



2008 Litigation Trends in Canada

2008 Litigation Trends in Canada

Fasken Martineau commissioned an independent research firm, Pollara Strategic Insights¹, to conduct a benchmarking survey of in-house legal counsel and senior executives responsible for litigation issues in Canada. This is the first study of this nature conducted in Canada and Fasken will continue to bring you regular litigation trends reports in coming years.

The purpose of the survey is three-fold:

1. To develop an in-depth understanding of the current litigation landscape in Canada;
2. To determine how many companies employ outside law firms and how satisfied they are with their current firms; and,
3. To better understand what factors would cause companies to switch outside legal firms.

2008 Litigation Trends in Canada

A representative sample of 300 in-house legal counsels from companies with 50 or more employees were randomly selected for this survey. Job titles of those who participated include General Counsel, Associate General Counsel, Deputy General Counsel, Vice-President & General Counsel, and Executive Vice-President. Telephone interviews were conducted between September 12 and October 1, 2008 in either English and French. Participants are well represented across all provinces.

REGIONS	INTERVIEWS
West	90
Ontario	110
Quebec	65
Atlantic	35
TOTAL (Canada)	300



2008 Litigation Trends in Canada

Highlights from findings

70% of the respondents have employed at least one outside law firm for a legal dispute in the last 12 months

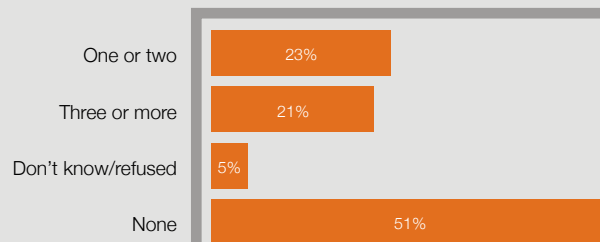
- Contrary to the common view that Canada is not a litigious country, the survey results show that over 40% of the respondents have had at least one legal dispute commenced against their company in the last year. Among the companies that were sued, the study shows an average of 8.3 disputes per year.
- The number of companies that have initiated a dispute is also notable (29%). Among the companies that have initiated a dispute, the average number of disputes they have commenced is four.
- The clear majority of the respondents indicate that the level of litigation has been steady in terms of the number of disputes commenced against them and the number disputes that they have initiated in the past year.
- There are significant regional differences in the data. Companies in Ontario and in the western provinces have seen the greatest number of disputes commenced against them in contrast to Québec and the Atlantic provinces. Companies in Québec have filed the fewest number of disputes and companies in Ontario have filed the greatest number.
- Labour and employment related legal disputes followed by contract, personal injury and product liability rank the highest on the list of litigation concerns for companies in Canada in the survey.
- Satisfaction with the outside law firms employed by companies for litigation is common across Canada, including over 50% who are very satisfied and 44% who are somewhat satisfied. Satisfaction is consistent across all regions.
- While companies tend to be loyal to the firms they have chosen, there are factors that would cause companies to switch legal providers. Of the factors that would drive business to change their current law firms, poor responsiveness and service are the most noteworthy. The odds of switching law firms is higher when their current firm fails to deliver on results and expertise, more so than if a new firm is more capable in meeting these criteria. Significantly, cost is the least important factor for companies when it comes to switching outside law firms.

2008 Litigation Trends in Canada

Not what you expected?

Contrary to the common view that Canada is not a litigious country, the survey findings suggest otherwise. Over 40% of the respondents have had at least one legal dispute commenced against their company in the last year. Among the companies that were sued, the study shows an average of 8.3 disputes per year. Companies in Ontario and in the western provinces have seen the greatest number of disputes commenced against them in comparison to Québec and the Atlantic provinces.

DISPUTES COMMENCED AGAINST COMPANIES



Regional Perspective – Disputes Commenced Against Companies

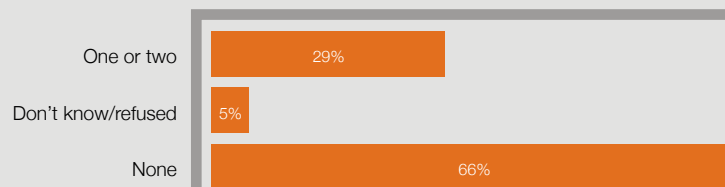
AVERAGE NUMBER OF DISPUTES (Among those who reported at least one dispute)

Canada	8.3
West	8.8
Ontario	9.8
Québec	6.6
Atlantic	4.1

2008 Litigation Trends in Canada

Though not as high as the number of the disputes filed against companies, the number of companies that have initiated a dispute is also noteworthy (29%). Among the companies that have initiated a dispute, the average number of disputes they have commenced is four. On a regional level, companies in Québec have filed the fewest number of disputes and Ontario has filed the greatest number.

DISPUTES INITIATED BY COMPANIES



Regional Perspective – Disputes Initiated by Companies

AVERAGE NUMBER OF DISPUTES (Among those who initiated at least one dispute)

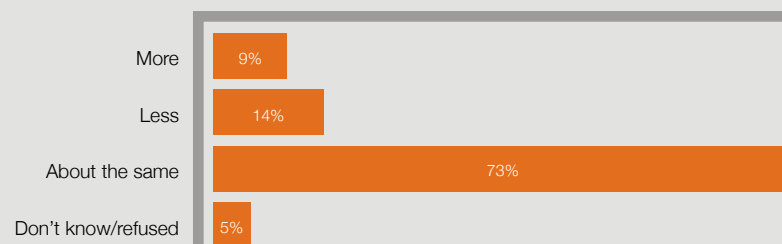
Canada	4.0
West	3.4
Ontario	6.5
Québec	2.1
Atlantic	3.3

2008 Litigation Trends in Canada

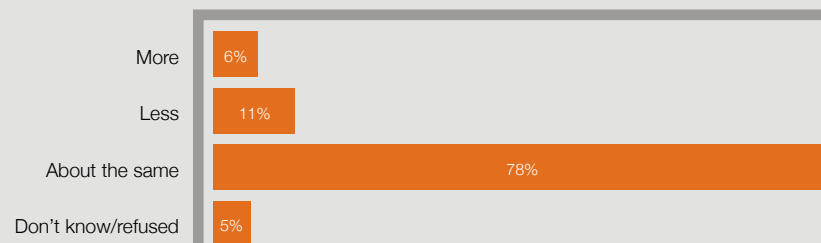
Litigation has been steady

The majority of the respondents indicate that the level of litigation has been steady in terms of the number of disputes commenced against them and the number disputes that they have initiated in the past year. 73% of the companies surveyed believe that approximately the same number of disputes have been filed against them and a slightly higher number of companies (78%) stated that they have initiated a similar level of disputes.

DISPUTES COMMENCED AGAINST COMPANIES



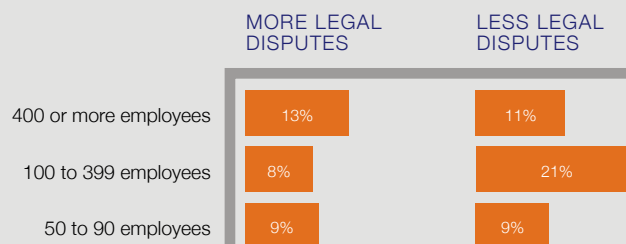
DISPUTES INITIATED BY COMPANIES



2008 Litigation Trends in Canada

A shift in results occurs when we look specifically at the size of the companies surveyed. Companies with 400 or more employees are more likely to say that *more* legal disputes have been commenced against them; whereas mid-sized companies with 100 – 399 employees are likely to say that *less* disputes have been commenced against them in the last 12 months.

LITIGATION LEVELS BASED ON SIZE OF COMPANY



At a regional perspective, companies in Atlantic Canada are most likely to say *more* disputes were commenced against their company this year than last and Québec and western companies are most likely to say there were *less*.

REGIONAL PERSPECTIVE – LITIGATION LEVELS

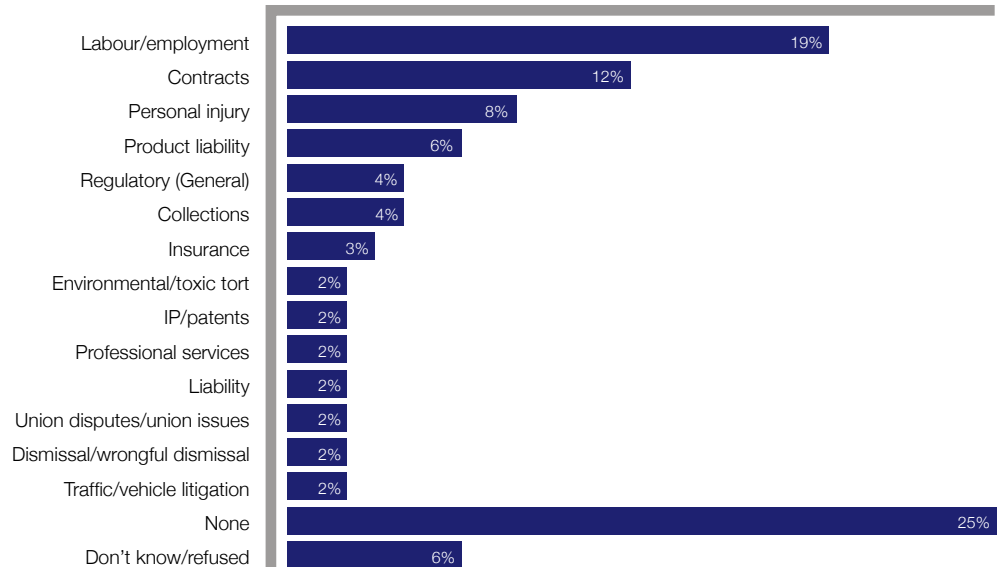
	MORE (%)	LESS (%)	ABOUT THE SAME (%)	DON'T KNOW/ REFUSED (%)
West	7	16	77	1
Ontario	11	14	70	6
Québec	3	17	77	3
Atlantic	23	3	63	12

2008 Litigation Trends in Canada

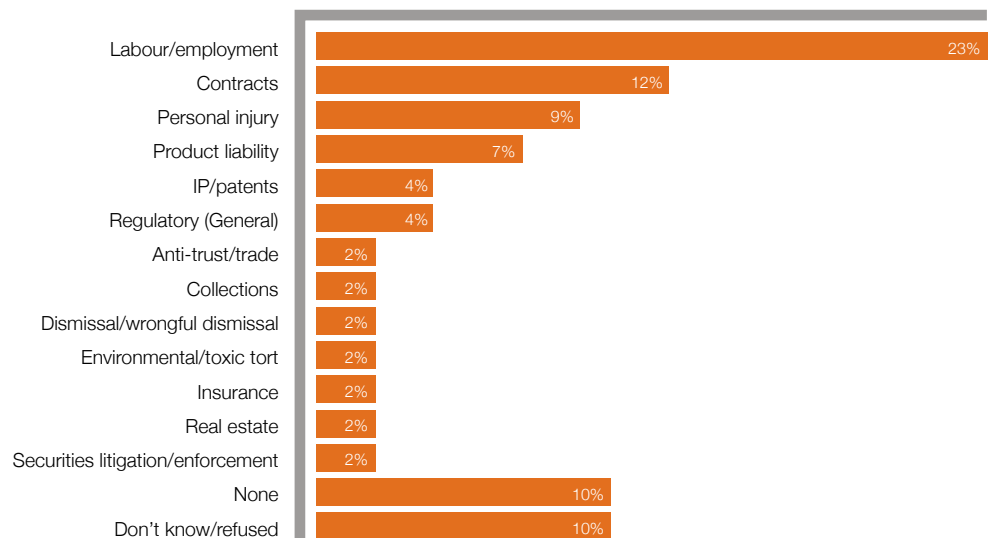
Top concerns for Canadian companies

The type of legal dispute that most concerns companies in Canada right now and in the future is labour/employment issues, followed by contracts, personal injury and product liability. Notably, one-quarter of the respondents are not concerned about any type of dispute at this time. Publicly-held companies (34%) are twice as likely as private companies (17%) to cite labour/employment issues as the legal dispute which concerns them most.

CURRENT TOP CONCERNS



FUTURE TOP CONCERNS

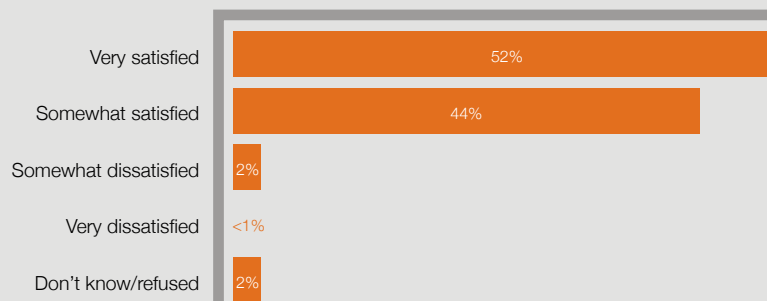


2008 Litigation Trends in Canada

Satisfaction is widespread

Nearly all of the companies surveyed are satisfied with the outside legal firms they employ, including over 50% who are very satisfied and 44% who are somewhat satisfied. Satisfaction is consistent across all regions ranging from a 93% satisfaction level in Ontario to complete satisfaction in Québec.

SATISFACTION WITH OUTSIDE LAW FIRMS



REGIONAL PERSPECTIVE – SATISFACTION WITH OUTSIDE LAW FIRMS

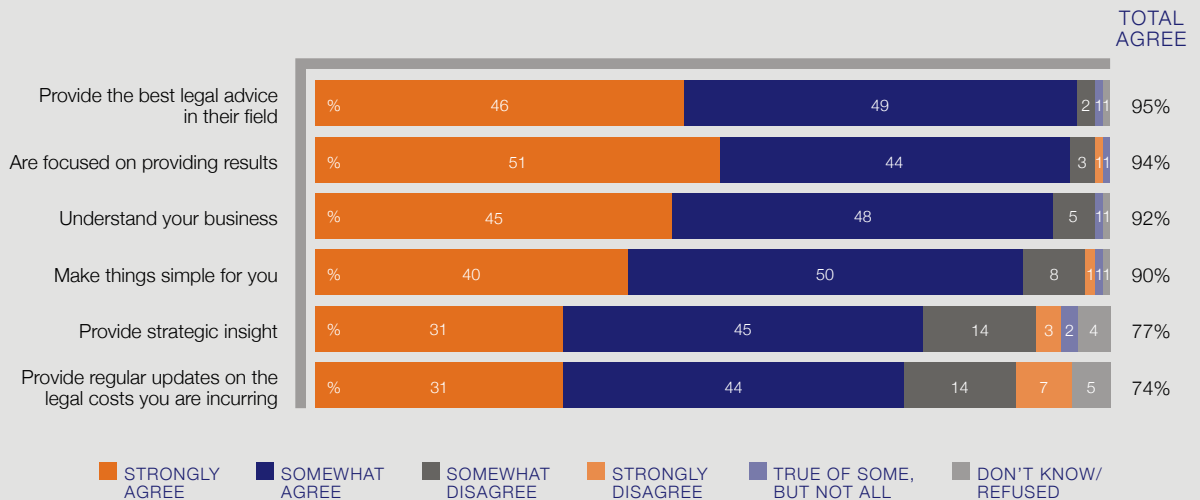
	SATISFIED (%)	DISSATISFIED (%)	DON'T KNOW/REFUSED (%)
West	96	<1	4
Ontario	93	4	4
Québec	100	<1	<1
Atlantic	96	4	<1

2008 Litigation Trends in Canada

Performance relative to key service criteria

Among the companies that hired at least one outside law firm, nine-in-ten or more agree that their firms provide the best expertise, are results oriented, understand the company's business, and make things simple. Fewer, but still a clear majority, agree their outside law firms provide strategic insight and provide regular updates on the legal costs the company is incurring.

SATISFACTION ON SERVICE CRITERIA



Companies with annual gross revenues of under \$10 million (24%) were more likely than those with revenues of \$10 million or more (4%) to have employed more outside firms in the past year compared to the year before

2008 Litigation Trends in Canada

Client retention risks faced by law firms

Fasken tested the likelihood to consider switching law firms as a result of a variety of factors. The analysis focuses on the proportion who say they are “very likely” to switch, as this is a more accurate predictor of behaviour change.

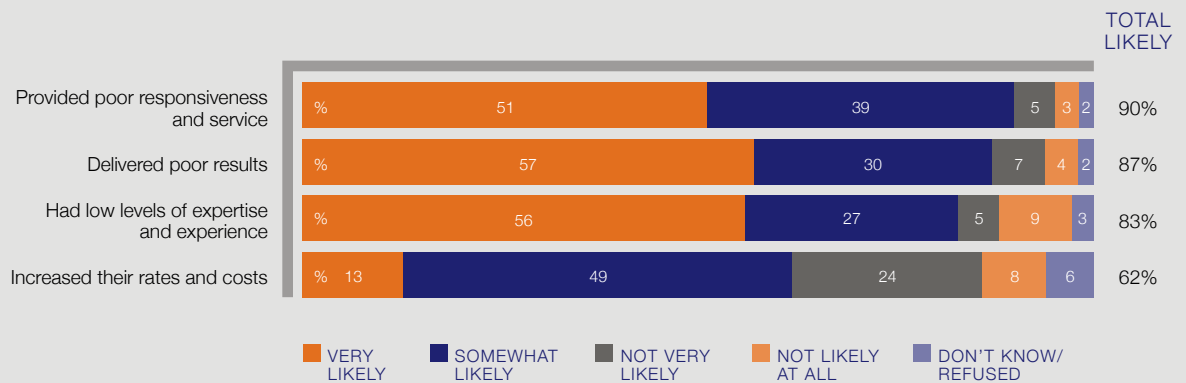
Companies are more likely to switch legal providers if their existing outside firm provides poor service (51%), poor results (57%) or unacceptable levels of expertise (56%) rather than if another firm offers better results (28%) or better service (18%). It is clear from the findings that companies are loyal to the firms they employ unless their firms fail to deliver on certain key factors. Of the factors that would drive business to drop their current law firms, poor responsiveness and service are the most notable. The findings also suggest that the greatest challenge in convincing potential new clients to switch firms is overcoming inertia.

Cost is not a driving factor when it comes to switching law firms. Only 13% of companies cited that they would be very likely to drop their current outside law firms if rates and costs are increased. Similarly, 18% of companies would be very likely to consider switching legal providers if a new firm offered better rates and costs. Canadian businesses clearly value factors related to service standards and results over costs.

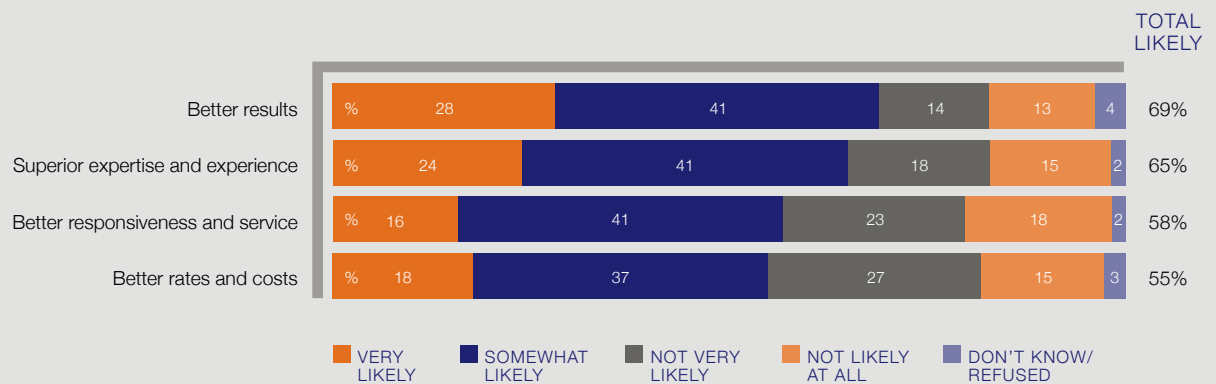


2008 Litigation Trends in Canada

LIKELIHOOD OF DROPPING CURRENT FIRM BECAUSE OF PERFORMANCE



LIKELIHOOD OF SWITCHING FIRMS BECAUSE OF BETTER OFFER BY NEW FIRM

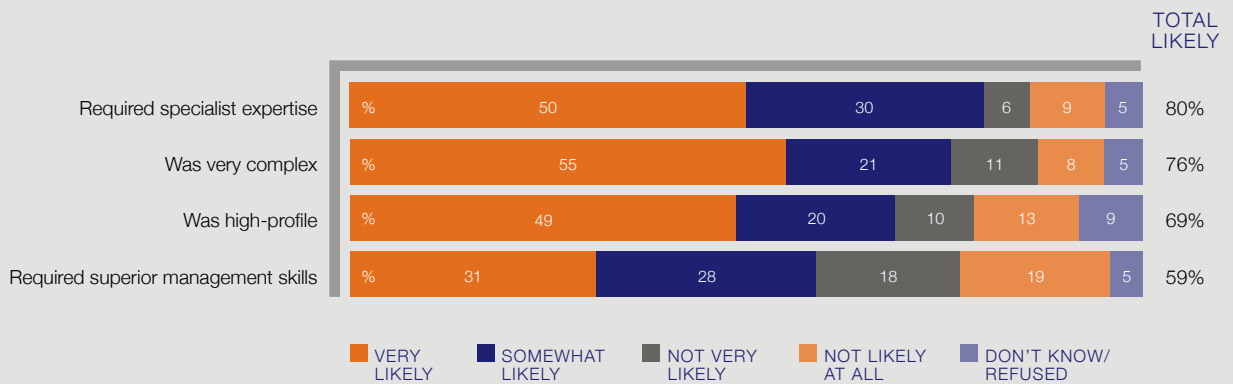


2008 Litigation Trends in Canada

Employing external law firms

Of the companies that do not employ an outside law firm, a majority of the respondents would be very likely to employ an outside law firm if a dispute required specialist expertise (50%) or was very complex (55%).

LIKELIHOOD OF EMPLOYING AN OUTSIDE LAW FIRM



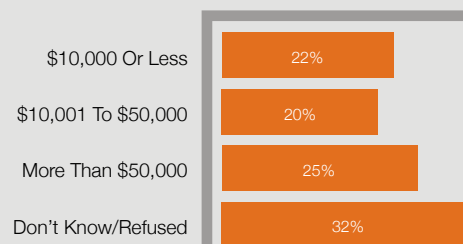
The majority of respondents (89%) expect that the number of outside law firms they employ to stay the same in the future

2008 Litigation Trends in Canada

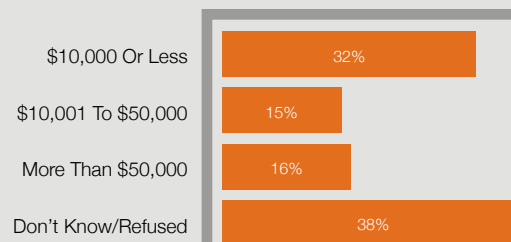
Sample profile

The annual spending on legal work and litigation work in particular ranges for companies across Canada. Two thirds of the companies have been in operations for over 20 years and over 75% of the participants are from private companies. The manufacturing industry represents the largest portion of the sample at 26%. Health care and hospitality and leisure follow at 11% and 9% respectively.

TOTAL ANNUAL SPENDING ON LEGAL WORK



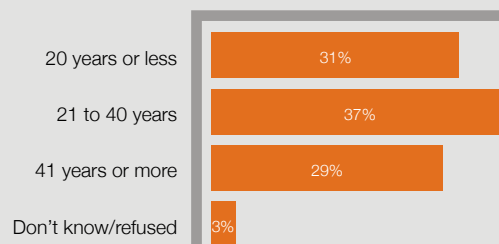
ANNUAL LITIGATION SPENDING, EXCLUDING COST OF SETTLEMENTS AND JUDGMENTS



2008 Litigation Trends in Canada

Sample profile

NUMBER OF YEARS IN OPERATION



PUBLIC OR PRIVATE COMPANIES

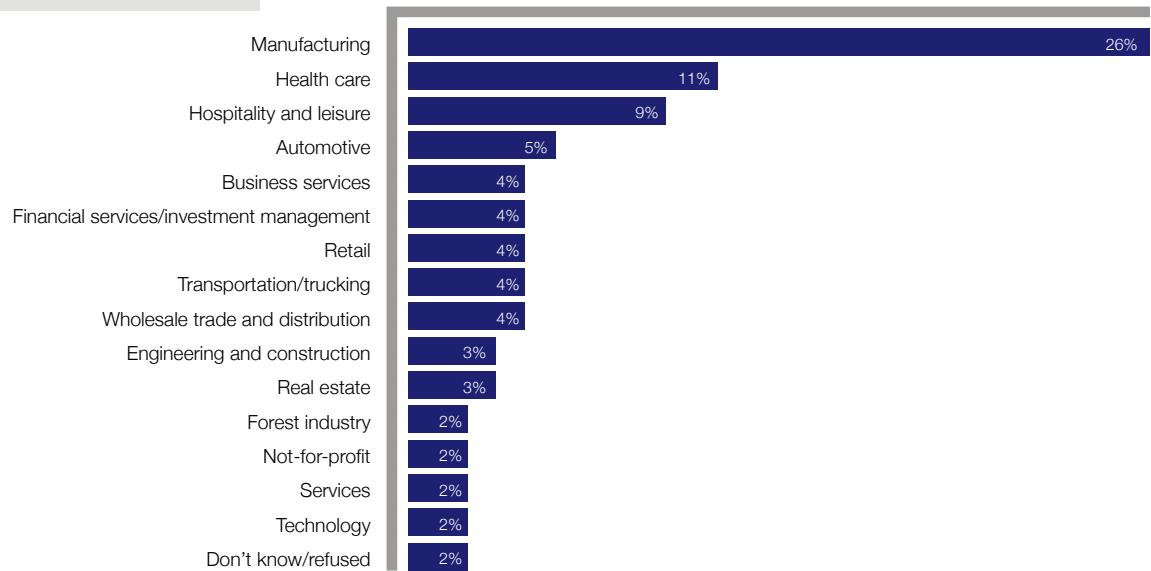


Publicly held companies (14%) are more likely than private companies (6%) to expect that they will increase the number of outside legal firms that their company employs in the future

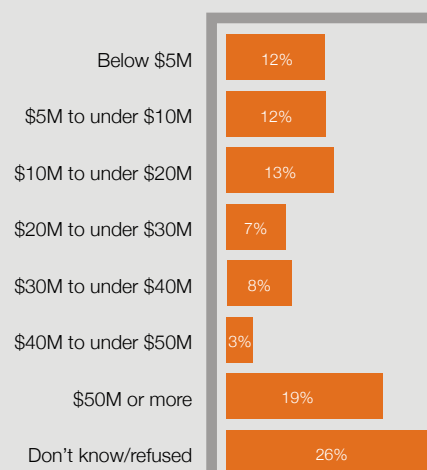
2008 Litigation Trends in Canada

Sample profile

PRIMARY INDUSTRY OR SECTOR



ANNUAL GROSS REVENUE



2008 Litigation Trends in Canada

Conclusion

This study shows that litigation is common, despite the popular view that Canada is not litigious. Respondents have seen stable levels of litigation in the past year, but the current global economic downturn may have an impact on the litigation landscape.

Companies are satisfied with their legal providers for litigation work. In particular, respondents are satisfied with the legal advice and results they receive from outside law firms. While a majority of the respondents agree that their law firms provide strategic insight and regular updates on legal costs, the satisfaction with these factors ranks lower than expertise and outcomes. This suggests that strategic direction and updates on costs are areas where law firms can do more to add value to their clients.

On a similar note, the survey findings stress the importance of results and experience, since companies are most likely to consider dropping their outside law firms should they fail to deliver on these factors. The impact of costs can be significant for any business. While this is true, the results of this study indicate that companies are less concerned with cost versus other factors such as service and expertise when it comes to switching legal providers.

Moving forward

We will continue to evaluate the litigation landscape in future years to assess any shifts in trends. In view of the current economic climate, our next litigation trends study will also report on how the financial crisis has affected litigation in Canada.

We encourage you to contact us with suggestions on future litigation trends topics and if you are interested in receiving the results on upcoming surveys.

2008 Litigation Trends in Canada

Beyond results

At Fasken Martineau, our Litigation Group delivers strategy, creative solutions and cost-effective practices. Strategy means placing solutions ahead of problems, and outcomes ahead of process. Creativity includes adapting legal principles to novel issues, applying unexpected solutions and investing in emerging disciplines. Cost-effective practices involve staffing and organization that capitalize on established expertise and fits your purposes and goals.

With offices across Canada, we can respond to clients' needs on a timely basis by assembling national and local teams. We have a broad range of experience and continue to assist clients with complex matters that require specialty expertise.

Click [here](#) to learn more about our team.

Fasken Martineau is a leading Canadian business law and litigation firm consistently ranked among the best law firms in Canada. Fasken Martineau has the depth and breadth of expertise in both of Canada's legal systems, common and civil law, and in both of Canada's official languages, English and French.

Vancouver Calgary Toronto Ottawa Montréal Québec City London Johannesburg

www.fasken.com