



CBA LEGAL
FUTURES
INITIATIVE

CONTRIBUTING PERSPECTIVE

THE CLIENTS' **PERSPECTIVE**



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
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INFLUENCE. LEADERSHIP. PROTECTION.

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INTRODUCTION

The first phase of the CBA's Canadian Legal Futures Initiatives is to understand the possible future practice environment for Canadian lawyers by examining various drivers of change.

One of these drivers is the shifting expectations of clients. In order to gain some insight into this critical area, the CBA engaged Phase 5 Consulting Group Inc. to convene online discussions with a range of clients. The discussions centered around clients' reactions to important trends outlined in Prof. Richard Susskind's paper *Key Trends in the Legal Marketplace*, a first-in-Canada inquiry into the future for Canadian lawyers.

ASKING A SAMPLE OF CLIENTS TO PARTICIPATE IN AN ONGOING, ONLINE DISCUSSION

Over 150 people were asked to participate in the research project with representation distributed for individual client participants by region, community size, gender, age / life cycle, and range of legal experience and for organization client participants by region, size, type, and status as a member of the CBA or CCCA.

This report is based on responses from 83 participants who contributed more than 10 posts each to the online discussions which took place over six consecutive business days, for each grouping, sometime between November 27 and December 17, 2012.

The 83 participants were divided into the following groupings:

- anglophone individuals with less experience using legal services
- anglophone individuals with more experience using legal services
- francophone individuals with varied experience using legal services
- organizations with in-house counsel
- organizations with no in-house counsel

Individuals with no experience using legal services were not invited to participate.

The online conversations were interactive and flexible, allowing people to join the on-going discussion in a way that fit their personal schedules.

INTERPRETING THE INPUT FROM PARTICIPANTS

The information collected from the online conversations does not provide the same kind of data as a polling survey does. Rather, this participant feedback is directional, reflecting views gathered from 250 hours of thoughtful and interactive input related to the pre-selected topics. Although the results are not necessarily representative of the population of clients as a whole they are good indicators of what is on clients' minds and their thoughts about the future. The feedback is strongest when it relates to experiences with, and expectations of, legal services. Participants were less sure when asked to imagine the law firm of the future.

IDENTIFYING KEY TRENDS TO EXPLORE IN THE ONLINE CONVERSATIONS

Participants were asked for their feedback on some or all of the 17 themes and concepts drawn from Prof. Susskind's work:

Market conditions

- Clients demanding more for less cost
- Standardization
- New legal structures
- New competitors
- International mergers

Access to legal services

- Avoiding and containing disputes
- Online legal help

Alternative sourcing

- Legal process outsourcing
- Relocating
- Leasing
- De-lawyering

Information technology

- Online dispute resolution
- Social networking
- Electronic legal marketplace

In-house lawyers

- Alternative fee arrangements
- Manage legal risks
- Changes in compliance work

RESPONDING TO THE KEY IDEAS

In their contributions to the online conversation participants based their remarks on their understanding of the legal world and their past experience using lawyers' services. They also referenced experiences with other service providers and industries.

These five trends emerged as the most relevant to participants:

1. More services for less costs
2. Standardization
3. Online legal help
4. Alternative fee arrangements
5. Legal risk management

○ 1. MORE SERVICES FOR LESS COST

It is a "fact of life" that consumers of any service have increasingly high expectations and want to feel that they are receiving good value for their money. In-house counsel spoke to budget pressures while organizations that hire out for their legal service needs reported a strong motivation to reduce their costs. Individual clients with less experience using legal services were skeptical that law firms would respond to the pressure for lower cost services.

Participants predicted that these cost sensitivities will put more pressure on law firms to become more efficient and to re-package services, for example, by setting fixed fees for specific work, offering discounted rates, and providing some basic, low-end services free of charge with added costs for tailored guidance, perhaps a checklist to help stay on track.

"I would like to see law firms teach in-house counsel the processes for which they are retained." In-house counsel

Participants suggested that there will be greater expectations of getting something extra from a law firm, such as professional development opportunities geared to them as clients and updates on relevant industry/client-specific information.

Participants also expected to take a more active role as consumers of legal services in the future. Clients in organizations with no in-house counsel said that they are ready to do more of the work themselves, with external counsel

taking on a reviewing role. Individuals could also see themselves being more fully involved in the legal process, and doing some of the work with a lawyer's guidance. Participants generally can see the possibility of more micro-managing of files and having more input into how legal work is handled.

"One law firm we use has a process where their accounting department advises the lawyer in charge of our file that we have hit a certain threshold in hours in a month. The lawyer then calls me to let me know. I really appreciate this." In-house counsel

Clients want simpler, basic tasks to be done by non-lawyers at a lower cost and then reviewed by a lawyer. They expect to pay according to who does the work — not pay for a junior lawyer to learn or for a team of experts when that might not be necessary. They likened this to changes in the medical field where nurse practitioners may now make a diagnosis, write prescriptions, and give vaccinations, freeing doctors for more complex situations.

Participants also expressed an interest in being kept informed throughout the legal process with regular reports and updates on both the status of the work and the costs-to-date. They expect bills for services to match the quote or budget, with itemized billing and opportunities for cost control.

They want information and advice from their lawyer to be clear and easy to understand.

"If a quote was given and a person was told that this was the pricing within 10% I am sure they would be very happy." Individual client

Overall, participants suggested that there will be a demand for greater accountability with respect to the delivery and costs of legal services.

○ 2. STANDARDIZATION

Experience with other service sectors prompted participants' views of the possibilities of increased standardization within the legal context. They pointed to the work of notaries in Québec as well as the medical, financial, and government fields as areas using a pre-packaged, standardized service delivery approach in some situations. There is an interest in seeing common legal matters dealt with in a common way to achieve efficiencies and cost-savings. However, some participants said that law is all about the nuances and that a cookie-cutter approach could lead to mistakes and extra costs.

"When work is sent out, it is because it is a one-off complex matter where the expertise does not already reside in-house and there is no value in building that expertise in-house for a one-off file." In-house counsel

Participants from organizations with in-house counsel reported that there already is an increase in the use of templates and standard tools and procedures, and noted that they are choosing to do more standardized, routine legal work in-house, with a resulting decrease in reliance on outside counsel for some matters.

3. ONLINE LEGAL HELP

The move to online services is prevalent in many other sectors with the legal profession being seen as slow to embrace it. Participants said that people generally expect to be able to find useful information and get help on the Internet, and noted an increase in the “do-it-yourself” mindset.

Participants believe that lawyers should realize that clients will use the Internet to get legal information, before and while using a lawyer’s services.

“Online legal sounds great. Sounds like you can save money by researching your case or even settling all your needs before taking them to a lawyer.” Individual client

On the other hand, participants could see downsides to online legal help, especially with respect to the quality of the advice. There was a concern that if some legal services end up being offered through call centres there would be a corresponding negative impact on the quality of services and increased risks to clients. Participants predicted that more clients will seek legal advice after having received poor legal advice from non-lawyer sources or having made mistakes based on their Internet research.

“Online assistance may be one way to help find answers to questions, but I don’t think it’s a good solution as most often, people don’t know what question to ask — making any answers vulnerable to poor interpretation.” Participant from organization without in-house counsel

Participants also thought that there might be increased risks to confidentiality with documents being stored online, and cloud computing.

4. ALTERNATIVE FEE ARRANGEMENTS

Overall, alternative fee arrangements were considered most applicable to routine legal work where the scope of work is more easily defined. Participants acknowledged that flat-fee arrangements may be problematic because seemingly routine matters could turn out to be more complex.

In-house counsel said that they are already asking their outside lawyers to consider alternate fee arrangements but reported that there has not been sufficient pick-up.

Corporate participants noted that senior management wants to be able to predict and manage legal costs and that this is often a driving force behind setting up in-house legal services and only using external counsel for one-off matters.

“My organization does not want more work done by external counsel than necessary.” In-house counsel

Clients said that they will be asking for more detailed up-front discussions with their lawyer about the scope, costs, timeframe, and outcome of a file. They want more than a 50/50 assessment of results. And, if possible, they want the opportunity to do some more routine work themselves to keep costs down.

○ 5. LEGAL RISK MANAGEMENT

Clients said they want their lawyers to set out all the options and then to give reliable advice on the best way to handle a situation. They expect their lawyer to know them / their organization and to put their best interests first. They want to benefit from pro-active legal advice which will help them to manage risk.

“I really appreciate it when a firm highlights for me another area which I may want to consider, taking a broader or big picture approach,” In-house counsel

In-house counsel said that there is an increasing expectation of external counsel to provide them with risk management advice based on a strong understanding of their business.

“I expect my provider of legal services to have thought of things that I might not know of or might not have considered.” Individual client

Helping a client identify and manage risk was seen as a strong value-added that would be very welcome.

“Guidance on legal risk is sort of like health care. Prevention is cheaper than the cure. If we can deal with things proactively, on some sort of fair fee basis, I think that would have some value. You learn something about how to improve for the next time from the litigation process, or the media process, or whatever, that you don’t find in a court decision. It would be nice if we could get a little more of that knowledge (or experience) transfer from the firms, without the pain of personal experience.” In-house counsel

LOOKING AT THE DELIVERY OF LEGAL SERVICES

Participants found it challenging to crystal ball what a future law firm might look like or how legal services would be delivered ten years from now. Nevertheless, they generally agreed that the delivery of legal services will be different from the way it is today.

“New competitors will be a good thing for end users. Prices will be driven down by competition. More options will likely lead to users choosing the services that suit their needs best.” Individual client

It was felt that there will be more competition, more delivery partners, and more players in the legal field, as more people with different professional backgrounds and training offer complementary services. For example, mediators, paralegals, contract writers, management coaches, family therapists. Some participants suggested that legislation will be needed to determine what other service providers can and cannot do.

“[With] routine and repetitive tasks being done by non-lawyers, there should be some cost-savings there. The finishing touches will still be done by a lawyer but at less cost than having the lawyer do the entire job from scratch.” Individual client

Participants foresee lawyers working collaboratively on a file as part of a team of professionals, drawn either from within the firm or outside it. The lawyer on the file will be expected to bring a high level of specialization, and both leverage this expertise and verify all legal aspects of the work, implementing quality control measures. Lawyers are expected to communicate effectively with everyone on the team, keeping everyone appropriately informed.

“At first [shared services] may be seen as cost streamlining... but it seems to me that it will just generate other kinds of work.” Individual client

Participants also predicted that clients will press for an ombudsman to review complaints and protect clients when errors are made by a service provider.

This new environment is expected to be more complex, competitive, and fragmented, generate more conflict of interest situations, and result in different law firm structures.

Participants expect that law firms will have to adapt their marketing approach to stand out in a more crowded market place. A few noted that clients may use the Internet to find out how other clients rated their lawyer’s services, a common practice in other sectors.

“I wouldn’t put any faith in client reviews, unless they were referrals by people I actually knew. Legal services aren’t products — it isn’t the same as purchasing snow tires, for example.” Individual, more experienced

While some participants predicted a growth in smaller firms because of their lower overhead, lower fees, and greater flexibility, others suggested that small firms will disappear because larger firms will be able to offer a wider range of services at lower costs.

FORESEEING CLIENT CHOICES

Given a predicted increase in the opportunities for clients to find legal information on the Internet and their interest in being more in control as consumers of legal services, some participants expect that clients will turn to mediation and other dispute resolution services, including online services, more often and that fewer cases will go to court.

“Mediators will become the next major trend.” Participant from organization without in-house counsel

On the other hand, some participants foresee an increase in client use of legal services as lawyers will add value to their services, including a strong understanding of their clients’ wants and needs.

“External counsel need to have a very good understanding of our world, including budget constraints, reporting structure, corporate values, stakeholders.” In-house counsel

Consistent with changes in other service sectors, clients said that there will be more expectations of immediate attention to their concerns and fast turnaround times.

EXPECTING CHANGES IN THE REGULATORY SPHERE

With an expanding number of professionals offering law-related services, participants expect to see a new accreditation or certification system for non-lawyers. They also foresee the need for oversight of online legal services and some participants thought it should be managed by a national impartial organization.

SUMMARIZING THE COMMENTS

It is obviously challenging to distill 250 hours of discussion, in two languages, among five different groups, into a few pages. The purpose of this report is to stimulate thinking — to encourage more discussion among colleagues and clients about the future of legal services — as a starting point in the CBA Legal Futures Initiative.

APPENDIX A – COMMENTS GROUPED BY CATEGORIES

WHAT DO CLIENTS WANT?

○ CLIENTS WANT LAWYERS WHO KNOW THEM/LOOK OUT FOR THEIR INTERESTS

- get reliable guidance on the best way to handle a situation; know all their options
- work with a lawyer who knows them/their organization and adds value, helps them to manage risk
- have a lawyer who looks out for their best interests
- benefit from proactive advice/suggestions
- achieve a positive outcome — get what they want or need

○ CLIENTS WANT TO BE MORE INVOLVED

- have the opportunity to do some of the work themselves to lower costs
- be kept informed throughout the legal process with regular reports and updates

○ CLIENTS WANT IMPROVED COMMUNICATIONS

- receive an honest assessment of the scope of services, costs, timeframe, and outcome
- understand the lawyer's advice (clear language)
- know that the lawyer is communicating with others as required — everyone in the loop

○ CLIENTS WANT MORE COST CONTROL

- use the services of less highly-paid professionals, e.g., simple tasks done by others and reviewed by the lawyer, and have input into those choices
- pay according to who does the work, e.g., not pay for a junior lawyer to learn or for a “wolf pack” that is unnecessary
- be billed for services according to the quote or budget — itemized billing and cost control



WHAT CHANGES TO LEGAL SERVICES DO CLIENTS SEE COMING?

○ CLIENTS WILL DO MORE OF THEIR LEGAL WORK THEMSELVES

- more legal services offered online, do-it-yourself opportunities
- more clients using the Internet to get legal information, before or while using a lawyer's services
- more work being done by in-house counsel; use of external counsel only for one-off legal matters

○ CLIENTS WILL WANT TO BE KEPT INFORMED AND HAVE MORE OF A ROLE

- more client control on how legal work is handled, more micro-managing

○ CLIENTS WILL LOOK TO NON-LAWYERS FOR ASSISTANCE

- more work being done by non-lawyers within law firm teams, e.g., in medical context, nurse practitioners meeting patients, giving vaccinations
- more work being done by non-lawyers outside law firms
- more use of lawyers as final reviewers of work done by others
- more clients coming in having received poor legal advice from non-lawyer sources or having made mistakes based on Internet research
- more regulation of non-lawyers working in the legal area

○ CLIENTS WILL LOOK FOR OTHER WAYS TO SETTLE DISPUTES/RESOLVE PROBLEMS

- more use of mediation and other dispute resolution processes, including online services; fewer cases going through the court system

○ CLIENTS WILL EXPECT MORE FROM THEIR LAWYERS

- more specialized legal services
- more pressure on lawyers to be up-to-date
- more pressure on lawyers to predict outcomes, 50/50 assessment not good enough
- more pressure on external counsel to know the client's wants and needs — no time to "babysit"
- greater expectations of fast turnaround times
- greater expectations of getting something extra from law firm, e.g., professional development for client, information-sharing

○ CLIENTS WILL EXPECT MORE FOR THEIR MONEY AND DIFFERENT BILLING ARRANGEMENTS

- more pressure on law firms to re-package services, e.g., low-end services for free, charge for value added, tailored guidance
- more set fees for specific work, more discounted rates
- increase in pressures on client budgets, a greater push for efficiencies, and a renewed focus on value and value added

○ CHANGES FOR LAW FIRMS

- more standardized elements — templates, tools, online forms
- more conflict of interest situations
- more competition
- more ratings of a lawyer's service on Internet sites
- increase in number of smaller firms with less overhead and lower fees
- increase in risks to confidentiality with cloud computing, documents stored online
- increase in different law firm ownership structures.



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