



# CBA LEGAL **FUTURES** INITIATIVE

HOW TO INNOVATE:  
FUTURES FOR SMALL  
AND SOLO LAW FIRMS



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN



# INTRODUCTION

Small and solo firms are the backbone of the Canadian legal services community across the country. They are well placed, through innovation in their practices, to improve service, efficiency, profitability, and accessibility of legal services to the public.<sup>1</sup>

This guide is part of a series of tools and resources produced by the CBA Legal Futures Initiative<sup>2</sup> to assist its members and the broader profession in preparing to meet future challenges and to take advantage of emerging trends, needs and opportunities. It offers guidance customized for small and solo firms on how to innovate their practices in order to seize the available opportunities and to remain viable and prosperous in the future legal market.

Your first question might be whether this entire guide is about technology. The answer is no. It is about innovation. Innovation is more than the latest gadget promising to make our lives easier. We will not issue dire warnings about robot lawyers poised to take over your jobs or profess that technology is the solution to every problem. Legal innovation is new concepts, ideas and techniques to help lawyers work more efficiently and provide legal services to clients in cheaper, faster and more effective ways — in ways which better meet the expectations of our clients and make legal services more accessible to the public.<sup>3</sup> Innovation includes technology, but also low-tech solutions like internal systems to ensure efficient and ethical practices, use of plain language and simpler documents, better approaches to staffing files, or moving to fixed fees.

Our focus is on the various ways small and solo practitioner law firms can embrace innovation, both through simple adjustments and more complex changes involving the use of new technologies. Technology is a powerful tool that lawyers can wield to be more

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<sup>1</sup> In the CBA *Guide to Strategy for Lawyers* (online: Canadian Bar Association, 2015), author Professor Richard Susskind sets out different advantages and disadvantages for large and small firms in strategy development; in many small firms “critical management decisions can be made swiftly; change in strategic direction can be implemented rapidly; costs of IT have plummeted so that small firms can inexpensively secure the processing and data storage capacity of the larger practices; as legal work becomes decomposed, collaboration with other businesses is possible; small firms do not suffer from the diseconomies of scale that fetter progress in larger businesses”. Available at <https://www.cba.org/CBA-Legal-Futures-Initiative/Resources/A-Guide-to-Strategy-for-Lawyers>, at 40.

<sup>2</sup> See Futures reports and resources at *Futures: Transforming the Delivery of the Legal Services in Canada* <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Futures-Transforming-the-Delivery-of-Legal-Service>.

<sup>3</sup> See CBA Legal Futures work research and consultation on client expectations, *The Clients’ Perspective*, (online: Canadian Bar Association, 2013) available at <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/The-Clients%E2%80%99-Perspective>. For discussion of and recommendations regarding innovations to legal service delivery to improve access to justice, see CBA Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* available at <http://www.cba.org/CBA-Equal-Justice/Home>, pp. 94-119. Also CBA Futures/Noel Semple, “Personal Plight Legal Practice: Innovating for Accessibility, Quality, and Profitability,” Canadian Bar Association available at <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Accessibility-Quality-and-Profitability>.

efficient and provide better service to their clients, but is only effective in the hands of an informed user. Our overall objective is to provide information about some of the tools (involving technology or not) that might help you to do your job better, cheaper, faster and perhaps even with less stress.

Chapter 1 offers a synopsis of the major changes happening in the legal industry and how small firms are affected. Chapter 2 provides concrete examples of innovative practices and options in small firms, and sets out the steps for pursuing those options in your law firm. We end with some tips on managing change within your firm.

# CHAPTER 1 - EMERGING TRENDS IN THE BUSINESS OF LAW

The following section provides a brief overview of how emerging trends will affect small and solo law firms. A more comprehensive analysis on changes, challenges and new opportunities in the legal profession can be found in the CBA Legal Futures report, *Futures: Transforming the Delivery of Legal Services in Canada*<sup>4</sup>, and the earlier foundational report *The Future of Legal Services in Canada: Trends and Issues*<sup>5</sup>. This chapter aims to provide updates on some of those trends and highlight those most pertinent to making strategic decisions about how to innovate a small law firm. Once you are ready to develop a new strategic direction, we encourage you to consider the practical guidance offered in CBA's *Guide to Strategy for Lawyers*, prepared by Richard Susskind to complement the Futures report and to offer firms a road map for strategic planning.<sup>6</sup>

## ○ TRENDS IN TECHNOLOGY

From the birth of the iPhone 10 years ago to the growing demand for drones, technology is all around us and much of it has become indispensable. The legal services industry is not immune to these technological changes. Just as email revolutionized the way lawyers communicate, there are rapid technological changes occurring today that will have a permanent effect on the way lawyers work. Here is a rundown on the current major tech trends in law.

### E-Discovery and Predictive Coding

Initially with electronic files on CDs, and today with Dropbox files in the cloud, e-discovery is a significant change in the way lawyers practice, and is now the norm. According to global research firm Markets and Markets, the worldwide e-discovery market will grow from \$7.89 billion in U.S. dollars in 2016 to an astounding \$22.62 billion by 2021, creating a robust niche for e-discovery specialists working with law firms.

E-discovery is one of the few success stories in legal technology in terms of its adoption and acceptance. All provincial civil procedure rules in Canada along, with other jurisdictions globally, have been amended to include e-discovery. For more guidance, the Ontario Bar Association maintains a helpful case law digest on the topic.<sup>7</sup>

<sup>4</sup> *Futures: Transforming the Delivery of the Legal Services in Canada* (online: Canadian Bar Association, 2014) available at [http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf)

<sup>5</sup> *The Future of Legal Services in Canada: Trends and Issues* (online: Canadian Bar Association, 2013) available at [http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/trends-issues-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/trends-issues-eng.pdf)

<sup>6</sup> Richard Susskind *A Guide to Strategy for Lawyers*, supra 1

<sup>7</sup> *Canadian E-Discovery Case Law Digests – Common Law* (Ontario Bar Association, September 2016) available at: <http://www.oba.org/EIC/Common-Law>.

Predictive coding is one of the most popular features in technology assisted review. Programs using predictive coding are able to learn what type of documents the user is looking for and generate a list of likely relevant documents based on that criteria. Lawyers then review that smaller sample of documents, selecting those that are in fact relevant; based on that data the program then creates a list of documents for production. Predictive coding is most useful on complex matters with a high volume of documents<sup>8</sup>. It offers smaller firms the opportunity to manage larger files that would, in the past, go to big law firms with the large number of junior lawyers or paralegals needed for traditional document review. Although TAR programs can be costly, the cost may be worthwhile in order to take on large files; there may also be the option of sharing the costs, and the work in complex litigation matters, with a consortium of solo practitioners or small firms.

### Big Data

Data surrounds us, in our smartphones, our computers and even our FitBits. The rise of big data is staggering. According to IBM, 2.5 quintillion bytes (10<sup>18</sup>) of data are created<sup>9</sup>, and 294 billion emails are sent, worldwide every day.<sup>10</sup>

Big data analytics involves using vast amounts of data to detect patterns, draw conclusions and make predictions, not unlike what lawyers do when reviewing facts and research to formulate opinions. This technology, known as machine learning, has tremendous potential in the legal industry to assist (not replace) lawyers in their synthesis and analysis of information. For example, three U.S. lawyers have created a system that analyzes U.S. Supreme Court decisions to predict rulings with 70% accuracy.<sup>11</sup> Ravel Law uses “judge analytics” in which a program analyzes every case decided by an assigned judge to predict the likely outcome of a matter.<sup>12</sup> Loom Analytics, a finalist in the CBA 2016 Pitch competition for legal innovation entrepreneurs, uses data analytics to help lawyers sort through case law more efficiently, and recently teamed up with Gowling WLG to support the firm’s legal research efforts.<sup>13</sup> At the moment, the most promising use of big data

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<sup>8</sup> FTI Consulting, *Advice from Counsel: Can Predictive Coding Deliver on its Promise?* (Online: FTI Consulting, 2017) available at: <http://www.ftitechnology.com/resources/white-papers/advice-counsel-can-predictive-coding-deliver-its-promise>.

<sup>9</sup> IBM, “Bringing big data to the enterprise,” (online: IBM, 2017) available at: <https://www-01.ibm.com/software/data/bigdata/what-is-big-data.html>.

<sup>10</sup> IBM, “IBM Big Data & Analytics Hub” (online: IBM, 2017) available at: <http://www.ibmbigdatahub.com/gallery/quick-facts-and-stats-big-data>.

<sup>11</sup> Josh Blackman, “The Next Evolution of SCOTUS Predictions: Predicting 7,000 Cases over 60 Years with 71% Accuracy,” (online: Josh Blackman, 2014) available at: <http://joshblackman.com/blog/2014/07/29/the-next-evolution-of-scotus-predictions-predicting-7000-cases-over-60-years-with-71-accuracy/>; Josh Blackman, Adam Aft and Corey M. Carpenter, “FantasySCOTUS: Crowdsourcing a Prediction Market for the Supreme Court” (2012) 10(3) *Northwestern Journal of Technology & Intellectual Property* 125.

<sup>12</sup> Ravel Law, “Products – Ravel” (online: Ravel Law, 2017) available at: <http://ravellaw.com/products/>.

<sup>13</sup> Amanda Jerome, “Gowling WLG to launch pilot project using web-based analytics tool”, *The Lawyer’s Daily* (13

analytics for the legal industry is in legal research, presenting an alternative to traditional legal research tools.

The democratization of legal information, making more legal data available to the public, is an important step in improving access to justice. Harvard Law School is currently working on digitizing and making public its entire law library.<sup>14</sup> Meanwhile CanLii is leading the way in making case law and case law commentary freely available. These efforts have tremendous value for the public, but also for small firms, by making research material more readily accessible.<sup>15</sup>

### Cloud Computing

Cloud computing offers a means to store information online and access it anywhere. For example, Gmail accounts are in the cloud, stored through a network of servers. And our devices are increasingly linked through cloud computing. The most popular example is Apple's iCloud software, which links the iPhone, iPad and MacBook. This technology offers lawyers the ability to run mobile practices with minimal costs.

Codes of Professional Conduct across the country require lawyers to keep clients' information safe in a secure location. This includes clients' digital information such as email correspondence. The Law Society of British Columbia offers a helpful checklist on what to look for when shopping for cloud computing software.<sup>16</sup> For example, it is important to find a Canadian service provider because there is concern whether client information would be subject to disclosure laws under the U.S. *Patriot Act*. David Fraser, a privacy lawyer and partner at McInnes Cooper, addresses this issue, advising that even information stored on Canadian servers is vulnerable to disclosure under legislation aimed to support law enforcement and protect national security.<sup>17</sup>

Information management policies are critical to keeping data secure.<sup>18</sup> Once these steps are taken, the cloud has tremendous potential for small firms. Young lawyers looking to start a

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Thursday 2017) available at: <https://www.thelawyersdaily.ca/articles/2909/gowling-wlg-to-launch-pilot-project-using-web-based-analytics-tool?category=news>.

<sup>14</sup> Library Innovation Lab, "Caselaw Access Project," (online: Library Innovation Lab, 2017) available at: <http://lil.law.harvard.edu/projects/caselaw-access-project/>.

<sup>15</sup> For discussion of and recommendations regarding public access to legal information and research, see CBA Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* available at <http://www.cba.org/CBA-Equal-Justice/Home>, pp. 66-76

<sup>16</sup> The Law Society of British Columbia, *Cloud Computing Checklist* (online: The Law Society of British Columbia, 2013) available at: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/checklist-cloud.pdf>.

<sup>17</sup> David Fraser, "Cloud Computing," (online: CBA National, April 2014) available at: <http://www.nationalmagazine.ca/Articles/April-2014-web/Cloud-computing.aspx>.

<sup>18</sup> Canadian Bar Association, *Legal Ethics in a Digital World* (online: Canadian Bar Association, 2015) available at: <http://www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/2015/Legal-Ethics-in-a-Digital-World/guidelines-eng.pdf>.







Everclear uses Blockchain to track diamonds from the mines to the market to prevent the spread of conflict diamonds.<sup>30</sup> Blockchain is being used to create a more secure financial system and could possibly be used as a way to safely store and access information across various data management systems.

While still in the experimental phase, lawyers with an interest in new technologies are hoping to use Blockchain to create smart contracts, written in computer code, which trigger tasks under the contract once a condition is met. For example, a smart contract could complete a transaction to pay for the service of registering a deed once the registered deed is entered into the system. Whether or not lawyers are ready for contracts to be written in computer code, development of the technology is well underway in the U.K. and the U.S.

## ○ THE EXPANDING DEFINITION OF COMPETENCE

There are indications that the definition of a “competent” lawyer may expand to include new aspects — specifically technological competence and cultural competence.

First, the Federation of Law Societies of Canada (FLSC) is, at the time of writing, in the process of a consultation on proposed amendments to its Model Code, which include expanding the definition of “competency” to incorporate “technological competence”. Currently there is no requirement that Canadian lawyers achieve any level of technology competence.<sup>31</sup> The proposed new clause to the commentary to Rule 3.1-2 states:

*[5A] To maintain the required level of competence, a lawyer should develop and maintain a facility with technology relevant to the nature and area of the lawyer’s practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer’s duty to protect confidential information set out in section 3.3.*<sup>32</sup>

Although the issue is still being debated, it seems clear that, while lawyers need not know all the technical details of new legal tools, they should have a general understanding of the

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<sup>30</sup> Gian Volpicelli, “How the blockchain is helping stop the spread of conflict diamonds,” (online: WIRED magazine) available at: <http://www.wired.co.uk/article/blockchain-conflict-diamonds-everledger>.

<sup>31</sup> More than half U.S. states impose a duty of technology competence. See Robert Ambrogi, “27 States Have Adopted Ethical Duty of Technology Competence,” (online: Law Sites) available at: <http://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html>. In California, litigators are required to learn about e-discovery and in New Hampshire lawyers must understand cloud computing. The American Bar Association amended Model Rule 1.1 (Duty of Competence), which now requires lawyers to keep track of “the benefits and risks associate with relevant technology” available at: [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html).

<sup>32</sup> For more information see Federation of Law Societies of Canada, “Model Code of Professional Conduct Consultation Report,” (online: Federation of Law Societies of Canada) available at: <http://flsc.ca/wp-content/uploads/2014/10/Consultation-Report-Draft-Model-Code-Amendments-for-web-Jan2017-FINAL.pdf>.

technology relevant to their practice, especially with regard to client confidentiality. The consultation closed on May 30, 2017, with the FLSC, at the time of writing, considering the feedback received.

With regard to cultural competency — which can be briefly defined as the ability to connect with people from different backgrounds than your own — the FLSC committed in 2016 to strike a working group to consider the 2015 Truth and Reconciliation Commission (TRC) call to action that the FLSC “ensure that lawyers receive appropriate cultural competency training.”<sup>33</sup> In the meantime, with growing awareness of the importance of diversity and cultural competency in the practice of law, some law societies are developing cultural competency training programs.<sup>34</sup>

## ○ TRENDS IN SELF-REGULATION

Law societies of Canada are working to catch-up to the new realities of the legal services industry. Looking to the major regulatory changes within the legal profession in the U.S.,<sup>35</sup> U.K.<sup>36</sup> and Australia<sup>37</sup>, a number of law societies are in the process of re-examining their regulatory frameworks, including consideration of alternative business structures where non-lawyer ownership of law firms is permitted and regulated, the regulation of entities as well

<sup>33</sup> Truth and Reconciliation Commission of Canada, “Truth and Reconciliation Commission of Canada: Calls to Action,” (online: Truth and Reconciliation Commission of Canada) [http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls\\_to\\_Action\\_English2.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf), at 3.

<sup>34</sup> Nova Scotia provides resources on cultural competency training through a web portal. See Nova Scotia Barristers’ Society, “Equity portal: Developing an equity strategy in your legal workplace” (online: Nova Scotia Barristers’ Society) available at: <http://nsbs.libbooks.com/content.php?pid=679663&sid=5634670>. See also Law Society of PEI, “Mid Winter Meetings and Cultural Competency Training,” (online: Law Society of PEI) available at: [http://lawsocietypei.ca/media/upcoming\\_events/upcoming\\_events15.pdf](http://lawsocietypei.ca/media/upcoming_events/upcoming_events15.pdf). The LSUC has approved mandatory CPD on advancing equality and inclusion and will develop such programming; inclusion of training on cultural competence, equality and inclusion in its licensing program; and a review and amendment if necessary of its Code of Professional Conduct to reinforce the professional obligations of all licensees to promote equality, diversity and inclusion. See the Law Society of Upper Canada, Working Together for Change: Strategies to Address Issues of Systemic Racism in the Legal Professions (online: The Law Society of Upper Canada, September 2016) available at: [http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2016/Convocation-September-2016-Equity-and-Aboriginal-Issues-Committee.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2016/Convocation-September-2016-Equity-and-Aboriginal-Issues-Committee.pdf).

<sup>35</sup> Alison Frankel, “Should law firms have non-lawyer owners? ABA reopens debate” (online: Reuters) available at: <http://blogs.reuters.com/alison-frankel/2016/05/05/should-law-firms-have-non-lawyer-owners-aba-reopens-debate/>; American Bar Association, “Discussion Paper on Alternative Law Practice Structures” (2 December 2011) available at: <http://mtpa.memberlodge.org/Resources/Documents/Discussion%20Paper%20on%20Alternative%20Law.pdf>.

<sup>36</sup> Mari Sako, “An Overview of Alternative Business Structures in England and Wales” available at: <https://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/2015-Georgetown-Law-ABS-Sako.pdf>;

<sup>37</sup> The Law Society of Upper Canada, “Alternative business structures: Australia” (online: The Law Society of Upper Canada) available at: <http://www.lawsocietygazette.ca/news/alternative-business-structures-australia/>; Steve Mark, Tahila Gordon, Marlene Le Brun and Gary Tamsitt, “Preserving the Ethics and Integrity of the Legal Profession in an Evolving Market: A Comparative Regulatory Response” (online: Office of Legal Services Commissioner, Australia) available at: [http://www.olsc.nsw.gov.au/Documents/preserving%20ethics%20integrity%20legal%20profession%20uk\\_paper.pdf](http://www.olsc.nsw.gov.au/Documents/preserving%20ethics%20integrity%20legal%20profession%20uk_paper.pdf).

as individual lawyers, the regulation of legal services offered by non-lawyers, and the scope of the definition of legal services that ought to be restricted to lawyers. The regulatory landscape for lawyers will likely undergo significant changes within the next 10 years.

Currently, the most contentious regulatory discussion happening in Canada is whether law societies should allow alternative business structures (ABS), with most of the controversy focused on ownership by non-lawyers of law firms (and possibly other kinds of newly-regulated legal service providers).<sup>38</sup>

While movement on ABS is uncertain, already many Canadian law societies are favourably considering entity regulation.<sup>39</sup> Entity regulation:

- allows the regulator to monitor compliance at the organizational level (as well as at the individual level), recognizing that many ethical obligations are managed by the firm's infrastructure
- is focused on proactive rather than reactive regulation — setting up workable systems at the front end that facilitate compliance, not just discipline for breach at the back end, and
- is a necessary precondition for ABS so that the organization, which might be owned or managed by non-lawyers without the same ethical obligations, can be regulated.

The provinces that are closest to implementation of entity regulation have developed and are piloting tools for firms to self-assess their compliance in establishing management systems that effectively achieve regulatory objectives such as: developing competent practices, effective communication, ensuring confidentiality, avoiding conflicts of interest, appropriate records management, effective firm and staff management, charging appropriate fees, maintaining effective and respectful working relationships, and working to improve diversity, equality and access to legal services.<sup>40</sup>

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<sup>38</sup> See discussion of and recommendations regarding ABS in *CBA Futures: Transforming the Delivery of the Legal Services in Canada* (online: Canadian Bar Association, 2014) <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Futures-Transforming-the-Delivery-of-Legal-Service>, at 32-35.

Also for a good review of the ABS debate, see "Alternative Business Structures," (online: Law Society of Upper Canada) available at: <http://www.lsuc.on.ca/ABS/>.

<sup>39</sup> See CBA Futures discussion of and recommendations regarding entity regulation in *Futures: Transforming the Delivery of the Legal Services in Canada* (online: Canadian Bar Association, 2014) available at <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Futures-Transforming-the-Delivery-of-Legal-Service>, pp. 46-47; CBA Ethics and Professional Responsibility Committee, in consultation with Access to Justice and Equality Committees, and other member groups, urged the adoption of entity regulation in a submission to the Federation of Law Societies of Canada, available at [http://www.cba.org/Our-Work/Submissions-\(1\)/Submissions/2016/Feb/Entity-Regulation](http://www.cba.org/Our-Work/Submissions-(1)/Submissions/2016/Feb/Entity-Regulation).

<sup>40</sup> Nova Scotia Barristers' Society, "Management Systems for Ethical Legal Practice": <http://nsbs.org/management-systems-ethical-legal-practice-mselp>. See also the CBA Ethics and Professional Responsibility Committee's 2013 *Ethical Practices and Self-Evaluation tool and Assessing Ethical Infrastructure* guide which provided guidance on proactive development of systems and infrastructure within law firms to support lawyers in complying with their

Once entity regulation is in place (Nova Scotia is expected to be the first, in 2018<sup>41</sup>) firms of all sizes will be expected to establish an “ethical” infrastructure based on these principles. However, the systems selected and complexity of the infrastructure will depend on the scope and characteristics of each practice. Small firms will be expected to achieve the same results, but how they get there will likely be quite different from that of a large firm.

## ○ NEW BILLING OPTIONS

The way in which lawyers offer legal services is changing. Increasingly law firms offer alternative fee arrangements (AFA), with a focus on accountability and pricing that reflects the value of the work. Examples of AFAs in the legal market are fixed (or flat) fees and unbundled services (limited scope retainers).

Fixed fees are becoming more common, are not yet rivalling the hourly rate in most firms. Flatlaw offers a list of lawyers using fixed fees and the types of services they offer. Axxess Law has received a lot of media attention for their fixed fees on wills, business incorporations and real estate transactions (as well as for opening offices in Walmart locations in Ontario).<sup>42</sup> Clients like fixed fees for the budgetary certainty and clarity in the services that will be delivered.

Fixed fees work best for low-cost, high volume work but, in order to be profitable, law firms must first undertake a cost analysis to know what fee will be profitable for each matter. This requires a more thorough analysis than has traditionally been undertaken in setting an hourly rate, as all costs of the business, and costs specific to the matter (including contingency costs), must be considered. Once costs are understood, proposed pricing needs to be assessed against competitive factors to ensure it corresponds to market expectations.

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ethical responsibilities, available at: <http://www.cba.org/CBA-Legal-Futures-Initiative/Resources/Ethical-Practices-Self-Evaluation-Tool>.

<sup>41</sup> Nova Scotia Barristers’ Society, “Legal Services Support Pilot Project Final Report,” (29 May 2017) available at: [http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-05-19\\_LSSPilotProjectFinalRpt.pdf](http://nsbs.org/sites/default/files/ftp/RptsCouncil/2017-05-19_LSSPilotProjectFinalRpt.pdf). The Prairie provinces launched in 2017 a pilot program of the Law Firm Practice Management Assessment Tool: <https://dvvbat5idhx7ib.cloudfront.net/wp-content/uploads/2017/05/31221445/May312017eBulletin.htm>. See also Amanda Jerome, “Prairie law societies collaborate on regulation pilot project,” *The Lawyer’s Daily* (10 April 2017) available at: <https://www.thelawyersdaily.ca/articles/2872/prairie-law-societies-collaborate-on-regulation-pilot-project?category=news> and The Law Society of Alberta, the Law Society of Saskatchewan and the Law Society of Manitoba, “Innovating Regulation: A Collaboration of the Prairie Law Societies,” (online: The Law Society of Alberta, the Law Society of Saskatchewan and the Law Society of Manitoba) available at: <http://www.lawsocietylistens.ca/start-dialogue/documents/2911/download>.

In British Columbia, the Law Firm Regulation Task Force has also recommended a self-assessment tool to monitor compliance and a framework to support law firm regulation: <https://www.lawsociety.bc.ca/Website/media/Shared/docs/initiatives/LawFirmRegulationSecondInterimReport2017.pdf>. The LSUC is currently also examining entity regulation: <http://www.lsuc.on.ca/better-practices/>.

<sup>42</sup> Drew Hasselback, “Why your next lawyer may be working at Walmart,” *Financial Post* (7 December 2015) available at: <http://business.financialpost.com/legal-post/why-your-next-lawyer-may-be-working-at-walmart>.

Some lawyers have been skeptical about AFAs. Riverview Law, a leading innovative law firm in the U.K, describes how to make a switch to fixed fees work, even for complex and variable matters such as litigation and M&A deals as follows.<sup>43</sup> First, assess your business processes and make changes to improve efficiency; second, figure out what your profit margins are and how many clients you need to be profitable. Once that assessment has been undertaken, determining your fixed fees becomes a straightforward exercise.

Fixed fees, when based on a thorough analysis, should result in improved efficiency and increased profitability. Small firms have the advantage, in adopting fixed fees, of generally being more nimble and flexible. Firms can build their business around fixed fees after undertaking an analysis of their intended services, the stages and cost of each type of matter, their profit margin, and their competition, to determine the fixed fees appropriate for each type of matter. Existing firms can do the same, with the benefits of basing their analysis on solid data and experience.

Another increasingly common practice, with an impact on billing, is unbundled legal services (also known as limited scope retainers), in which a lawyer takes on only part of a matter. Offering unbundled legal services provides a way for people, who cannot afford the costs associated with their entire matter, to access legal services for certain key tasks such as legal advice, drafting agreements, coaching clients, and assistance with legal research.<sup>44</sup>

Lawyers have not entered limited scope retainers in the numbers that access to justice advocates hoped, hesitant to work on a task-by-task basis for fear of complaints from clients. However, a report from MediateBC found that these fears were unfounded.<sup>45</sup> MediateBC offers a toolkit for lawyers looking to start unbundling services.

Limited scope retainers provide lawyers with real opportunity for growth, particularly in family law where there is seen to be considerable potential for unbundling services.<sup>46</sup> In addition, according to the report “Nudging the Paradigm Shift”, the top legal problems facing Canadians are consumer disputes (22.6%), debt (20.8%) and employment disputes (16.4%), areas well suited to unbundling.<sup>47</sup>

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<sup>43</sup> Andy Daws, “Five Questions About Fixed Fees You’re Afraid to Ask” (online: attorneyatwork) available at: <https://www.attorneyatwork.com/five-questions-fixed-fees-youre-afraid-ask/>.

<sup>44</sup> The National Self-Represented Litigants Project lists more than 100 lawyers that offer unbundled services. See “National Directory of Professionals Assisting SRLs” (online: National Self-Represented Litigants Project” available at: <https://representingyourselfcanada.com/directory/>. See also Barbra Bailey, “Unbundled Legal Services” (online: Law Society of Saskatchewan) available at: <http://library.lawsociety.sk.ca/inmagicgenie/documentfolder/CLE2A.PDF>.

<sup>45</sup> MediateBC, “Family Unbundled Legal Services Project,” (online: MediateBC) available at: <http://www.mediatebc.com/unbundle>.

<sup>46</sup> John-Paul Boyd, “DIY A2J 4: Unbundle Your Services, Reinvent Your Billing Model” (online: Slaw.ca) available at: <http://www.slaw.ca/2016/02/05/diy-a2j-4-unbundle-your-services-reinvent-your-billing-model/>; Carolynne Burkholder-James, “Limited-Scope Retainers: What’s in it for you?” (online: Canadian Bar Association) available at: <https://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2015/Limited-scope-retainers-What’s-in-it-for-you>.

<sup>47</sup> Ab Currie, “Nudging the Paradigm Shift, Everyday Legal Problems in Canada,” (online: Canadian Forum on Civil

For a thorough analysis of the implications of fixed fees and other billing options (specifically how to offer services that are accessible, of high quality and profitable), see CBA Futures paper, prepared by Noel Semple, *Personal Plight Legal Practice: Innovating for Accessibility, Quality, and Profitability*.<sup>48</sup>

## ○ CHANGES IN THE JUSTICE SYSTEM

The evolution of the legal profession is not confined to private practice. While this guide is focused on innovation within small law firms, as changes in the court system will affect your practice, a brief overview is worthwhile.

Canada faces the daunting task of modernizing the justice system. Because the system is independent and reliant on government funding, innovation has been slow. There has been some progress with court documents available to the public online and court dockets posted online (see OntarioCourtDates.ca) but there is still a long way to go.

Technology is having a major effect on the way disputes are resolved. While courts are working to modernize, people are looking for solutions outside the traditional adversarial system. We've seen the rise of online dispute resolution (ODR) since the late 1990s, but with rapid advancement in technology in recent years, ODR has become significantly more affordable and accessible for the public.<sup>49</sup> This will affect small/solo firms as it presents potential clients with an alternative to traditional dispute resolution through the courts. For a comprehensive discussion of and recommendations regarding reforms to the justice system to improve access to justice, see CBA Access to Justice Committee, *Reaching Equal Justice*.<sup>50</sup>

Legal app development is evolving from applications that merely provide information, to smart applications that help consumers pinpoint their legal issues and even help in dispute resolution. For example, the Small Claims Wizard app helps clients through the paperwork, step-by-step, and offers coaching services provided by lawyers. Civil Resolution Tribunal (CRT) in B.C., an online dispute resolution tribunal available via smartphone and website, will begin to manage small claims under \$5,000 starting in July 2017. CRT will also handle disputes that arise for condo owners within strata corporations, with the potential to help thousands of homeowners avoid costly legal fees. What makes the CRT unique is that it is fully integrated into the justice system, freeing up valuable court time.

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Justice) available at: <http://cfcj-fcj.org/sites/default/files//publications/reports/Nudging%20the%20Paradigm%20Shift%2C%20Everyday%20Legal%20Problems%20in%20Canada%20-%20Ab%20Currie.pdf>, at 4.

<sup>48</sup> CBA Futures/Noel Semple, "Personal Plight Legal Practice: Innovating for Accessibility, Quality, and Profitability," Canadian Bar Association available at <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Accessibility-Quality-and-Profitability>

<sup>49</sup> Jason Koebler, "Rise of the Robotlawyers: How legal representation could come to resemble TurboTax," *The Atlantic* (April 2017) available at: <https://www.theatlantic.com/magazine/archive/2017/04/rise-of-the-robotlawyers/517794/>.

<sup>50</sup> CBA Access to Justice Committee, *Reaching Equal Justice Report: An Invitation to Envision and Act* available at <http://www.cba.org/CBA-Equal-Justice/Home>, at 84-94.

As litigators are well aware, innovation in the court system, particularly the use of technology, is modest at best, and certainly not outpacing changes in private practice. Lawyers have the opportunity to demonstrate leadership through the innovation of their practices.

## ○ CHANGES IN RURAL CANADA

While all small firms will grapple with changes in pricing options, regulation and technology, many are also faced with finding someone to take over their practice when it's time to retire. As a large number of senior lawyers in rural practices retire, there is a growing (unmet) need for new lawyers to take their place.<sup>51</sup>

Flexible hours, more control over work/life practice and lower overhead costs have been identified as advantages to practicing law in rural areas — and drawing cards for young lawyers looking to start their own law firm or join a small practice.<sup>52</sup>

Nevertheless, Canada is facing an acute access to justice crisis in rural areas. In British Columbia, only 20% of lawyers have a private practice outside of Vancouver, Victoria and lower mainland. The CBA B.C. branch began the Rural Education and Access to Lawyers (REAL) program to encourage young lawyers to move to rural areas by providing financial support for second-year law student interns and facilitating a shared articles registry to enable small firms to employ articling students. Between 2009 and 2013, 40 of the 79 students who went through the REAL program remained in those rural communities to work.<sup>53</sup> Other provinces are also working to get younger lawyers into rural practice. In Manitoba, law graduates who work in a rural area for 3 years are eligible to have a portion of their tuition reimbursed.

Succession planning is another critical issue for lawyers in rural practice. The Nova Scotia Barristers' Society noted in a 2012 report the number of rural lawyers nearing retirement, and the lack of succession planning among N.S. lawyers, and urged solo practitioners to create succession plans to enable young lawyers to have long-term opportunities in rural areas. However, there are practical barriers to following this advice. Only 53% of N.S. lawyers reported that they had enough work to hire another lawyer, and most are frustrated when a newly-hired young lawyer or articling clerk leaves after a short time.<sup>54</sup>

What to do? Solo practitioners and small firms in rural areas have a unique incentive to

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<sup>51</sup> See CBA Futures paper *Demographic Trends* (online: Canadian Bar Association, 2013) available at [http://www.cba.org/CBAMediaLibrary/cba\\_na/PDFs/CBA%20Legal%20Futures%20PDFS/Demographic-trends-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Demographic-trends-eng.pdf), for an analysis of emerging trends including unique challenges in rural practices, at 7.

<sup>52</sup> Nova Scotia Barrister's Society Rural Practice Working Group, "Analysis of the Judicial Marketplace and Future Demand for Lawyers in Rural Nova Scotia" (Nova Scotia Barristers' Society 2012), at 39.

<sup>53</sup> Marg Bruineman, "Going small" *Canadian Lawyer* (November 2014) available at: <http://www.canadianlawyer.com/5356/Going-small.html>.

<sup>54</sup> Nova Scotia Barrister's Society Rural Practice Working Group, "Analysis of the Judicial Marketplace and Future Demand for Lawyers in Rural Nova Scotia" (Nova Scotia Barristers' Society 2012), at 18.

innovate. Innovation is key to attracting new lawyers to rural areas, which is essential to ensuring accessibility to legal services in these communities.

## CHAPTER 2 – INNOVATION IN ACTION

Although there has been plenty written about innovation, it is sometimes hard to grasp what it looks like in a practical setting. Each story in this chapter provides an illustration and aims to bridge the gap between innovative ideas and practice by demonstrating how such ideas can be implemented in a small firm setting. The topics selected address some of the more pressing issues — they are not exhaustive — and suggest ways that small firms can bring about change in their practices.

Each story, written by individual lawyers and experts, is followed by a list of steps to guide you in implementing the highlighted ideas into your practice, if they suit you. We have not attempted to provide information about particular products or technology service providers (except in passing in the previous discussion, and in the interviews below), because it will quickly be out of date; however you will find in the endnotes resources which provide updated information on available legal technology.<sup>55</sup>

To help you examine the benefits and feasibility of implementing particular innovations, ask yourself as you read each story:

- How could this new approach, product or service benefit my clients?
- How could this new approach, product or service benefit my staff and me?
- What help would do I need to implement this approach, product or service?
- How can I build this approach, product or service into my practice? (i.e. make a plan)

### ○ INNOVATING WHERE AND HOW YOU WORK

#### David Brannen on the Virtual Office

*“About 85 to 90 percent of our work with clients is virtual. The advantage to this model is that it opens up the pool of people we can help.”*

I have a passion for helping the underdog and law was a perfect fit. I started my law firm in January 2013. I wanted to work in a law firm that matched my core values and beliefs. This simply was not possible in traditional law firms. I saw the changes in the legal industry and wanted to be at the forefront of rethinking how to provide legal services and products to Canadians.

The most challenging aspect of running a firm is the financial aspects, managing cash flow, etc. The most rewarding aspect is the positive comments from people we have been able to

<sup>55</sup> ABA Legal Technology Buyers Guide available at <http://buyersguide.americanbar.org/>; and, although directed to in-house legal departments, you may find useful information from LawGeex 2017 *In-house Counsel's Legal Technology Buyers Guide* available at <http://blog.lawgeex.com/inhousebuyersguide/>.

help across Canada with our free and paid services.

We use cloud-based software to manage all cases. About 98 percent of incoming documents are converted to PDF then shredded. Our clients have access to their file via a secure online portal. They get notified when documents are uploaded or there has been a milestone reached or change in case status. This benefits the client because they are better informed about their case progress by seeing things happen in real time.

It is part of our core mission to be educators and to provide the best free information regarding disability claims. One of the big problems in the disability claim world is that there is a lot of bad advice being given by well meaning people (including other disability claimants, doctors, lawyers, etc). I wanted to establish an online community where people can provide support and advice to one another, yet moderated by us to make sure the information and recommendations exchanged are sound from a legal perspective. We have an online forum posted on our website and we mail out free hard copies of our books about disability claims.

It was easy to set up my mobile practice, even back in 2013. I had a MacBook, scanner, cloud-based software and a VoIP phone/fax service. It's all you need. We continue to use this same basic model today. All our lawyers work remotely from home and everything they need is on their MacBook; 80 percent of our staff works remotely. We use virtual staffing from services like Upwork.

We are a bit of a hybrid of virtual/in-person law practice. About 85 to 90 percent of our work with clients is virtual. The advantage to this model is that it opens up the pool of people we can help. We are able to represent clients across Canada with a virtual model. We are not limited to hiring people who happen to live in our city. We have team members in different provinces who all work remotely. In my experience employees are happier and more productive when working remotely. We hire customer service representatives with a business background, instead of a legal background, to help with clients because I want people with a customer service mindset.

One drawback to running a virtual practice is that it can be isolating for staff, so anyone going with this model has to be acutely aware of this and build systems and a culture that can support people and create a sense of team. The biggest challenge has been solving the issue of incoming/outgoing mail. We have solved this by having all mail come in and go out from a single hub. I cannot emphasize enough the need for centralized document and mail management if you are running a virtual team or office.

*David Brannen is the founder of Resolute Legal, a disability law firm based in Moncton, NB.*

## Your next steps — Creating a virtual office

1. Invest in high quality laptop computer(s) and an external hard drive to backup data.
2. When setting up your wireless network, download virtual private network (VPN) software onto your laptop and smartphone. VPNs encrypt your Internet activity while using a public Wi-Fi network.<sup>56</sup>
3. Ensure each computer is locked with a password.
4. Research software providers. Here's what you'll be looking for:
  - a. Email providers — if you're going with popular models (i.e. Microsoft 360), make sure encryption is included as an option when sending and receiving emails.
  - b. Accounting software — find a provider that can streamline tracking of billable time, invoicing and document management.
  - c. File management system — You'll want cloud-based software so you can share documents with staff and clients.<sup>57</sup>
5. Have a central address for delivery of mail and other hard-copy documents to your firm.
6. If you have an existing office, consider converting your paper files into electronic format (see next section).
7. Create a set of policies for staff working remotely. Think about how you and your employees will communicate and how work will be delegated and monitored.
8. Schedule daily communication with your employees.
9. Consider finding a co-working space for in-person client meetings.

### **Marcus Klee on the Paperless Office**

*“Our ability to service clients, share work products, receive comments and instructions, and reduce costs while increasing service levels, is greatly enhanced by our paperless practice.”*

I went into law school while I was finishing a Ph.D. in the humanities with the intention of teaching at a law school. I was fortunate enough to work at a law firm as a first year student, and every summer thereafter. I was fascinated by litigation, enjoyed learning completely new subject areas with every file, and was deeply impressed with the commitment and

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<sup>56</sup> David Whalen, “Add a VPN to Your Mobile Lawyer Toolkit,” online: Slaw.ca available at: <http://www.slaw.ca/2012/10/25/add-a-vpn-to-your-mobile-lawyer-toolkit/>.

<sup>57</sup> The Law Society of Upper Canada, “Technology Practice Tips: Remote Access (Transcript),” online: Law Society of Upper Canada, available at: <https://www.lsuc.on.ca/with.aspx?id=2147500241>.

abilities of the lawyers I worked with.

David Aitken and I started our firm in April 2013 after having spent our entire careers in very large law firms, but practicing in a niche area. I was drawn to the idea of working with people I like and admire in a smaller setting with greater control. We had great relationships with clients and felt that the time was right to try and make it on our own without the help or hindrance of a large law firm.

Setting up the firm and dealing with all of the administrative overhead was more challenging than I imagined it would be. We were fortunate to select fantastic service providers for accounting, IT support, and logistics, who understood how we wanted to run our practice, and were already experienced in setting up a “less paper” (if not paperless) practice in other areas such as medicine and accounting.

We started out to build a paperless practice and invested significant time and financial resources in exploring various platforms and options. We quickly settled on an Apple environment and have not looked back since. We went to different service providers about scanning and archiving our legacy files and were told it would cost 50 cents to \$1 per page. We decided instead to hire a few part-time employees over a two-year period to do the work. Instead of costing \$200,000 it cost us only \$20,000.

We use about 10 percent of the paper that we used in large law firms. We still print single copies of key working documents (expert reports, submissions to the Court, etc.) but all documentary production and service of various records on opposing counsel is done electronically. We also provide electronic copies to our clients on a USB.

Our practice involves a great deal of foreign travel and very large and complex documents, so we needed a way to take material on the road, quickly access and edit it, and share our work with others. It seemed logical to build a paperless practice in our office that would support and integrate with our highly mobile practice.

Our ability to service clients, share work products, receive comments and instructions, and reduce costs while increasing service levels, is greatly enhanced by our paperless practice. We also have more flexibility with respect to office space and configuration. We have an office in Ottawa and Toronto with clients around the world. We work in teams on particular cases regardless of where the clients or lawyers are located. We have a shared secure document and email repository that we can securely access quickly from either office, or while on the road. We use telephone, video conferencing, and virtual meetings, and now find physical location to be largely irrelevant to the way we practice.

All of our data storage is in-house, which costs \$50,000 a year. We also have protection in case of fires or natural disasters. We don't charge for phone calls, faxes or data storage.

*Marcus Klee is the co-founder of Aitken Klee, an intellectual property litigation firm based in Ottawa.*

## Your next steps — Going paperless

1. Plan ahead. You'll need the following equipment:
  - A scanner
  - Adobe Acrobat or similar software to convert scans into PDFs
  - A backup system (cloud software, external hard drives, etc.)
2. Evaluate your paper consumption. Consider what you print and how you can reduce printing through desktop file management. For example, emails can be stored and categorized instead of printed, and client files can be managed electronically.<sup>58</sup>
3. Set up an electronic file management system. Use this opportunity to evaluate how you store and manage matters.
4. Digitize your existing paper files by scanning files into PDF format (which are then stored on your electronic management system). Consider hiring part-time staff for help.
5. Pick a date in advance to convert to paperless, i.e. when your file management systems (intake, correspondence, invoices, supporting documentation) are all managed electronically, documents related to all new files will be in electronic format, and documents related to existing files have been converted to electronic format.

### Ed Gallagher on Pricing your work<sup>59</sup>

*“Clients know ahead of time what we propose to do and the price for those services. This way, clients can decide whether they are receiving good value ahead of time.”*

In 1986, I was in the Canadian Army and I was looking for some new challenges. The military sponsors a small number of officers to attend law school each year, with a follow-on period of obligatory service as a Legal Officer in the office of the Judge Advocate General. The opportunity to continue my military service with additional skills as a lawyer was very

<sup>58</sup> Janice Mucalov, “Ten Ways Law Firms Lose a Lot of Money,” online: Canadian Bar Association, available at: <https://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2014/Ten-Ways-Law-Firms-Lose-a-Lot-of-Money>. See also Janice Mucalov, “Greening Your Law Firm: A Practical Guide to Creating an Environment-Friendly Law Office,” online: Canadian Bar Association, available at: <http://www.cba.org/Publications-Resources/CBA-Practice-Link/2015/2014/Greening-Your-Law-Firm-A-Practical-Guide-to-Creati> and Ann Macaulay, “How to Make Your Office (Almost) Paperless,” online: Canadian Bar Association, available at: [http://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2008/How-to-Make-Your-Office-\(Almost\)-Paperless](http://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2008/How-to-Make-Your-Office-(Almost)-Paperless).

<sup>59</sup> For a detailed analysis of ways to innovate while maintaining profitability, including the fixed fee option, see CBA Futures paper, prepared by Noel Semple, “Personal Plight Legal Practice: Innovating for Accessibility, Quality, and Profitability,” Canadian Bar Association available at <http://www.cba.org/CBA-Legal-Futures-Initiative/Reports/Accessibility-Quality-and-Profitability><sup>60</sup> Ibid.

appealing to me. It was a great choice that I never regretted.

I started the firm in 2003 because I had a strong desire to control my own work and be my own boss. Initially it was an association of independent practices with a friend of mine, but after a few years I bought him out and ran the firm with my wife, Michelle, who is also a lawyer.

Our firm focuses on the legal advice and support that most regular people will need in their lifetimes: real estate conveyancing, wills and estates, family law, and small business law. We have also developed a niche practice area advising smaller municipalities in rural Alberta.

The most challenging aspect is finding sufficient time to devote to running the business as distinct from delivering the legal services that are the core of our business. These are two very different things. Without a doubt the most rewarding aspect, professionally and personally, is the development of the lawyer-client relationship into a trusted advisor relationship.

For the first 5 years of operating the firm, Michelle and I worked by the hourly rate. I never liked it. Billable hours are a terrible measure of the value of legal services. They create the wrong incentives for the lawyer. Clients rightly think that the hourly rates are arbitrary and ridiculously high. We thought that clients would like to know the scope and price for our services ahead of time. They do.

We decided to take a value-based approach to pricing. We develop the general plan for each time of matter and communicate that plan to the client. In complicated matters, such as litigation, the plan is typically broken down into several phases. In each phase, we develop a comprehensive list of tasks necessary to complete that phase. Each task must add value by contributing to moving the matter forward. For example, in a family law file, phase one may be to commence legal proceedings and to invite the opposing party to enter into a negotiated resolution. We break down the tasks, such as drafting a statement of claim, and drafting a letter to opposing counsel to suggest negotiations. The work ends at the point when we no longer have control over what happens next. In this example, the phase one planning cycle concludes once you serve the claim and letter inviting negotiations. The next cycle would begin when we receive a response to our letter and I advise the client on the appropriate next steps.

Fixed fees are a better reflection for the client of the value of our work. We use fixed fees for all our files except for two legacy clients, and we have extremely low account receivable rates. We give each client a very detailed legal services agreement (our name for a retainer agreement), which explains what we are going to do for the fee, and is clear that if they want us to do extra, we will charge more. If there's a fastball and we need to do additional work, we'll do a change order. Each change order is a written extension of the terms of the legal services agreement to encompass the additional scope of work (and price). It is a much simpler document than the legal services agreement itself. If there isn't time to do a

change order, because we've received a "fastball" requiring immediate action, we'll do the work and bill them afterwards. We've never had a problem with clients about this.

Based on my experience, clients are not price sensitive exactly — it's the not knowing how much it's going to cost that worries them. We need to put ourselves in their shoes. With fixed fees and a clear agreement, clients know ahead of time what we propose to do and the price for those services; and that if they ask for more (beyond the agreed scope of work) they will pay more. This way, clients can decide whether they are receiving good value ahead of time. They are generally much more satisfied with allocating their scarce financial resources to the purchase of legal services in these circumstances.

There was no guidebook on how to do this, specifically how to assess the value of the work. To set the price, I consider the quality and the quantity of the work to be done, using simple metrics. For solicitor work, I look at the dollar value of the overall transaction and the risk involved for both the lawyer and the client. I look at the value added from the client's perspective for each step. Then I look at it from the perspective of time. Is the work as a whole going to take a half day, a whole day, or several days?; after which I consider it in terms of a "counsel fee" in a court context. The price reflects inputs from all of these perspectives. In family law litigation, where there is a mix of both solicitor work at the office and barrister work in court, or both barrister and solicitor work in a settlement meeting, I take the same approach: what is the dollar value and risk involved, what value is added for each step, and what quantity of work is going to be required, again looked at in units of a half day or more. Overall, while time is a factor in setting the price, it is not the only factor and it is not the most important factor. I track time, not for billing purposes, but to assess my efficiency. This pricing system rewards efficiency and penalizes inefficiency. If a task takes me longer than expected, then I lose income as compared to time-base billing. On the other hand, if I can do it faster, then I am better off than if I had only billed for my time.

You get more comfortable as you move along with pricing in this manner. It's as much of an art as a science, and is constantly being refined. Our prices are sufficient to cover costs and generate profit. The sweet spot is in finding the right income and ways to work more efficiently.

Small and solo firms are ideally positioned to use fixed fees because there are less people to convince. Most lawyers we have spoken to indicate interest in theory, but think that it would not work for their own practices.

The question I usually get from lawyers about our pricing is what do we do with clients that call all the time? We put in our agreement that calls that fall within the scope of the work (such as a call to provide us with input we've requested on a draft affidavit) are covered by the fixed fee. Clients will be charged extra for calls on matters that fall outside the scope of the agreement. For example, a call asking us to review and provide advice on how to respond to a new text message exchange that is not relevant to the work we have agreed to. Over time, the additional time and effort involved in managing a particularly demanding



client will be reflected in higher pricing on the basis that the demand for additional attention is of significant value from the client's point of view.

Another benefit of the value-based approach is that the value is in the product, not attached to a particular person. For example, the value for the client is in the drafted pleading, whether it is written by an articling student or a 30-year veteran, provided that the quality of the work meets the high standards of the profession.

We also delegate more work to staff and they tend to get more meaningful work.<sup>60</sup> When we told our staff about the plan to switch to fixed fees, we explained these benefits to them. It took only 6 months to make the change.

My suggestion to other lawyers is to make the decision and go for it.

*Ed Gallagher is the co-founder of Patriot Law Group in Alberta.*

### Your next steps — Using fixed fees in your practice

1. Evaluate your legal services and pricing. Some areas to examine include:
  - a. Operational costs (office rent, salaries, insurance, etc.)
  - b. Your billable hours and rates (including discounts)
  - c. Accounts receivables and collection rates
  - d. Profit margins<sup>61</sup>
  - e. Tasks involved in each kind of matter and time/type of staff required for each task
2. Gather information about your firm retainers including the types of matters. This information will be useful in determining what type of matters are most popular in your firm and what pricing has been used in the past.
3. Consider the client's expectations and what services they are purchasing for each matter.
4. Set prices for different matters.
5. Create a standard legal services agreement outlining what work will be completed for each matter, and at each phase, with options for additional services.
6. Set a launch date and inform existing clients about the new fee structure.
7. Keep track of the time and cost to complete each matter in order to make any necessary adjustments to your fixed fees.<sup>62</sup>

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<sup>60</sup> Ibid.

<sup>61</sup> Edward Poll, "Is Flat Fee Billing a Viable Alternative?" online: Canadian Bar Association, available at: <https://www.cba.org/Publications-Resources/CBA-Practice-Link/solo/2014/Is-Flat-Fee-Billing-a-Viable-Alternative>.

<sup>62</sup> Carolyn Elephant, "6 Ways to Avoid Paying a Price for Using Fixed Fees," online: Above the Law, available at: <http://abovethelaw.com/2014/04/six-ways-to-avoid-paying-a-price-for-using-fixed-fees/>.

## ○ INNOVATING BUSINESS DEVELOPMENT AND COMMUNICATIONS

### Jamie Benizri on Building Customer Relationships and Marketing

*“We want to educate and inform, and offer helpful content that will answer the people’s questions about legal matters to help them move forward.”*

#### *On Building a Law Firm for the Client...*

Working in a corporate law firm, I always felt there was tension between attorney and client over billing. In my view, the practice of law was not in tune with modern commerce and wanted to create something that would be more customer-centric. A law firm for the people rather than a law firm for lawyers.

I started the Legal Logik firm in 2011. We are now a full-service law firm with attorneys practicing in everything from commercial and corporate law, business transactions, and mergers and acquisitions to family law, property law and real estate transactions, business transactions, mergers and acquisitions and securities law and penal and criminal law.

I love that we’ve been able to build a team and a reputation for innovating law. By carving out a niche our team has rallied around our position and this has resulted in a fun, dynamic place to work. Although the management and operations of a young law firm come with their own challenges, from HR to budgets, any decision made in a young firm can have significant impact on the future.

I think the firm has really grown because we focus on affordable services for business clients like our no-fee incorporation. We onboard a client with that service and when they need contracts or a trademark, they come back to us and they also refer us to others. Our corporate clients then regularly email us asking if we can help them with labour matters, small claims and other civil services.

I think many people avoid legal services because they fear the cost and it leaves completely underserved markets. For services that we can offer easily thanks to technology and that are repeatable, such as incorporation or small claims preparation, we list them on the website with a fixed price. People appreciate knowing what they will pay ahead of time and I think people trust us more because they see we are transparent with fixed fees.

I think fixed fees are also important for efficiency. For most civil services, an attorney must meet with a client, evaluate their situation and propose a plan of action. If there is a service we can set up as a package, we reduce the amount of work on the part of staff, which helps us keep prices down. We can’t make our entire array of services fixed fee but we are always looking for opportunities to create new fixed fee packages.



### *On Social Media...*

Our website is the hub, but social media offers outposts to reach people and begin a relationship. We use social media marketing to reach out to new customers and existing clients about our services and provide education in the forms of videos and articles. The disadvantages to using social media are that it is hard to do right and consistently without dedicated staff and, even then, it is easy to put a lot of time into it and get no measureable results. For lawyers to do it right, they have to take off the lawyer's hat and put on a marketing and communications hat. Some lawyers are not interested; others are, and maybe have great ideas, but they don't have the time to work *on* the business rather than just *in* the business.

The pros are many. There are all these networks at our fingertips that allow us to build a community and communicate with that community regularly for free. We put a lot of thought into what content we want to create based on our audience and publish often, and it has paid off. We post two articles and two videos in English and in French each week plus events, photos and more. We want to educate and inform, and offer helpful content that will answer the audience's questions or give them information that can help them make decisions about buying legal services. We also want to show the authentic and human side of the firm. It would be tough to do all of that with just a website.

People compliment us often on our social media presence and they see that we have a lot going on. If someone is wondering if we are the real deal and they look at our social media, it definitely builds a lot of credibility.

In using social media, choose your networks. It is better to do one network right than publish sparsely on many. Next, do it right. Make sure your posts are interesting and engaging content that reflects your brand. Behind a social media strategy you need a content marketing strategy and that takes planning and resources. For an attorney to both serve clients and run social networks is tough. The best is to have a communications person, or if you don't have the budget to hire, bring on interns in terms of marketing.

We create a lot of content, articles, free reports, and videos, which require scripts and storyboards, post production, graphic design and more. Our marketing team uses Google Docs for online collaboration, which is great for me because I can review and leave comments after a long day of court in the wee hours. The marketing team has my changes or comments immediately, which definitely speeds up our content creation.

Logik TV, a web series about legal and business topics, was something our marketing team had wanted to do for a long while and we finally decided it was time. The positive response was pretty immediate with more engagement on Facebook, people writing to me on LinkedIn saying they are looking for a lawyer like me and even other jurists high-fiving me at the courthouse. The important thing about Logik TV for us is that it makes law personable. We want it to be interesting and fun. We call it "lawtainment"!

### *On Building Long-Term Relationships...*

We are big believers in long-term relationships and we wanted to create a way to keep in touch with our previous and existing clients. We created Logikgram as a print newsletter to mail to clients to provide interesting content and remain top of mind. Since everyone gets tons of emails and we hit delete on so many, we wanted to send something physical that people would see, touch and feel good receiving. Also people pick it up at events, and clients read it in our waiting room or take it with them.

We also use a cloud-based customer relationship management system (CRM) for leads (before they become clients) and our marketing team uses cloud-based project management software(Asana).

We're automating internal procedures for greater efficiency, implementing customer value optimization (CVO) campaigns and working on email marketing. We are also developing mobile apps and AI applications. Our aim is really to be the most innovative law firm in Canada.

*Jamie Benizri is the President and Managing Partner, Legal Logik Inc. in Montreal*

### Your next steps — Create a marketing plan

1. Determine your marketing goals. Sample marketing goals include establishing your firm's expertise, becoming the number one firm in a specific area of practice or gaining new clients.
2. Decide what practice areas you want to focus on.
3. Identify your target market. Consider who are your existing clients and create a profile of your typical clients.<sup>63</sup>
4. Determine what types of marketing activities (advertising, blogging, social media, etc.) you will use to reach your target market. Do some research on how clients find you, whether through referrals, online advertising, word of mouth, etc.
5. Create an editorial calendar for marketing content. Have a master calendar that incorporates all your content (blog, website updates, etc.). Develop a list of topics that you'll cover and use this as a base for creating content.
6. Determine how you will measure your success and track your costs.

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<sup>63</sup> Sally J. Schmidt, *Marketing the Law Firm: Business Development Techniques* (Law Journal Press, NY, 2004); Stephen Fairley, "10 Questions to Help Attorneys Identify Your Target Market," online: The Rainmaker Blog, available at: <http://www.therainmakerblog.com/2014/02/articles/law-firm-marketing/10-questions-to-help-attorneys-identify-your-target-market/>.

## Doug Jasinski on Social Media Marketing

*“Ultimately the marketing plan should reflect the personality of the lawyer or firm in question, and allow you to play to your strengths.”*

I was interested academically in the law as a subject matter and had heard the standard refrain that law school would “open a lot of doors” for future career opportunities. I also knew that if I was going to law school I would want to practice for at least part of my working career, although I was open to the possibility of doing other things at some point as well. As it turned out, that was essentially exactly what happened. Five years of practice before I decided to take a different path.

I had always been interested in advertising and marketing and considered entering the industry before law school. Once I decided I was ready to switch gears and leave the practice of law, I already knew advertising and marketing was the direction I wanted to go. I went to Toronto for a year and got some experience with an ad agency there, and then came back to Vancouver and opened up my own shop. I didn’t fit the traditional parameters for a typical advertising agency employee, and so it somehow just seemed easier to set up my own shop at that point. We are exploring the possibility of expanding our work in Central and Eastern Canada by establishing an Ontario location in the years ahead. That’s the biggest change afoot for us at present.

Lawyers are conditioned to be inherently risk averse and prefer to follow in well-trod paths when it comes to their professional image and reputation. Anything that is unusual or “new” faces intense scrutiny, and many are likely to steer clear just out of a general sense of wariness. Additionally, many lawyers don’t have the time or inclination to explore new technologies, and are therefore even less inclined to dive into something that they are largely unfamiliar with.

To create a marketing plan, lawyers/firms need to start with an honest appraisal of their own interests, strengths and weaknesses. If you hold your nose at the whole idea of marketing, hate writing, etc., the marketing plan should take that into account and be geared towards things that require less lawyer involvement. If you have little or no budget to hire outside help but are willing to write and do speaking engagements, it suggests a different approach. Trying to fit square pegs into round holes is never a great strategy. Ultimately the marketing plan should reflect the personality of the lawyer or firm in question, and allow you to play to your strengths.

My own view is that it’s critical to have at least some credible web presence for the firm. There is no question that clients, potential clients, other lawyers etc. all look you up online, if for no other reason than to find your phone number, email address or directions to your office. So having at least a basic presence that matches the level of professionalism that you

want to project in person is critical. Beyond that, some firms rely very heavily on their website as a business development channel, others not at all. So the depth of the website and other online marketing efforts beyond the website is firm-specific, but having at least some presence is non-negotiable.

For small/solo firms wanting to use their website as a business development tool to generate new work, it requires ongoing effort in terms of developing new content, considering search engine optimization and marketing, and leveraging social media. Simply putting up a 3 or 4 page website and expecting the phone to ring off the hook is unrealistic given the competitive landscape.

Don't go in with all guns blazing. Spend some time as a listener, observing how other people and other firms communicate on these channels. The different social media networks have somewhat different etiquette and tones, and what works on one isn't always appropriate on another. As you gain familiarity, you can ramp up your activity a bit more. Also, you don't necessarily need to engage on 4 or 5 different social networks simultaneously. You are better off being effective on one network than scattershot on five.

One of the things that I think works well for lawyers and firms on social media is using them as an opportunity to display your human side. Many lawyers and firms do a huge amount of work in the community, be it pro bono legal work or supporting charitable organizations and causes, and much of those efforts are quite hidden. You don't have to endlessly toot your own horn. But if all of your other marketing material only shows the "suit" side of you, it can be very humanizing, for example, for a client to see a picture of you at the finish line of that bike ride for cancer you participated in. It can provide easier conversation starters with new clients and put a more approachable face on the firm.

I do see some lawyers descending into personal arguments with other commenters online from time to time. Of the major social networks, this seems to happen most often on Twitter. Just always remember that anything you post is out in the public domain potentially forever.

*Doug Jasinski is the founder and President of Skunkworks Creative Group Inc., in Vancouver.*

#### Your next steps — Manage social media for your firm

1. Decide which social media platform to use. It's better to focus on one social media channel and learn it well before branching out to other channels.
2. Identify your target market (existing clients, new customers, etc.).<sup>64</sup>
3. Decide how much time and resources you'll devote to social media and who will be responsible for writing and posting content.
4. To learn how to use a social media network effectively, follow other law firms, lawyers and

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<sup>64</sup> Stephan Futeral, "Defining Your Law Firm's Target Audience for Online Marketing," online: JustLegal, available at: <https://www.justlegalmarketing.com/law-firm-target-audience/>.

legal associations who are active in the network. Pay attention to how they engage with their followers.

5. Find a balance between promotion and content. You want to celebrate your firm's successes but also provide your audience with useful content related to your work.
6. When using social media, don't solicit for clients directly and be careful to protect your brand.
7. Create a schedule for posting content online. Programs such as Hootsuite are helpful in posting content on multiple social media platforms.
8. Measure your progress using popular tools such as Google Analytics and Twitter Analytics.

### **Martine Boucher on Your Professional Network**

*"Attending networking events to build your professional network is overrated. From my experience, the key to success is to be true to yourself."*

I don't think I really decided to become a lawyer. I went into law school thinking that it would offer good general training and that I would find my path afterwards. And then I just fell in love with the intellectual challenge, the problem solving and using my knowledge to help businesses manage their legal risks.

I first started practising on my own about seven years ago, offering my services as in-house counsel on a freelance basis. Quickly after, I realized that there were other lawyers like me looking for a home while, on the other side, there was more work than I could manage.

Geoff Best (co-founder of Simplex, also known as the 'non-lawyer', non-jogger, non-doctor...) and I spent a month in Thailand in a house by the Andaman Sea thinking about what we wanted to do next on a professional and business level. At that point, I had worked big law and in big companies, and was ready for my next adventure. We started by looking at the opportunities we had seen in the marketplace, the skills we had, and the values we wanted to live by. Having spent a few years at GE Capital, we saw a hole in the marketplace for in-house counsel services offered on a flexible basis. We came back from our trip with a business plan!

We are an in-house counsel boutique and like most in-house counsel, we specialize at being excellent generalists. Business law is our main area of practice and we also offer services in the areas of contracts, chain of supply, corporate and commercial, governance and compliance, financing, tax, employment, technology and intellectual property.

We are now present in Alberta, Quebec, B.C. and Ontario. We plan to double the number of our lawyers in Canada in the next 18 to 24 months. We believe everybody should have

access to a good in-house counsel and we want to be there for Canadian organizations at the different stages of their growth.

What I find most challenging about running our own law firm is that there is always more you can do and it becomes very difficult to leave the office at the end of the day. And by leaving the office, I mean not to send one more email, to stop talking or thinking about business, to not read about business and to not make another post on our social media. The most rewarding part is, without a doubt, that many of our lawyers have found a home where they can practice law in a challenging way while being true to their own values.

Attending networking events to build your professional network is overrated. From my experience, the key to success is to be true to yourself. Participate in activities that you really care about, connect with your co-workers and your neighbours. It can be volunteer work, sports, or a professional education. It really doesn't matter as long as you enjoy yourself and are ready to tell your story. You need that 2-minute quick speech about who you are and what you do. Be personal. I have had more success in building my network and finding clients this way than any other way. People can feel when you are genuine and passionate about what you do.

Don't be afraid to admit that you don't know everything. Nobody wants to help a know-it-all. Looking back, the best thing I did was to start Simplex with a "non-lawyer" who happened to know a lot about business, which I did not! Some of the best advice and help I got came from other entrepreneurs and business owners. If there is a good Chamber of Commerce in your area, become a member and get actively involved.

It is quite hard to measure the impact of social media on your business. That said I have found that using social media has helped me identify trends and influencers. With an active approach -by that I don't mean a post here and there but really engaging with your audience - I think you can really network and meet new people. I personally find it easier to meet people face-to-face but I have used social media to facilitate some introductions.

Develop good content for online marketing. We have the knowledge, the talent, the precedents, the ideas, but it takes time to package it in a format that really speaks to our clients and do it in a consistent way.

*Martine Boucher is the CEO and Co-Managing Partner at Simplex Legal LLP, an in-house counsel boutique firm based in Calgary.*

#### Your next steps — Expanding your professional network

1. Develop clarity as to who you are, what you do well and what you are selling. In other words, what is your brand, your signature?
2. Have a story to tell. It is the best way to be memorable.
3. Be authentic in your conversations and interactions with people.



4. Use social media as a way to connect with people in your practice area, in one-on-one interactions. After establishing a relationship with others online, consider inviting them for face-to-face meetings.
5. Consider attending alumni events as a way to connect with former classmates.

## ○ INNOVATIONS FOR GROWTH

### Pascale Pageau on Hiring and developing your lawyers

*“Don’t hesitate to invest in good people. They are the ones who will bring you forward.”*

I wanted to become a lawyer to change the world, to support those in need and make a difference for others. After a few years of practice, I realized that the traditional firm model was not aligned with my personal vision of how to provide services as an attorney and advisor to my clients. It was also a challenge for me in that model to balance my professional ambition with my other priorities in life and my role as a parent.

I started Delegatus 12 years ago in my basement. Eventually I was not able to keep up with the demand so I looked for lawyers to team up with for specific contacts.

Our key distinction is our approach. We connect with our clients, adapt to their needs, and offer a human approach. We want our clients to feel that we are not only on the same side, but also on the same level, working elbow to elbow.

Delegatus evolved from a freelancer legal corporation to a strong multi-skilled team of lawyers. We grew as a firm with a cost-efficient philosophy in mind, considering our clients’ and our internal needs. We do not spend money on anything that is not necessary to better serve clients, and aim to invest in what matters most. We have a cozy and comfortable office our lawyers and clients like to use; technical tools for an efficient practice; services for our lawyers such as business development coaching and marketing, practice support and accounting; and a devoted support team to make it all work.

In terms of structure, we encourage our lawyers’ entrepreneurial spirit and treat them as independent partners. We have a flat structure; our compensation policy is transparent and applicable to all. They can expect the same treatment regardless of their experience and background. Over the years, we are happy to say that, although our structure has slightly evolved to better suit our expansion, we never left behind our vision and our human approach.

Our lawyers are self-determined and skilled enough to control their practice. Their level of work is balanced between their personal objective and their clients need. There is no face time pressure and we do not set target billing or hourly rates according to seniority. They

receive a percentage according to what they or lawyers from the team bill to the clients they serve. The firm does not guarantee a workflow (who does?) but rather helps them build a business plan, provides the perfect set for cross-selling opportunities and uses its brand and network to serve as a very interesting introduction to great clients. The training and coaching we offer, as a group and individually, is greatly appreciated.

Our firm is successful because of a combination of talent and will — the talent of an amazing and brilliant support team and of experienced and bright business lawyers, combined with a common dedication to make things better within the legal and business communities.

It wasn't a piece of cake to hire new lawyers and staff. The firm was a start-up. Our need for talented people was indirectly proportional to our financial resources. It was a struggle to support and structure our growth. As well, we were new in the market, which is known for not being very good with change. Our model was different and little known. Recruitment was hard.

We were lucky to find passionate people who believed, like us, that our innovative model was worth the efforts. Our first lawyer hired was Anik Fontaine in 2006. After more than 10 years at Delegatus, she is an indispensable commercial and IT law resource and successfully developed an enviable portfolio of clients. We sometimes look back to better appreciate how fast we improved on so many levels in such a short time.

We sometimes hear that attitude is even more important than competence. We tend to agree (as long as our competence standard is met!) because, ultimately, we want to enjoy working with our colleagues and we want them to be involved and motivated. We need to treat them well and to refrain from thinking that it is an employers' market. We look for people who share the same human values, and who are self-determined and ambitious.

Be ready to devote time to the management of your practice, which you will need to take care of (any time you can) between client files, business development and, hopefully, your personal life. It is wise to set aside a budget to hire a trusted manager, other professionals, and technological tools to keep your head above water as your firm grows, or for periods when there is a peak in your practice.

Don't hesitate to invest in good people. They are the ones who will bring you forward. Surround yourself with the best people.

Get involved in the community and get to know as many people as you can. You may end up finding your next partner or your best client.

*Pascale Pageau is Founder and President of Delegatus based in Montreal.*



### Your next steps — Preparing to hire a new lawyer

1. Be prepared to invest time in looking for the right person.
2. Write a job description that accurately depicts what the job will entail. Think about the required knowledge and skills needed for the position.
3. Advertise the position not only in mainstream media (newspapers, job posting websites) but also using social media and local bar associations.
4. Prepare for the hiring interviews with a set of open-ended questions.

### **Elizabeth Fitzgerald on Freelance Support**

*“Respect people’s work by paying for the time and skill they provide.”*

It’s hard to pinpoint exactly why I became a lawyer but I learned the power of writing at an early age. I threatened the local council with litigation if they did not repair the damage to the pavement in front of the front door of my family home. I think I was 10 when I wrote that letter. It was fixed within a week.

I am a freelance contractor, which means that law firms hire me to work with their clients. I started that work in January 2013. I practice technology law, in particular commercial contracts and regulatory advisory work relating to new technologies.

I was working in a law firm in Madrid, Spain, after having worked in a law firm in Dublin, Ireland, and I realized that commercial law practice was going to be very similar no matter what country I was in. I was reading Richard Susskind’s book “The End of Lawyers?” at the time and it encouraged me to think outside the framework of traditional practice.

Many people think that as a freelancer you will work less hours. For me, that has not been the case. Last year I was averaging 56 hours per week, which is the same average as a partner in a UK law firm. The most challenging aspect is that freelancing tends to involve a lot of drafting, which can be exhausting and requires a lot of focus. Without a doubt the most rewarding aspect is the ability to decide when to do that work. If I work very late one day, I will do something nice the next morning to recover. I also like to take more vacation time than would be possible in a situation where I was a partner or an employee. Although in the first year of my freelance practice, I forgot to take any!

Being a freelance solicitor has opened many doors for me. I have developed a network of people that I really enjoy working with. I get to pick and choose my clients and they are a great bunch. I have learned more as I can see different firms’ approaches to similar problems. I have received a lot of offers to do interesting things, both in traditional practice and outside. It turns out that showing you can run a business, even as a solo trader, is a good thing.

The first firm that contracted with me wanted to hire me as an employee but the timing was wrong. I had just been offered the amazing opportunity to work in Madrid for a few months. The law firm paid a retainer for my return and offered contract work, which suited both of us. That was the launch pad. I still work with that first law firm but now seven customers send work to me on a regular basis. I have two types of clients. There are growing firms that don't quite have enough work to hire an additional full-time lawyer in my specialty and clients who hire me for my expertise.

When hiring a freelance lawyer, find someone who loves practice. I don't think it is an ideal situation if the lawyer is freelancing because they hate law and haven't moved on. Freelancing requires hard work, and you've got to be fond of your work to handle the instability and the self-sufficiency.

I use the technology that my contractor firms use and everything is run and controlled by their systems. This means I must be on top of many different types of technology but, again, I view this as an advantage. I am, after all, a technology lawyer.

I don't use a virtual assistant. I do everything myself. It doesn't take that long. My arrangements are very streamlined. This, however, might not suit other more administrative-heavy areas of practice.

I bought an excellent laptop and a smartphone. It is that simple. I tried working from home at the start but found it isolating and boring. I work in a co-working space called the Fumbally Exchange, which happens to be populated by the nicest people that also have small businesses. I have been here since 2013 and it has been a superb experience. My work is too specialized to gain many clients out of working in the space, but the collaboration, assistance and moral support in terms of running a business has been great. A disadvantage is that there are no other lawyers here to bounce ideas off. In some ways, I do miss legal chat!

Twitter has been a complete lifesaver. I've met lawyers around the world and gotten involved in things through Twitter. Technology law is very fresh and moves quickly and I'm getting involved in the conversations. Twitter is my greatest knowledge bank.

When making your decision about a co-working space, consider your obligations of client confidentiality. Is your desk overlooked? Is there a space to go to for calls where your conversation cannot be overheard? I operate a paperless office, mainly for security reasons. If you are in a paper-heavy practice area, a co-working space may not be for you.

Respect people's work by paying for the time and skill they provide. Respect the effort required to gain skills in different aspects of your business. Delegate so that you spend your time doing what gives your business the most benefit. I built my own website, just to see that I could, but next time I'm getting a professional — there are many excellent providers here in my co-working space!

*Elizabeth Fitzgerald is Freelance Solicitor in Ireland.*

### Your next steps — Hiring a freelancer

1. Decide what work to delegate.
2. Ask colleagues for referrals.
3. Be clear about your deadlines, budget and terms of payment.
4. Communicate frequently. Receiving regular progress reports or weekly scheduled phone calls will help build the relationship. Give feedback.
5. Discuss whether the devices the freelance uses are encrypted.
6. Make sure freelance lawyers only have access to files relevant to their work.
7. When the work is completed, make sure to remove access to your firm's email and document management system.<sup>65</sup>

### ○ NEW PERSPECTIVES

#### **Koren Lightning-Earle on Cultural Competency**

*"I think through more education we can create a more inclusive legal profession."*

During the final year of my undergrad I decided I was not done my education yet. I wanted more. I applied for both an MBA and law school. I got into law school.

I started my firm in 2011, but I was in politics at the time so I didn't start taking clients until 2014, when I left politics. I wanted the flexibility to be able to raise my children and practice law. I wanted to ensure I could drop my kids off at school and be there for them when they needed me.

I mainly practice Aboriginal law, administrative law for First Nations clients, family law and mediation. The most rewarding experience of having my own law firm is seeing the improvements in the Nations I work with and how they use law to advance their community - and I get to be a part of that. I also work with the Law Society of Alberta to help implement the recommendations from the Truth and Reconciliation Commission.

I think cultural competency training is absolutely necessary. How are people supposed to provide services to a client when they don't understand their background? For example, the lack of understanding that Canada was founded, not by two nations but on the back of the Nations that were already here — that is an integral part of Canadian history that has been

<sup>65</sup> Sam Glover, "Outsourcing 101 for Lawyers: How to Get the Most from Freelancers" online: Lawyerist, available at: <https://lawyerist.com/outsourcing-101-lawyers-get-freelancers/>. See also Carolyn Elefant, "Hiring Options For Growing Solo," online: Above the Law, available at: <http://abovethelaw.com/2014/03/hiring-options-for-growing-solo/>.

left out of peoples' lives and educations, and has created a disconnect between lawyers and Indigenous peoples as a result.

We see from so many bad examples why cultural competency is important. We need mandatory CPD about reconciliation and cultural differences. If we can ask about wellness, we can ask about reconciliation.

I think through more education we can create a more inclusive legal profession. Most lawyers don't even know that there are hundreds of different indigenous groups. They don't know that their clients have special rights like treaty rights or that there are specific tools available for Aboriginal people. I was speaking to a child advocate lawyer and he didn't know that indigenous children have the right to participate in cultural activities and that there are resources available to service these children. I don't blame lawyer. I blame our system for allowing them not to know.

Not everyone was raised with exactly the same privileges and disadvantages. We are shaped by our backgrounds and our history. If we want to provide quality services to a diverse range of clients, we need to be open-minded and embrace those differences and understand and respect our client's background.

As a profession, we need to know that reconciliation is not easy and it will be uncomfortable at the beginning. How do we reconcile? We need lawyers that are willing to be vulnerable, have the conversations and then move forward with action.

*Koren Lightning-Earle is CEO of Thunderbird Law and Indigenous Initiatives Liaison at the Law Society of Alberta.*

### Your Next Steps — Improving Cultural Competency

1. Complete a self-assessment on your cultural competency.<sup>66</sup> Harvard University provides several, free assessment tests on implicit bias and the Central Vancouver Island Multicultural Society provides a Cultural Competency self-assessment tool.
2. Encourage your team to take cultural competency training including CPD seminars.
3. When taking on new clients, consider the cultural and socioeconomic similarities and differences between you and your client. This will help in considering effective ways to communicate with your client.

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<sup>66</sup> See Harvard University, "Project Implicit," (online: Harvard University) available at: <https://implicit.harvard.edu/implicit/>. See also Central Vancouver Island Multicultural Society, "Cultural Competence Self-assessment Checklist," (online: Central Vancouver Island Multicultural Society) available at: <http://www.coloradoedinitiative.org/wp-content/uploads/2015/10/cultural-competence-self-assessment-checklist.pdf>.



## Jeena Cho on Integrating Wellness

*“When I am practicing self-care, I am engaging in activities that maintain my well-being so that I can be a better lawyer, spouse, parent, sister, brother, etc.”*

I immigrated to the United States at the age of 10 with my immediate family. No one in my family spoke any English. We had to learn how to navigate the culture, and learn to integrate. Because we were immigrants, we also faced injustice and discrimination.

I was a big fan of the TV show “Law & Order” and I admired the role the attorneys had prosecuting criminals, giving voice to victims and pursuing justice. This led me to pursue my career as a lawyer.

As lawyers, we are in the trauma and suffering business. Clients rarely go to see a lawyer with happy news. When I was a prosecutor, I saw suffering all around me, both on the side of the defendants as well as the victims.

Later in my career, I became a consumer bankruptcy lawyer. Needless to say, no one ever goes to see a bankruptcy lawyer for the fun of it. I generally see clients who have hit rock bottom and are going through one of the most traumatic experiences of their lives. Frequently, clients end up in bankruptcy due to some unexpected life circumstances — divorce, death, injury, illness, unemployment, or failed business.

It’s incredibly difficult to witness the suffering of another human being and not have that impact you in some way. I think law school taught me that lawyers are supposed to do their jobs with robotic precision, not have any emotions, and certainly not take on the trauma of their clients. Yet, when faced with a client who has exhausted every last cent in an effort to save their dying child or spouse, it’s difficult to be emotionally detached. Furthermore, I believe having some level of empathetic or compassionate connection is critical to create a healthy attorney-client relationship.

I turned to mindfulness when I experienced burnout, which expressed itself as detachment, severe stress and unbearable anxiety. Once I saw firsthand the incredible benefits of having a regular mindfulness and meditation practice, I felt it was important to share these tools with other lawyers. It’s interesting that therapists, social workers, first responders and other professionals who work with people who are experiencing trauma receive training on things like secondary trauma, vicarious trauma, PTSD, and how to not let it negatively impact you. Yet, lawyers receive no such training.

I firmly believe that we must practice and pay attention to our own well-being. It’s difficult to imagine that you can be the best attorney possible if you’re experiencing burnout, overwhelming stress/anxiety, suffering from depression or alcohol/substance abuse. As is

often said, "Secure your own oxygen mask before helping others." This is true for lawyers as well. We must put our own wellness first. It's important to charge our own battery, fill our own fuel tank so that we're not running on fumes.

I like to think about mindfulness as the deeply held intention with which I live my life. It's about living in the present moment without preference or judgment. It's about being committed to each moment and bringing a gentle stance, and a compassionate attitude.

Often, lawyers are so busy trying to juggle our many responsibilities that we lose sight of why we do the work that we do and how we want to do it. Having a daily mindfulness and meditation practice is akin to constantly making small course adjustments and making sure my actions, how I go through life and how I interact as a lawyer is consistent with my deepest values.

Most lawyers recognize that our role is so much more than analyzing our client's problems solely through the lens of the law. We often play other roles such as life coach, therapist, financial advisor, and confidant. In addition, solo practitioners wear other hats. We have to do marketing, business development, billing, collection, tech support, act as webmaster and secretary, just to name a few of the roles we play.

Law school simply is inadequate training for so many of these roles. There's often a lack of resources and uncertainty about where or who to turn to for help. Furthermore, lawyers are trained not to be vulnerable or to admit that we need the assistance of others, which further compounds the pressures.

Recognize that self-care and your own well-being matters! Often, self-care activities are confused with being "selfish." Even though these two terms sound similar, they're opposite in meaning. If I am being "selfish," I am taking something away from you for my own gain or benefit. When I am practicing self-care, I am engaging in activities that maintain my well-being so that I can be a better lawyer, spouse, parent, sister, brother, etc.

Lawyers will often tell me they constantly struggle with the feeling of failing. When they're at the office, they feel as though they're failing as parents, or spouses. The opposite is also true. When they're at home, they feel as though they should be at the office, billing. The only antidote is to acknowledge that we can never live up to the perfectionist tendencies we all tend to have and practice being a good friend to ourselves.

Build self-care practices into your day. Self-care doesn't need to take a lot of time or money. It just takes dedication and regular practice. I schedule self-care activities in my calendar and hold that time as sacred. For me, my self-care activities are meditation, yoga, gardening, and sewing.

With smartphones and the ability to stay connected 24/7, it's becoming increasingly more challenging to truly unplug. So, pay attention to how connected you are and intentionally disconnect. For example, try not having your smartphone on your nightstand. Don't check



your email first thing in the morning or right before you go to bed.

*Jeena Cho is author of "The Anxious Lawyer," mindfulness instructor and wellness consultant based in the U.S.*

#### Your next steps — Incorporating wellness into your lifestyle

1. Be fully present in the moment. When you're having dinner with your family, pour all of your attention into that moment. When you're at the office, fully devote all of your attention to that task.
2. Consider practicing the ability to stay on task and focus in the present moment through regular meditation.
3. Schedule breaks throughout the day. Also take digital breaks away from emails and other electronic communication.<sup>67</sup>
4. Seek out help and resources through training.<sup>68</sup>

#### **Ron Friedmann on Change Management**

*"Be upfront about the effort that will be required, for how long, and the benefits that likely will follow."*

Law had long interested me (my grandfather was a lawyer) and, after some agonizing, I decided on law school even though I was not sure I wanted to practice. Working in two large law firms and one boutique over two summers, I realized law practice was not for me. But I sat for and passed the bar exam in two states and was admitted. I became a lawyer but did not practice. Instead, I worked for Bain & Company as a strategy consultant. After three years there, I started my career in the legal market running practice support for a law firm.

I joined Fireman & Company five years ago, just after it started. I had done consulting previously and liked it. I knew Joshua Fireman from years earlier and liked his approach and business philosophy. We have now grown to 12 consultants. We help lawyers practice law more efficiently with knowledge management, legal project management, process improvement, and practice technologies. Tech is important in what we do but we always start by asking what is the business or practice problem to solve. We always focus on planning for adoption of any changes we suggest.

Organizations often roll out new technologies or new processes. They frequently assume

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<sup>67</sup> See "Finding Your Blue Sky: Wellness and balance in a demanding profession," LawPro Magazine (14:3) available at: [http://www.practicepro.ca/LawPROmag/LawPROmagazine14\\_3\\_Sept2015.pdf](http://www.practicepro.ca/LawPROmag/LawPROmagazine14_3_Sept2015.pdf).

<sup>68</sup> See CBA Wellness (online: Canadian Bar Association) available at: <http://www.cba.org/CBA-Wellness/Home>.

that workers will simply adopt whatever is rolled out. They are wrong. Gaining adoption is hard work. Change management is the art and science of helping people adopt new ways of working.

Dr. Larry Richard, who has studied the personality of thousands of lawyers, provides evidence that lawyers in fact do resist change more than others. Beyond personality characteristics he documents, lawyers learn in law school to follow precedent. If change bothers you at baseline, and you focus on the past, that's a tough place to start from. It explains why, when it comes to new ideas, lawyers and firms are famous for thinking, "which other firms are doing that?"

If a lawyer really wants to change, he or she may need help in the mechanics. That could be someone to train them in new software or a new process. The bigger challenge, however, lies less in those mechanics and more in instilling the desire to change. To achieve change, you must answer WIFM: what's in it for me? Never mind that the change will help the organization. How does it help me? Few people, especially lawyers, blindly obey management edicts. Gaining adoption requires answering WIFM, which can include not losing a client, making the job easier, increasing compensation, achieving a better work-life balance, or having more fun.

Part of the answer is to accept less than 100 percent adoption. Not everyone has to change to achieve institutional success. Start with good answers to WIFM. It may not, however, overcome all opposition. Fortunately, few firms are monolithic. Individuals and practice areas usually differ substantially. One strategy is to find the group(s) most willing to change and work with them first. You can then hold up their success by whatever metric is important in that firm or office and use that to motivate opponents. This triggers lawyers' competitive instincts, which can often overcome resistance.

For some opponents, fear answers WIFM. For them, the adage "If you don't like change, you're going to like irrelevance even less" applies. For them, explaining they will lose clients or lose stature in the firm can swing the balance of psychological pressure to accept the change.

Part of change management is to set and manage expectations of what outcomes of change to expect and then work to get there. Chemistry has the concept of activation energy. To get a chemical reaction to release its potential energy, you must put some energy into the system first. That's just another way of saying that there may be some pain at the outset but the gain will exceed that cost not long after. Be upfront about the effort that will be required, for how long, and the benefits that likely will follow. My repetition here is intentional. It reflects an element of change management.

It's easier to turn a small ship quickly than a large ship. Smaller firms have, at least in theory, a better ability to change quickly. There are fewer stakeholders to align and less infrastructure to rip-out and replace. That applies to thinking, process, and technology.



More generally, software has become easier to use and cheaper to license. And choice of good quality mobile apps and software has exploded. Law practices of every size need to automate as much of their business operations and practice as they can. It's striking that many lawyers readily learn new law, yet resist learning new ways of working.

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#### Your next steps — How to implement change in your law firm

1. Communicate regularly with lawyers and staff about the changes, the effort required and the expected benefits. Give lawyers and staff the opportunity to voice their opinion.
2. Set a clear timeline for implementation, including any necessary training.
3. Run a pilot program to test your ideas.
4. Be prepared for setbacks once you've implemented the change. Re-evaluate after 6 months to see what needs to be improved.<sup>69</sup>

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<sup>69</sup> Arne Byberg, "Change Management for Lawyers: What Legal Management Can Learn from Business Management," in *Liquid Legal: Transforming Legal into a Business Savvy, Information Enabled and Performance Driven Industry*, eds. Jacob Kai, Schindler, Dierk, and Strathausen, Roger (Springer International Publishing, 2017), at 175-189.

## CONCLUSION

Lawyers are capable of change. The legal profession is evolving (slowly) and many lawyers, even those who have been practicing for decades, have adapted well. But change is not easy. While you may see the purpose in trying something new, you may still need to convince your business partner to implement change.

Often resistance to change presents a significant barrier. Everyone (but especially lawyers) needs time to digest new ideas and processes.<sup>70</sup> Plan ahead, especially if you expect there will be backlash. Set a firm deadline for making the decision. Lawyers tend to ruminate more than others, but at some point a decision has to be made. Recognize that any change, whether big or small, elicits fear, especially change to a long-standing and familiar routine. Make sure to clearly communicate with key stakeholders. Inform lawyers and staff throughout the process about what you are doing, and when and how the changes will be made. At the same time, collect feedback regularly and frequently.

Whether you're starting a new law firm or looking to make changes to your existing practice, you have a unique opportunity at this moment to influence, and model, the future of legal practice. As you consider the options for innovation, understand that it is not a one-time process. We must work hard to continually move our industry forward.

As demonstrated by the wide range of topics covered in this guide, there are many possible starting points when transforming a legal practice. The key is to carefully consider your goals, be decisive, and maybe just try something new even if the outcome is somewhat uncertain.

What drives change is not technology, but ideas. Our profession needs a change in its attitude towards innovation, and it can start with you. Let's embrace new ideas and consider how to be a part of the new legal frontier.

### About the Author, Julie Sobowale

My adventure in law began at the Schulich School of Law in Halifax, Nova Scotia. As a first-year law student, I noticed a few articles in legal magazines about e-discovery. I decided to start a freelance writing business focused on legal technology, entrepreneurship, diversity and practice management. After graduating from law school in 2012 and articling at a law firm in Halifax, I focused on writing and consulting. The more I learned about legal innovation, the more I wanted to write stories about forward-thinking lawyers and professionals in Canada. My work has appeared in the *ABA Journal* and other publications of the American Bar Association, and in various publications of the Canadian Bar Association, the Canadian Corporate Counsel Association and the Nova Scotia Barristers' Society (NSBS) magazine. Find me on Twitter @nslegal.

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<sup>70</sup> For more insight on change management in small law firms, see "How To Become An Agent For Change In Your Law Firm" *GP/Solo Law Trends & News Litigation* (April 2006) 2:3 available at: [http://www.americanbar.org/newsletter/publications/law\\_trends\\_news\\_practice\\_area\\_e\\_newsletter\\_home/agentsforchange.html](http://www.americanbar.org/newsletter/publications/law_trends_news_practice_area_e_newsletter_home/agentsforchange.html).



