



Canadian Corporate Counsel Association
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et conseillères juridiques d'entreprise

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Canadian In-House Counsel Survey 2021

Unparalleled Insight into the Canadian In-House Counsel Profession

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Introduction

The Canadian Corporate Counsel Association (CCCA) and Mondaq are pleased to present the results from our first Canadian In-House Counsel Survey. This report provides Canadian in-house counsel with unrivalled insight into key questions and issues that are impacting individual counsel and legal departments today. Designed in partnership with an advisory board composed of eminent in-house counsel from across Canada, this report provides up-to-date and robust analysis of current hot button issues and future outlooks.

We would like to thank the Canadian in-house community for their wholesome participation in our new survey, as well as our advisory board participants for their sage counsel. Thank you also to our survey report sponsor, DiliTrust, for enabling us to further amplify the survey findings and analysis.

It is our hope that you will find this report useful in helping you to make informed decisions about your and your department's priorities now and in the future.

About the CCCA

The CCCA is the leader and voice for Canadian in-house counsel. Founded in 1988 as a forum of the Canadian Bar Association, we represent over 5,000 in-house counsel from every province and territory, and sector and industry, making us the most inclusive and representative professional association for in-house counsel in Canada.



Alexandra Chyczij
Executive Director
CCCA

About Mondaq

Mondaq is the global standard in AI-enabled content marketing and analytics solutions for professional services firms and helps its >22 million readers worldwide to find answers to legal, tax and compliance questions. Mondaq has over 2 million readers in Canada, including the majority of Canadian in-house counsel and executives from thousands of Canadian organizations.



Tim Harty
Chief Executive Officer
Mondaq

Methodology

In March 2021, the CCCA and Mondaq launched a new, annual Canadian In-House Counsel Survey.

The survey objective is to provide unrivalled insight into Canadian in-house counsel by being the country's most comprehensive and most representative survey into the state of in-house legal departments.

Over 460
respondents
completed an
online survey

461 survey
respondents

between March and May 2021, with 33 questions covering organization and legal department details, budgets and investment, outsourcing, technology, innovation, as well as priorities, challenges and other people-focused questions.

This was followed by a voluntary self-identification section, which over 260 respondents went on to complete.

To provide rigorous oversight and authority, the survey was designed in partnership with our survey Advisory Board, which includes eminent Canadian in-house counsel.

Advisory Board



Bindu Cudjoe

SVP and General Counsel
CWB Financial Group



Fernando Garcia

VP and General Counsel
Cargojet



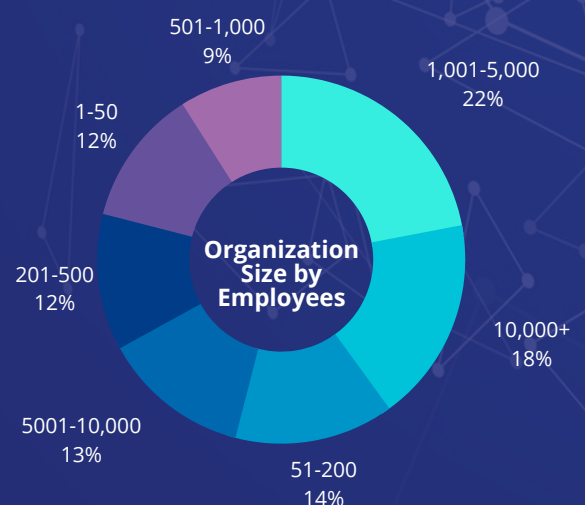
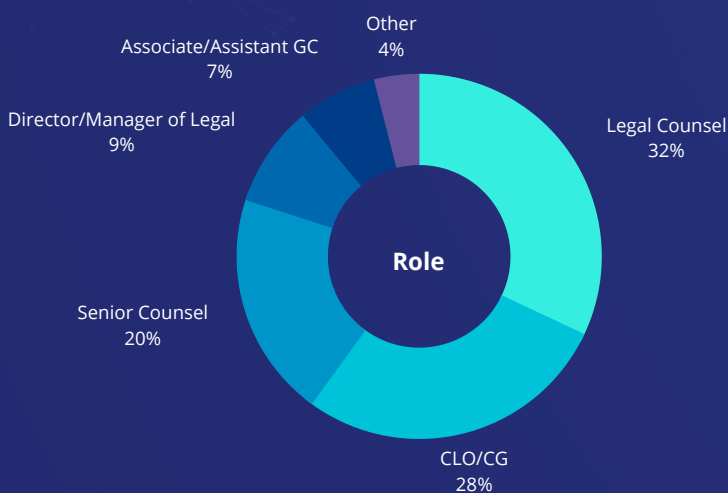
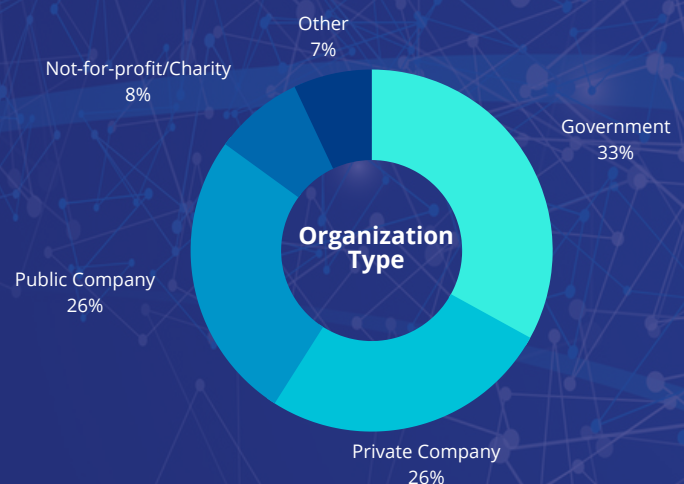
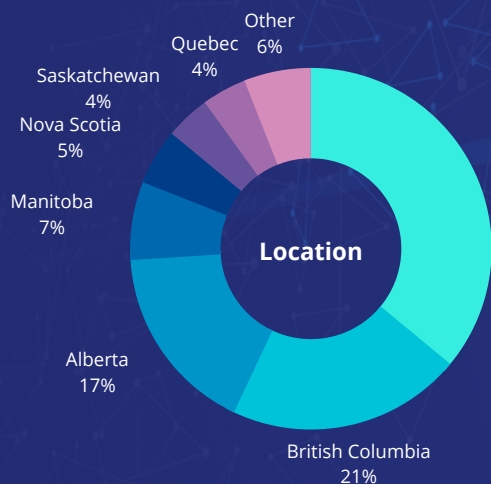
Margot Spence

Manager, Corporate Law
ICBC

Participant Profile

The survey responses have provided us with the representative view we were seeking, with 28% of participants providing a view from the top (CLOs/GCs) and excellent representation throughout legal departments, with a significant number of Senior Counsel (20%), Counsel (32%) and Director of Legal Services/Legal Manager (9%).

The survey saw excellent response levels from public companies (26%) and private companies (26%), representing all the key industry sectors and organization sizes, as well as from government organizations (33%) and not-for profits (8%). More survey respondent specifics are to be found in the Participant Profile charts below.



Executive Summary

Against the backdrop of the most seismic global event since the Second World War, the CCCA & Mondaq Canadian In-House Counsel Survey seeks to shine a light on the state of Canada's in-house legal departments. The extensive questionnaire and significant survey participation allow us to provide unrivalled insight into the biggest challenges, issues and priorities, the direction of travel of Canada's in-house legal teams, as well as insights into what is on the mind of in-house legal counsel and what makes a great in-house lawyer in 2021.

The challenges presented to Canadian in-house counsel by the

7 in 10

in-house counsel have seen an increase in their work-related stress and anxiety levels in the last year.

pandemic are numerous, and they can be seen as big contributors to the seven in ten in-house counsel who have seen an increase in their work-related stress and anxiety levels in the last year. Combined with increased levels of accountability as well as heightened demand for in-house services, there is the potential for significant staff burnout and fallout.

There is a clear call to action for legal department leaders to put in place programs which support employee wellbeing.

Beyond the pandemic, legal departments are dealing with many challenges, many related to risk management, with a focus on managing compliance generally as well as privacy compliance specifically. Litigation is also a significant concern looking forward, as is an expected increase in workloads.

There is a clear call to action for legal department leaders to put in place programs which support employee wellbeing.

Executive Summary (continued)

Moreover, there is an opportunity for legal departments to further prioritize ED&I initiatives with nearly four in ten in-house teams not yet deeming ED&I a priority, whether it is within their own legal teams or when retaining outside counsel.

Perhaps unsurprisingly given the challenges faced, a significant uptick in demand for in-house legal services is expected, which is leading to increased spend on technology and an increase in legal department headcount. While much of this demand will be met internally through additional investment in people and technology, we expect a modest increase in the amount of work and spend on outside counsel, which still dominates outsourced spend for legal services. From the buy-side, there is an expectation from in-house teams that outside counsel are both experts in the law and experts on their businesses and industry sectors.

A significant uptick in demand for in-house legal services is expected, which is leading to an increase in spend on technology and in-house headcount.

In-house counsel are carrying accountability beyond their legal responsibilities, including compliance, ethics, investigations and more. While much of this additional responsibility is centred on CLOs/CGs, counsel and senior counsel frequently pick up additional responsibilities too. It is evident that the best in-house lawyers today require so much more than legal skills, with the most common skills mentioned for an effective in-house lawyer in 2021 being understanding the business, followed by flexibility and adaptability and communication skills. Perhaps it is these skills beyond pure legal that are helping employees move from the legal department to non-legal roles outside of it, with one in five respondents seeing an increase in the number of in-house counsel moving into non-legal business roles.

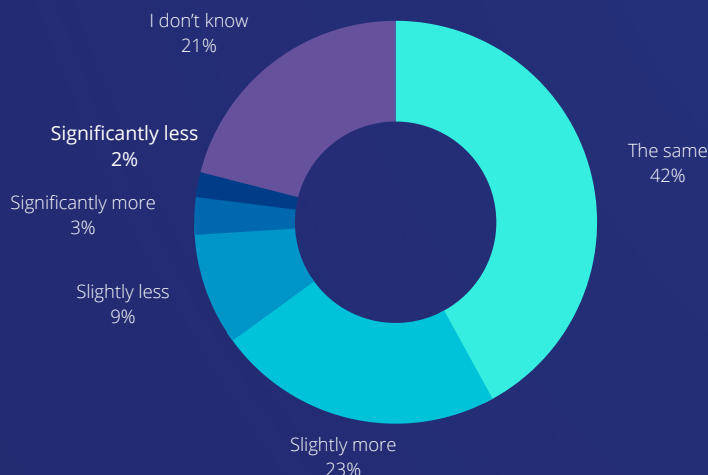
Budgets & Investment Priorities

While four in ten legal departments are expecting budgets to stay flat in the next year, 26% expect in-house budgets to grow and 11% are expecting a decline. Much of the growth is being driven by public companies (29% expect budget growth) and private companies (36% expect budget growth). Government organizations are both the least likely to see growth (21%) and most likely to see a decline (13%) in budgets.

Where we see budget growth, it is as a result of increasing responsibilities and demands. The top five areas of increased in-house demand are around data privacy (55% expect increase in activity), risk and compliance (46% expect increase), supporting operational delivery (39% expect increase), providing business strategy and advice (38% expect increase) and contract management (33% expect increase).

It's apparent that organizations are increasingly looking to their legal departments to manage risk – across privacy and other areas of compliance – and to act as a business partner to help them navigate through extraordinary times.

Expected size of the total in-house legal department budget over the next year:



Expected Increase in In-House Demand

55%

Data privacy

46%

Risk & compliance

39%

Supporting operational delivery

38%

Business strategy & advice

33%

Contract Management

Budgets & Investment Priorities (continued)

The biggest beneficiary of the additional spend is legal department staffing, with 36% of respondents expecting to spend more (compared with 6% who will spend less) through additional hiring (one in three anticipates headcount growth versus just one in twenty a decline). This is highest in private companies, 46% of whom are intending to spend more on in-house staffing and 39% are expecting growth in headcount. This does raise the prospect of an even bigger battle for legal talent within the Canadian market.

#1

beneficiary of the additional spend: legal department staffing

The next biggest budget beneficiary is technology, with 34% of respondents expecting to spend

more (versus only 2% spending less). Again, this number is highest in private companies with nearly half of them expecting to invest more in technology in the next year.

The third beneficiary of increased spend is outside counsel, with 29% of organizations expecting to spend more. However, with 14% of respondents expecting a reduction in spend, the overall growth in outside counsel spend is likely to be modest. 36% of private companies and 23% of public companies anticipate spending more on outside counsel.

Spend on alternative legal services providers is seeing by far the least growth, with just 6% of respondents seeing more spend compared to 3% less.

#2

beneficiary of the additional spend: technology

So, while demand for in-house services is increasing significantly, it is apparent that much of this demand will be met internally through additional investment in people and technology.

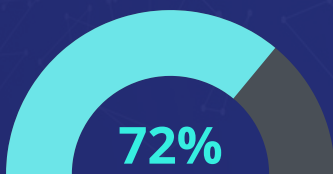
Outsourcing

Outside Counsel

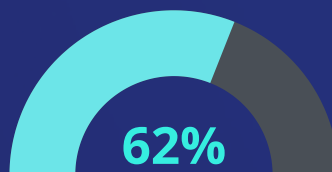
Despite the anticipated increase in legal department headcount, there remains a heavy reliance on outside counsel. One of the responses to the heightened level of accountability and demand on in-house legal departments is the anticipated increase in the amount of work being outsourced to outside counsel over the next year: 29% of private companies, 27% of government organizations and 25% of public companies anticipate sending more work to outside counsel. However, with 16% of organizations expecting to outsource less work to outside counsel, the overall increase in outsourced work is likely to remain relatively modest.

Unsurprisingly, the three types of work that are most often outsourced to outside counsel are centred around areas where existing in-house capabilities don't exist or need to be supplemented: seeking expert advice in a new area (72% likely to outsource); transactions and activities where legal departments want external counsel assurance and opinions (62%) and transactional activities where legal departments don't have internal capacity (61%).

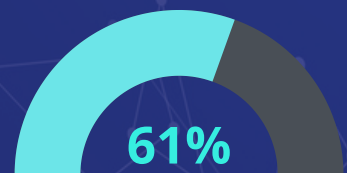
Work Areas Most Often Outsourced



Seeking expert advice in a new area



Transactions and activities where legal departments want external counsel assurance and opinions



Transactional activities where legal departments don't have internal capacity

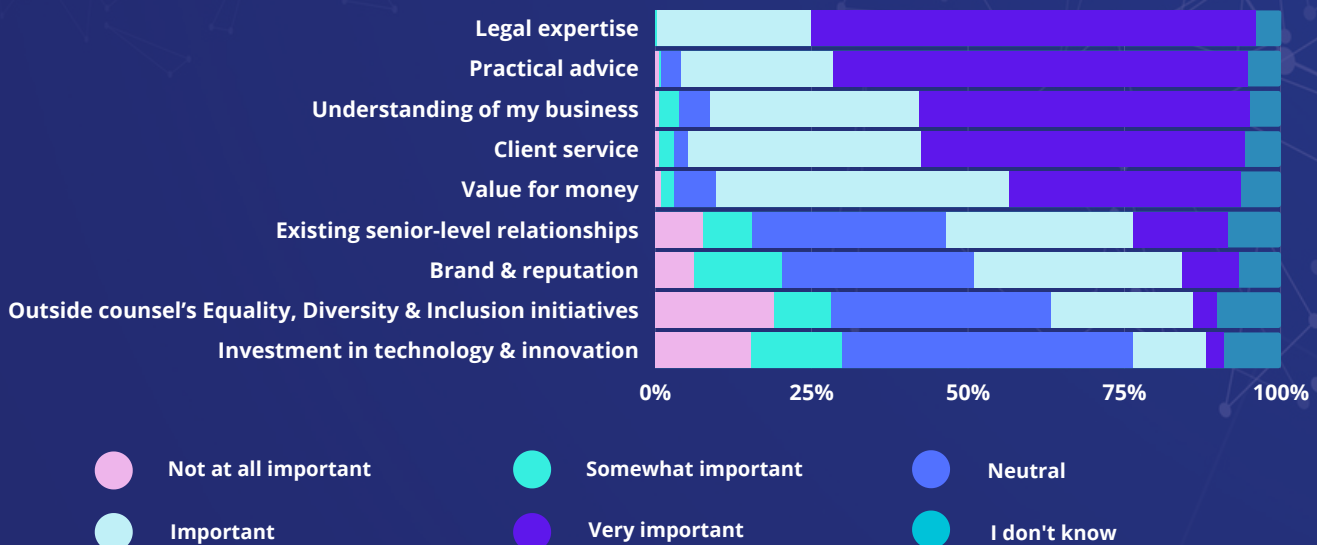
Outsourcing (continued)

When choosing to instruct outside counsel, the top four considerations are legal expertise (96% consider important or very important), practical advice (91%), client service (89%) and understanding the client's business (86%). It is therefore evident that in addition to legal expertise, outside counsel need to understand their clients' organization and business requirements. In line with this, one in five legal departments are also seeking external expertise on industry perspective and intelligence, another way in which outside counsel can bolster their offering.

This emphasis on outside counsel having the right level of knowledge of both the legal and organizational requirements of clients was also reflected in the factors in-house counsel believe are the least important when instructing outside counsel, namely investment in technology and innovation (15% consider important or very important) and the firm's brand and reputation (42%).

Additionally, with less than half of respondents deeming existing senior-level outside counsel relationships important or very important, this could be seen as encouraging to law firms who are looking to win new business and perhaps, conversely, as a warning to firms and partners who place too much emphasis on managing existing relationships over other key drivers of legal services purchasing.

How important are the following factors when selecting outside counsel?



Outsourcing (continued)

One aspect of note is the importance placed on outside counsel's equality, diversity and inclusion initiatives. Only 26% of respondents stated that this was an important factor when considering which firm to retain. This will be further discussed in this report under the ED&I section.

Other Outsourcing

Law firms continue to dominate the market for outsourced legal services. Just 13% of in-house teams use alternative legal service providers (ALSPs), increasing to 16% of organizations with over 5,000 employees. In terms of sector, 9% of government, 15% of public companies and 19% of private companies use ALSPs. Spend on ALSPs is expected to see minimal growth in the next 12 months, with only 6% of respondents spending more, compared to 3% less.

E-discovery is outsourced by one in ten in-house legal departments, increasing to 15% in public companies. Translation services are also used by one in the ten in-house teams, increasing to one in five public companies, where there is significantly more demand.

Percentage of legal departments using

13%

ALSPs

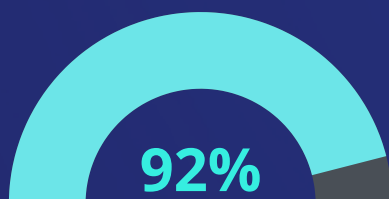
11%

Translation services

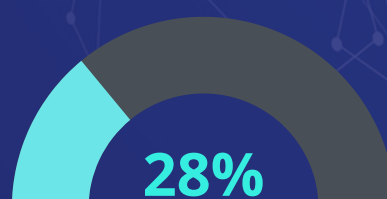
9%

E-discovery

When outsourcing



**Outsource within
Canada**



**Outsource outside of
Canada**

Innovation & Technology

Innovation

Innovation in legal and risk management is a priority for more than half of organizations. So, while some in-house think differently (*"Legal Innovation is nonsense consultant speak. We provide legal services, we don't need innovative technology to achieve that"*: Director of legal services/legal manager), the majority of respondents take innovation seriously. In fact, six in ten legal departments in public companies are innovating as a priority.

The most common areas of innovation are document management and contract management – with contracts at the centre of much legal department innovation – as well as process and matter management innovation. Much of this is likely driven by an acceleration of digital transformation brought on by the COVID-19 pandemic. The mention of artificial intelligence (AI) seems conspicuous by its absence; this could either be due to the respondents' understanding that AI is already built into some of the innovation solutions or an affirmation that innovation via AI is not currently a priority.

>50%

of organizations are prioritizing innovation in legal and risk management.

The single biggest area of innovation in the legal department is:

workflow Remote work **Matter management** automation
document management data
contract management file management
processes e-signature **contracts** Contract Automation

Innovation & Technology (continued)

Technology

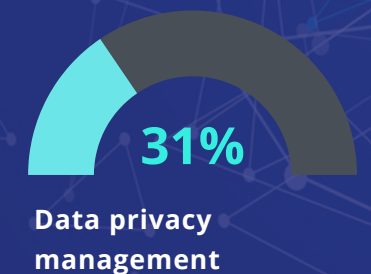
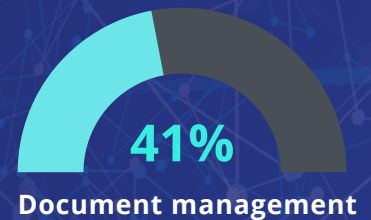
Four in ten organizations are prioritizing investment in legal department technology. This is highest in government at 44% and surprisingly low in public companies at 25%.

The prioritization of technology investment is visible in spending plans, with 34% of respondents expecting to spend more on technology in the next year (versus just 2% spending less). This number is highest in private companies with nearly half of them expecting to invest more and lowest in public organizations, of which 29% expect to spend more on technology.

Growth in technology investment is expected to come from document management, data privacy management, E-signature solutions and contract lifecycle management, with the vast majority of legal departments investing in these areas. It appears that remote working and digital transformation driven by the pandemic, which are also driving in-house innovation, are behind much of this investment.

Finally, the key factors impacting the speed of technology adoption are cost and interoperability – currently high cost and poor systems integration are the top two factors holding back the adoption of new technology.

Number of organizations expecting to invest more in these technologies



Priorities & Challenges

The COVID-19 Pandemic

The challenges presented to Canadian in-house counsel by the pandemic are numerous, and they can be seen as big contributors to the seven in ten in-house counsel who have seen an increase in their work-related stress and anxiety levels in the last year.

When asked for the single biggest business concern arising as a result of the pandemic, a remarkable number of responses centred around people-related matters, including significant concern for employee wellbeing. Employee centred concerns ranged from remote working to mental health to staff burnout to health and safety issues. There is no doubt that it is the people in organizations that have been at the centre of most concern. Following the employee items there are factors such as privacy, risk management and financial concerns across both the top and bottom lines.

Digging deeper into the responses by job roles, the level of concern for the legal department staff is highest in the most senior roles (CLOs/GCs and Senior Counsel), whereas legal counsel were equally concerned about people matters as they were about financial matters, particularly cost related, perhaps indicating some insecurity around the future of their own roles.

What is the single biggest business concern arising as a result of the COVID-19 pandemic?

services operational Staff burnout mental health revenue
Team staff Privacy Remote working cost
employees Return work Health & safety
workplace management business continuity changes economy
risk business

Priorities & Challenges (continued)

Priorities

Given all of the employee-related concerns raised by respondents across all levels of in-house roles, it is somewhat surprising that there is no mention of supporting legal department employees in the most commonly named business priorities for the coming year, which are around managing risk, compliance and privacy, and supporting the business and internal clients.

There appears to be a significant disconnect between employee wellbeing concerns (and the associated significant increase in work-related anxiety and stress levels) and the top priorities of in-house counsel.

There appears to be a significant disconnect between employee wellbeing concerns and the top priorities of in-house counsel.

This further supports our view that many Canadian in-house legal departments are a ticking employee wellbeing time bomb.

This is a call to action for legal department leaders to understand underlying employee wellbeing issues and to put in place programs to address them where they don't already exist.

Challenges

It is unsurprising that the greatest legal challenges that individuals expect to face in their in-house departments in 2021 are COVID-19 related (*"Implications of the future of work" and strategizing and implementing a new hybrid flexible work model across the enterprise* General Counsel). Other significant challenges centre on risk and compliance, litigation, privacy and increasing demand/workload.

Managing risk focuses on compliance risk, with the huge volume of regulations to comply with, of which privacy compliance is evidently still a big challenge.

Priorities & Challenges (continued)

The greatest legal challenge I expect to face in 2021 is:

uncertainty adapting risk Budget Privacy increasing demand
compliance Remote work litigation much work
Covid-19 related data privacy legal
increasing workload pandemic regulatory changes
workload work environment pace resources less resources

As with in-house teams, the biggest legal challenge boards of directors are expected to face relate to COVID-19. This is similarly followed by risk management and compliance challenges. Boards are also expected to tackle financial (both revenue and cost related) and change management issues. Privacy, ESG and diversity also feature as board-level challenges for 2021.

The greatest legal challenge the board of my organization expects to face in 2021 is:

regulatory privacy uncertainty Diversity inclusion
compliance ESG pandemic financial risks
litigation **Covid-19 related** Data privacy
change recovery costs Technology revenue growth
Governance

Equality, Diversity & Inclusion

"Glass Half Full or Half Empty"

Issues of equality, diversity and inclusion (ED&I) have become a main focus of discussion and review over the recent years. However, the survey indicates there is still much room for improvement.

When asked whether ED&I was a priority in their own legal departments, 38% of respondents stated that ED&I was NOT a priority in their legal departments. Slight discrepancies were found based on location. For instance, more respondents in Ontario (73%) felt that ED&I was a priority for their departments when compared to those in other provinces, with BC at 59% and Alberta at 58%.

The lack of priority on ED&I remained at similar levels irrespective of whether respondents were responsible for the legal

38%

of respondents stated that ED&I was not a priority in their legal departments.

department (CLOs and GCs) or less senior members of the department. This means that in nearly four in ten legal departments, ED&I was not deemed to be a priority by those most likely to have control and responsibility over the composition of the legal department.

Equality, Diversity & Inclusion (continued)

"Glass Half Full or Half Empty"

However, the sentiment seems to be more closely tied to sector and size of department. The highest rate of negative response was in the private sector, with 56% noting that ED&I was not a priority, compared to 32% in government and 30% in the not-for-profit sector. The largest discrepancies can be found when an analysis is done of the size of department. Here we found that the large majority (88%) of departments with more than 30 staff stated that ED&I was a priority, whereas only 62% of departments with 11 to 30 staff felt it was a priority and even fewer in smaller departments.

Given that considerably more in-house teams are expected to grow, rather than reduce, in size over the next 12 months, with the highest headcount growth being in private companies, there is opportunity for improvement in ED&I. More work and investigation should be done to determine the obstacles and barriers faced by mid- to small-sized legal departments in making ED&I a priority. We need to determine whether the barriers are faced in attracting, retaining and recruiting talent; in the relationship with HR; or in the organizational policies and procedures around ED&I.

Research has clearly shown that ED&I is important for higher levels of trust and engagement among employees and a healthier bottom line. Today the question is how large a cultural change is needed in the Canadian in-house counsel profession to increase the priority we place on ED&I.

People & Talent

"A Ticking Employee Wellbeing Time Bomb"

Given the overall volume of survey participants, we were able to examine a significant number of responses across all job levels, helping us to deliver a view from the top as well as from middle and more junior in-house legal roles. This makes the findings which follow even more compelling.

It is evident that in-house counsel are carrying significant accountability beyond their legal responsibilities, with over 40% of in-house counsel also responsible for compliance, while one in four is responsible for investigations and another one in four for ethics. Government relations, ESG and investor relations (in public companies) are also frequent additional responsibilities. Much of this additional accountability is centred on CLOs/CGs, with six in ten responsible for compliance and over 40% for ethics, although counsel and senior counsel frequently pick up additional accountability too.

Given the level of responsibility beyond the delivery of legal services, combined with the pressures of the pandemic, it is no surprise that stress and anxiety levels are running high across in-house legal departments. While the rationale might be clear, it is no less concerning that organizations and their legal departments are sitting on an employee-wellbeing time bomb.

In-House Personnel Accountability Beyond Legal

40%

of in-house counsel are also responsible for compliance.

1 in 4

is responsible for investigations.

1 in 4

is responsible for ethics.

1 in 6

is responsible for government relations.

People & Talent (continued)

"A Ticking Employee Wellbeing Time Bomb"

An eye-watering 71% of respondents reported an increase in work-related stress and anxiety in the last year. What's more, while the increased level of stress and anxiety is very high at the top table (61% of CLOs/CGs reported an increase), the increase is amplified as roles become less senior: 61% in GCs increases to 71% in legal counsel to over 80% in director of legal services/legal manager. The increase is highest in public companies (75%) and in those who identify as females (74%). In addition to these findings, there are also numerous mentions of employee retention, staff burnout and "the deterioration of mental health" in response to the biggest business concerns presented by the pandemic. These findings raise a number of questions regarding employee wellbeing, mental health and the duty of care for staff, across all job levels but even more acutely in middle- and more junior-level legal roles.

To conclude the people section on a more upbeat note, it is evident that in-house counsel require so much more than legal skills, with the most common three skills mentioned for an effective in-house lawyer in 2021 being understanding the business, followed by flexibility and adaptability, and then communication skills. Perhaps it is these skills beyond pure legal that are helping employees move from the legal department to non-legal roles outside of it, with one in five respondents seeing an increase in the number of in-house counsel moving into non-legal business roles, including HR, compliance and operational roles.

Non-legal roles most likely for in-house counsel to move into:

commercial Business Development **HR**
operations risk management **compliance** Director
operational leadership

Stress and anxiety levels amplified in more junior roles

61%

of CLOs/CGs reported increased levels

71%

of Legal Counsel reported increased levels

>80%

of director of legal services/legal manager reported increased levels



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