

The Government legal in-house model: International case studies — responding to change

Tania Warburton



ILANZ
IN-HOUSE LAWYERS ASSOCIATION
NEW ZEALAND LAW SOCIETY

NZLS EST 1869

The Government legal in-house model

Tania Warburton was awarded the ILANZ scholarship at the end of 2014. Using this support and her 2015 Leadership Development Centre (LDC) fellowship, Tania attended Harvard Law School's *Leadership in Corporate Counsel Programme*. She also attended a Corporate Lawyers Symposium at the University of Birmingham and met with representatives from BT and public sector counterparts in the United Kingdom. On her return to New Zealand, Tania interviewed a number of NZ Government lawyers. This report reflects on the learnings from this research and experience.



▲ Tania Warburton

Acknowledgements

I would like to acknowledge and thank Helen Mackay, Fazleen Ismail, Gabrielle O'Brien and Sophie Melligan of the New Zealand Law Society (NZLS) and Rosemary Hannah-Parr and the team at LDC who supported and funded this research. Thanks to Jeff Orr, Justice Matthew Palmer QC, Michael Heron QC and Cheryl Gwyn who encouraged me to consider undertaking this work. I would also like to thank Una Jagose QC, Anneliese Parkin, Dan Fitz and Sophie Tredget from British Telecom, Dr Ben Yong, David Noble, Doug Walters (GLS), Phil Griffiths (GLN) and all the government lawyers (both in NZ and the UK) who agreed to be interviewed on the basis of anonymity. All these people generously gave up their time for this research.

The views expressed in this article are entirely personal to the author and build on a presentation given by the author to the 2016 Lawyers in Government Conference (GLN, 2016)

<i>Introduction</i>	1
<i>The New Zealand Position</i>	3
<i>The UK Government Legal Services</i>	7
<i>BT Legal</i>	10
<i>Lessons for New Zealand</i>	14

Introduction

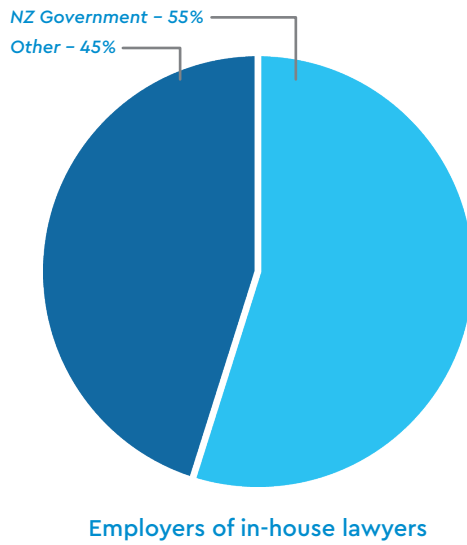
Whether you are a client or provider of legal services, the legal market is undergoing change. Globally, in-house legal teams are growing in their influence.¹ At the same time, they are facing increased pressure to deliver more value to their business for less cost. Whilst the legal budget tightens, the demands for legal services have grown, through increasing regulation and compliance requirements. The key issue for in-house counsel is how to meet this "more for less" challenge.² Internationally, in-house counsel are re-examining the way legal work is undertaken:³

Times have changed for legal departments since the options for handling complex legal work were limited to hiring more staff, or relying on external counsel to execute work when the internal legal team were too busy. The challenge for today's legal departments has not only been to do more, but to do more better, faster, with fewer staff by exploiting technology and data, and at a lower cost.

John Dzienkowski, "The Future of Big Law: Alternative Legal Service Providers to Corporate Clients"⁴ identifies the five drivers of change in corporate client behaviour (over the last 15 years) in relation to legal services. These are:

- » The growth of in-house legal staff. Businesses are now using their own legal employees to handle larger volumes of work. These employees are often hired from outside law firms so have the necessary experience for the work and in turn, they control the work given to outside law firms.
- » There is a greater demand for controls on outside legal costs. This means increasing scrutiny on legal bills. There is a move away from reliance on a single law firm for all legal advice. Businesses are spreading their legal work among law firms to create competition and control costs. In addition, some businesses are "in sourcing" work such as discovery to reduce costs.
- » The decline in litigation and growth in alternative dispute resolution as a means to control cost.
- » A growing unwillingness to pay for lengthy legal advice prepared by juniors and reviewed by partners in the big law firms. Clients do not mind paying premium rates for advice of the senior expert counsel but they are becoming increasingly unwilling to pay for overly long advice prepared by young junior counsel. In many cases, in-house teams now have the juniors to do that work internally for less cost.
- » Businesses are also increasingly relying on the non-lawyer controlled delivery of some legal services such as the large accounting firms.

1. The Law Society of England and Wales "The GC350: benchmarking study for the in-house community: Wave 1" (May 2016) at 3 <www.lawsociety.org.nz>
2. Susskind R *Tomorrow's Lawyers* (Oxford University Press, 2007)
3. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>>
4. John Dzienkowski "The Future of Big Law: Alternative Legal Service Providers to Corporate Clients" (2014) 82 *Fordham Law Review* 2995 at 2998–3001



The New Zealand (NZ) Government legal service is a prime example of this growth of in-house counsel. As at June 2016, the NZ Government was the largest employer of in-house lawyers, employing 55% of all NZ-based in-house lawyers. Government legal teams are also larger.⁵ However, like their private sector counterparts, government in-house counsel are not immune from the "more for less" challenge. A renewed emphasis on working across the government sector, together with the need to demonstrate value, require government in-house legal counsel to examine the way they work.

This report looks at the current NZ Government in-house legal services model and compares it with two international organisations (public and private) who have undergone significant changes in recent years, namely the UK Government Legal Department and the legal department at BT (British Telecom). How have these other models risen to the challenge and what are the possibilities here? ■

5. NZLS "Over half of in-house lawyer employers have team of one" (14 June 2016) <www.lawsociety.org.nz/news-and-communications/latest-news/news>

The New Zealand position

The New Zealand government legal model is essentially departmentalisation. In brief, at its apex sits the Attorney-General, Senior Law Officer and Minister of the Crown, together with the Solicitor-General, the junior non-political Law Officer, as the principal legal advisors to the government, with overall responsibility for maintaining the rule of law. They are, in turn, supported by the Crown Law Office, providing legal advice and representation to the government.⁶ In practice, much of the legal work is situated within the in-house legal teams of each government department. These teams, usually comprising a Chief Legal Counsel and range of solicitors, are employed directly by and responsible to the individual government departments.

The provision of Crown legal services is governed by the Cabinet Directions for the Conduct of Crown Legal Business 2016.⁷ Essentially, where any department requires legal services on core Crown legal matters from outside its own in-house legal team, it must be referred to the Solicitor-General and the Crown Law Office. Core Crown legal matters include issues concerning the Crown revenue, enforcement of the criminal law, the exercise of constitutional powers or duties (including the Treaty of Waitangi, the Crown-Māori relationship, international obligations and the NZ Bill of Rights Act 1990) and any litigation in a Court or a tribunal where the Crown is a party either through a Minister or government department. Legal work outside these areas can be outsourced directly by the individual department to an external legal provider.

Previous reviews of the provision of government legal services

Despite some fundamental changes to the public service since the 1980s, the way government legal services have been carried out has remained relatively stable. Calls for greater centralisation have been made but largely resisted and as the government legal service expanded, departmentalisation has remained at its core.

In 1986, the first systemic review of government legal services was undertaken by Professor Gordon Orr and Mr David Bradshaw.⁸ This was at a time when in-house legal teams were a relatively new phenomenon and there were only 350 solicitors employed throughout the public service (including Crown Law).⁹

The purpose of the review was to consider the appropriate framework for the conduct of the Crown's legal business to ensure that the services provided were

6. For an in-depth outline of the respective legal roles in government see: Cabinet Office *Cabinet Manual 2008* (Wellington, 2008) at 48–49, McGrath J "Principles for Sharing Law Officer Power: The Role of the NZ Solicitor-General" (1998) 18 NZULR at 197, Palmer, M "The Law Officers and Departmental Lawyers" [2011] NZLJ at 333, & Dean M & Cochrane D *A Review of the Role of Functions of the Solicitor-General and the Crown Law Office* (24 February 2012) at 8–11

7. *Cabinet Directions for the Conduct of Crown Legal Business 2016* CO(16)2

8. State Services Commission "Review of Government Legal Services" (August 1986)

9. at Appendix II. This included 40 in the Public Trust, 19 in the Housing Corporation, and 23 & 19 in the Law Reform and Land and Deeds divisions respectively in the Justice Department.



“What if we don’t change at all... and something magical just happens.”

properly co-ordinated and of the necessary quality. Whilst recognising a number of strengths in the system (the role of the Solicitor-General, a separate Crown Law Office and the availability of specialised advice at a senior level within departments), the Review also highlighted the difficulties with the departmentalised approach. In essence, these included:¹⁰

- » The ad hoc growth of the Government legal service. There were no formal links between in-house solicitors across departments and between in-house counsel and the Crown Law Office. The Review noted this was unsatisfactory, leading to a duplication of work and limited recognition of the specialised knowledge of some in-house solicitors. The Review considered there was considerable scope for improvement in the overall coordination of the Government legal service to ensure resources were used in the most efficient manner.
- » There was no adequate support service and no central database of legal opinions. Consequently, an opinion given in one department on a matter of interest to other departments would rarely come to the notice of those departments.
- » With each department being responsible for recruitment, training and career development, there were no opportunities for lawyers to move between departments to broaden their legal experience. There was also no overview or planning of what the Crown needed in terms of its legal staff across government.
- » In-house counsel were isolated, with no network across the departments to provide a group of professional peers.

The Review recommended greater centralisation of the government legal services, through the creation of an Attorney-General's department, containing two divisions: the Crown Law Office and the Legal Services Directorate. The Office of the Solicitor-General would stand on its own, free of administrative responsibilities, with the Solicitor-General focussing on advising Government on major legal questions and representing it in important Crown litigation. Solicitors in all government departments (aside from the Ministry of Foreign Affairs) would fall within

10. at 14–18

the jurisdiction of the Legal Services Directorate, which would have responsibility for recruitment, salary scales, career development, performance reviews, promotions and training.¹¹

However, in 1986 the government was moving away from a centralised public service approach to individual departments with their own accountabilities (the State Sector Act 1988 was just around the corner) and the Review's recommendations concerning structural change were not adopted.

As the growth of in-house counsel increased, departmentalisation has remained the norm. Little changed until 2011, when the current Attorney-General appointed Miriam Dean QC and David Cochrane to consider the roles and functions of the Solicitor-General and the Crown Law Office.¹²

While the focus of the Dean Cochrane Review (and accordingly its recommendations) was on the functions of the junior Law Officer and the Crown Law Office, it also recognised the importance of a co-ordinated approach to the provision of government legal services. But the reviewers stopped short of recommending a centralised government law firm, comprising all public service lawyers.¹³ They considered it important for departments to continue to retain their own in-house advisers, able to provide specialist legal advice at short notice within a department's overall strategic objectives. According to the reviewers, the advantages of a centralised law service could be achieved by the establishment of the Government Legal Network (GLN), for minimal cost.



The Government Legal Network (GLN)

As stated on its website:¹⁴

The GLN is a collaborative initiative of departmental Chief Legal Advisors and the Principal Law Officers (Attorney-General and Solicitor-General). With the support of all government lawyers, the GLN leverages the collective legal resources and expertise of the Crown to support the Government in the lawful delivery of better public services to New Zealanders.

Led by the GLN Director, the network is accountable to the Solicitor-General and comprises approximately 800 in-house lawyers working within government departments. The GLN Advisory Board includes the Solicitor-General, a departmental Chief Executive, a central agency senior manager and nominated Chief Legal Advisers. Based on the United Kingdom Government Legal Services model (see page 7), the GLN seeks to provide a virtual government legal service, without physically centralising government legal services within the one agency.

Since its inception in 2011, the GLN has implemented a number of initiatives to improve the way government lawyers work together:

- » Introducing a legal risk reporting system to provide a risk framework across government

11. at 5–9 & Chs.5,6 & 8

12. Dean M & Cochrane D *A Review of the Role and Functions of the Solicitor-General and the Crown Law Office* (24 February 2012)

13. at 35–41

14. <www.gln.govt.nz>

- » Identifying joint procurement opportunities: such as whole of government contract for legal research resources
- » Introducing various training initiatives, including an annual Lawyers in Government conference and an induction programme for new government lawyers
- » The GLN intranet: designed to enable the sharing of precedents and legal advice across government
- » Facilitating secondments between government departments
- » Co-ordinating some government legal recruitment through the summer clerk and graduate programmes; and
- » The establishment of various practice groups, such as ICT, natural resources and international law, within the network, to allow government lawyers practising in these areas to share information, identify risks and provide training seminars.

These initiatives have been instrumental in shifting the focus of chief legal counsel to a more collaborative approach but much of its work is tied to graduate recruitment, training and secondment opportunities. The intranet is in its infancy and requires departments to "volunteer" uploading their advice, which is ad hoc and incomplete. For the main part, the NZ government legal service, although substantially larger over the years, remains departmentalised. This raises the issue as to whether legal resources (both in-house and external) are being used in the most efficient manner. ■

The UK Government Legal Service

Prior to 2014, the previous UK government legal services comprised the law officers (Attorney-General and Solicitor-General) supported by a small Attorney-General's office. The Treasury Solicitor's Department, headed by the Treasury Solicitor, was the main provider of legal services, consisting of approximately 700 lawyers. It carried out the majority of civil litigation and employment law for government. It also provided legal services to just over ten individual departments such as Culture, Media and Sport, Treasury and Education. Most other departments had their own in-house legal teams.¹⁵

The Andrew's Report

In 1987, Sir Robert Andrew conducted a review of the UK government legal service. The report recommended greater consolidation, through merging the key legal departments into an enlarged Law Officers' Department and a more centralised structure for recruitment and career development.¹⁶ Much like the 1986 New Zealand report, the Andrew report's key recommendation of greater centralisation was not taken up immediately. However, it did kick start the creation of the Government Legal Service (the GLS – the forerunner to NZ's GLN).

Like our GLN, the GLS represented a loose professional grouping of government lawyers and between 1990 and 2013 it grew from 800 to over 2000 members.¹⁷ Lawyers continued to be employed by their own departments. However, GLS ran a centralised recruitment programme (recruiting approximately 200 lawyers, 25 trainees and 150 summer clerks annually), facilitated the sharing of legal material and research through the LION intranet system and offered training and career development, allowing greater movement of lawyers between departments.

The Government Legal Department

After approximately 25 years in operation, the departmentalised approach (with a virtual GLS) was formally brought to an end with the creation of the Government Legal Department (renaming the Treasury Solicitor's Department). As part of the government's shared service plan of Civil Service Reform, the majority of government legal teams were brought into the unified structure, doubling the size of the former Treasury Solicitor's Department to over 2000 staff. The department now provides most of the government's litigation, commercial and employment

15. Ben Yong *Risk Management: Government Lawyers and the provision of legal advice within Whitehall* (The Constitution Society, 2013) at 30–46; & Dr G Appleby "Providing Legal Services to Government: Looking beyond Efficiency to the Public Interest" (Paper presented to the Australian Government Lawyers Network Annual Conference, Canberra, 19 June 2015)

16. Ben Yong *Risk Management: Government Lawyers and the provision of legal advice within Whitehall* (The Constitution Society, 2013) at 26

17. at 27

services as well as the advisory teams for the majority of core government departments.¹⁸

As noted by the Attorney General, Jeremy Wright QC MP, in 2015:¹⁹

This is an important milestone, reflecting the impressive work that has taken place in bringing the majority of government legal services into a single organisation. Combining all these different legal teams offers more diverse career opportunities for lawyers and has clear potential to provide both higher quality legal services for government and efficiencies for the taxpayer, in line with this government's broader approach to reforming the civil service.

So how does this work? The Government Legal Department's (GLD) litigation, commercial and employment teams are located within the Department, whilst its advisory legal teams are housed in the various government departments. Initially there were concerns that this approach would affect relationships with various departments and Ministers.²⁰ However, the transition from departments employing their own counsel to that of centrally employed lawyers being sent into a department was managed by retaining the existing Chief Legal Advisors in each department (although now they are employed by GLD). This enabled departments to rely on counsel they already trusted.

The GLD is almost entirely funded through cost recovery, recovering only the direct costs incurred by the organisation. Those lawyers embedded in a department are paid by fixed fees (based on the number of lawyers plus a percentage of the GLD's overheads). Each year, the senior leadership of the GLD meet with the relevant department to assess upcoming work programmes and legal staffing levels (based on historic spends, trends and upcoming litigation). Litigation work is essentially paid on an hourly rate and the employment and commercial groups charge a mix of hourly and fixed fees depending on the nature of the work.²¹ Surpluses are returned to the agencies. In 2014/2015, GLD provided rebates of £2.6m – £2.78m shared among litigation clients and £0.18m to advisory clients. This was in addition to a £4m rebate in 2013–14 and a 5% hourly fee reduction from 1 April 2011 with a further 2% reduction from 1 Dec 2012.²²

Cost savings come from the new centralised structure and new ways of working. For example, around 40% of the GLD immigration casework is now handled by paralegals, freeing up counsel to handle more complex casework.²³

Since its creation, UK government lawyers interviewed noted that centralisation has enabled better management of legal risk across government. Through common information management and sharing, there has been less duplication of effort and

18. The departments include the Cabinet Office, the Departments for Communities and Local Government, Culture Media and Sport, Education, Environment, Food and Rural Affairs, Exiting the European Union, Health, International Development, International Trade, Transport and Work and Pensions, the Home Office, HM Treasury, and the Ministries of Defence and Justice. The Foreign Office and BIS (Department for Business Innovation and Skills) remain outside

19. Treasury Solicitor's Department & Attorney General's Office, "Treasury Solicitor's Department announces name change" (Press release, 18 February 2015)

20. Ben Yong *Risk Management: Government Lawyers and the provision of legal advice within Whitehall* (The Constitution Society, 2013) at 44

21. Treasury Solicitor's Department *Annual Report and Accounts 2014–15* (UK, 2015) at 12 plus interviews with UK GLD legal counsel

22. at 15

23. Government Legal Department *Annual Report and Accounts 2015–16* (UK, 2016) at 13

a core legal department means greater flexibility to move people and resources at short notice where they are needed most.

In such a large department, with employees spread across other agencies, an important issue is the maintenance of consistently high quality advice. Some interviewees expressed concern that a homogenised legal service would lack the healthy tension which previously existed between the Treasury Solicitor's department and agencies' legal teams, allowing the testing of advice and ability to tease out the issues. There was also concern about the loss of specialist knowledge within departments, as lawyers become more generalised and are moved between agencies.²⁴

The GLD seeks to manage this through its Legal Quality programme, which includes a specialist team of drafters to examine the quality of drafting and guidelines; the provision of guidance and training on advisory work; and establishing five "centres of excellence" including devolution, human rights, and freedom of information/data protection. These centres are lead legal teams which have been recognised for their expertise in a particular subject area. In both the 2014/15 and 2015/16 Annual Reports, 95% of GLD clients rated GLD services as "Good" or "Excellent". In addition, the office of the Attorney-General retains responsibility for supervising all legal advice to government and arguably provides the tension needed to test GLD legal advice.

Recruitment and career development are now centrally managed by the GLD. Interviewees agreed that the larger GLD greatly improved opportunities among lawyers in government, making it a more attractive career choice. However, there are issues around the transparency of the promotion system and the ability of those lawyers embedded in other agencies to receive recognition for their value to those agencies, rather than work done for GLD. In addition, there remains the issue of whether to try and attract (and grow in-house) high quality commercial lawyers or simply outsource this expertise to the private law firms, rather than competing with them for staff.

The purpose of the new GLD is essentially to meet the challenge of delivering a higher quality legal service for less cost. GLD itself represents a significant change to the way the UK government sought to deliver its in-house legal service. In the private sector, radical change has also resulted in a re-evaluation of how and who should deliver legal services. ■

24. Interviews with UK Counsel and Ben Yong *Risk Management: Government Lawyers and the provision of legal advice within Whitehall* (The Constitution Society, 2013) at 44–45

BT Legal



Paul Hudson ©

The BT Legal team is viewed internationally as a leading innovator, transforming the way BT's legal services are managed.²⁵ Dan Fitz was appointed Group General Counsel and Company Secretary at BT in 2010, inheriting 450 lawyers, split into 26 different teams. When he arrived, he was told his budget would be cut by 5% each year. As Dan noted:²⁶

It was that constant pressure that caused us to start thinking about well, we made it this year but how do we survive next year or the year after unless we have a plan?

Understanding the problem

First, BT Legal identified their core purpose: "To enable and protect value for BT".

A clear purpose helped focus their approach on their core principles which were essentially about running BT Legal as a business within a business.²⁷

In 2010, BT legal was departmentalised. Legal teams were spread throughout BT, dedicated to a particular line of business or division. The focus was on who they worked for rather than what they did. As a result, there was duplication in the work across the teams.

Dan Fitz and his team undertook a forensic analysis of how they worked. This involved dissecting the legal functions (both internal and external) right down to

25. The transformation of BT's legal services is now a case study, taught at Harvard Law School's Leadership in Corporate Counsel programme

26. Interview with Dan Fitz (Tania Warburton, 2016)

27. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>>

a granular level (drafting, negotiation, research, meeting internal and external clients). What the review found was that as BT's broader business was downsizing, the internal legal teams were:²⁸

- » Gap filling (managing tasks previously done by others in the business)
- » Focused on lower level repetitious tasks that were not location dependent
- » Spending a disproportionate amount of time on drafting bespoke documents and little time on standardisation
- » Continuing to pay external providers on an hourly basis to manage overflows
- » Failing to match the cost of the task with the downside risk.

The analysis found the teams spent only 10% of their time with clients and only 20% of their tasks were location dependent. As a result, BT Legal looked at changing both their internal structure and their external legal spend.

Internal transformation

Like the UK Government Legal Department, BT Legal decided to adopt a shared services model. The focus changed from who lawyers worked for to common skills and needs.²⁹

This meant that many of the core delivery functions were centralised (such as commercial, litigation and employment), funded from a centralised legal budget. Only those senior lawyers and teams performing specialist functions were retained within the BT divisions. For example, consumer law specialists sit in the consumer division. This work is funded by the business unit directly.

Again, like the Government Legal Department, this model required measures to ensure consistency in the quality of the advice. BT Legal put considerable effort into creating standardised deal manuals to emphasise a BT way of doing things. This helped produce consistency in the advice and increased collaboration.³⁰

In addition, on the BT intranet they established a digital front door system, to triage legal requests. It was at first quite basic but has since evolved with drop down menus in plain English which give insight into where and how quickly work requests are being assigned. The client receives an acknowledgment, and is told which lawyer the work has been allocated to and when it will be completed. The data from the system allows BT Legal to baseline the demand for its services, helping it predict future peaks and troughs.³¹

Today there are 275 lawyers across BT. As noted by Dan Fitz:³²

We didn't have to be sub-scale because we had the numbers not to be. That reorganisation created headroom to start thinking about what next. We knew we had to a) give people more money next year in line with inflation and b) had to fund cuts after that.

Dan recognised the value in having in-house counsel who know the client better than anyone else. The goal for Dan was to retain staff, by moving them up the value-chain and manage a diminishing budget. To do that, attention turned to the external spend. The goal, operationalised through its legal triage system, was to maintain the complex and interesting legal work for staff and export the low complexity, repeat work. In essence, ensuring that "the right task, was handled by the

28. Ibid

29. Interview with Dan Fitz (Tania Warburton, 2016)

30. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>>

31. Ibid

32. Interview with Dan Fitz (Tania Warburton, 2016)

right person at the right cost."³³

Changing BT's external legal spend and the use of alternative legal providers

BT Legal uses external legal providers in several different ways, relying on a mix of alternative legal providers (starting with Axiom but now also working with Halebury and Obelisk) as well as the more traditional law firms.

This mixed approach is not unique to BT. Increasingly, other UK General Counsel are taking a fresh look at the tasks they are briefing out. In a 2014 study, Allen & Overy noted the appetite for the new alternative legal providers was increasing with 63% of organisations using them.³⁴ Disaggregating larger projects allowed organisations to divide the tasks among providers.

BT Legal's main alternative legal provider is Axiom. In 2013, Axiom had over 1000 employees (550 of whom were lawyers) and \$150million in gross revenue. It is similar to a management consulting firm, providing analyses and proposals to clients about how to manage their legal work. As noted by John Dzienkowski, it embraces:³⁵

...the concept that clients do not need a full-service law firm to perform all aspects of the transaction for the client at high lawyer rates. Instead, every matter must be analysed and effectively unbundled...The legal work should be unbundled from the non-legal work. The high-risk, complex work should be unbundled from the routine, low risk work.

The purpose of this is to work out who should do what. A lawyer? Non-lawyer? The client?

Axiom also offers insourcing (secondments of Axiom lawyers and non-lawyers into a firm) and outsourcing options for the client. For example, where a corporation manages hundreds of form contracts, Axiom sets up an outsourced managed service model to process the work.³⁶

The alternative service providers are able to offer their services to clients at lower prices than their law firm counterparts (by as much as 30 to 50% below the fees charged by law firms for similar work) because:³⁷

- » The work (and therefore the fees) is disaggregated among lawyers and non-lawyers
- » Less is spent on overheads and premises, offering flexible work environments for their staff



▲ Dan Fitz

33. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>>

34. Allen & Overy *Unbundling a market: The appetite for new legal services models* (May 2014)

35. John Dzienkowski "The Future of Big Law: Alternative Legal Service Providers to Corporate Clients" 82 *Fordham Law Review* (2014) at (2995) 2998-3001 3008 - 3010 & 3015

36. at 3009-3010

37. at 3017-3019; see also C Fowler, D Gribble, A Jacobs, H McKay, L Melsa, S Roberts & A Saunders "What Skills Will In-House Lawyers Need For 2020?" *Practical Law* (Thomson Reuters, 2016) at 2-3

- » Greater reliance is placed on technology; and
- » Most use salaried employees rather than the partner-associate model.

At BT Legal, Axiom operates the front-door system and triages the legal work – low complexity/high volume drafting tasks are allocated to Axiom (and other legal providers) and the complex work goes to BT Legal. This means that essentially all of BT's standard work (anything under £3 million contracts) is outsourced. Initially, Axiom took approximately 30% of the work, it now does 68% of all work requests.³⁸

Outsourcing to Axiom was a major change and BT Legal had to invest time up-front in setting up the audit process, playbooks and service levels. It also requires constant quality assurance and a continuous improvement mindset. A BT Legal Senior Counsel regularly visits Axiom premises, checking on the quality of their output.³⁹ However, for BT Legal, outsourcing the low-risk, low complexity work has been a success, both for the client and BT Legal staff. By removing the volume work, BT lawyers can now concentrate on the complex work where knowledge of the business is the value-add. It gives staff more control over their work.

High risk or specialist work is still directed to the big law firms but BT no longer outsources its routine commercial work to them. BT is also spending less and focussing on fewer firms. It is using regional law firms or others it might not have previously worked with, who have been more innovative in their use of technology, data and project management of the work.⁴⁰ As a result, BT's commercial spend is 75% lower than it was in 2010.

Thinking outside the square: BT Law Limited

BT legal did not stop there. It also embraced the changes to the regulation of legal services that took place in the UK and became one of the first in-house legal departments to obtain an alternative business structure licence and launch its own legal process outsourcing venture.

BT Law Limited handles small tort claims. It originally arose out of dealing with insurance recovery claims from visits by BT engineers (bumps, scrapes and break-ages) but has since expanded and is offering its services to other businesses, such as courier companies. ■

38. Interview with Dan Fitz (Tania Warburton, 2016)

39. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>> & Interview with Sophie Tredget, Chief Counsel – Private Sector Bids, BT (Tania Warburton, 2016)

40. C Fowler "BT's legal transformation" (13 Nov 2015) <<http://uk.practicallaw.com>> & Interview with Dan Fitz (Tania Warburton, 2016)

Lessons for New Zealand



For the last 40 years, government legal services in New Zealand have essentially remained departmentalised. However, with the changes occurring overseas, a rethink is timely. As noted by Chris Fowler:⁴¹

If we hadn't transformed ourselves, it is likely that change would have been imposed on us, so we have managed to control our own destiny and make a virtue out of necessity

In NZ, we are currently replicating legal services across the whole of government. We operate on a sub-scale level – staffing a “complete” legal team within each of the larger government departments. But there are varying degrees of scale. Some departments, lacking the financial capacity to employ a complete legal team, must make trade-offs on the composition of their teams (employment vs property) and outsource to law firms the expertise they lack in-house.⁴² Others operate on a smaller scale (one or two in-house counsel) which results in heavy reliance on Crown Law and law firms to provide essential legal support.

This mixture of in-house capabilities also puts pressure on Crown Law. For in-house counsel, the choice when requiring external support is either Crown Law, external law firms or barristers. For Crown Law, this means the demands it must currently meet are unevenly spread among the government departments and depend on the strength of the instructing in-house team. This approach carries the risk of diverting Crown Law away from its core business (such as litigation, constitutional law, criminal law, and the Crown revenue). As noted by the Reviewers in a recent Performance Improvement Framework Review for Crown Law, it also ignores the collective strength of GLN. The Reviewers recommended a more strategic approach to the running of Crown Law. Crown Law in its response, acknowledged that this required a look across the whole network:⁴³

41. C Fowler “BT’s legal transformation” (13 Nov 2015) <<http://uk.practicallaw.com>>

42. Interviews with Chief Legal Counsel (Tania Warburton, 2016)

43. Performance Improvement Framework: *Review for the Crown Law Office* (June 2017) at 4

The challenge, in the language of the Lead Reviewers, is to 'step up' our leadership in a way that genuinely unleashes the power and capability of the networks we oversee, work in and support. We will build into our systems ways to leverage the collective strength of the more than 800 lawyers in departments across government, as well as the network of Crown Solicitors across New Zealand and the 37 departmental prosecuting agencies.

This report has outlined some options to harness that collective strength. In the UK, both the GLD and BT Legal adopted a shared services model, centralising core legal services (such as employment and commercial law) whilst recognising that specialisation was still required within the various business units. Doing this avoided duplication of work across the teams and better collaboration. Both organisations also looked carefully at the type of work their lawyers were undertaking in order to reduce cost. The GLD devolved work to paralegals and invested in technology. BT Legal concentrated its outsourcing at the low rather than high end of its business.

Both entities designed a solution to meet the particular challenges they faced. Neither relied on either wholesale centralisation or departmentalism. Instead, they recognised the value of specialisation and "insider knowledge" whilst also seeking to avoid the duplication of sub-scale teams across agencies and divisions.

For NZ government in-house legal teams, the innovations undertaken in the UK give us more options to consider than the usual go-to solution: briefing out the top/high end work to cope with increased demand. We need to look at building our in-house legal capacity to aid job satisfaction and rethink the ways we outsource and manage our external legal spend.

As a starting point, we need to thoroughly understand what work we currently provide to our businesses and question whether what we are doing is the best use of our value-add as in-house counsel. Knowing the answer to that question will help us determine what the next steps should be.

For NZ Government legal services, the opportunity exists for GLN to undertake a forensic analysis of the legal work currently performed within departments. Are we appropriately focussing on the matters that present the most risk to the Crown or do we provide the same bespoke legal work regardless of how small or large the risk? Is there scope for greater standardisation of some of our work across government? Do we need to assess what we are currently doing that non-lawyers within our organisations or across government could provide more efficiently?

This would provide the necessary data to consider whether changes to the current operating model (departmentalism) are required, and even if not, whether work currently performed by in-house teams could be performed by others (outsourcing/non-legal departmental staff). The value of in-house counsel is that they know the client better than anyone else and, in government, each department has its own specialist services often operating under complex legislative requirements. There will always be a need for in-house counsel who know the business. The issue is whether the work currently being undertaken by those counsel is making full use of their expertise or whether they are being spread too thinly doing work that could be performed by others.

While New Zealand has not progressed as far as the UK in opening up the landscape for alternative legal service providers (the Lawyers and Conveyancers Act 2006 continues to limit the manner in which legal services can be provided), alternative legal services are beginning to emerge which may provide GLN with options to reduce, across departments, some of the lower level in-house legal work currently being performed. For example, LawHawk (an online legal document generation service), LawVu (a cloud based legal management system) and lexvoco (which provides legal management systems as well as legal advice ser-

vices) all provide different ways to reduce and manage the low-end legal work.

In terms of being able to look strategically across the system, GLN has already had success through the collective procurement of legal databases. There is an opportunity to take this further. One area to consider is legal management systems and templates/IT solutions for the generation of commercial contracts/procurement. This includes using technology which enables legal services to work across the GLN. Considering how to reduce the need for a legal overview of commercial contracts on matters that are low risk to the Crown would also be worthwhile. GLN is best placed to look at standardised contracts and templates for use across the network. BT Legal is moving towards "zero touch" contracts. The legal team provide business units with the tools to complete their own contracts, without the need for a legal overview. Managing the quality and reducing the risks of this approach are dealt with by the use of "drop-down" menu options for units to complete the contracts. There are no "free form" contracts.

Depending on the outcome of any forensic analysis, the shared service model (in areas such as litigation, commercial and employment) would allow the GLN to build capability with a governmental lens. Shared services do not need to be housed in a centralised legal department, but rather could be based within the most appropriate department. For example, employment legal services could be located within a department, which currently houses a large employment practice. Recent changes to the rules regarding shared services have opened up opportunities in this space.⁴⁴

Another option is to consider the shared services model on an initial small scale. The legal teams of the Ministry of Social Development and the new Ministry for Vulnerable Children, Oranga Tamariki, are currently designing a shared legal service across the two agencies. Each agency will also continue to have lawyers embedded within their agencies. As Dan Fitz noted at the recent ILANZ conference 2017, whilst BT Legal embraced centralisation, there is a downside, the legal team can become less connected to the operating units. In order to manage legal risk at an early stage, operating units need to know who to talk to. So BT Legal left some legal teams located within a unit, even though they worked across the organisation.

Sharing legal services initially between two agencies enables the model to be trialled on a small scale and grow organically. However, as it expands, quality assurance management will become a critical factor to ensure success. As the UK GLD and BT Legal found, this requires a significant investment of time both upfront and ongoing. Ensuring the consistency of quality legal services across the network will be a key component in getting buy-in from agencies.

It is only recently that we have begun to think and act more effectively as a whole of government legal service. The GLN has been a central plank in this shift. In the next five to ten years, we have the opportunity to develop GLN in a way that allows us to think and act more strategically across the departments to make sure we are using and developing our legal resources in a way that helps us provide

44. In 2016 rule 15.2.4 (Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) was amended to enable in-house lawyers (and their employing organisations) to provide legal services to entities with various degrees of relationship to the employer. Rule 15.2 now allows an in-house lawyer to provide legal advice to another entity where the employer entity owns not less than 50% of the other entity or can exercise at least 50% of the control of that other entity. The amendments to the rules were adopted by the Law Society Council on 15 April 2016 with the approval of the Minister of Justice. More information on using the new rule can be found on the New Zealand Law Society's website. <www.lawsociety.org.nz/for-lawyers/regulatory-requirements/shared-services-rule-change-for-in-house-lawyers/using-the-new-rule>

the best and most efficient legal services to the Crown. As the reviewers of Crown Law observed:⁴⁵

Through leadership of the GLN, and a highly collaborative relationship-based practice of law for the Crown, two things are achieved: Crown Law carves out capacity for itself to deliver on its highly-constitutional and special function and the overall legal capability of the Crown is enhanced

The UK developments provide a useful starting point and the opportunity to learn from their experience both in terms of what has worked and what might be done differently. ■

45. Performance Improvement Framework *Review for the Crown Law Office* (June 2017) at 18