

The 7 Faces of Legal Knowledge Management

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Executive Summary: In simple terms, knowledge management (KM) in law firms and corporate or government legal departments is about working smarter, leveraging the collective wisdom of the firm or department, and not reinventing the wheel. The reality, however, is that KM cannot always be understood in such simple terms. The typical law firm Director of KM, for example, will often be responsible for several KM-related activities. By breaking down these activities into discrete categories – the “7 faces of legal KM” – one can gain a more sophisticated understanding of what legal KM is and how it can improve client service and the firm’s bottom line. And since each of these aspects has its own unique challenges, by looking at each aspect individually, one can better isolate unique technological and people-powered solutions to increase effectiveness that might otherwise be missed if these unique aspects were not taken into account.

The 7 Faces of Legal Knowledge Management¹

That legal knowledge management has “7 faces” is not too surprising given the lack of consensus on a single, all-encompassing definition of knowledge management.² Because of the challenge of precisely defining this term, we often simplify the meaning of knowledge management when explaining to outsiders what it is we do. One common cocktail party explanation of legal knowledge management is that we help lawyers to work smarter and not “re-invent the wheel” when we organize and make accessible precedent agreements and research memos. However, as I elaborate in this paper, there are many aspects to legal knowledge management, each of which requires different human and technological strategies if knowledge management is to be effectively implemented. The reality is that the typical law firm Director of Knowledge Management wears many hats, being responsible for one or more of what I am calling “the 7 faces of

¹ This paper adapts an early draft of a new chapter I am writing for a proposed third edition of *Legal Research and Writing* (Irwin Law). The first two editions of that book did not specifically discuss knowledge management. However, as my thinking on legal information literacy continues to evolve, I believe that knowledge management and legal research and writing are intrinsically related and should be discussed together (even though, traditionally, knowledge management is not discussed in most books on legal research and writing).

² A number of commentators have noted the challenge of defining knowledge management. Ray Sims, for example, recently has analyzed a number of these definitions – see Ray Sims, “Analysis of 53 Definitions of Knowledge Management,” Sims Learning Connections Blog, comment posted March 19, 2008, <http://blog.simslearningconnections.com/?p=282> (accessed October 13, 2009).

legal knowledge management.”³ These 7 faces encompass the following inter-related activities:

1. Document / Records Management
2. Precedent Development
3. Legal Research / Intranet Content Delivery
4. Professional Development / Training
5. Litigation Support
6. Practice Management
7. Client-Facing Initiatives / Alternative Fee-Billing

Although these 7 faces of legal knowledge management each may involve different implementation strategies and will often involve other departments within the organization, the bottom line is to produce concrete results that make lawyers more effective in meeting client needs. And although there is – and always be – a human element to implementing these legal knowledge management strategies, because this is a legal technology conference, I will pay special attention to the technological aspects affecting each of these faces of knowledge management.⁴

³ I am indebted to the members of the Toronto Law Firm KM Directors Group for our various discussions on this topic, particularly discussions with Eugene Cipparone and John Gillies in anticipation of the Group’s September 2009 meeting in which I started to realize how many different hats members of the Group wore relating to KM projects. The phrase “The 7 Faces of Legal KM” is mine (as far as I know) and the usual disclaimers apply that the views expressed in this paper are mine and should not necessarily be attributed to that Group or to my firm (despite my firm being extremely supportive of KM and KM initiatives).

⁴ Throughout this paper, I will often be referring to law firm knowledge management but in most situations the discussion and analysis will be broad enough to encompass knowledge management for corporate and government law departments, an increasingly important issue for these departments who also face similar challenges of too much information and the need to work smarter and not re-invent the wheel. Appendix A contains some comments on knowledge management of specific applicability to corporate and government law departments.

Traditional Definitions of KM

Before analyzing the 7 faces of knowledge management (or KM as it is commonly called), I want to first explore some of the reasons why KM is difficult to define and to look at some of the more common elements among the various definitions of KM, all with the goal of putting some context in the subsequent analysis of the 7 faces or aspects of legal KM.

There are a number of reasons why it is difficult to define KM:

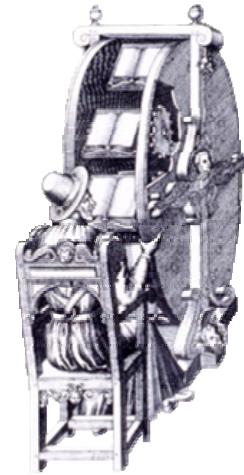
- Although one could argue that knowledge management has been practiced in one form or another for hundreds of years,⁵ modern knowledge management makes its first major appearance in the Canadian legal literature only one decade ago.⁶ As such, within the legal community at least, knowledge management is still a

⁵ An early KM technology was Agostino Ramelli's bookwheel, invented over 400 years ago (in 1588). See the wonderful graphic of it on the next page, sourced from the Wikipedia entry for "Bookwheel." In "Innovator, Fool, I Dream: Deploying Effective Knowledge Management Principles to Combat Information Overload in Law Firms" in *Knowledge Leadership Forum* (New York: April 26-2007), I review the history of information overload, which dates back to the invention of the papyrus scroll (note: "Innovator, Fool, I Dream" is an anagram for "information overload"). As each generation faced an increase in the amount of information available, technological solutions – such as Ramelli's bookwheel as a solution for having too many books to read – were introduced to help cope with the information overload. As such, I see attempts by modern knowledge managers to organize legal knowledge content as part of an ongoing development: as technology causes (or allows to happen) an increase in legal information overload, so to does technology present likely solutions (along with the ever present role of human beings as part of the process).

⁶ One of the earliest mentions of the phrase "knowledge management" in the Canadian legal literature appear to be from a June 5, 1998, article in Vol. 18, No. 5 of *The Lawyers Weekly* by Joyce Hampton entitled "Lawyer Breaks Glass Ceiling in High-Tech Industry." In the United States, the earliest use of the phrase "knowledge management" that I could find in the legal literature was from just over 20 years ago in the April 1989 newsletter of the American Association of Law Libraries: Robert L. Oakely, "Report on the Meeting of the Library of Congress Advisory Committee" (1988-89) 20 AALL Newsl. 258.

relatively young industry with many firms trying different approaches, resulting in KM meaning different things to different firms.⁷

- The fact that numerous writers have commented on the challenge of calculating a return on investment (or ROI) on law firm KM projects⁸ reflects in part the fact that KM is not always well-defined and contains elements not conducive to traditional accounting methods of determining ROI.



Agostino Ramelli's Bookwheel (1588).
Source: Wikipedia

- Depending on who you ask, some might argue that KM is more about technology and harnessing technological solutions such as smart search, Web 2.0 solutions and the like; whereas others tend to emphasize the human element of knowledge transfer that cannot always be effectively captured through technology (but instead through tacit knowledge transfer in the form of training, mentoring of

⁷ See the Bibliography to this paper for a list of some of the leading resources on law firm knowledge management. I recommend the following two books for those new to this area: Matthew Parsons, *Effective Knowledge Management for Law Firms* (Oxford University Press, 2004) and Gretta Rusanow, *Knowledge Management and the Smarter Lawyer* (New York: A.L.M. Properties, 2003).

⁸ See, for example, Kingsley Martin, "'Show Me the Money' – Measuring the Return on Knowledge Management" (October 15, 2002), LLRX.com, <http://www.llrx.com/features/kmroi.htm> (accessed October 13, 2009); John I. Alber, "Rethinking ROI: Managing Risk and Rewards in KM Initiatives" (February 23, 2004), LLRX.com, <http://www.llrx.com/features/rethinkingroi.htm> (accessed: October 13, 2009); Mary Abraham, "Measuring Knowledge Management ROI" (May 20, 2008), Above and Beyond KM Blog, comment posted on May 20, 2008, <http://aboveandbeyondkm.blogspot.com/2008/05/measuring-knowledge-management-roi.html>.

junior lawyers and on-the-job experience). As such, KM can mean different things to different people.

Despite the lack of a single agreed upon definition of KM, most definitions contain the following elements:

- KM is about leveraging an organization's intellectual capital through harvesting, organizing and making applicable knowledge available
- KM, properly done, should deal with both explicit and tacit knowledge
- KM is about creating a knowledge-sharing environment that encourages and rewards collaboration

To analyze effective KM in the legal industry, I propose my own definition of KM in these terms:⁹

The purpose of knowledge management in law firms (or corporate/government law departments) — aligned with the firm's specific operational and strategic goals — is to:

- *provide support for faster, more effective legal services to clients (internal and external), thereby increasing profit margins for the firm at the same time as attracting and retaining clients*

⁹ I cannot likely claim this definition as my own since I have been influenced by so many other definitions. For example, I liked the recent definition by Dave Snowden in "Defining KM," CognitiveEdge Blog, comment on September 23, 2009, http://www.cognitive-edge.com/blogs/dave/2009/09/defining_km.php and have incorporated parts of his definition and have likely borrowed some language from other commentators without necessarily realizing it. I also acknowledge that my definition is unrealistically lengthy, in part to be as inclusive as possible.

- *promote legal information literacy to make the work lives of lawyers and other firm members more productive, thereby indirectly nurturing employee retention and knowledge sharing¹⁰*
- *establish best practices and standards for legal services, thereby reducing the risk of errors and malpractice.*

This is achieved through knowledge management staff working in collaboration with local content administrators (providing locally-relevant solutions for organizations with offices in multiple locations) by:

- *helping create an environment that fosters information-sharing and that values lifelong education*
- *capturing, organizing, updating and making available explicit legal knowledge content (in the form of precedents, research, and best practices checklists)*
- *supporting the training and mentoring of lawyers and staff to promote the transfer of tacit legal knowledge (using both human-training and technology).*

With this definition of legal KM in mind, I will now discuss the 7 faces of law firm KM.

In so doing, I will also look at how each “face” or aspect of legal KM can impact the firm’s bottom line and how technology (and human solutions) can address the challenges encountered when trying to implement the particular aspect of KM under review.

1. Document / Records Management

My definition of KM above included the task of providing “support for faster, more effective legal services to clients” by “capturing, organizing, updating and making

¹⁰ I realize that some may argue that this aspect of KM is slightly vague and that it is not the mandate of a KM Department to worry about employee retention. Despite that concern, I truly believe that eliminating frustrations that lawyers experience when they can’t get the information they need when they need it goes a long ways towards keeping them happy and encouraging better employee retention.

available explicit legal knowledge content (in the form of precedents, research, and best practices checklists).” Document management and records management play an important role as part of this KM task.

Although the paperless law firm remains a myth, legal professionals *are* increasingly working in a digital environment (word processors, email, the Internet and so on). As such, managing digital information (along with paper hard copies) is extremely important. A document management (DM) system is “a computer system (or set of computer programs) used to track and store electronic documents [or] images of paper documents.”¹¹ Most DM systems have features that allow filing by specific location, that protect privacy settings on documents (when required), and that provide for authentication, traceability and retrieval through browsing and searching.¹² Records management, on the other hand, is “the practice of maintaining the records of an organization from the time they are created up to their eventual disposal” and “may include classifying, storing, securing, and destruction (or in some cases, archival preservation) of records.”¹³ In a law firm, document management is often thought of as organizing documents for the lifecycle of a matter (i.e., when the matter is still open). Records management, on the other hand, is often thought of as a special form of managing documents at the end of that life cycle when the matter is closed and the document are stored and retained for an appropriate period of time.

¹¹ Wikipedia contributors, “Document management system,” *Wikipedia, The Free Encyclopedia*, http://en.wikipedia.org/wiki/Document_management_system (accessed Oct 13, 2009).

¹² *Ibid.*

¹³ Wikipedia contributors, “Records management,” *Wikipedia, The Free Encyclopedia*, http://en.wikipedia.org/wiki/Records_management (accessed October 13, 2009).

Although legal KM can (obviously) be developed in a law firm or corporate legal department in the absence of a document management or records management system, for large, multi-office firms, these systems are important foundation for housing the firm's explicit knowledge content (in the form of documents, e-mails, video and the like). For a large law firm, it is almost unimaginable to operate without a document management system, something that helps organize documents by client or matter and makes sharing of information extremely easy. For the knowledge manager, a document management system is an important source for harvesting knowledge content. Appropriate profiling or tagging of documents being saved greatly increases the ease by which materials can be subsequently retrieved.

In many law firms, knowledge management staff are not necessarily responsible for records management despite the fact that: (i), knowledge managers will know the legal and ethical issues that govern records retention, and (ii) at the time a file is closed, there is an excellent opportunity for knowledge managers to review the file for valuable content (in the form of research and sample documents with re-use value that might otherwise not have already been harvested).

Some of the major document management systems used in law firms in North America include Autonomy Interwoven,¹⁴ OpenText¹⁵ (Docs Open/ Hummingbird), Worldox,¹⁶ TimeMatters,¹⁷ Microsoft SharePoint¹⁸ and Documentum¹⁹ (with products such as CT

¹⁴ Autonomy Interwoven: <http://www.interwoven.com>.

¹⁵ OpenText: <http://www.opentext.ca>.

¹⁶ Worldox: <http://www.worldox.com>.

¹⁷ TimeMatters: <http://www.lexisnexis.com/law-firms/practice-management/specialized-law/time-matters.aspx>.

Summation²⁰ or CaseMap²¹ being used mainly in the context of organizing and searching documents on litigation matters). Some of the foregoing products also contain modules for records management; otherwise, firms will sometimes use their financial management system or develop their own home-grown solutions for tracking closed files.

Although document and records management can be expensive, it is simply a cost of doing business and a core or basic infrastructure for any large law firm; operating without document and records management would be inefficient and increase liability risks of law firm breaching its statutory and ethical obligations to properly maintain documents.

Technology plays an important role in document and records management. However, due to the need to ensure the integrity of electronic documents and the privacy settings on documents, these systems require fairly significant investment in IT staffing and network and hardware infrastructure. In addition, until recently, most DM systems lacked effective search engines, causing frustration for users when they retrieve too many documents or not the anticipated ones. Fortunately, smart search engines are being developed²² that improve both precision and recall and return results that are much more relevant. However, in addition to challenges of effective search, there is the challenge of effective email management. The majority of documents in document management

¹⁸ Microsoft SharePoint: <http://sharepoint.microsoft.com>.

¹⁹ Documentum: <http://www.documentum.com>.

²⁰ CT Summation: <http://www.ctsummation.com>.

²¹ CaseMap: <http://www.casesoft.com>.

²² Some of the smart enterprise search engines being used in law firms include Interwoven Universal Search (IUS) (<http://www.interwoven.com>), Recommind (<http://www.recommind.com>) and even Microsoft SharePoint (<http://sharepoint.microsoft.com>), the latter of which is discussed in more detail in the next section. For a recent article on the adoption of IUS by one Canadian law firm, see Gerry Blackwell, "The Knowledge Management Robot: Smart Search Tools Offer Easier and Faster Ways for Finding that Needle in a Haystack" (June 2009) Canadian Lawyer 21.

systems are increasingly emails. Although many emails are not always important documents, some are important and most are integral to proper matter management (to ensure that all correspondence on a particular matter are properly stored).

2. Precedent Development

The documents in a DM with the some of the highest “re-use” value can be precedents, which are the agreements and litigation documents (“precedents”) drafted by lawyers on behalf of clients. Precedents – broadly defined – can include a variety of documents: model agreements or pleadings that, over time, have been developed and annotated to include the “ideal” or model document; sample precedent agreements or pleadings from past transactions or lawsuits; clause banks of boilerplate provisions or important contractual provisions; checklists for typical transactions (e.g., for the purchase or sale of a business) or lawsuit procedures (e.g., a trial preparation checklist); transaction opinions; and deal closing documents (that many firms are now digitizing once the deal has been completed to make the full-text searchable and easily accessible). Precedents, therefore, are an example of the core “explicit” knowledge or intellectual capital of a law firm (compared to the equally if not more important “tacit” knowledge of law firm, being the knowledge or experience resident with the brains of firm members).

Even though there is typically no standard precedent perfect for every possible legal situation, many precedents can be re-used and adapted for future transactions.²³

²³ The recycling of agreements as precedents has in fact be recognized (and implicitly endorsed) by the Supreme Court of Canada in the following comments of Binnie J.: “Recycling precedents is the life-blood

Precedents also help define a baseline standard of content to address the typical issues that might arise in connection with the issues for which the precedent was designed (for example, a model share purchase agreement may contain pages of sample representation and warranties clauses, not all of which might be needed or be relevant for a particular transaction in the future). However, it is easier to catalogue the most likely clauses in the model agreement as a “checklist” of issues for the drafter to consider and to later remove those that are not needed when the model is applied to a particular transaction.

Although some lawyers are very effective at developing and maintaining their own personal sets of precedents, many are too busy to do so. Knowledge managers can therefore bring some discipline to the task of gathering, organizing and maintaining precedents. This is achieved through a combination of people-powered resources and technology. The people-powered resources typically involve qualified lawyers (often given the title of “Professional Support Lawyer” or “Practice Support Lawyer,” known by its acronym of PSL). PSLs usually have experience in the substantive areas of law related to the precedents in question and use their skills to evaluate the specific language and appropriateness of particular precedents in addition to – in most situations, time permitting – annotating the precedents with value-added commentary to alert the user to any particularly issues to consider when using the particular precedent. Depending on the firm, PSLs may also write client bulletins and prepare RFPs for their department within the firm. And although technology plays an important role in helping to make precedents

of corporate law practice. A document prepared for Client A is part of the lawyer’s work product and may go through numerous iterations in the service of other clients. The practice of law would be hopelessly inefficient and costly for clients if transactional documents had to be reinvented rather than customized.” See: *Strother v. 3464920 Canada Inc.*, 2007 SCC 24 ¶ 111.

easily re-usable, technology alone cannot (so far) replace the value in having some human-initiated review and organization process to make the precedents more easily browsable.

However, technology does play an important role in precedent development. For example, smart conceptual search will improve search recall by being able to have the system know to retrieve not only “non-disclosure” agreements but also “confidentiality agreements” if the user searches on only “non-disclosure agreements” as his or her search keywords.²⁴ Likewise, there are excellent document assembly software products that enable document assembly and clause banks to make document or precedent drafting both more efficient and less prone to errors. For example, HotDocs²⁵ has the ability to check for proper paragraph numbering and gender correction. Other document assembly software includes ContractExpress DealBuilder,²⁶ Exari,²⁷ KIIAC,²⁸ Legal MacPac,²⁹ and Microsystems.³⁰

As mentioned above, most large law firms are also now digitizing their “deal closing books” often as a space-saving measure (since the hard copy of the closing books, once digitized, can more easily be returned to the client or sent to off-site storage).

²⁴ This example was mentioned in relation to IUS in donalee Moulton, “New Advanced Browser-based System Makes Searching Easier,” Vol. 29, No. 20, *The Lawyers Weekly* (October 2, 2009).

²⁵ HotDocs, <http://www.hotdocs.com>.

²⁶ ContractExpress DealBuilder: <http://www.business-integrity.com/products/contractexpressdealbuilder/default.html>.

²⁷ Exari: <http://www.exari.com>.

²⁸ KIIAC: <http://www.kiiac.com>.

²⁹ Legal MacPac: <http://www.legalmacpac.com>.

³⁰ Microsystems: <http://www.microsystems.com>.

Those KM departments that also integrate with their law library and legal research departments³¹ can also supplement their internal precedents by providing access to commercially-produced external precedents, many of which are available online by subscription.³² The Practical Law Company³³ also has a subscription service providing access to fairly sophisticated corporate/commercial precedents developed by leading British and American deal lawyers.

Once again – just as most major law firms could not operate without a document management system – most major law firms will need to have some sort of process in place to access and develop corporate/commercial and litigation precedents. The degree of sophistication of any firm’s precedents bank will depend in part of the nature of the firm’s practice, the size of the firm, and the number of staff available to dedicate all or part of their time to precedent development. The investment cost in developing an internal precedent bank can be expensive but should provide returns on that investment in the form of being able to produce better agreements or court documents for clients more cost-effectively. In addition, to the extent that firms need or want to address client demand for alternative fee arrangements (discussed below as an aspect of the 7th face of KM), a necessary condition of being able to explore and offer alternative fee arrangements for clients assumes access by the firm to a strong precedent bank in order to leverage such content more cost effectively.

³¹ Discussed more in the next section.

³² For Canadian law, the major commercial precedent services include: *Canadian Forms and Precedents* and *Williston and Rolls Court Forms* (LexisNexis Butterworths, in print and online); *O’Brien’s Encyclopedia of Forms and Precedents* (Canada Law Book, in print and online); and *Litigator* (court-filed litigation precedents, on Westlaw Canada). There are also numerous “print only” services available in Canada in addition to there being U.S. and U.K. forms and precedent services available on each of LexisNexis Quicklaw and Westlaw Canada.

³³ Practical Law Company UK: <http://uk.practicallaw.com>; Practical Law Company US: <http://us.practicallaw.com>.

One KM activity that can often be impacted across all 7 faces of legal KM that I will discuss now is expertise location within the firm (even though the need for expertise location arises in some of the other 7 faces of KM). In small organizations, people will know who the experts are on particular issues. However, as firms grow in size – especially when there are multiple offices – it becomes more difficult to know who does what well. Although online “contact information” systems such as InterAction³⁴ are commonly used by law firms, we are starting to see products that combine contact management with smart search to identify expertise within the organization based on activities an individual has done on particular transactions or documents and, for example, how much time the individual has billed on matters related to the area of expertise required (some of these smarter products include Reconnind,³⁵ ContactNetworks,³⁶ BranchIT,³⁷ and SharePoint Knowledge Network³⁸). Within the firm, locating experts is important when needing someone to draft particular documents or otherwise provide advice on a particular area of law (or provide training to firm members on that area of law).

³⁴ LexisNexis InterAction: <http://www.interaction.com>.

³⁵ Reconnind: http://www.reconnind.com/solutions/enterprise_search.

³⁶ ContactNetworks: <http://www.contactnetworks.com/products/>.

³⁷ BranchIT: <http://www.branchitcorp.com>.

³⁸ It appears that the Knowledge Network will now be included in new versions of SharePoint: “Knowledge Network Dropped for SharePoint 2009 Version,” TechTicles.com Blog, comment posted December 13, 2007, <http://www.techicles.com/knowledge-network-dropped-for-sharepoint-2009-version.page> (accessed October 15, 2009).

3. Legal Research / Intranet Content Delivery

An important part of legal KM is legal research and its related elements, including research memos and opinion letters. Many would typically think of traditional KM as being the knowledge *inside* the firm (within the collective expertise of the lawyers and other firm members) whereas library and legal research is the knowledge *outside* the firm (within the decisions of judges or textbooks of leading academics, for example).

Although this inside/outside distinction may be overly simplistic, there is some truth to it.

Despite how one characterizes the interdependency of KM and legal research, it is clear that technology has radically transformed legal research and law libraries and lessened the inside/outside distinction, resulting in all sources of legal information being important, whether the information is physically within the firm or outside the firm. Technology has also transformed law librarianship – especially in the last decade – with the increasing digitization of both primary sources of law (legislation and case law) and secondary sources (treatises, journal articles, conference papers, encyclopedias, case digests and reference tools).

Although in many law firms the KM Department and the Law Library may operate relatively independently, it makes sense for them to be formally integrated (as I have done at my firm), given their inter-relation, and be seen as a “one stop shop” for legal information, whether that information is sourced from internal sources (such as model

agreements or best practices) or external sources (such as commentary from a book or cases from an online database).

In addition to technology providing greater access to sources of legal information, technology also allows the prospect of cost recovery for online legal research charges (on LexisNexis Canada or Westlaw Canada, for example), something which was generally not possible in a print-only environment (since the cost of library print subscriptions is generally regarded as office overhead, in the same way as rent and office supplies).

Technology has also enabled federated search, creating the ability to integrate and search on both internal content and external research databases (e.g, including such products as WestKM³⁹ and Lexis Search Advantage⁴⁰).

In addition, law firm law libraries – on their own or in conjunction with KM departments – are increasingly using Web 2.0 technologies such as RSS feeds to push relevant law-related information to members within the firm. As part of the role of pushing out information content, many KM or library departments are given responsibility over their organization's Intranet portals. Intranets also play a unifying force in connecting organizations with multiple office locations making communal resources easier to find. Products such as Microsoft SharePoint are currently in vogue in many law firms due to the capabilities of SharePoint to integrate content from different data sources within the law firm (such as the DMS, the firm's contact manager, the financial management system,

³⁹ WestKM: <http://west.thomson.com/products/services/westkm/default.aspx>.

⁴⁰ Lexis Search Advantage: <http://law.lexisnexis.com/lexis-search-advantage>.

and so on) and to provide both search and browse capabilities.⁴¹ For organizations with offices in Quebec, IceFire⁴² provides French/English translation on the fly for SharePoint menus and interfaces.

Other critical technologies for multi-office locations include IP-based phones and video-conferencing.

4. Professional Development / Training

To the extent that legal KM – as part of my definition – is to “promote legal information literacy” and “establish best practices and standards for legal services” most KM Departments in law firms are involved – either formally or informally – in professional development and training (this training will often involve a combination of staff from KM, Library, Professional Development and IT, along with practicing lawyers who are the experts within the firm). As mentioned earlier, the transfer of tacit knowledge – the information and experiences of a seasoned lawyer – can often be more valuable than the explicit knowledge contained in precedents and research memos. Unfortunately, until the Vulcan mind meld is perfected, one of the more effective ways of capturing tacit legal knowledge is through training and mentoring. However, technology is increasingly providing solutions to improve training of lawyers through the use of audio, video and other online tools.

⁴¹ LawPort (<http://www.svtechnology.com>) is another popular intranet solution for law firms.

⁴² IceFire: <http://www.icefire.ca>.

One firm that is leading the field in on-line training for lawyers is Wilson Sonsini, who partnered with Altus Learning Systems⁴³ to develop the Wilson University On-Demand Learning (ODL). The firm currently has “41 classes on ODL, serving practice groups from corporate to litigation to patent, and addressing not only legal content such as mergers and acquisitions, e-discovery, and patentability, but also professional skills such as legal writing, conflicts management, and e-mail best practices.”⁴⁴ Some of the features include video on demand, transcripts of training sessions, PowerPoint slide shows with transcripts, MP3 downloads and the ability to search for the spoken word.

A positive side-effect of in-house training – in addition to having your lawyers develop their knowledge of substantive law and best practices in practicing law – is the atmosphere created in letting lawyers know that learning and sharing their knowledge is important.

In addition to in-house training, many lawyers will attend external continuing legal education (CLE) seminars, another excellent source of practical legal information and best practices. Most seminars provide binders that are then kept in the firm’s law library collection. Increasingly, CLE seminars are making their materials available online.⁴⁵ The Canadian Legal Symposia Index on LexisNexis Quicklaw is the best way to search for CLE papers (this database indexes CLE papers from 1986 to current). In the United

⁴³ Altus Learning Systems: <http://www.altuslearning.com>.

⁴⁴ Larry Brown, “Just-in-Time Training: On-Demand Learning Platform Drives Firm’s Success” (May 2009) *Legal Management* 52.

⁴⁵ In Ontario, for example, AccessCLE provides online access (for a fee) to a large number of CLE papers from Law Society of Upper Canada seminars – see: <http://ecom.lsuc.on.ca/home/accesscle.jsp>. There are currently around 2,500 seminar papers available ranging across 12 different practice areas or topics.

States, the Practicing Law Institute⁴⁶ and West Legal EdCenter⁴⁷ are two major providers of online CLE for lawyers.

5. Litigation Support / Project Management

Litigation support is often a special subset of law firm KM focusing less on the litigation precedent and legal research aspect of litigation but instead dealing with case management, document review and electronic discovery. Depending on the firm, the KM Department may or may not be directly involved in litigation support. For firms with large litigation departments, there may be embedded PSLs or a large contingent of litigation paralegals who will play an important role in managing what is, increasingly, a huge volume of electronic documents related to a particular lawsuit. One key aspect of litigation support – a topic not well taught in law school – is project management and the need for the litigation support team to have strong project management skills to help with early case assessment and managing appropriate levels of resources to particular lawsuits.

Most law firms will contract out the initial stages of the e-discovery process that (typically) involves the need to scan large volumes of the client's print and digital documents from the client's servers and then package that content for review using appropriate document review software.⁴⁸ There are a large number of software solutions

⁴⁶ Practicing Law Institute: <http://www.pli.edu>.

⁴⁷ West Legal EdCenter: <http://westlegaledcenter.com>.

⁴⁸ In Canada, for example, Platinum Legal Services (<http://platinumlegalservices.com>) and Commonwealth Legal Services (<http://www.commonwealthlegal.com>) are two firms who provide this type of service (as do many others). The trend towards e-discovery in Canada has also prompted specialized, boutique law firms such as Wortzman Nickle (<http://www.wortzmannickle.com>), a law firm whose work focuses on e-discovery.

dealing with document review and case management, including CaseMap,⁴⁹ CT Summation⁵⁰ and Recommind's Axcelerate eDiscovery Software.⁵¹

One challenge North American law firm knowledge managers are dealing with is the availability and suitability of outsourcing some or all of this document review work (and potentially other KM-related work) to India and other countries where the hourly wages of lawyers are much lower (this outsourcing is often called “LPO” – Legal Process Outsourcing).⁵²

6. Practice Management

Many legal knowledge managers play some role in practice management for their firm or organization. Like KM, however, “practice management” may mean different things to different people. In the context of legal knowledge work, practice management will often involve establishing professional standards or best practices that cover the following activities:

- establishing and maintaining document standards, such as creating a standard Word template for the “look and feel” and formatting of the firm’s documentation or establishing criteria that governs how the firm provides reasoned opinions to clients or transaction opinions to other parties;

⁴⁹ CaseMap: <http://www.casesoft.com>.

⁵⁰ CT Summation: <http://www.ctsummation.com>.

⁵¹ Recommind Axcelerate eDiscovery Software: http://www.recommind.com/solutions/ediscovery_compliance.

⁵² See, for example, Gavin Birer. “The Winds of Change: Law Firms & LPO,” SLAW Blog, comment posted on June 13, 2009, <http://www.slw.ca/2009/06/13/the-winds-of-change-law-firms-lpo/> (accessed: October 15, 2009).

- helping the firm manage its conflicts of interest procedures and the establishment of ethical walls;
- supporting competitive intelligence on competitor law firms.

Knowledge managers support of practice management within the law firm will often involve leveraging a variety of technologies, including the DMS, the financial management system and various legal research databases (for competitive intelligence, for example).

For the knowledge manager, any work in support of practice management provides the opportunity to work more closely with the firm's top management, something which can help raise the profile of the KM work being done. It is always important for anyone doing legal KM to remember that we are not implementing processes or projects for the sake of something to do – it is about clients and trying to ensure that any KM initiatives are implemented with the bottom line – increase revenues, decrease expenses, promote lawyer and employee retention all in the goal of meeting client needs, all important things that are constantly in the minds of upper management. As in the words of Matthew Parsons: “The point of a knowledge-based strategy is not to save the world; it's to make money.”⁵³

⁵³ Matthew Parsons, *Effective Knowledge Management for Law Firms* (New York: Oxford University Press, 2004) at 21.

7. Client Facing Initiatives / Alternative Fee-Billing

Closely related to practice management are initiatives by the firm to attract and maintain clients through a variety of methods. For the knowledge manager this can involve a wide range of activities, often working closely with the firm's management and the Marketing and Finance departments:

- **Business intelligence:** Many firms track news stories on clients and on industry trends in an attempt to better know the client and anticipate the client's business and legal needs;
- **Extranets:** In response to client demand or the desire to work more efficiently with the client, law firms establish and maintain shared online (and secure) workplaces for clients in the forms of extranets or wikis to allow the client to better review and monitor work being done on their behalf.
- **Bulletins:** Most law firms regularly publish bulletins or newsletters on legal topics of interest to their client and then distribute these to important clients and otherwise make them available on their websites.⁵⁴

An increasingly important issue for law firms and their clients is the likely trend towards alternative fee billing that provide the client ways of paying for legal services that are not

⁵⁴ I have created a Custom Google Search that searches the websites of major Canadian law firms that can be used to find bulletins on particular legal topics (by searching on the applicable keywords). See: <http://tinyurl.com/can-law-firms>.

necessarily based solely on the hourly rate of the lawyer.⁵⁵ For alternative fee billing to work, firms will need to be able to leverage their intellectual capital more effectively and here is where legal KM plays an important role. A firm that can provide their services faster while still maintaining high standards for quality will be in a better position to move away from traditional hourly billing and consider value-billing or flat fee arrangements, where appropriate. Technology can play an important role in helping the firm predict appropriate billing amount for particular transactions by analyzing data of past transactions and the amount of time and work done.⁵⁶ Some of these products that can help with fee estimation, profitability analysis and task-based billing include, in one way or another, Redwood Analytics,⁵⁷ Satori,⁵⁸ Elite 3e,⁵⁹ and viEval.⁶⁰

Conclusions

The work of a Director of Knowledge Management in a law firm or corporate or government law department is always interesting and challenging due in part to the 7 faces of legal knowledge management. Depending on the size of the firm or department, the staffing and the type of practice, a knowledge manager might be involved in a number of activities, including any possible mix of document and records management, precedent

⁵⁵ See, for example, Mark A. Robertson & James A. Calloway, *Winning Alternatives to the Billable Hour*, 3d ed. (Chicago, IL: American Bar Association, 2008). See also: The Alternative Fee Lawyer Blog (<http://thealternativefeelawyer.blogspot.com>).

⁵⁶ See, for example, Mary Abraham, "Alternative Billing Alternatives (ILTA09)," Above and Beyond KM blog, comment posted on September 30, 2009, <http://aboveandbeyondkm.com/2009/09/alternative-billing-alternatives-ilta09.html> (accessed October 15, 2009) and Mary Abraham, "Using Technology to Manage Costs," Above and Beyond KM blog, comment posted on October 1, 2009, <http://aboveandbeyondkm.com/2009/10/using-technology-to-manage-costs.html> (accessed October 15, 2009).

⁵⁷ Redwood Analytics: <http://www.lexisnexis.com/redwood-analytics/>.

⁵⁸ Satori: <http://www.satorigroupinc.com>.

⁵⁹ Elite 3e: <http://www.elite.com/elite-3E/>.

⁶⁰ viEval: <http://www.videsktop.com/vieval.html>. These products are discussed by Abraham, *supra* note 56 in "Using Technology to Manage Costs."

development, legal research and intranet content delivery, professional development and training, litigation support, practice management and client-facing initiatives, including alternative fee-billing.

Each of these tasks – although often inter-related – can involve different skills sets and technologies, in addition to the need to work with various departments within the organization. For some of these tasks, technology plays a huge role, whether in document management, enterprise search or online training, to name but a few examples. Just as the definition of legal knowledge management may change and grow over time, expect to see technology change and grow to address new and better ways of helping lawyers capture and organize both their explicit and tacit knowledge content.

Appendix A

Knowledge Management Issues Specific to Corporate and Government Law Departments

Although this paper discusses law firm KM in many of its examples, many of these examples – and the issues and solutions – will be transferable to the setting of a corporate or government law department. For example, just as a large law firm needs document management, precedent development and CLE training (to name just a few parallel examples), so too will corporate and government law departments need these strategies if they are to be more effective in the way they work and utilize their law-related intellectual capital.

However, until recently, legal KM issues facing corporate or government law departments have had little separate attention in the KM literature despite both corporate or government law departments sometimes being larger than some of the largest law firms and having equal if not greater need for bringing some discipline to the process of effectively leveraging their internal intellectual capital.

Set out below are some initial thoughts I have had regarding some of the issues that corporate or government law departments might face as challenges, unique from what law firms might face:

- **Institutional constraints:** Many corporate or government law departments, although large in size when compared to law firms, may be dwarfed in size by a much larger number of employees and branch offices throughout the entire corporation or government body. As such, corporate or government law departments may face additional institutional constraints not necessarily felt by more “nimble” law firms. Some of these constraints might include: the risk of there being more disparate data sources of information on different legacy systems throughout the organization; the lack of centralized control over documents; the lack of a single internal network; differing informational and documentation needs of different departments within the organization; and a less flat hierarchical structure, thereby making it harder to implement change.
- **Lack of a DMS:** As mentioned above, a DMS is a fairly core infrastructure technology at the base of any law firm KM program. In larger institutions with tens of thousands of users, the lack of a single DMS makes it that much harder to have a single repository from which to capture and organize the knowledge content.
- **Privacy concerns:** Government bodies in particular may face more obligations than private law firms in the way they handle the personal information of citizens, thereby making it more difficult to organize and use the documents within their control (one of the issues being discussed by my co-panelists at the conference).

- **Project management / Funding:** The recent, ongoing scandal in Ontario over the challenges of implementing an e-Health records regime⁶¹ highlights the project management and funding issues that many KM projects typically involve. For large corporations or government bodies, project management and funding are likely going to be issues for any major KM project.

Because of some of these challenges, corporate or government law departments may wish to consider smaller, easier to implement KM projects, including such things as:

- **Integrating or merging “knowledge content” departments:** To the extent that strength comes in numbers, it may be strategic to formally merge departments within the corporation or government that handle law-related information. This would, in most cases, include the law department, the law library, business/competitive intelligence and perhaps marketing staff. Even if there is no formal merger, closer ties should be established among these departments, including with the IT department.
- **Web 2.0 technologies:** If a formal DMS is too large a project to be implemented quickly, consider using secure Wikis as collaborative workspaces to mount the law department’s key documents and forms and research and policies. Likewise,

⁶¹ See, for example, Keith Leslie, “Opposition Demands Public Inquiry into \$1 billion Ontario Spent on eHealth” (Canadian Press, October 13, 2009).

web-based video and meeting technologies can be used inexpensively to implement training and help establish consistent standards and practices.

- **Extranets:** Work with your outside counsel at establishing extranets, either via their firm's network or via an extranet you create, to allow for sharing of legal information you are paying for (and likely re-using).

As the legal KM industry matures, and as the needs increase for corporate and government law departments to be more effective in capitalizing on their internal information and expertise, expect to see more prominent discussion in the literature on corporate and government law department KM.

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