

Roundtable Report

Making the First Move

Experiences of first time in-house counsel

February 2016

Contents

Welcome	3
The lure of in-house practice	4
Challenges at the coalface	4
The rewards.....	6
Timing the jump	6
In retrospect.....	7

Welcome

Welcome to the February 2016 Mahlab Roundtable Report.

This is the fourth report in our popular Roundtable series designed to expose and explore the challenges and opportunities facing legal professionals today. Hosted in Melbourne and Sydney, our Roundtable discussions continue to provide participants with the opportunity to connect, share their experiences and gain advice from their counterparts, while providing valuable insight into the legal industry.

In this report we detail discussions with professionals who have recently made the move from private practitioner to in-house counsel: from their motivations and challenges in transition, through to the joys and opportunities of the corporate experience.

The Roundtables were attended by representatives from the public and private sectors spanning a range of industries including digital, information technology, property development, energy, transport, infrastructure, and professional services.

This report builds on the findings of previous Roundtable discussions which focused on the experiences of general counsel, company secretaries and sole legal counsel. Please keep an eye open for our next Roundtable Report, which will explore the role of deputy general counsel.

All Roundtables are conducted under Chatham House Rules.

We thank all participants for their eager involvement. Undoubtedly readers will benefit from their candid reflections.

You can join the conversation online via #MahlabRound, follow @MahlabLegal on Twitter and connect with us on LinkedIn.

Sincerely,



Lisa Gazis
Mahlab Managing Director
NSW



Katherine Sampson
Mahlab Managing Director
VIC

Exploring the move from private practitioner to in-house counsel

In recent years, in-house opportunities have become more prevalent and increasingly coveted by private practice lawyers. In-house legal teams in popular industries often have their pick of some of the best and brightest lawyers trained by the top law firms.

Correspondingly, law firms are facing difficulties retaining their lawyers, particularly at the fourth to fifth year level, when practitioners experience the 'in-house itch', often precipitated by a secondment experience or by hearing about friends' and colleagues' experiences in-house.

The lure of in-house practice

There are some recurring themes in lawyers' motivations for seeking to move in-house. The most oft-cited reason is to work alongside the business. Many private practice lawyers feel disconnected from their clients as 'mere service providers' and feel frustrated by the restrictive structure of private practice. These practitioners perceive that working at the client coalface will offer a greater sense of purpose and professional satisfaction.

Challenges at the coalface

Transitional troubles

The role of in-house counsel has distinct challenges that lawyers must learn to accept and adapt to if they are to succeed in this environment. Lawyers often find the transition difficult and lament a lack of support during this process. While most in-house counsel complete a formal induction program when they commence a new position, very few organisations, including those with a sizable legal team, have a training or on-boarding procedure specific to legal employees. While the broad general induction program is helpful as an overview of the organisation, first time in-house lawyers feel that more structured and targeted training would ease their teething issues. These transitional issues subside as the lawyer gets to know the business and becomes accustomed to the in-house environment.

Removing the hierarchy

Although private practice lawyers often feel restricted within the law firm hierarchy, they can find the lack of structure in the in-house environment confronting at first. While the law firm hierarchy can be a source of frustration, it can also provide a level of comfort as private practice lawyers are trained in an environment with very sophisticated risk management protocols and clear policies whereby practitioners below partner level are seldom responsible for making decisions except in close consultation with the partner or senior associate who supervises them.

By contrast, in-house lawyers are regularly called upon to exercise independent discretion and to guide the internal clients' decision-making process. New in-house lawyers can feel overwhelmed by this responsibility, particularly in the early stages when they are still getting to know the business and learning about the official and unofficial policies and the organisation's appetite for risk.

Interacting with the business

In the in-house environment, work comes from a number of sources: from different members of the legal team and directly from the business. Being surrounded by the client can mean that the lawyer is often bombarded with work and the prioritisation of tasks can be challenging. Bigger organisations with larger legal teams tend to have a more structured approach to allocating work.

The way instructions are received can at times be unclear and confusing. Some in-house lawyers are simply copied on emails without a specific request for advice or action. It is at times awkward to volunteer legal advice or contribution if it is not expressly sought, especially when dealing with senior executives.

In-house lawyers gradually develop a strategy for communicating with the business to establish and manage priorities. As their understanding of the business evolves, in-house lawyers also learn when to escalate matters and when to ask for help.

Relationships with stakeholders

First-time in-house lawyers work hard to build relationships with internal clients and are mindful of avoiding the perception that they act as a roadblock to the organisation's commercial or political objectives.

Despite these efforts, there are circumstances where they need to push back against the internal clients in order to protect the organisation from incurring undesirable legal risk. Though in-house lawyers must establish the trust and confidence of the business, they also need to maintain the ability to say no when necessary. External lawyers have a degree of separation from the client that can make it easier to give legal advice that may have unfavourable practical implications for the business. Further, external lawyers, consulted for their subject matter expertise, are often perceived to have more authority and credibility.

Some Roundtable participants felt that it takes time to earn the right to be consulted early and often when it comes to strategic business decisions. In contrast, when they were working in private practice, they may have been brought in on highly confidential matters from the very beginning and would even meet with the General Counsel or CEO before the in-house legal team was informed.

The battle for boundaries

First time in-house counsel face a common struggle to find the balance between building relationships and establishing boundaries. A vital part of the in-house lawyer's role is to engage with the business and develop open communication lines to ensure the legal team is consulted and able to exercise influence over decisions.

In-house lawyers are sometimes asked by their internal clients to assist with non-legal work. This may be driven by a misunderstanding as to the lawyer's role or by an attempt to offload the particular employee's workload. Some Roundtable participants were disappointed that due credit was not attributed for this work and that their efforts went unnoticed by senior managers. Without undermining their efforts to gain the trust and confidence of the business, in-house lawyers need to find ways to ensure that their contributions are recognised or learn to say no if the request is beyond the scope of their role or more appropriately handled by another employee.

Quantifying and demonstrating value

First time in-house counsel must adapt to their function and status within the organisation.

In the law firm environment, they were fee earners and regarded as the economic engine of the business. In contrast, in-house lawyers don't generate revenue and are, in fact, a cost to the business and therefore sometimes perceived as a drain on profits.

While in private practice billings were a key performance measure, in-house lawyers need to find different ways to demonstrate their value. Some are able to refer to financial indicators such as the reduction in external legal fees but more nuanced value-adds include preventative measures that are much harder to quantify.

Participants agreed that this change from profit-centre to cost-centre can impact the level of administrative support and resources allocated to the legal function.

The rewards

First time in-house counsel enjoy working alongside the business and seeing the results of their work come to fruition, thus fulfilling their primary motivation in making the move. Many enjoy adopting a less black-letter and more commercial approach. Being engaged in the client's objectives also increased the practitioners' sense of value and professional satisfaction.

They report that their legal work is more varied and that their legal skills have broadened as a consequence. They are also more agile in advising on areas outside their primary expertise.

Some lawyers find there are lifestyle benefits associated with moving in-house. There is more flexibility to work from home and manage one's own workload. The absence of the pressure of the billable hour and timesheets also appeals.

Timing the jump

Lawyers often question how long they should spend in private practice before seeking to move in-house. Roundtable participants were unanimous in recommending that the ideal time to make the transition is when the practitioner has consolidated his or her legal experience and developed the confidence to face the client day-to-day and on their turf. The timing of the move depends considerably upon the size and nature of the legal team that the practitioner is joining.

In-house lawyers who work in small teams or solo roles will require greater professional confidence and maturity in order to effectively exercise influence over internal stakeholders. Lawyers working in government or statutory corporations find that the additional political overlay requires very strong stakeholder management skills.

One participant commented that having made the move in-house after more than 10 years in private practice, they have found that their additional experience gives them credibility. They brought to the company not only a strong knowledge of their area of law but also a network of connections with the main players in their industry. Having developed commercial acumen in private practice, they feel equipped with the instinct to sense when a transaction is driven by something other than good commercial reasons and they are alert to the need to investigate further or ask questions to better understand the context of the client's instructions. Another participant moved to an in-house role with just three years' post-qualification experience at a major law firm. They commented that their legal skills were still developing at that stage and reflected that they probably did not continue to grow technically at the same pace in-house.

The corollary is that lawyers who wait until later in their careers find it harder to secure their first in-house role at a senior level. Senior roles are rarer and are usually contested by a pool of applicants who already offer in-house experience. Applicants coming straight from private practice may be looked upon less favourably by hiring managers who understand the requisite transition period and prefer to recruit lawyers who have already gone through this process.

In retrospect

Overall, Roundtable participants felt that the decision to take their careers in-house was the correct one. It was very clear that there was an adjustment period where they had to come to understand not only the business processes, priorities, commercial nuances and associated risks, but also how legal services are provided in the in-house environment.



Melbourne: Level 1, 535 Bourke Street, Melbourne 3000 T: (03) 9629 2111 E: melb@mahlab.com.au
Sydney: Level 9, 6 O'Connell Street, Sydney 2000 T: (02) 9241 1199 E: syd@mahlab.com.au

 @MahlabLegal

 mahlab-recruitment

www.mahlab.com.au