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Outsourcing is taking hold

'Significant step'

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Brett Gundlock/National Post

If there were ever an iceberg that was truly just the tip of the iceberg, the recent decision by Rio Tinto Group to hire Indian lawyers to do basic corporate-commercial legal work may well qualify.

"It won't be long before inhouse departments start looking at the elements of even the largest transactions that are amenable to outsourcing," says Carla Swansburg, president of the Association of Corporate Counsel's Ontario chapter and senior counsel at Royal Bank at Canada. "I'm thinking things like due diligence, contract review, data collection, legal research and lease abstracting."

This type of thinking could spell the beginning of the end for the highly leveraged, associate-hour-heavy work that makes up so much of law firms' prized transactions.

"Big M&A has a huge price tag, and that's enough of an incentive for seeing what you can commoditize," she says.

Rio Tinto, bypassing its external counsel, has worked directly with legal outsourcing company CPA Global to recruit 12 Indian lawyers who will perform what managing attorney Leah Cooper calls legal tasks "at the basic end of substantive," such as using old agreements to draft new templates that allow internal or external counsel to carry out more complex work.

The goal is to save about $25-million annually by effecting a 20% reduction in the Australian-English mining company's $126.8-million legal budget. So far, the goal seems quite realistic. In less than two months since the Indian team began operations on May 1, Rio Tinto has saved approximately $1-million by paying rates that are one-seventh of what it pays its main external counsel, Linklaters and Baker & McKenzie.

For in-house counsel or law firms thinking of hopping on the outsourcing bandwagon, help is at hand. In 2008, Gavin Birer, a former Bay Street lawyer and businessman, founded Legalwise Outsourcing Inc., the first domestic legal outsourcing firm to use Indian lawyers to service Canadian clients. The firm works with a team of almost 500 lawyers based in Mumbai and Pune.

"India is a common-law country, so we have no difficulty training Indian lawyers to deal with Canadian legal issues," he says. "Our clients include law firms looking to lower costs as well as in-house departments."

Still, some of Canada's major firms are downplaying the impact of Rio's move on the outsourcing trend.

"If anything, this is still a marginal phenomenon that's fraught with difficulties relating to quality, remoteness and the exercise of control," says Michel Brunet, chairman and CEO of Fraser Milner Casgrain.

Canadian firms, he says, with associate partner ratios that generally don't exceed 2:1 proportions, don't carry anywhere near the burden of the 5:1 ratios found in large U.S. and U.K. firms.

"We're more like boxes than pyramids," Mr. Brunet says. "The answer for us is to become more efficient in file management and more creative in devising alternative billing structures by way of partnerships with our clients."

Mr. Brunet isn't the only one to espouse these views. "It's true that clients are extremely cost-conscious, but I don't believe that this outsourcing trend will unravel in Canada as the new norm," says Noble Chummar, co-head of Cassels, Brock & Blackwell's India practice.

But Domenic Crolla, Gowling Lafleur Henderson's managing partner, sees a more immediate fallout from Rio Tinto's move.

"Ultimately, the teams in India will have to work with both in-house and external counsel, and if Rio can pull it off and maintain the quality as well as a high degree of integration, it's a significant step because it is capable of affecting large volumes of legal work," Mr. Crolla says. "There are no guarantees here, but I expect that Canadian law firms will be seeing some of this reasonably soon."

Gowling, it turns out, is putting its money where its mouth is. From all appearances, the firm is priming the Hamilton office, already known for its efficiency with commoditized files such as mortgage foreclosures and collections, to do the type of work Rio Tinto is outsourcing.

"Gowlings is turning an offshore model into an onshore model, not just for their own clients but for other law firms or in-house departments that aren't otherwise their clients," Ms. Swansburg says. "We work with them at Royal, and have found that it's a fantastic model that shows the benefits to law firms who have an entrepreneurial approach."

Although the onshore model is slightly more expensive than offshoring the work, Ms. Swansburg says the advantages make the additional marginal cost worthwhile.

"The increased concern everywhere over privacy, disclosure and maintaining control over information certainly gives the onshore model some logistical benefits," she says.

Royal has also resorted to "in-house outsourcing. We have a subsidiary in India that employs Indian lawyers who produce work for our Canadian in-house department," Ms. Swansburg says.

It wouldn't be all that surprising, then, to see law firms leading a major transaction or senior counsel on large litigation files having to work with other law firms "onshoring" departments who have won a split bid for the M&A file, or with India-based lawyers hired directly by the client or the law firm itself.

No one, including Rio's Ms. Cooper, denies the risks involved in outsourcing. But Ms. Swansburg, who worked at Osler, Hoskin & Harcourt and Ogilvy Renault before going in-house, says lawyers and clients diverge in their evaluation of the risks.

"The law firms almost always wave flags about quality and control, but their mistake is that they approach risk calculation in an extremely different way from in-house counsel," she says. "In-house counsel, whose budgets are being squeezed so hard, can't afford a zero-tolerance approach and they're being asked to analyze the cost-benefit equation much more closely these days."