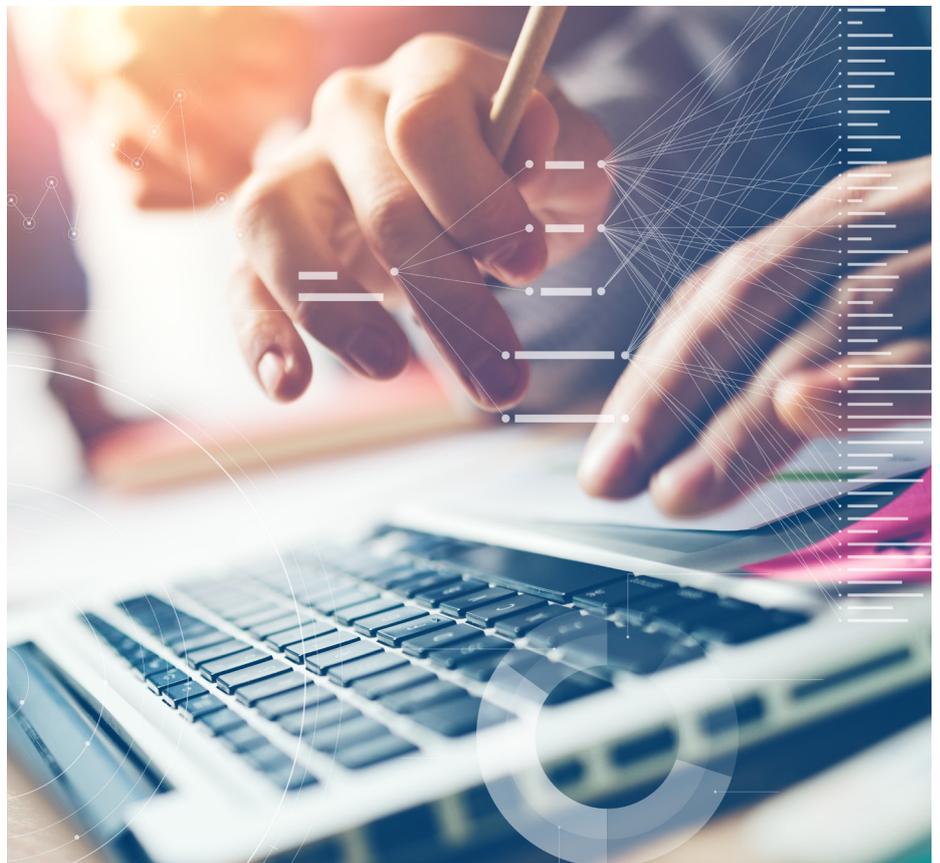


The modern general counsel: Legal advisor and strategic business partner



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The modern general counsel (GC) role has evolved from legal advisor into something more. They now serve as a strategic and influential partner and counsel to the C-Suite, helping make decisions that protect the business while guiding growth and profitability.

Trained to mitigate risks, GCs must now shift focus to how to best manage risks in a highly risky environment. They must provide strategic insight, as legal and regulatory concerns arise, to change the perception of the legal function as simply a cost center.

Through interacting with OpenText enterprise customers, including many of the largest and most sophisticated global corporations, it became evident that enterprise legal departments are facing unprecedented disruption. Digital transformation, regulatory, social, and economic shifts are making the old ways of operating legal departments untenable. To better understand these challenges and help legal departments leverage technology to optimize operations, OpenText and the Corporate Counsel Business Journal (CCBJ) surveyed almost 300 enterprise legal leaders.¹

This paper explores their evolving responsibilities and key priorities of these leaders, and highlights innovation occurring in the market and validated in our survey. Such change is needed to shape the modern practice and business of law to not only survive, but thrive in the digital age.

Shifting expectations and responsibilities

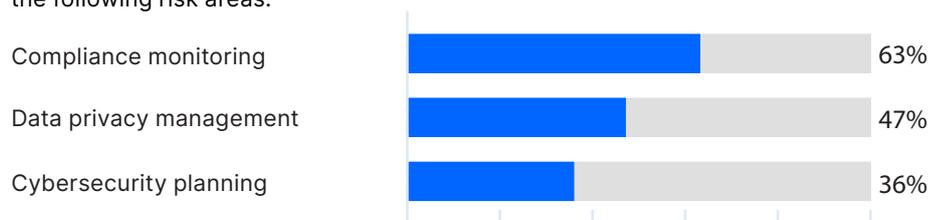
Regulatory complexity and global economic constriction are driving expansion of GC's legal responsibilities.

A stronger voice, greater agility, and innovation are necessary to weather changing expectations, increased volume and complexity of data, new regulations, and cost pressures.

In the OpenText/CCBJ study, the factors listed as having the greatest impact on changing roles and responsibilities include:



Moreover, the pace of change is accelerating, fueled by expanded responsibilities in the following risk areas:



¹ CCBJ Corporate Counsel Business Journal, The new General Counsel survey. (2023)



Accordingly, legal risk must be better managed, decisions made faster and operational costs reduced. GCs must also learn to exploit new critical technologies for maximizing ROI and minimizing risk in re-shaping the modern enterprise practice and business of law.

Decision-making with C-Suite executives

Eighty-seven percent of chief legal officers agreed that the role of general counsel is shifting from legal advisor/risk mitigator to a strategic and influential partner to other senior executives, including CEOs, COOs, CISOs, CTOs, and CSOs.²

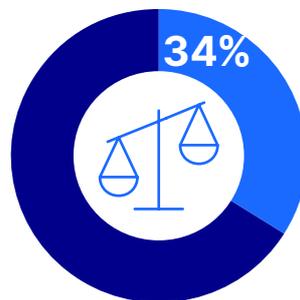
GCs possess a unique understanding of business activities, including operations, risks, and opportunities. Working with the C-Suite and other executives, they can be valuable assets in establishing predictability and resolving uncertainties relating to economic, operational, socio-political, and regulatory risks.

To succeed today, the GC must become smarter and more informed. Modern technology allows faster access to facts to drive and improve planning while making better risk-adjusted decisions. These legal leaders should work more cross-functionally with other business departments to gain a clear understanding of goals, challenges, and overall operations. As a result, their legal strategies and decision-making will be data driven and will help the business avoid risk.

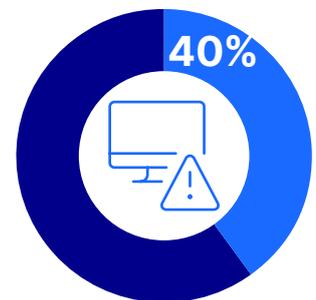
Partnering with the CIO

Meeting these goals not only requires close collaboration with the legal operations team (Legal Ops), but also with the chief information officer (CIO). In our recent survey, 72 percent of general counsel stated that CIOs play a critical or important role in delivering on departmental legal innovation strategy.

The CIO should be a critical partner not only to address cross-functional risk challenges (e.g., cybersecurity technology), but to support the GC and its Legal Ops team (if in place) in identifying and developing solutions to digitally transform the legal department while ensuring the organization is getting full value from its technology. Today, adoption remains low. Many in-house legal departments do not have established technologies, such as matter and document management, in place.



34% of survey respondents reported they don't have a Legal Ops team



40% report lacking IT advocacy and collaboration as a key barrier preventing implementation of technology

² CCBJ Corporate Counsel Business Journal, The new General Counsel survey. (2023)



The legal team’s technical requirements must align with solution needs and existing systems. This includes how that infrastructure is configured and maintained, deployment options, and how performance is measured.

GCs cited the following areas in which collaboration with CIOs has proved useful, if not critical:



Technical partnership between legal and IT teams will boost adoption by ensuring needs are best met, establishing integrations with key applications, reassessing work dynamics, and driving secure and compliant data handling.

GC as the risk and compliance manager

A global pandemic, new government policies, a paradigm shift to remote work, and a rise in social activism have created new risks. With a continuously changing landscape, there is greater scrutiny of how organizations evaluate and manage risk. Legal departments are forced to act based on fears emanating from the boardroom, especially with regards to reputational damage. According to the OpenText / CCBJ survey:



Business leaders cannot afford to manage risks on a reactive basis. According to a recent report, 70 percent of GCs responded that managing risk proactively (instead of reactively) is the area of their department they are most focused on improving.

“The general counsel is now more of a secretary of state for the CEO; there is a sense that a crisis can pop up in a geopolitical way.”³ The GC must adjust to the unpredictability of internal and external risk impacting the organization, adapting operating models to stay ahead of modern challenges.

3 The General Counsel Report 2023

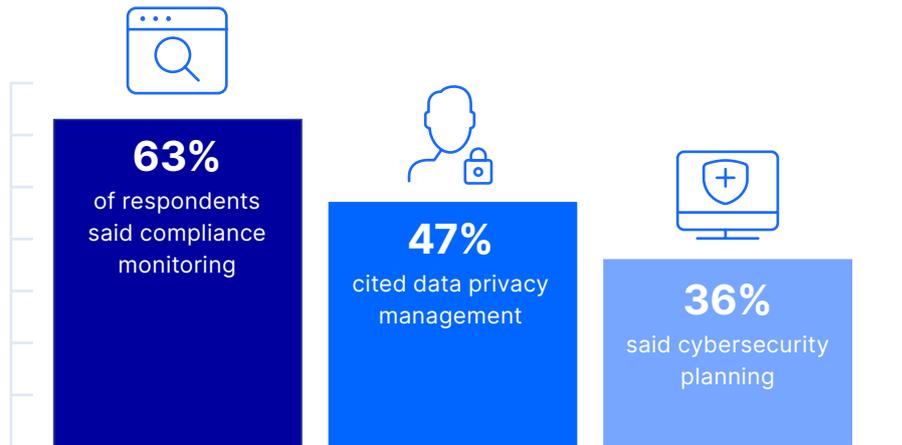


Regulatory scrutiny is on the rise. In the United States, the Biden Administration's goal of combatting corruption requires greater coordination and data sharing across many enforcement agencies. The US Department of Justice (DOJ) and other regulators have committed significant resources to corporate criminal and civil enforcement. New rules, updates, and guidance are increasing burdens on companies to identify compliance issues.

The Federal Trade Commission is pursuing more antitrust lawsuits, investigating significantly more merger deals, and enforcing stricter settlements.⁴ Whistleblower incentives and protections are on the rise (e.g., the US Securities and Exchange Commission program payout is at an all-time high) along with significant efforts to increase whistleblower protections in the European Union (e.g., the EU Whistleblower Directive).

For in-house legal and investigations teams, the threat of internal misconduct is rapidly increasing in frequency and scale. In the OpenText / CCBJ survey, 55 percent cited an increase in regulations and compliance mandates. Enforcement agencies expect more of businesses, emphasizing iterative risk management and the need to use data analytics to inform those activities.

The OpenText / CCBJ survey confirms this trend. Asked which factors have had the greatest impact on their changing roles and responsibilities:



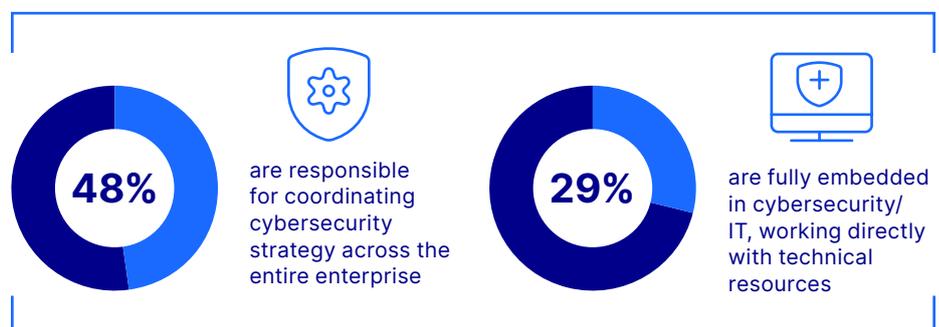
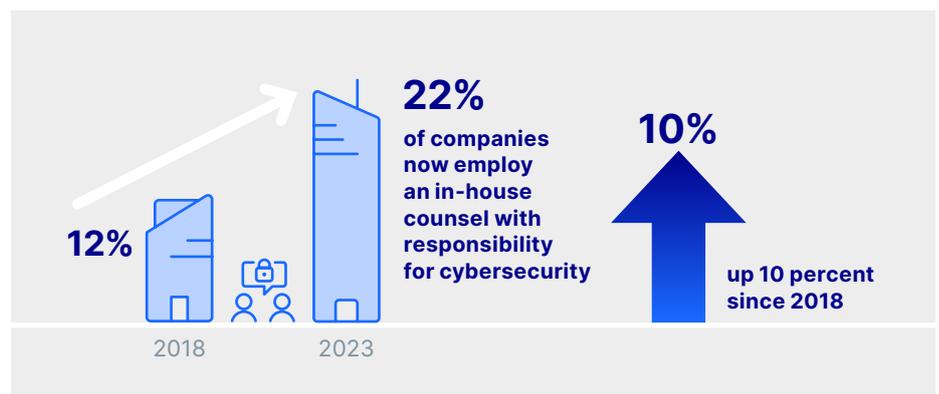
Expanded role in cybersecurity and privacy

Cyberattacks have become the second-highest ranked area of concern for class action lawsuits and an area of expected dispute exposure.⁵ Comprehensive data privacy and protection laws, with their stringent obligations and potential for fines and lawsuits have exacerbated this. Breaches often create significant chaos as key members of the executive team pivot from preexisting priorities to address the reputational, regulatory, and likely financial impacts.

⁴ Norton Rose, 2023 Annual Litigation Trends Survey

⁵ Norton Rose, 2023 Annual Litigation Trends Survey

GCs and their departments are starting to play a pivotal role in driving organizational cybersecurity and data protection initiatives. They are collaborating closely with IT and security teams to develop robust information security policies, incident response plans, and data breach notification protocols. According to a recent report:⁶



⁶ ACC Foundation – 2022 State of Cybersecurity Report



Data privacy management and ESG

Many general counsel are facing an ever-expanding role in managing the enterprise data privacy program. In fact, privacy is now the most common business function directly overseen by legal, overtaking compliance.⁷ Almost half of organizations in North America house their privacy function in legal, compared to approximately one-third of organizations across the rest of the world.⁸

Beyond climate change issues and guidance on disclosure requirements, Environmental, Social, and Governance (ESG) priorities and goals are becoming a key risk management priority for the modern GC, according to a recent survey on new areas of focus, which ranks ESG ahead of regulatory and internal investigations, neck and neck with information governance and closing in on incident response. Many in-house departments are leading material portions of ESG initiatives and strategy. This includes having greater oversight in some jurisdictions, over due-diligence, third-party practices, and keeping track of regulatory and compliance obligations.

Organizations also have to consider growing consumer activism. Many legal departments are concerned with a rise in ESG-related class actions.⁹ With increased emphasis on the social and governance pillars, corporate governance, anti-corruption, and oversight regarding supplier practices associated with modern slavery and human rights have emerged as key priorities.

Innovation, productivity, and talent retention

The modern GC must recruit, hire, and retain a supremely skilled team to successfully execute on these initiatives. With more work insourced, delivery models must be assessed, including possibly hiring non-legal professionals to augment internal skill sets and meet department needs. This may include technologists, program managers, data analysts, eDiscovery professionals, business strategists, and operations specialists.

A fundamental move over the last several years to hybrid and remote work means workers expect higher degrees of flexibility and greater work-life balance.

The hybrid work paradigm is not a passing fad—and in-house legal departments must operate in some remote capacity going forward.¹⁰ As more Gen Zers and Millennials dominate the workforce, a more empathetic and flexible work environment is needed to remain competitive and ensure skilled workers remain engaged and fulfilled.¹¹

⁷ ACC 2023 LDMB Report. Similarly, according to the IAPP EY Annual Privacy Governance Report, legal remains the most prominent place for privacy offices at 41%.

⁸ 2022 IAPP EY Annual Privacy Governance Report

⁹ See Norton Rose Litigation Trends Survey

¹⁰ See Thomson Reuters, 2023 State of the Corporate Law Department

¹¹ A recent survey focused on understanding the experience and challenges of US based in-house legal talent and data by tenure in an in-house role. Findings indicated that for the most junior in-house attorney, the key focus is on well-being, increasing employee engagement, and providing effective training/development opportunities. Those employees seek time not only on work but to engage in activities outside that environment. Deloitte, 2023 Legal Talent Survey.

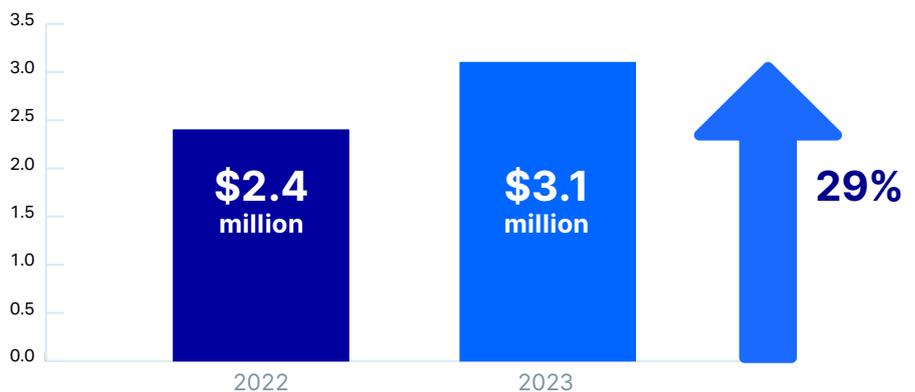


Legal department leaders are clear that they want to facilitate innovation for their organizations, recognizing that automation and other innovations must be implemented to increase productivity and improve performance and collaboration. According to the OpenText/CCBJ study, 54 percent of GCs surveyed said managing increased workload to avoid delays and reduced quality is a departmental priority and 47 percent said optimizing and streamlining operations are among their chief concerns.¹² This provides breathing room to prioritize the professional fulfillment and work-life balance desired by today's workforce. Of course, both take a backseat to the top priorities of general counsel: improving their teams' abilities to proactively manage risk (70 percent) and keep up with and meet new regulatory demands (59 percent).

Technology: Managing risk and costs without sacrificing quality

Research from the Thomson Reuters Institute has found that while 65 percent of law departments are experiencing increasing matter volumes, 59 percent are dealing with flat, if not decreasing, budgets.¹³ At the same time, regulatory developments, compliance risks, and support costs are causing legal departments to anticipate much more legal spending across practices, regions, and industry sectors.

Median total spend by law departments¹⁴



The GC is starting to rely on technology to streamline legal operations. 91 percent of the OpenText/CCBJ survey respondents said technology is critical or important to meet legal strategy, objectives and challenges and 61 percent expect their legal technology budget to increase.¹⁵ Technology investment is being leveraged to improve key legal activities, minimize other expenses, and to meet deadlines. This includes advanced analytics, AI, and machine learning with a focus on automating workflows and solving complex legal programs.

By adopting these platforms and solutions, legal departments can optimize workflow, enhance collaboration, and increase productivity within their legal teams. Centralized access to legal resources and repositories facilitates effective knowledge sharing, repurposing work to expedite responses to litigation or regulatory requests and ensuring consistency and defensibility across the organization.

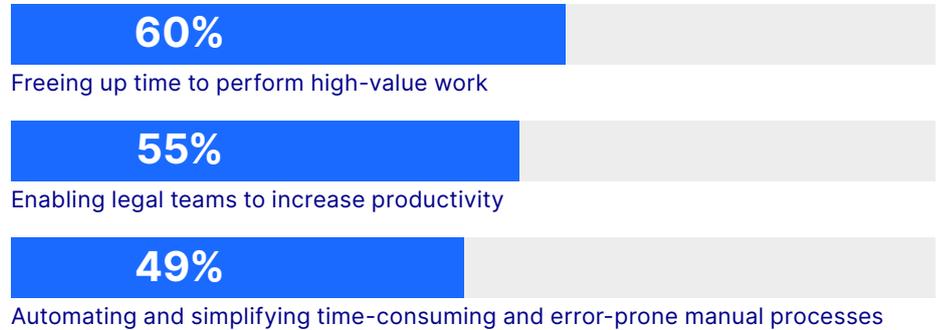
¹² CCBJ Corporate Counsel Business Journal, The new General Counsel survey. (2023)

¹³ Thomson Reuters, 2022 and 2023 State of the Corporate Law Department.

¹⁴ See ACC Law Department Management Benchmarking Report.

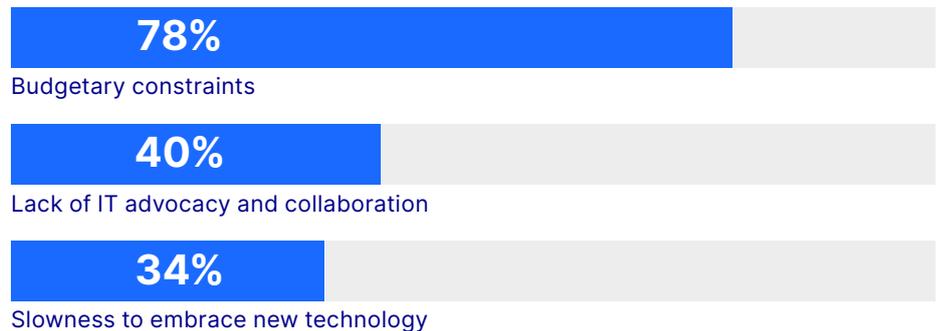
¹⁵ CCBJ Corporate Counsel Business Journal, The new General Counsel survey. (2023)

The OpenText / CCBJ survey results¹⁶ reveal the top reasons cited by GCs for wanting to implement AI are:



Information retrieval tools, advanced technology, and services are being sought to minimize the costs and risk of eDiscovery, managing legal hold notifications, and preserving data. Many buyers are placing heavy emphasis on offerings that cover end-to-end requirements. They are selecting technology to improve and automate the legal hold notification and tracking process that integrates with eDiscovery solutions.

Headwinds remain, however. According to GCs,¹⁷ barriers to technology implementation include:



The goal is a balance between minimizing the costs of outside counsel and keeping permanent staffing of in-house resources down. For document reviews, this includes determining what cases or matters to apply more resources towards and the sophistication needed to support review activities and analysis.

Leveraging outside providers as valuable experts and resources can be especially useful for document review services, as well as those associated with litigation support activities. Experts can leverage existing workflows or customize them in ways that are legally defensible. With service professionals' support, technology assisted review (TAR) and visualization tools can be used to provide legal departments with true value. Organizations can mobilize resources efficiently to meet deadlines and keep review costs down.

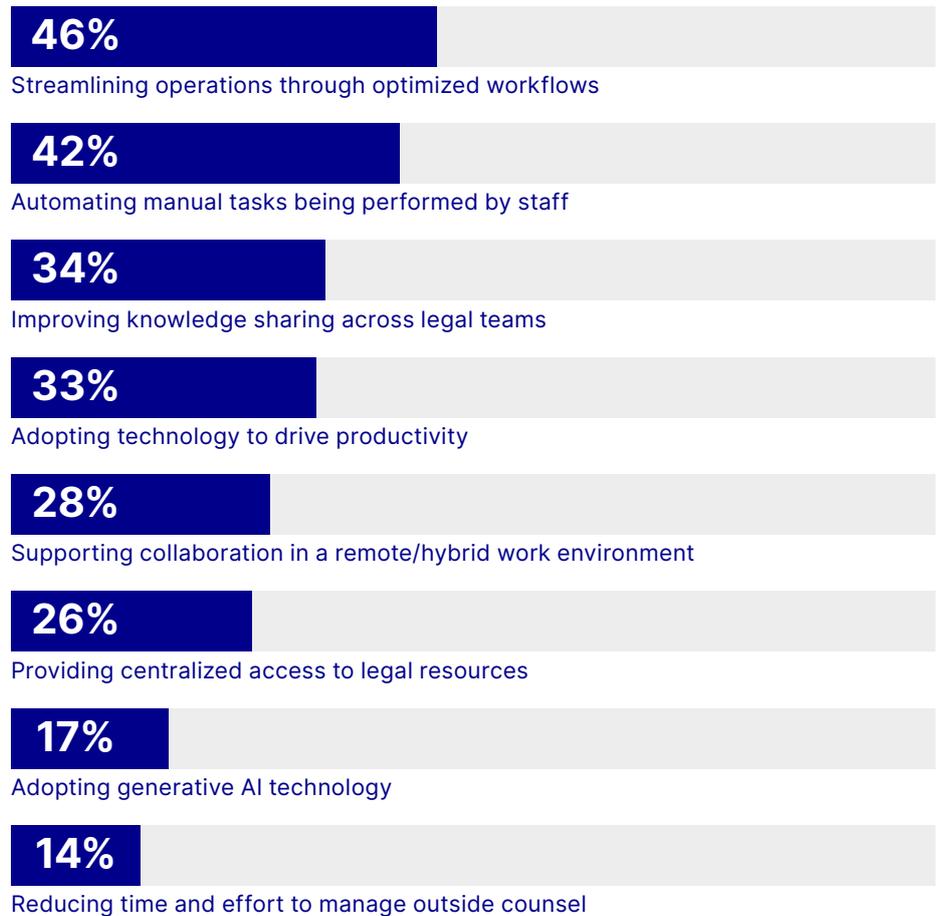
¹⁶ Ibid.

¹⁷ Ibid.

Focus on high-value work

In-house legal departments must get creative to meet demands and ensure manageable workloads with a limited resource pool. Technology can free up legal teams to focus on more substantive, high-value work vs. mundane or routine legal tasks. Higher-value targets can include accelerating data analysis or review to meet deadlines or find information pertinent to a matter, distilling facts, and driving prioritization and case strategy.

In the recent survey of GCs, respondents said areas of focus on their productivity journey include:



Methodology

OpenText and Corporate Counsel Business Journal conducted a research study by sending invitations to an online survey to corporate law departments. There were 289 legal professionals—74 percent of whom are located in North America—who responded to the survey between July and August 2023.

Of these respondents, 76 percent were from corporate law departments with between one and 10 attorneys; 15 percent were from law departments with between 11 and 25 attorneys; four percent were from law departments with between 51-100 attorneys; and five percent were from law departments with more than 100 attorneys.

The respondents represent a broad range of industries from Banking and Financial Services, Manufacturing, Healthcare and Government, and many others.

Expanding the eDiscovery use case

Information retrieval and advanced analytics tools, including eDiscovery technology and techniques, are being implemented to support use cases beyond litigation—including investigations, arbitrations, audits, incidence or post data breach response, information/subject rights requests, and M&A due diligence activities.¹⁸

Some organizations are outsourcing investigative capabilities and expertise to locate key facts and gain insights at a fraction of the time through unique workflows and automation. With increased obligations to demonstrate effective compliance programs, greater emphasis is being placed on data-driven approaches to risk management and analysis.

Future outlook

Forward-thinking lawyers are already creating high-performance, highly flexible legal departments. They are using solutions to support business colleagues, deliver better staff experiences, and provide greater control over work performed by outside providers.

There is an opportunity for the legal executive to emerge as an empowered decision-maker relying on intuition, legal knowledge, and data-driven insights. With a more robust and informed approach to risk-based decision-making, the modern GC can tackle emerging compliance and regulatory challenges with fiscal frugality.

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¹⁸ See eDiscovery Today, 2023 State of the Industry Report.