

## Quality of consulting services: what makes consulting services to stand out

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This material discusses mostly legal consulting, some of the points discussed in this material, however, can be relevant to other types consultancy services.

### “Why should I pay you?” – Consultant’s value creation mission

Think about this: if you were the client (someone purchasing the service), would you pay for the service you are providing? Every once in a while I believe even experienced consultants ask themselves why a client should be paying for a particular work. A client pays a consultant so that the consultant brings value to the client and client’s business. Seems obvious, but it is easy to get off the track.

There is more than one way of delivering quality legal (and just any other consulting) service and each case is different. We have found the following to be helpful:

- (a) An advice a consult provides to her client should be *specific, unambiguous, and clear*. As far as legal consulting is concerned, often this issue comes up in the following circumstances, among others:
  - (i) laws or regulations are not quite clear and the lawyer ends up delivering somewhat unclear directions, and
  - (ii) a lawyer does not want to take a risk and ends up recommending that a client choose one of several possible courses of action (or routes). In other words, the client is offered to make a choice – i.e., choose course of action on a matter for which the client has turned to a lawyer.

The underlying issue is that a lawyer does not want to make a decision. In most cases this would not be acceptable to a client. *If the client knew that she would be making a choice, she probably would not even bother hiring a lawyer.*

Now, we can name number of exceptions to this recommendation. For instance, there are “business decisions” a client should make. Additionally, a lawyer (especially, outside consultants) may not have sufficient information for making a decision on a matter. But often the issue is “who is in a better position” to make decision on an issue, and

when rules and regulations are involved, then we believe a good lawyering requires that a lawyer make more specific decisions.

Example: A client has entered into distribution agreement with another company. The client is the manufacturer. The client intends to terminate the agreement with its distributor. Laws of some countries require that a supplier pay compensation to a distributor upon termination of a distribution agreement. The client is asking whether it should wait for expiry of the term or terminate prematurely, and whether premature termination would allow the distributor to claim compensation.

A lawyer looks at the regulations and does not find specific response to this question. He asks around and there is no general clear opinion on it. In most cases it will not be the best idea to limit the advice to “there is a risk that a distributor can claim compensation”.

Not that the lawyer should always say “yes, pay”, or “no, do not pay”. The job is to find the solution. He may, for instance, look at how compensation is calculated and whether it will be easy or difficult for a distributor to claim compensation.

To be sure, providing a specific and clear advice is not easy and it may be one of the reasons some are reluctant to do so. This underlines the importance of experience and rigorous search for information.

Again, sometimes it may become impossible to offer a specific advice to a client. In these situations, we would recommend explaining the client why a consultant is not able to provide a specific advice (e.g., lack of information, very inconsistent and hard to predict practice). In other words, say something along the lines of “I am sorry, I cannot give you more specific directions, because...” The point of paragraph, however, is that more often than not lawyers have to make a decision and provide specific advice on the course of action a client needs to take.

One small note: we are not saying a consultant should not offer *alternatives* under any circumstances. If there are alternatives, a consult should make sure (i) those alternatives are clear – is not along the lines of “it is not clear whether you can do it or not” and stop there, and (ii) she recommends a certain course of action – e.g., “while you have these options, I would recommend option [x]”.

- (b) Some lawyers like to engage in theoretical thinking and analysis and I personally have been one of those. Thinking about theory and generally “thinking deep” is not bad. On the contrary, it may be quite helpful. The problem would be if all (or even part of) of those theoretical and doctrinal discussions find their way to an advice a lawyer delivers to her client. Our experience is that in absolute majority of cases, clients are not concerned about theoretical aspects of their issue. Most just want to know and expect their lawyer to tell them *what to do*.

If we can imagine opinion or advice delivered to a client as an iceberg, theoretical analysis and thoughts would have to be the part under the water, while top of the iceberg is (or should be) a very practical advice.

- (c) Memorandums or similar documents sometimes include many references to articles, sections or provisions of laws or rules. As with theoretical thoughts, in most cases clients are not interesting in hearing or reading these references. There has to be a special reason for citing a particular article or section of a law or regulation. For instance, an administrative authority has imposed a sanction on a client based on a particular section of a law, and that section is a matter of dispute.
- (d) The advice must be capable of being put into action. We have been in situations where some course of action is theoretically possible, but it is not quite clear whether it can be done in practice. In that sense, the advice must be practical. Unless a client has no alternatives, a consultant should provide the advice, which is possible to implement in practice. In other words, do not suggest a client take a course of action just because it is something that can be done in theory.

### **When there is consulting, there is customer**

A consultant generally serves her client – she rarely acts as an “independent third party”. Outside consultants serve the company with whom they have entered into an engagement agreement. In-house lawyers typically serve the company with whom they have an employment agreement. Government lawyers service the government agency they work for, etc.

- (a) Needless to say that if a client does not know who her client is, she probably should not even start working on an assignment. We have been asked to, for instance, “draft a sale and purchase agreement” without receiving much information. The first question should be who I would be representing? Is my client a seller or buyer in the transaction? The final work product much depends on who my client is. If am representing a seller, in drafting the agreement I will do my best to ensure that the seller’s interest are protected as best as possible and I will not be concerned much about buyer’s interests, unless it is necessary to protect my client’s (seller’s) interests.
- (b) Every client’s case is specific and requires individual or tailored approach. Opinions or legal approaches may be standard, but cases are rarely standard. There is a danger in approaching one case as being almost the same or identical to another. Of course, there are situations that are similar to each other in one or several ways. Occasionally, we do copy some piece of advice to one client and paste into an advice to

another client. But the key point is that a consultant should be careful in her conclusions as to similarity of situations.

- (c) A lawyer can hardly provide a good advice without learning and understanding her client's economic and business incentives and interests. It is true that the lawyers work with laws and regulations. But those rules apply to specific business situations. If for instance a client asks his counsel to draft a sale and purchase agreement, the draft will not be good without a lawyer knowing what the client sells (or buys), the price of goods, payment terms and other commercial issues.
- (d) When a lawyer signs agreement on providing services (employment agreement, engagement agreement etc) with a company, they represent the company, not its officers (including officers who sign the relevant agreement). A lawyer may be receiving instructions and assignments from a company's officers (such as CEO) and as a general rule the lawyer should follow those instructions. An issue may arise in situations where the officer authorized to give instruction has some sort of personal interest in the assignment.

This may sound simple and obvious, however, at times a lawyer finds herself making hard decisions. Typically, it is the client's officers who build relationship with a lawyer and they work towards a common goal.

### **Have you thought about the instruction?**

Clients often have end-result in mind – goods are purchased, profit is made, office is established *etc.* That applies to the process of their giving assignments and instructions. Process may matter for clients under certain circumstances, however, not as much as for consultants, who should be the persons guiding a client. These factors require a consultant to be careful about implementing a client's instructions. We recommend bearing the following in mind:

- (a) Even the most sophisticated clients (or their employees) may issue instructions the implementation of which may not be appropriate under particular circumstances.

Example: The client was about to purchase shares in an entity. The selling party offered the client pays the down payment of 20%, and the client agreed. The conversation took place between the client and the selling party. The client instructed the counsel to draft agreement on down payment. The counsel was quick to revert with advice that he does not recommend entering into such agreement, as there is no security that the selling party will not take the money (down payment) and run away. If the client does want to enter into a similar agreement, it is best to take security interest in the shares of the target company.

The more those instructions are specific – “we will do this, following which we’ll do that and so on” – the more attention will be required from a consultant in evaluating those steps. It is, therefore, wise to take time and think about the assignments and client instructions. Experienced consultants know that often they end up “untying” different elements involved in an assignment. Although on surface (and at first glance) all may seem to be clear and well understood, upon careful investigation these elements may turn out to be tied together in a very “chaotic” or unorganized way. So the take away is this: take time to think about the assignment and instructions – don’t worry if that takes too much time. That time will not be wasted.

- (b) A consultant’s job is to guide his/her client. If a consultant blindly follows instructions and a problem occurs as result of this, more often than not the consultant is the one taking all the blame, because “you are the consultant, you should have told us...”
- (c) Beware of “can you please take a quick look and get back in few minutes” or stuff along those lines. What may look a simple matter at the first glance may turn out to be a complex issue. Rushing to get back to a client fast may result in a consultant delivering incomplete or incorrect advice.

Also, time required for a particular assignment can be debated and different people will have different thoughts on that. We have discussed that issue below. I believe, however, we can all agree that it is possible to assign minimum required time for certain assignments. In other words, there is often minimum required time for an assignment that if a consultant were to spend less than that, the final product will suffer from defects. By way of an illustration, if a lawyer gets an instruction to draft complex joint venture agreement, requiring him to draft it within one hour would generally not be prudent thing to do.

### **Advice off the top of my head**

Providing advice without research or “off-the-top of our head” has been a very difficult task for us, unless we are dealing with few well established situations. We try not to provide advice on a specific issue without proper research. Advising without much research may sound appealing for a lawyer – many would think of it as a chance to look clever and professional. But that may be skating on thin ice.

We have been working in an emerging economy. A lawyer can hardly specialize in one particular field of law – it seems that in most emerging economies the market does not support a narrow specialization. It may be easier for a narrowly specialized lawyers in developed economies to provide advice without much research. But even in those economies, providing advice without proper research may be an issue. We would note the following

- (a) Each client's case/matter is different. There may be standard positions or opinions, there are rarely standard or identical situations. I have personally been in difficult situations because I have thought one client's matter is exactly the same as the others. Sometimes you do learn a hard way...
- (b) If you are the client, then be careful about those counsels, who seem to show they know it all and can speak about details off the top of their head. Not that there are no counsels who can do this, it is just that there may be danger in relying on that kind of advice.
- (c) If a lawyer is requested to say something on a matter, what happens in most cases is that a lawyer provides general advice or thoughts on an issue. It is certainly prudent to let the client know that a consultant would do research and get back in due course. I have been taking this approach for many years now and that has saved me from many difficult moments.

### **He who knows it all**

We occasionally meet lawyers who believe they can be equally specialized in almost areas of law that one can possibly think of. It is important to at least understand (and acknowledge) that this would be something very hard to achieve.

When many of us first graduated from school and started our careers as consultants, we thought if someone asks us a question we would just take a look at the relevant regulations (or theory books or other books) and deliver the right response. But good consultancy is more than that. It requires experience. To be sure, a good education allows consultants to benefit most from the experience, but experience is too important to ignore.

Gaining relevant experience in one or two fields of law takes quite some time and effort. It is, therefore, hard to be good expert in equally all fields of law (or consultancy).

### **Work must be well organized**

Our experience has been that being able to organize a work well has a significant impact on the quality of a final product. Major part of being well organized is a good time and work management. There are plenty of books, materials and other resources on time and work management, and this small document is does not aim to deal with that. We just wanted to point out to few things we thought would be helpful to consultants reading this material:

- (i) If an assignment requires contributions from several individuals, it is necessary to identify the "owner of the process". It is the person

responsible for final product, which almost always means the person will have some project management and coordination duties. That's something most consultants seem to avoid (other than project manager).

- (ii) Bear in mind Parkinson's Law: "work expands so as to fill the time available for its completion". The practical implication of this law is that one should get just to the point and deliver the result. It may sound appealing to do careful research and spend a lot of time "digging deep", however, in practice when you are pushed by deadlines, it is possible to deliver equally good sometimes even better results.

I do not mean to advocate setting strict deadlines and pushing oneself or others into death. I do not think such practice creates a healthy environment, and quite the opposite, it creates unhealthy environment. I am just saying that often one needs to adopt a practical approach and get to the point as quickly as possible, and there is a lot of benefit in doing that.

### **Oops, I think that was a mistake...**

Making mistakes is part of human nature. True, some people make more mistakes than others. But if someone tells or acts like he/she has never made a mistake or does not make mistakes, that person is just not being honest, to say the least. We want to draw the reader's attention to the following:

- (a) If find yourself constantly making mistakes or making mistakes too often, it may be you do not quite like what you are doing. If that's the case, move on to something else. It is not worth the effort and pressure.
- (b) Some lawyers and even experienced lawyers try to act as if nothing happened or otherwise hide the issue. I never thought of it a good strategy. Consultants do this in a hope that "no one will notice it", especially if the mistake is minor. That's never been a choice for me, personally. That kind of attitude may irritate people and create tensions.
- (c) If you notice a mistake in your work, the first step is this: Do not panic!
- (d) Before you go ahead and acknowledge a mistake and throw out all sorts of apologies, take a moment and think if what you think is a mistake is really a mistake. In other words, think first. Also, think about *why* things happened the way they did. I think this is a very important part of the process of dealing with significant mistakes for several reasons: (i) sometimes you discover what looks like a mistake, isn't quite mistake, (ii) you may discover it is something you could not be responsible for, and (iii) prepares you to deal with the issue more effectively and efficiently.

- (e) When a mistake happens, in my opinion, the best strategy is to (i) acknowledge the issue and offer a solution. Again, there is absolutely no benefit panicking. Instead, spend time thinking of how to make things right. Some clients will understand and appreciate, yet others will be unhappy and express their dissatisfaction. None of the troubles, however, gives reason for dishonesty.

### **Cross-border matters**

As far as lawyering goes, it is important to keep in mind that rules and regulations of one country on a particular matter may differ (and sometimes may differ significantly) from rules and regulations of another country on the same matter. I have been in situations when a foreign lawyer managing the matter would speak on certain issues assuming that the process is similar to the one in his country. The result was quite a misunderstanding. When approaching matters regulated by a foreign country's laws, there is often a benefit in assuming (for number of practical purposes) that you do not know much about other country's laws.

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