinate the management of cost and quality.
- The client in the third stage recognises that performance and cost must be managed as one taking into account the retainer, the client's concerns, the dynamics of law firms and the realities of contemporary legal practice.

This third stage of management is clearly the most desirable. It has these characteristics:

- Selection of the solicitor is based entirely on:
 - merit;
 - cost;
 - prior experience; and
 - budgeting, programming and management skills
- The goal is to select a particular solicitor with whom a long-term relationship is expected, so long as the client's expectations are met. This means overcoming any bias in favour of large firms. It also means short sightedly avoiding playing firms off against one another.
- Managing as one legal expenses and the legal work, including strategy, tactics, staffing, quality, and other non-monetary aspects of the performance of legal work that trigger higher bills.
- Alternative billing is used to meet client goals, reward the solicitor's efficiency and quality. Alternatives should be tested before implementation by solicitor and client to show feasibility and trust.
- The retainer sets out standard policies and procedures which allow efficient bill examination by the client.
- Bills are in standardised task-based or project-based formats to facilitate review and solicitor to-solicitor comparisons.
- Matter management and bill review are integrated. Performance, staffing, quality, strategy, and tactics are monitored through bills, budgets, plans, and reviews.
- Solicitor-client communications are electronic to allow prompt management feedback.
- Post-mortems of significant cases are conducted to extract lessons and assess the solicitor's performance.

Selecting the Right Solicitor

The client should solicit additional information on experience and fees. The solicitor can be asked to make a presentation regarding his or her qualifications, experience, staffing, evaluation of a matter, budget/plan, and fee arrangements.

Budgeting skills, an ability to meet budgets and programming skills need to be criteria of selection.

One tip that a solicitor's actual experience is less than maintained is its reluctance to budget its fees or provide a detailed evaluation or plan for a matter. Experience is the best tool for creating budgets and plans. Without experience a solicitor cannot budget or plan.

Selection should be based on an evaluation of the qualifications of the solicitor and team that will actually be assigned to the work.

The right solicitor is the most experienced, competent solicitor eager to have the business with a pragmatic plan and reasonable budget.

Risk Management

Risk management is an integral part of good management. Because of this and because risk management strategies support favourable and reliable procurement decisions, a formal risk assessment should be a part of any procurement of legal services to identify potential risks early and choose the best option for management.

The Retainer

The common law and ethical rules give the client an edge over the solicitor in terms of control, but they provide little guidance on how to exercise control over, the mechanics of the relationship or over setting fees beyond the vague requirement that they are reasonable.

The client fees therefore needs to create a legal project management system in which the solicitor's incentives are consistent with the client's objectives and the client is protected against abuse.

The retainer can create such a legal project management system if it covers satisfactorily:

- Scope of work.
- Client expectations and goals.
- Matter management.
- Billing arrangements (especially if there is to be an alternative to hourly fees).
- Timing and format of bills.
- Hourly rates, if applicable, including how changes are to be made.
- Staffing, including how changes are to be made.

- Communication.
- Limits on authority and when approvals are required.
- Ethical considerations, like avoiding conflicts of interest.
- Resolving billing disputes.
- Plans and Budgets.
- Consequences of exceeding the budget.
- Control of work; and
- Publicity.

Planning and Budgeting

Solicitors, especially those who are billing by the hour, have little incentive to plan ahead, yet a client cannot wait until the work is done to understand what it might cost, the risks involved, and the options. Without agreement on the scope of the client's work, an evaluation of the risks of the work, a plan for handling them, and a budget for likely cost, the client cannot make rational judgments about whether or not to pursue the work and what resources will be required to handle it.

Plans need to be created for the client's work, including not only the most likely strategy and tactics, but likely contingencies, pitfalls, detours, and options as well. Plans establish the objectives and the path to their fulfilment. The work done all needs to fit within the objectives.

A plan grows out of an evaluation of risks and a budget grows out of the plan, when a price is assigned to each task in the plan. The plan is thus the skeleton on which the budget is hung.

Changes to a budget should also be approved by the client.

Managing Resourcing

Resourcing is a key feature of any project management. Controlling legal staff is as crucial to controlling legal fees and should be a shared responsibility.

In selection for example, the client needs to avoid a "bait and switch routine" or buying "a six pack". Once a client goes through the selection process he or she is entitled to ensure that the chosen lawyer is handling the case and not someone else.

The client can also ensure that work is not being done by an amorphous and ever-changing "team".

With the addition of each timekeeper, the time wasted by all the others on internal conferences increases, extra copies of many documents have to be made, and so on. "Churning" the staff by replacing team members who are already up to speed with new staff not only wastes time educating the fresh recruits, but wastes the investment in the replaced staff.

In addition to controlling the quantity of staff, the client can control their quality to ensure all people doing the work are cost-effective.

Managing Quality

Attentive solicitors appreciate the business, look for ways to save fees, return phone calls, voluntarily adjust bills, and are constantly alert to the client's needs.

There are warning signs for which clients should be alert, either at the outset or as the relationship progresses.

At the outset:

- High firm overhead. Primary expenses for solicitors are salaries (including partner profit divisions), professional and office expenses. A lean firm will always have the potential to be cheaper.
- Claims that the work is too unpredictable to plan or budget. This is a sign of inexperience or an inability or unwillingness to be cost conscious.
- Legal community gossip, about changes in the health of the firm, billable hours quotas, changes in size, new office space, defections, and so on.

As the relationship progresses:

- Staff additions and changes in staff.
- Inattention of the primary solicitor or assignment of responsibility to another are again signs that the client is being taken for granted.
- Slow bills, which impede management.
- Ignoring the retainer agreement, including bill formats.
- Exceeding budgets by a significant amount.
- Bills which include impromptu discounts or adjustments can be a sign of cost-consciousness, but may also indicate that even the solicitor thinks fees are too high in comparison with value.
- Events that were unanticipated by an agreed management plan.
- Lots of internal conferences, memos to the file, and other "internal" work, but relatively little external activity with the court or opponent or third parties.
- The solicitor cannot give good reasons why particular tasks are necessary, eg discovery.
- Reluctance of the solicitor to apply for an early trial or to discuss settlement. In legal work other than litigation, the equivalent is a reluctance to meet with the other side to conclude negotiations or endless rounds of tiny changes to documents.

- "Chunky" time entries in which the "core" team members bill chunks of time even when there is little to do.

Legal Risk Management and Quality Assurance

Legal risk management and quality assurance are characteristics of those "best practice" solicitors with whom the sophisticated client is most likely to be able to align its interests.

- Legal risk management may be defined as the design and implementation of management strategies or internal controls or both to ensure compliance with the law and protection against risks that might otherwise result.
- Quality assurance is a separate management strategy. In Australia and New Zealand AS 4360-1998 governs risk management and AS9001/ISO9001 quality assurance. There are guidance materials available from Standards Australia for both standards.
- Quality assurance is, however, a complimentary management strategy to risk management. Whilst risk management aims to protect a solicitor and his or her assets and earnings from loss and liability quality assurance promotes a commitment to provide quality service.
- Like other successful management initiatives both require:
 - Understanding and acceptance from top to bottom of a firm; and
 - Top down commitment so as to ensure entity-wide compliance.

The two also overlap in that both aim to minimise claims, in the case of quality assurance complaints from clients, so that the two processes can be integrated. A quality assurance system can be a way of establishing and maintaining a legal risk management regime.

A comprehensive legal risk management scheme dealing with clients' work without mistake and as quickly and efficiently as possible must be built by:

- identifying the risks likely to arise because of the nature of the work undertaken;
- analysing these risks;
- assessing them; and
- taking steps to reduce or eradicate them.

Alternative Fees

- It is critical to recognise the distinction between billing methods and pricing. Pricing must be competitive and whether it is or it is not competitive is determined by factors including:
 - the type of work;
 - the client;
 - the type of pricing policy the solicitor chooses to adopt;
 - the effect of competition in the market.

Promptly venting frustration with bills is important. From the loyal client it is a gift.

Hourly rates have a place when the client's work cannot be scoped but all too often they emphasise time at the expense of quality or efficiency and quantity over quality. In this they make the commercial interests of solicitor and client diverges whereas what is needed is incentives which make those commercial interests coincide. Alternatives to hourly rates can re-align the interests of client and solicitor.

The question that the solicitor must seek to answer in choosing any alternative billing method is "Does this method best measure the value of the legal services?" The services only have value insofar as they meet the needs and wishes of the client. It is the client and his or her perceptions that define value just as they define quality.

As much as clients complain about hourly fees, they are unsure what to expect with alternatives. Yet alternatives can be tested without risk. Hourly fee budgets or estimates can be used as experimental fixed fees, with client and solicitor asking the question "What if that estimate had been a lump sum fee?"

Alternative fees to hourly rates need to be tailored to the client's work to:

- create incentives consistent with the client's objectives;
- ensure that fees are proportional to value.
- make fees predictable; and
- shift part of the risk to the solicitor (who is, after all, in the best position to balance risk and reward).

The client who is apprehensive of a change from traditional hourly rates to alternative billing can "test drive" alternative billing whilst paying hourly rates by using estimates or budgets as hypothetical lump sum fees.

Comments and Conclusions

In Australia the principal mechanisms by which a client can review a solicitor's bills are extra-curial complaint procedures and the process of assessment still known in some jurisdictions by the name of "taxation". It is, however, possible for the well drawn retainer to impose a more comprehensive and effective and less formal and cumbersome scheme of accountability on the solicitor by the type of audit akin to

what accountants call a performance audit, one which considers issues such as economy, efficiency, cost-effectiveness, competence, quality of service and performance.

Applying Legal Project Management to management of a client's work can achieve these benefits:

For the client:

- better initial advice and confidence in outcomes.

For the solicitor:

- Improved planning (accurately defined scopes of work, accurate estimates of costs and outlays and efficient allocation of scarce and expensive resources).
- Improved performance against defined scopes of work and budgets.
- Competitive advantage and improved financial performance.

Legal Project Management also has the potential to make hourly billing an exceptional billing technique, not the norm, justifiable only when too many unknowns and variables make it difficult, if not impossible, to use alternative billing techniques.

Legal Project Management Contacts

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