



A Guide to Strategy for Lawyers

Version 1.0

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THE CANADIAN
BAR ASSOCIATION

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MESSAGE FROM THE PRESIDENT

As the national representative body of over 37,000 lawyers, the Canadian Bar Association plays a unique role in leading change in the Canadian legal profession. We want our members to flourish both now and in the future, which means equipping them with resources and ideas to shape their career paths in a rapidly-changing environment. I am pleased to introduce this booklet, *A Guide to Strategy for Lawyers*, as a hands-on tool that our members can apply to their practices today, to best orient and prepare themselves for tomorrow.

Jack Welch of General Electric once said, “Change before you have to.” I love the simplicity of that advice because it conveys the key challenge that is before us all as lawyers if we want our profession to be relevant in the years to come. We don’t want to merely be swept along on the twin tides of globalization and technology, or worse, left behind by them. Given the challenges we face, the time to act is now.

When the CBA embarked on its Legal Futures Initiative three years ago, we engaged Richard Susskind OBE, an author and a leading thinker on the topic of the future of the legal profession, as a special advisor. Over the course of the Legal Futures Initiative’s work, which culminated in the 2014 report *“Futures: Transforming the Delivery of Legal Services in Canada,”* Richard played an important role, offering challenging and authoritative advice and guidance by email or on the other end of a long-distance line from England. His research and years of experience advising major law firms, in-house legal departments, and national governments give him great insight into the perspectives of lawyers considering change.

After the *Futures* report was published, the CBA decided it would be helpful to create a tool to help law firm leaders develop concrete strategy to deal with the changing legal environment. The following booklet offers a clear, effective step-by-step process for law firms interested in taking a strategic approach to their future; it also offers directions for sole practitioners and in-house counsel interested in doing the same. It is up to the profession to find ways to innovate and improve, and we believe this booklet will allow each of you to get started on that journey.

We hope you will find it helpful. Change may be happening at a different pace depending on your location, practice size and specialty. But it is happening to all of us, and on behalf of the CBA, we intend to help you prepare for it.

Michele H. Hollins, Q.C.
President, Canadian Bar Association

FOREWORD

This guide was written to complement *Futures: Transforming the Delivery of Legal Services in Canada* ('Futures'), the report of the Canadian Bar Association (CBA) that was published in August 2014.

In working on Futures with members of the CBA Legal Futures Initiative, we anticipated a common reaction from partners in law firms: 'OK, we understand that our profession is changing rapidly, but what should we actually do?' The answer to that question, in our view, is that each legal business needs to revisit, think through, and develop its long-term strategy. But what does that actually mean and how should firms go about it?

For twenty years or more, the "strategy" for most law firms was to repeat the previous year's performance, ideally with a bit more fee income and some cutting of costs.

The lesson of Futures is that tomorrow's legal landscape will not look like yesterday's, that the old ways of working need to be replaced, that legal businesses need to re-consider what services they offer, how they deliver them, and how to work more closely with their clients.

The CBA and I agreed that legal business leaders might need some practical help on strategy. And it was suggested that I should try and distill my experience of working with lawyers into a practical guide — a 'how-to' publication, different from my usual books, which either seek to identify future trends or are fairly theoretical.

This short introduction is the result. For more than 25 years, I have been advising law firms and legal departments, large and small, in Europe and North America, and I have developed a set of tools and methods for doing this. I have selected some of these for inclusion here. This guide is directed at 'legal businesses' — mainly law firms, but most of what is said here applies equally to in-house departments. I tend to use the terms 'law firms' and 'legal businesses' interchangeably but the intended audience is all lawyers.

Little of this material has been published before. It is not an exhaustive guide to strategy for lawyers. But I hope it is a useful starting point.

Richard Susskind
June, 2015

CONTENTS

Section 1 A Quick Introduction to Strategy

- 1.1 What is strategy?. 8
- 1.2 Why do law firms need strategy?.. . . . 9
- 1.3 What makes a successful strategy project?. 10

Section 2 Checklists for Developing Strategy

- 2.1 Strategy Wheel 12
- 2.2 Process 14
- 2.3 Checklists.. . . . 16
 - 1) Horizon widening 16
 - 2) Soft Issues 18
 - 3) Direction 20
 - 4) Market issues 22
 - 5) Priority markets 24
 - 6) Competing 26
 - 7) Management issues 28
 - 8) Governance and Policy 30
 - 9) Execution.. . . . 32
- 2.4 Standard strategy document. 34
- 2.5 Testing the strategy 38
- 2.6 Tips for managing change 39
- 2.7 Smaller firms 40
- 2.8 In-house lawyers. 42

Section 3 Big Issues of Strategy

- 3.1 Differentiation 46
- 3.2 Market leadership 48
- 3.3 Pricing 50
- 3.4 Information technology.. . . . 52
- 3.5 Process analysis 54
- 3.6 Alternative sourcing 56
- 3.7 Legal project management 58
- 3.8 Disruptive innovation 60
- 3.9 Winning more work 62
- 3.10 Sector strategy. 64

Section 4 Further Reading68
About the author70

A QUICK INTRODUCTION TO **STRATEGY**

1



'PLANS ARE NOTHING; PLANNING IS EVERYTHING'
DWIGHT D EISENHOWER

1.1 What is **strategy**?

Confusingly, there are many definitions and schools of strategy. According to one leading book, *Strategy Safari*, there are at least five distinct definitions of strategy and ten different schools of strategic thought. If nothing else, this means we should be wary of people who dogmatically say that something is or is not a strategy or that there is a right way of formulating strategy.

This guide takes a pragmatic rather than a purist view of strategy. It builds on the actual concerns of practitioners. In these rapidly changing times, what most lawyers want for their businesses is a well-considered document that addresses four main issues:

- Where the business is today.
- What challenges it faces.
- Where it wants to be and why.
- What it needs to do to get there.

Why make it more complicated than this? The underpinning challenges facing a firm may be profound but it is important to reduce these challenges to a manageable set of issues.

This guide is based on the experience of work with over one hundred strategy documents in law firms and legal departments, and more than twenty-five from other professional firms. These have varied from 1 to 500 pages in length. In a nutshell, the best strategies — those that make a positive and lasting difference, and are widely valued within legal businesses — seem to share the following features:

- They provide a clear sense of aspiration, direction and priorities for the business.
- They relate to the next 3 — 5 years (not much less, and not much more).
- They are flexible enough to accommodate market changes and opportunities.
- They are quite short (10 pages or so).
- They are bold (not a negotiated compromise; and they would excite an investor).
- They are clear (no management waffle or legalese or excessively complex diagrams).
- Although pitched at a high level, progress against the strategies can be measured.
- The strategies indicate major next steps to be taken, rather than detailed plans.
- They are presented and discussed, with enthusiasm, with everyone within the firm.
- They form the basis of all other strategic thinking across the firm.

1.2 Why do law firms need **strategy**?

The action-oriented partner, especially in a small firm, may feel that work on strategy is unnecessary — ‘we know what we need to do, so let’s just get on with it.’ There are analogies here with clients of law firms who question whether a formal contract may be necessary when a major deal is going through. The truth is that law firms who do not engage in strategic planning do not really know what they want to do, beyond having general aspirations like ‘bringing in more business’ or ‘cutting our costs’. Good strategic thinking goes beyond the setting of financial targets. Here are some reasons to engage in fairly formal strategic thinking:

- It helps set clear overall direction for the longer term (3-5 years) and not just for the next few months.
- It enables lawyers to look beyond their ‘headlights’ — running a business without a strategy is like driving at night with headlights on but with no specific destination.
- It is a useful way of coping with change, of facing and understanding an uncertain future and making some choices.
- It is a technique that enables a firm to monitor and measure its progress.
- It increases firm-wide understanding and enthusiasm for the firm and its aspirations for the years ahead.
- It requires lawyers to prioritise — if everything is a priority, nothing is a priority.
- It provides a clear message for clients about the future of a firm.

In other words, without strategy, law firms run the risk of being directionless, of focusing only on the short term, of being incapable of managing change, unable to tell if they are making progress, lacking in internal buy-in, of having no clear priorities, and with no coherent proposition to put before clients.

Launching and running a strategy initiative is of course a major commitment. And law firm leaders are already busy — on a daily basis, they are serving clients, winning work, delivering the figures, and motivating their colleagues and teams. But these are the responsibilities of managers. Leadership is something more. Leaders also have to step up and guide firms through the medium and long term - marshalling their groups through times of change, understanding the trends in their market, building sustainable relationships, enhancing the brand, and, it is suggested here, reviewing and developing strategy. In these turbulent times, a tight ship with a very clear final port of call is preferable to a rudderless ship.

1.3 What makes a successful **strategy** project?

How do you develop a strategy for a legal business? Again, there is no one right answer. There are many ways of strategizing. However, experience suggests that the most productive and effective strategy *projects* seem to share these features:

1. They are led from the very top.
2. A substantial first draft is produced by a small group (3-5 people).
3. The strategies are formulated quite quickly (the process does not drag over months).
4. They are based on vision and not legacy (forward not backward looking).
5. Those involved in strategizing are open-minded and adventurous.
6. They are not bogged down by large quantities of historic data or by endless analysis from consultation exercises.
7. They are informed by a deep grasp of the likely competitive environment in the future.
8. The first drafts are later tested and refined by a much wider group.

In the early stages, it is best not to worry about format or layout. Instead, discussion should focus on key issues and questions of substance.

Finally by way of introduction, a strategy is not set in stone. Lawyers need to be flexible and adaptable, and prepared to change and review their strategies regularly: in these times of great flux, as often as on an annual basis. Eisenhower was wise to stress that it is not a plan in and of itself that is of value; it is the process of planning — the thinking, the prioritizing, and the imagining of a different future.

2

CHECKLISTS FOR DEVELOPING **STRATEGY**



'A responsive firm listens
continuously to its markets.'
David Maister, *True Professionalism*

2.1 **Strategy** Wheel

To help lawyers formulate their own strategies, this guide provides a series of checklists that cover nine basic strategy topics. These are summarized on the following page, where the topics are depicted on a ‘strategy wheel’. This in itself is a type of checklist, laying out the issues that lawyers should address when thinking strategically. In the pages that follow, a checklist or a list of prompts is provided under each heading, alongside some commentary on each subject in turn.

There is no need to work through the checklists in the order in which they appear: the process of formulating strategy is not a linear, box-ticking exercise. Rather, it should be iterative, looping round — revising, and re-calibrating in light of discussion.

That said, it is recommended that one of the earliest steps in the strategy process is the ‘horizon widening’ component. This is intended to set the tone and spirit of the exercise and is best conducted upfront.

The strategy wheel is not a contents list for a strategy document. Lawyers should resist the temptation to start drafting too early. It is, to stress again, the thinking, reflection, debate, and prioritizing that is at the heart of strategy; and not the production of a document.

It is useful to have the strategy wheel blown up and pinned to the wall during discussions. This offers a constant reminder of the broad shape of the discussions.



2.2 **Process**

There are many ways to run through the checklists or prompts. The most tried and tested is to convene a small group of interested parties (including partners, associates, and support staff) and to work through the checklists in workshops of two hours or so.

When the checklists are being used, as they can be, to formulate practice area strategies within firms, it should be possible to complete the exercise in three or four of these sessions. It may be helpful to undertake reading or preparation between the workshops and it will take some time afterwards to draft a document that reflects the conclusions, but it is useful to impose limits and keep the discussions finite. The law of diminishing returns kicks in very forcefully after four meetings of partners who assemble to discuss strategy.

Where the strategy is devoted to the production of a firm-wide document, the process is more involved. In broad terms, leaders within the firm should follow the checklists in setting overall direction. In parallel, individual practice areas and perhaps industry sectors should work through their strategies and feed these into the deliberations of the leaders. This is known as a combination of 'top down' (from the leaders) and 'bottom up' (from the practices) strategic thinking.

It is helpful to have strategy discussions facilitated by an external person. This need not be a strategy expert but should be someone who has the experience and gravitas to encourage everyone to have a say, to discourage senior partners from dominating, and to remind all participants that there are no right answers.

2.3 Checklists

1

HORIZON WIDENING

Over the past 20 years, most strategies of law firms have built directly on past activities, services, and successes. Rarely have major discontinuities been envisaged. For most firms, in other words, it has been expected that the future would be a minor variation on the past. However, CBA's Futures work directly challenges this assumption of continuity. It calls for law firms to think more innovatively, open-mindedly, and creatively about the future.

Accordingly, the first task in the strategy exercise is to widen horizons of everyone round the table. In part, this calls for some study of recent developments and informed predictions of the future - in the Further Reading section of this guide, there are materials that are recommended reading for before the first strategy meetings. Horizon widening also calls for a new mindset, the broad spirit of which is captured in the following prompts:

- Think of holes not power drills
Black & Decker are reputed to say they sell holes and not power drills.
What do lawyers and courts actually sell?
What is the real value that clients seek from you?
- Skate to where the puck will be
Wayne Gretzky says he skates 'to where the puck is going to be'.
Where will the puck be for lawyers in 2020 (clients, competitors, the economy, technology)?
- Be vision-based not legacy-based
Don't walk backwards into the future, constrained by where you are today.
Instead, think up bold visions; worry later about how to get there.
- Do not dismiss new ideas too quickly.
Lawyers suffer badly from 'status quo bias'.
Instead of shooting down ideas, switch to a 'why not?' mode.
- Bear in mind that the best is the enemy of the good
Voltaire was right. Improvement is rejected for falling short of perfection.
Evaluate reforms and new ideas against what we have today.

- Visioning is not negotiating
Lawyers like to negotiate and compromise.
In visioning, you are not hammering out a settlement; you are re-inventing.
- Think the unthinkable
Allow yourselves to contemplate potentially overwhelming threats.
Equally, envision outrageously positive outcomes.
- Contemplate 'destroy-today.com'
Imagine what providers or services could destroy your firm today.
Now, think whether or not you could embrace some of these approaches.
- Think like an angry client
It is always sobering to imagine a client as a fly on the wall in strategy sessions.
Next, imagine that client is disgruntled by conventional lawyering and ask what they would think of your discussion.
- Choose between revolution and incremental transformation
Assuming major change is upon us, this need not be 'big bang' revolution.
Bear in mind that transformational change can happen in manageable increments.
- Remember the next generation
Bear in mind the needs, mindset, and habits of the next generation of lawyers and clients.
Long-range planning in law is our legacy for our children and their lawyers.
- Don't think like a lawyer
Lawyers are taught to challenge, to question; you are trained sceptics.
In thinking about the future, think creatively like an entrepreneur, a musician, or an artist.
- Invent rather than predict the future
According to Alan Kay, the best way to predict the future is to invent it.
In strategy, you are not trying to guess what might happen; you are shaping your future.

2

SOFT ISSUES

Hard-nosed legal practitioners often reject discussion of ‘soft issues’ as nebulous and non-commercial; for the faint-hearted rather than the tough and business-like. Their preference is to start with the figures. However, it is difficult to have a coherent and meaningful view of where a legal business is going in the long run without reflecting on some more basic issues.

The point is best made in the negative. A law firm whose partners do not have a shared view on values and culture and who do not have a shared set of ambitions and a common vision, is likely to be dysfunctional and, in the end, a potentially destructive place to work.

The checklist on the next page provides some prompts for discussions on various soft issues.

A useful way of capturing the ambition, values, and culture of a firm is to brainstorm and eventually select a small number of adjectives that capture the mood of the meeting. Lawyers are often reluctant to speak in emotional terms and here is where a facilitator should tease out the human side of the strategy group.

It is often best to delay work on articulating the final vision until all elements of the strategy wheel have been debated. First time round, all that is needed is a tentative vision, or some notes on what eventually might be included.

Soft Issue Checklist

Ambition

- How ambitious is the firm?
- How hungry for success?
- Do you aspire to being world class, or ground-breaking, or highly respected, or ... ?

What is motivating the firm to change?

- Is the platform burning?
- Is there a fear of being left behind?
- Or is there a passion for emerging as a market leader?

Values

- What matters to you in your working lives?
- To what extent is it all about money?
- What else do you value — stimulating work, a worthwhile job, fun, intelligence, collegiality, team-work, diversity, social responsibility ... ?

Culture

- What kind of working environment do you want?
- What is special about your firm? (If the firm is different, pin down why and how.)
- Aside from the actual work, what should attract people to your firm?
- What behaviour and attitude do you want to be more widespread?

Vision

- Reflecting your ambition, values, and culture, come up with an inspiring snapshot of the firm in 3-5 years.



3 DIRECTION

Formulating strategy, above all, is about setting overall direction for a business. While lawyers enjoy and are often most expert when delving into details, it is important also to impose discipline that generates a helicopter view of the future business. There are two metaphors here — first, a sense of direction or point on the horizon, and, second, a high level view, so that the shape of the entire strategy can be seen at a glance.

The spirit, then, is to encapsulate the broad thrust of the business in a handful of sentences that can be quickly grasped and embraced by partners and staff, and can easily be understood by clients.

The checklist on the following page suggests the key questions that must be asked and answered. In light of the findings of Futures, the first item is pivotal. As suggested already, from 1985 to 2005, give or take, for many law firms and practices within, the development of strategy involved little more than confirmation that the coming year would be much like the last, except that overheads would be trimmed and fee income would be nudged up a little. Consistent with the prompts on Horizon Widening, in current times of great change, it can no longer be assumed that the future will look like the past, that controlled evolution will be sufficient for business success.

Direction Checklist

- Start with a 'goods and challenges exercise'
 - a rapid-fire, shout-out, group exercise
 - first of all, expressing views on what is going well
 - and then listing areas where there is room for improvement
 - the point is not to have excessive debate on the suggestions made
 - simply capture the thoughts on a flip-chart (a job for the facilitator)
 - start with all the 'goods' (the facilitator should not allow negativity)
 - and then move to the 'challenges' (this is the place for critique)
 - this is a quick way of pinpointing the strengths and weaknesses of a group
 - after the meeting, type up and refer back regularly

Approach

- Do you regard the changes that your strategy calls for to be transformational for the firm or 'business-as-usual plus'?
- If transformation is called for, will this be 'big bang' revolution or incremental?

Growth

- Is major expansion anticipated?
- Is growth in number of lawyers, for example, an objective in and of itself?
- If growth is intended, is this likely to be organic or through merger?
- Can you give a sense of scale (for example, we will double in size)?

Financial performance

- What do you intend the trajectory of your turnover and profitability to be?
- How critical to the strategy and the future of the firm is better financial performance?
- Is there scope, if permitted, for external investment (if not for the traditional business, then perhaps for any new vehicles)?

Brand and reputation

- Choose half a dozen adjectives that capture what you would like the market — clients, potential clients, significant competitors, possible recruits — to use when describing you in 3-5 years.
- For what would you like your firm to be famous?

4

MARKET ISSUES

Law firms do not operate in a vacuum. They serve and are part of a diverse collection of markets.

It is important that lawyers think more about markets and marketing than sales and selling. In the words of Theodore Levitt, in *Marketing Myopia*, ‘Selling focuses on the needs of the seller, marketing on the needs of the buyer. Selling is preoccupied with the seller’s need to convert the product into cash, marketing with the idea of satisfying the needs of the customer’.

For lawyers to excel in marketing (in Levitt’s sense), they must honestly appraise their impact on the market in the past and thoroughly assess the outlook for the various markets that they propose to serve. The term ‘market’ covers geographical areas (what is the need for legal services in this part of the world?), industry sectors (what legal support do these types of client need?), types of legal service (deals, disputes, compliance, advice), complexity of service (high-end or low-end), and new markets or opportunities (such as consulting). There is more detail on this in the next section.

Discussions about market issues should be most stimulating for the genuinely client-facing lawyers, focusing on issue such as: how well you have served your markets in the past; what major changes are facing your clients, and how best you can respond to shifting market demands. Discussions of markets should not be confused with PR and client entertaining.

Market Appraisal Checklist

What we have achieved

- A punchy summary of the firm's journey should appear in some way in the final document.
- The details of this can be worked up at a later stage — at an initial strategy session, it is worth quickly identifying 6-10 major achievements that characterize the firm's progress.

Market outlook

- This is the 'Wayne Gretzky' challenge — for the firm to skate to where the puck is going to be and not to where it once was.
- The strategy has to have a view of what the firm's marketplace will be like in 3-5 years, of what the drivers of change are likely to be
- There is no point in changing the firm to serve the current market better
- Typically, this should cover (in broad brush, not huge detail):
 - shifting economic conditions
 - political and regulatory change
 - old and new competition
 - emerging technologies
 - pressures on price and quality
 - shifting demands of law firm clients
 - new skills needed for a modern legal business

Client feedback

- Their views (briefly) of your past performance
- Their perceptions of market trends
- Their sense of their likely future needs.

Readings in *Futures* — see pages 19-21.

5

PRIORITY MARKETS

Establishing a firm's priority markets is the first of two core elements of a law firm's strategic positioning. As the checklist on the next page illustrates, there are two supertanker questions to be addressed:

- What are your target markets?
- Who are your target clients?

It is here that the greatest discipline is needed, especially in agreeing and limiting the markets that are to be the firm's priority. Many of the most successful law firms are those that have made difficult decisions about their priority services and priority clients. They have divested themselves of some practices (eg, some large firms have decided no longer to offer private client services) or, more radical still, they have 'fired' certain clients (saying they are no longer able to serve them well). Such firms tend to be highly focused in their business development and send out clear messages to the market on their prime areas of expertise.

Prioritizing is tough. It is telling some partners and practices that they are not as significant for the business as others. It is forewarning that there will be little investment in certain groups and teams.

Although it is tough, most firms find it easier to pinpoint their chosen markets than to identify and communicate the relevant ways in which they are different. More guidance on this is provided in the following section.

Market Prioritization Checklist

Start with a blank sheet exercise

- All participants should be asked if they were able to design the group/firm from scratch, what would it look like?
- Two-page responses should be submitted anonymously
- Collated and summarized by a facilitator before discussions on priority markets and competing
- This encourages vision-based thinking

What will the firm's key markets be in 3-5 years? (Keep the number manageable number and identify those where market leadership is the aim; for the rest, give a sense of market position.)

What are your main areas and types of legal work?

- Traditional law firm categories

What is your target catchment area?

- Countries
- Regions
- Cities and towns

In what industry sectors do you intend to serve?

Will you undertake expert/advisory work or routine/process work, or both?

Do you plan to break into entirely new markets or services (such as legal risk management or consulting services)

Who will be your target clients (keep the numbers manageable)?

General categories of business.

Particular clients.

6

COMPETING

The second core element of strategy is addressed by the following question — how will you compete in your chosen markets? Innumerable publications have been devoted to this question, covering issues such as competitive advantage, differentiation, pricing, and the rest.

How do law firms out-gun their competition? By being cheaper? By being better? Some additional guidance on this is offered in Sections 3.1 - 3.3.

The question of competing is becoming more complex in the legal industry. Historically, law firms competed only with one another. As *Futures* anticipates, however, there are new competitors striding into the legal marketplace, including the big four accounting firms, legal publishers, legal process outsourcers, paralegal firms, and, in some jurisdictions (and soon perhaps in Canada), externally funded start-ups.

The competition that beats you may not look like you. Accordingly, in settling on the firm's sources of competitive advantage, these should be characteristics and capabilities that help firms surpass both the current and emerging competition.

On the other hand, law firms might find opportunity here — the new competitors might equally be new collaborators, bringing talents and tools that complement traditional lawyers.

Market Competition Checklist

At a firm-wide level, how will your firm beat the competition and win more than your fair share of work?

- Through your brand or reputation?
How?
- Through the quality or substance of your work?
How?
- In the way you deliver your services (delivery model)?
How?
- In the way you run your business (operating model)?
How?
- In the relationships you have with your clients?
How?
- On price?

Divide differentiators into four categories:

- Current differentiators — *maintain these*
- Short term — *build in coming year*
- Medium term — *deliver in 2-3 years*
- Long term — *deliver in 4-5 years*

Readings in *Futures* — see pages 19-20.

7

MANAGEMENT ISSUES

The discipline of management is not yet highly regarded across the legal profession. Too often, it is compared unfavourably with ‘proper work’, that is, advising clients.

While the delivery of service is of course fundamental to law firms, this should be built upon a foundation of solid management. Until the recent global recession, management in most law firms involved a fairly light hand on the tiller. This is not to diminish the solid work of many HR managers, technologists, marketing specialists, finance directors, and others. But it is to question how seriously management was taken. The salaries of these line managers are very rarely on a level with those of partners, which speaks volumes, given the considerable value these managers can add.

It is also revealing how few ‘non-lawyers’ have successfully taken on the job of Chief Executive as a full replacement for Managing Partner anywhere in the world — rarely is the role given to a non-partner and, when it is, it has usually not been with success (which partly reflects lawyers’ preference for being managed by star lawyers, and partly suggests law firms are not generally willing to pay the salaries that a top flight executive commands).

It could be said that most law firms have succeeded over the past thirty years in spite of, rather than because of, the way they have been managed. In these tougher times, however, when firm direction and clear prioritizing are needed, when clients are becoming more demanding, and when new competitors are emerging, law firms must now take management more seriously. And they should start by ensuring sufficiently experienced people are in place.

Management Questions Checklist

What management challenges do you face, in relation to:

- The quality of your services.
- Attracting and retaining great people.
- Training young lawyers, when routine work is alternatively sourced.
- The pricing and cost of your services.
- The way you deliver your services.
- The way you manage your clients, on and off live matters.
- Your commitment to IT and knowledge management.
- Your financial control.
- Your brand, reputation, sales and marketing.
- Finding new service opportunities.

Emphasis

- Which of the above challenges are the top priorities over the next 3-5 years?
- To what extent is innovation central to the way the firm is managed?
- Is cost reduction a fundamental aim here and, if so, is the firm considering business process outsourcing?
- Is the challenge in improving the management of the firm one of steady improvement or is a step change needed?
- Are you prepared to invest sufficiently in management time?

People

- Given your challenges, do you have people of sufficient seniority, experience, and gravitas to manage these successfully?
- Are you prepared to pass management roles from partners to professional managers?
- If not, is this because you believe lawyers are superior managers or because you are not prepared to pay what it takes to attract superior managers?
- If professional managers are permitted to be partners, are you willing to promote your senior management team accordingly?

8

GOVERNANCE AND POLICY

In relation to governance, there is an old management maxim that should shape lawyers' thinking — 'structure should follow strategy'. Appropriate governance and business structures should be confirmed after the major strategic decisions have been made and the overall direction has been set and not before. The line of thinking should be as follows:

'Given this is where we are going as a business, and these are our strategic priorities, permitted forms of governance and what formal structures are best suited to helping us responsibly meet our objectives?'

One of the pitfalls here for lawyers is to over-engineer their approaches to governance and, not unrelated, to let questions of governance dominate debates about strategy.

In relation to most policy issues, as laid out in the following page, these should sit comfortably with the softer issues of 'values' and 'culture' as set out in the Soft Issues Checklist. A law firm's approach to, say, diversity and social responsibility, should be premised on a shared view about what is morally and socially desirable, and not on the basis of some business ethics box ticking exercise.

Governance & Policy Checklist

Governance — how the legal business is controlled, structured, and directed, under the following headings:

- Partnership compensation and staff pay
- Roles of partners, in client service and management
- Daily management decision-making and monitoring of this
- Strategy and policy development
- Committees and management structures
- Use of professional managers
- Succession planning
- Risk management
- Management information
- Legal structure
- External and internal financing
- Accountability
- Regulation (including entity regulation)
- Compliance
- Conflicts
- Complaints-handling
- Internal audit
- Financial reporting — internally
- External reporting
- Retirement
- Partnership and other agreements

Key policy issues — a clear statement of the firm's approach and position on:

- Diversity
- Recruitment
- Privacy and security
- Charitable activities and pro bono work
- Social responsibility
- The environment
- Work-life balance
- Balancing the interest of the clients with the profit-seeking aims of the firm

Readings in *Futures* — see pages 46-49.

9

EXECUTION

It is commonly noted that lawyers are great at coming up with new ideas but patchy at implementing them. There is little point in having an inspiring and wonderfully conceived strategy if there is neither the will nor the mechanisms in place to execute.

Law firms fail to execute for a number of reasons — those responsible for executions are too busy with client work, the production of a strategy document is regarded as an end in itself rather than a call for action, some lack the experience of implementing management solutions, insufficient investment of time or money is made, and execution proves to be more demanding and complex than expected. Each of these concerns should be met when thinking through the execution component of strategy.

In David Maister's book, *Strategy and the Fat Smoker*, the author captures the challenge well: 'Real strategy lies not in figuring out what to do, but in devising ways to ensure that, compared to others, we actually do more of what everybody knows they should do.' Accordingly, he goes on, 'the necessary outcome of strategic planning processes is not analytical insight, but greater resolve'.

There is no point on embarking on a strategy development process, unless there is genuine commitment to execution.

Strategy Execution Checklist

Establish the main priorities

- What are the 'supertanker' projects (a small, realistic number) that are going to make the strategy a reality? (This takes the strategy from being aspirational to credible.)
- Options here might be:
 - a new operating model,
 - a new delivery model,
 - the division of the firm into Advisory and Process divisions,
 - the setting up of a low-cost services centre,
 - a major merger,
 - a strategic alliance with a Big 4 firm,
 - a large new wave of lateral hires,
 - a sustained innovation programme,
 - ground-breaking disruptive technologies,
 - an aggressive internationalization initiative,
 - a radical new approach to client service experience and bidding for work,
 - a firm-wide adoption of project management (underpinned by widespread process mapping and redesign)

Implementation

- What are you going to do that is different?
- Who is responsible for each of the priority projects and when will they deliver (actual dates)?
- What other strategy work is needed (practice area strategies, sector strategies etc)?

Next steps

- Once the strategy is signed off, what will happen in the first 100 days?
- What will happen in the first year?
- How can each and every person in the firm be involved?
- How will you monitor progress?

2.4 Standard **Strategy** Document

The template provided here, on the next page, is not scriptural in its authority. It is intended instead to provide a starting point, a framework, for those who are reducing the strategy to writing. It can be used by smaller firms or for practice area strategies within larger firms, as well as by larger firms for their firm-wide strategy. The difference between them will be in depth and detail. The basic content should be the same.

The template is based on the checklists and so its contents should be familiar to those who work their way round the strategy wheel.

STANDARD FORM

1. Our Practice

Ambition _____

Values _____

Culture _____

Vision _____

2. Direction

Approach _____

Growth _____

Financial performance _____

Brand and reputation _____

3. Priority Markets

Types of work _____

Sectors _____

Geography _____

STANDARD FORM

Division between expert and routine _____

New services _____

4. Differentiation

Current — to maintain _____

Short term — to build in coming year _____

Medium term (2-3 years) _____

Long term (4-5 years) _____

5. Implementation

Governance _____

Policies _____

Management _____

IT and KM _____

Sourcing _____

STANDARD FORM

6. Next Steps

Implementation_____

Responsibilities_____

Within 100 days_____

Within 1 year_____

Monitoring progress_____

2.5 Testing the **Strategy**

There are many ways of evaluating the strategy of a legal business. Is it realistic? Is it inspiring? Is it internally consistent? Is it clearly expressed? Most lawyers will be familiar with such tests.

Additionally, it is recommended that firms apply a further set of tests, as follows:

- Client test — what would leading clients and potential clients think of your strategy? You should want clients to be interested and impressed with your new direction.
- Investor test — imagining that external investment were possible, would the strategy of the firm attract major investors? Serious financial growth and substantial return are basic aspirations for any successful business.
- Harvard test — is the strategy sufficiently distinctive that Harvard would immediately wish to write a case study of the business? This test sets the bar high but it is a good challenge to claims of genuine differentiation.
- Competitor test — would the world's leading law firms be impressed, feel threatened, or even inspired by your strategy? The best businesses are deeply respected by their competitors.

There are no definitive responses to these tests. Their purpose is to provoke and encourage discussion and to inject some reality into the evaluation of the originality of a strategy. Usually, these tests help put the strategy in context. Occasionally, they encourage strategy itself to be re-visited.

2.6 Tips for **Managing Change**

Developing and introducing an ambitious new strategy to a law firm can be demanding in a law firm where the partners and staff are conservative (which is the case in most practices). Inevitably, support for change, especially radical change, will be uneven. The following tips may help:

- Accepting that there will be four levels of faith attached to any new strategy — agnostics, atheists, believers, evangelists — the priority at the outset should not be to bulldoze the atheists and agnostics.
- Build up support amongst the believers and the evangelists.
- You cannot convince lawyers by intellectual argument alone.
- Partners like evidence (pilots and case studies).
- Feedback from clients can be crucial, urging partners in short order from regarding some innovation as nonsense to looking upon it as mandatory
- Think carefully about what motivates partners — for instance, fear, greed, or excitement.
- Look for and engage some unlikely champions.
- Maverick management — ‘harness the geeks’.
- Watch that your fleet is not moving at the speed of the slowest ship.

2.7 **Smaller Firms**

In these times of great change, smaller law firms often feel that they are at a great disadvantage — they may say that they are unable to invest heavily in their businesses, they lack economies of scale, and are too busy serving clients to change the direction of their businesses (it is indeed hard to change the wheels on a moving car). More generally, partners in small firms often think that strategy development is for the larger practices. Accordingly, they may think that this guide is only for big firms.

There are various misconceptions here. Some of the world's most successful legal businesses are small practices. Consider the following advantages for smaller firms:

- Critical management decisions can be made swiftly.
- Changes 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 largest practices.
- As legal work becomes decomposed, collaboration with other businesses (for example, with LPOs) is possible.
- Small firms do not suffer from the diseconomies of scale that fetter progress in larger businesses.

It is fundamentally mistaken to assume that small firms do not need to think through their strategies. The framework provided in this booklet (Section 2.4) works for all law firms, large or small, as well as for practices within firms. Every business should think through the pivotal issues depicted on the strategy wheel and basic questions such as 'which markets should we serve?' and 'how can we best compete in these chosen markets?'

Notes for smaller practices

The choices facing smaller practices are small in number:

- carry on with little or no change
- merge or forge strategic alliances
- shut down.

For most partners in smaller firms, the inclination to carry on tends to be strongest (this is 'status quo bias'). For this to be rational, however, it should be underpinned by some compelling answers to this question — what unique value can you bring as a small legal business? Here are the kinds of answers that pass muster:

- Our clients have told us unequivocally that they want us to stay as we are.
- We are rural lawyers — our community requires a wide range of legal services and there are no obvious competitors to our traditional offering.
- Niche service — we are acknowledged specialists and, although small, we are as expert as anyone; more than this, we are highly focused on a limited range of services.
- Trusted adviser — although we are lawyers, our clients come to us because we are their general business advisers.
- Cheaper service — because we are smaller, we can offer a high quality service at significantly lower service than larger practices.
- More personal service — our clients come to us because they value a high touch, face-to-face service by lawyers who know them well and care about their social and working lives.
- We can act as sub-contractors for larger firms, by undertaking work that they cannot do at sufficiently competitive prices.

Smaller practices that want to win high-end work must also ask themselves if they are taking advantage of a variety of resources that enable them to compete with larger firms:

- Knowledge resources, provided by external third parties.
- IT services, outsourced to specialist providers.
- LPO providers, able to take on, for example, large-scale, document review exercises.
- Cloud technologies for the storage and provision of data and software.
- Online deal-rooms, case-rooms, and work-rooms.
- Advanced video technology.

2.8 In-house lawyers

General Counsel also need to think strategically. Although their departments do not generally have profit motives, they are under enormous pressure to be more business-like: to cut their internal and external legal costs, to work more efficiently, to justify their existence in commercial terms, and to show that their set-up is preferable to alternative suppliers. On top of their conventional legal services, increasingly in-house counsel are also asked to be legal risk managers — to anticipate and avoid all manner of legal (including regulatory) risks. They are expected to put a fence at the top of the cliff as well as an ambulance at the bottom.

And yet, they have limited resources. Accordingly, they must plan for the long term, prioritise, and ensure that they are bringing value. In other words, they need to formulate their own strategies. It might surprise GCs to learn that the standard form strategy document presented in Section 2.4 can be used directly by in-house legal departments, with one change only — the section on differentiation needs to be replaced by a section that demonstrates the value that their function will bring.

On the next page, three further points of guidance are provided. The first summarizes the options available to General Counsel who are trying, in a systematic and strategic way, to reduce their expenditure. The second is a (demanding) test to determine whether in-house counsel are genuinely focused on cost reduction. And the third presents a set of prompts for ‘blank sheet thinking’ in the context of in-house departments.

Points of Guidance

Strategic options for General Counsel, who are trying to reduce costs:

1. Tighter management of law firms
 - inviting alternative pricing proposals
 - inviting new sourcing models

2. Internal strategic review of the in-house function
 - efficiency review
 - sourcing review

3. Large-scale, legacy-based strategic review (combining 1. and 2.)
 - review and improvement to current law firms' performance, and
 - review and improvement of current running of in-house function

4. Full-scale, vision-based strategic review
 - top-down, fundamental appraisal of strategy
 - driven by legal needs analysis of the organisation served

The Shareholder Test

When a costed proposal for the conduct of a deal or dispute is being considered, would a commercially astute shareholder, who was familiar with the growing number of alternative ways of sourcing legal work, consider what is contemplated as representing value for money?

Blank sheet thinking

If you could design the department from scratch, using an entirely blank sheet of paper, how would it look:

- What work would you in-source?
- What work would you give to law firms?
- What alternative methods of sourcing would you favour?
- How would you motivate and manage law firms?
- How would you use technology?
- How would you share knowledge (internally/externally)?
- How would you formalise the management of risk?
- How would ensure close relationships with the business?

2

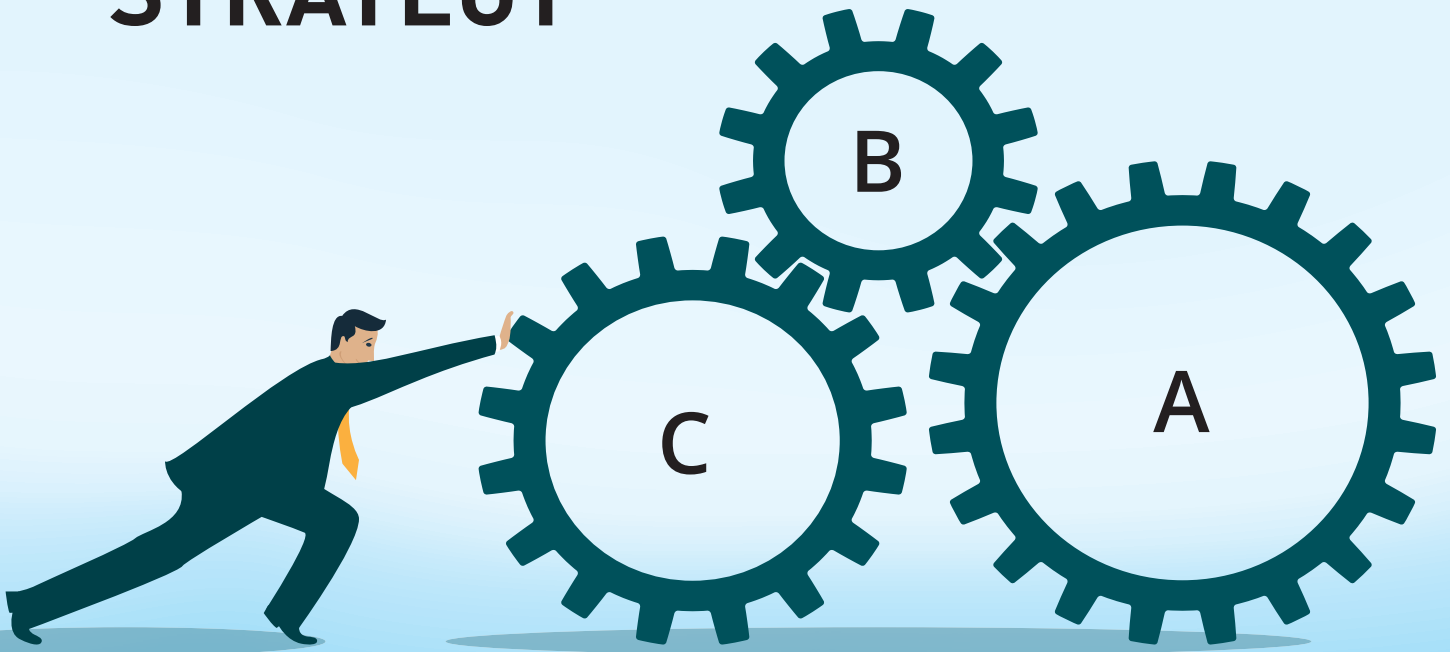
Checklists for Developing **Strategy**

- How would you structure the department?
- What administrative support would you have?
- What external reputation would you seek?

This is a method of gaining important strategic insights and (hopefully) consensus within an in-house legal team.

3

BIG ISSUES OF **STRATEGY**



“To survive, (businesses) ... will have to plot the
obsolescence of what now produces their livelihood.”

Professor Theodore Levitt,
Marketing Myopia (2004)

3.1 **Differentiation**

It is alarming, when asked what differentiates their firm, how many partners say something like ‘we are commercial’ or ‘we understand our clients’. Can anyone seriously believe that these are characteristics that distinguish a team of lawyers from most others in the market?

For a firm to compete well in its chosen markets, it must be able to differentiate itself. This means, first, doing business in a way that is *distinctive* from others in the market. Law firms that can differentiate can derive competitive advantage from this (for example, in winning more work and attracting better people). Of course, secondly, the differentiation must be *relevant* for clients. There would be little mileage, for example, in being verbally abusive to clients. This might be distinctive but it is unlikely to be conducive to an increase in workflow. For the impact of differentiation on a legal business to be substantial, thirdly, it has to deliver some kind of real *value* to its clients. More than this, fourthly the differentiation must be *sustainable*, which means not easy for competitors or clients to adopt.

Too often, partners want ‘off-the-shelf differentiation’ — a set of quick fixes that will mark them out as superior. Sadly, there are no short-cuts. In requests for proposals or in conversation, when clients ask law firms why they believe they are different, these buyers can immediately distinguish window dressing and marketing puff from a well-conceived set of distinctive capabilities.

In the end, though, as the list on the following page suggests, there are a limited number of ways in which law firms can differentiate themselves.

Differentiation — relevant, valuable, sustainable — is difficult to achieve in practice. There are many ambitious and bright lawyers (and now other providers) in the market.

Differentiation Checklist

Although it is difficult, the main options are limited in number. In summary, legal businesses can differentiate themselves by:

- Offering a lower cost service
 - Straightforwardly cheaper
 - More obviously better value for money

- Delivering a higher quality of service
 - Superior work product
 - Quicker, more responsive, more directly usable

- Providing a superior service experience
 - Easier to work with
 - More enjoyable to work with

- Sustaining better ongoing relationships
 - On the job
 - Between jobs

- Having distinctive branding
 - Instilling greater confidence
 - A natural first port of call

3.2 **Market leadership**

Leaders of law firms and practice areas often say that they are or want to be market leaders. Sometimes this means that they are, or aspire to be, the undisputed best in a given market but often a lesser claim is being made — that they want to be in the leading pack.

There is a danger of under-estimating how difficult it is to be a market leader. And the main test here is not whether a firm is a market leader in the minds of its partners but whether clients agree. More often than not, clients are unable to identify one firm as pre-eminent but they will be able to point to a top tier.

There can be little doubt that being undeniably the best can bring great advantage — when there is bet-the-ranch or high profile work, clients (in-house counsel and business leaders) often gravitate towards the no.1 players and often, in these circumstances, price is not a key factor.

It is also great for a firm to be in that leading pack, because this means it is likely to be on all short-lists when work is put out to tender; even if the firm will be rubbing shoulders with formidable opponents and so differentiation will still be key.

Drawn from leading management thinking on market leadership, the analysis on the opposite page shows the characteristics of businesses that are genuinely market leaders. The main lesson is that it is far from easy and certainly not attainable simply by copying others.

Market Leaders

Competing for the Future (1994), Gary Hamel and CK Prahalad

- Creating and dominating emerging opportunities, staking out new competitive space
- Path-breaking not benchmarking; imagining a future and then creating it
- Finding the future, mobilizing for the future, getting to the future first

Built to Last (1994), James Collins and Jerry Porras

- Visionary companies, the best of the best, have core ideologies (values/purpose) beyond making money
- Core ideology — who we are, what we stand for, what we are all about
- The ideology is in the fabric of all aspects of the business

The Discipline of Market Leaders (1995), Michael Treacy and Fred Wiersema

- A leader will find the unique value that it alone can deliver to its chosen market
- It must have a clear value proposition (promise to the market), and operating model (to deliver that value)
- And ... operational excellence, product leadership, customer intimacy

The New Market Leaders (2001), Fred Wiersema

- Leaders focus on a key concept — customers are scarce; so there is a battle for customers
- Leaders understand how customers choose and increase their chance of being chosen
- The battle is an ongoing process, a team-effort, and progress must continually be measured

Good to Great (2001), Jim Collins

- Disciplined people — leaders with humility and will, who surround themselves with the right talent
- Disciplined thought — confronting brutal facts, never losing faith, understanding what you can be best at
- Disciplined action — a culture of discipline, an ethic of entrepreneurship, pioneering carefully selected technologies

3.3 Pricing

Many lawyers consider pricing to be the most important issue of strategy, partly because of increasing cost pressures from clients and in part because competitors seem willing to charge ever lower fees. As a result, there is endless discussion — in journals and meeting rooms — about the need for alternative pricing models.

In thinking about pricing, it is important to distinguish between (1) ‘pricing to win’, that is, setting a price for legal work for which client will settle — this is a marketing challenge and involves insight into what price or pricing mechanism the market will find acceptable; and (2) ‘pricing for profit’, that is, setting a price that will deliver a sufficient return - this is a finance challenge, involving an ability to estimate costs, evaluate risks, and calculate profitability.

It is imperative here to ask and listen to what clients actually want. The table on the next page lists nine features of pricing often mentioned by clients. Law firms should determine their clients’ priorities amongst these. Unhelpfully, clients will often glance at the list and say they want the lot. This reveals some confusion in clients’ thinking, because some of the priorities are incompatible. Open dialogue is needed to pin down genuine preferences.

One of the options, ‘innovative sourcing’, hints at a more fundamental issue — although lawyers believe pricing is the pivotal question, there is a growing body of thinking that suggests the real challenge is to move from pricing differently to working differently. With this in mind, law firms should consider ‘task-based pricing’, which involves dividing work up into tasks and pricing each separately.

Nine Features of Legal Pricing

transparency	predictability	flexibility
competitive rates	risk sharing	added value
innovative sourcing	alignment	client comfort

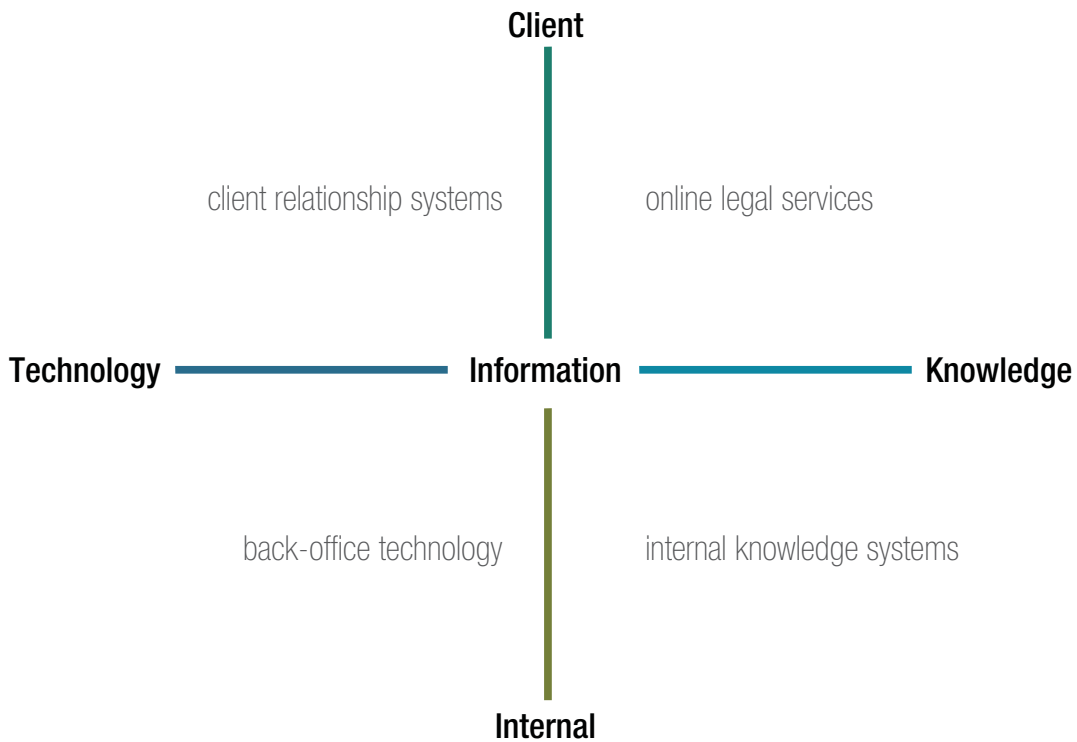
3.4 **Information Technology**

The legal industry has been said to be the most document intensive of all sectors. Since 1980 or thereabouts, the main use of IT has been in the back office of law firms and legal departments — for applications such as word processing, internal e-mail, accounting, and the like (these fall into the bottom-left of the grids on the following page). Over the last decade, there has been greater investment and interest in the use of IT that more directly enhances lawyering itself. One such application, in the bottom-right, has been systems to help lawyers capture and share their collective knowledge and experience — from know-how databases to intranets. Another, in the top-left, has been to enable lawyers to communicate electronically (by e-mail, work-rooms, video-conferencing, and social media) with those they advise. And, most ambitiously, in the top-right, legal guidance and legal documents are gradually being made available to clients on an online basis. The grids, therefore, capture these four basic categories of technology for lawyers — the top grid is for law firms, while the lower grid is for in-house legal departments. For a full analysis, see Susskind, *Transforming the Law* (2000). The grids (by plotting onto them) can be used as a way of summarising, for example, what technologies are currently in use or, strategically, what systems are being developed or are under investigation.

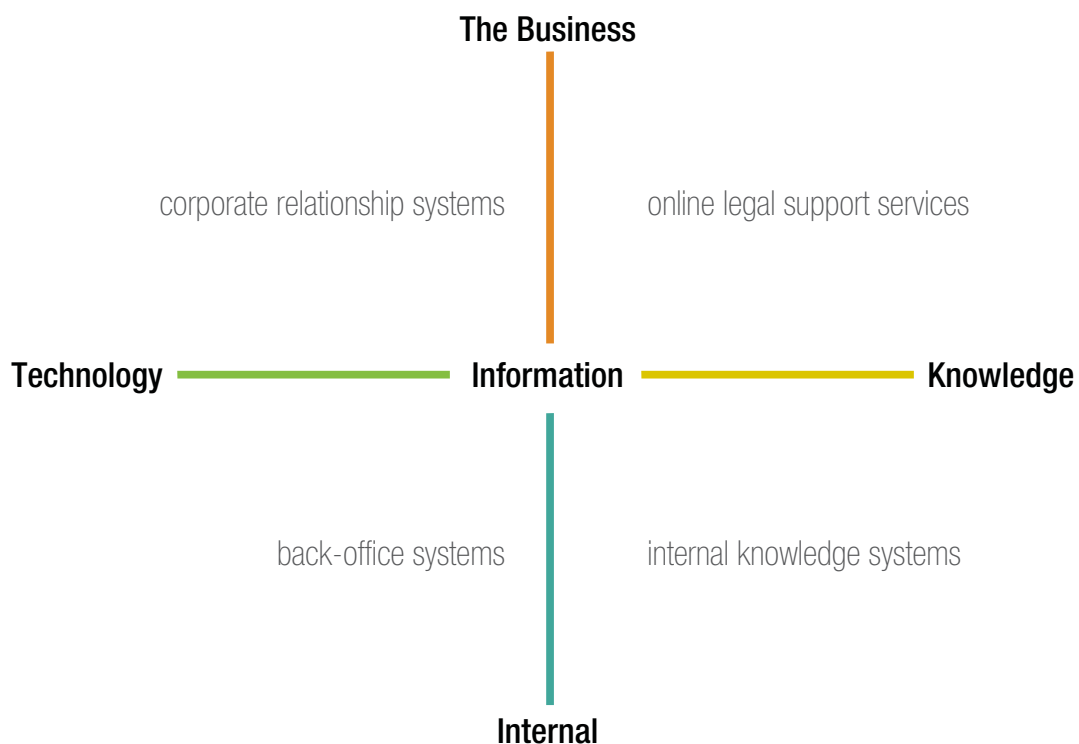
Do not get carried away with technology. Of course, the gravitational pull of gadgetry can be strong. But lawyers should be driven in their prioritization of systems by a conviction that their systems will bring one or more of these benefits: (1) will reduce costs (efficiency and productivity); (2) will enhance service (quality and consistency); (3) will be a direct source of profit; (4) will differentiate the firm; (5) will keep the firm in line with best practice; (6) will help develop client relationships; or (7) will improve the service experience.

INFORMATION TECHNOLOGY GRIDS

Law Firms



Law Departments



3.5 **Process analysis**

There is growing recognition amongst progressive law firms and in-house legal departments that process analysis is one vital tool for lawyers who are serious about reducing their costs, becoming more efficient, and even overhauling some of their working practices.

Borrowing some thinking and techniques from the worlds of manufacturing and of systems analysis, the idea here is straightforward — that the work and activities of lawyers can and should be subject to detailed analysis, so that inefficiencies are eliminated and legal tasks are resourced appropriately. One central technique here is that of ‘decomposition’ of legal work into more basic tasks and ensuring that each of these tasks is sourced and conducted in the most efficient way possible.

On the next page, the list outlines various approaches to legal process analysis, some of which are more radical than others.

In practice, effective process analysis with, say, a group of partners, requires specific analytical skills and the ability to motivate rather than alienate expert lawyers who may be skeptical about decomposition or feel threatened when their work is placed under a microscope.

The analysis can be of work conducted within a firm (internal working practices) or of the work conducted by firms together with their clients. The latter is likely to be more fruitful, especially when clients are invited to be involved themselves in re-thinking the way that work is undertaken for them and the role they should play.

Approaches to Legal Process Analysis

Process analysis

- breaking down work as presently conducted
- with basic tasks and responsibilities identified

Process mapping

- graphically representing the tasks and workflow
- sometimes including dependencies and critical paths

Reallocation of tasks

- a first step in greater efficiency — the right person for each task
- ensuring that tasks are not undertaken by too senior individuals

Process simplification

- removing unnecessary bureaucracy and administration
- avoiding duplication of effort and reinvention of the wheel

Process improvement

- streamlining and optimising the existing process
- introducing some improved working practices and patterns

Process re-engineering

- entirely rethinking working practice
- introducing fundamentally new ways of working

3.6 **Alternative Sourcing**

The previous observations on pricing and on legal process analysis point towards a further innovation that is likely to transform the work of lawyers. This is alternative sourcing — when legal work is decomposed into more basic tasks, the challenge then is to identify the most efficient way of sourcing the constituent parts. While this may involve the deployment of traditional lawyers on an hourly billing basis, the list on the following page provides an illustration of the many different ways that legal work might now be sourced.

The focus here is not simply on offering a new pricing proposition. Instead, it is on undertaking the work differently. While clients are generally happy to pay high rates for experienced and expert lawyers to undertake complex tasks, they are increasingly skeptical about paying junior lawyers high rates for routine and repetitive work (such as document review in litigation or due diligence) that can be sourced in different ways.

Although perhaps the best known method of alternative sourcing is LPO (legal process outsourcing), it must be stressed that this is but one of a range of options open both to law firms and to in-house legal departments

From a client's point of view, unless a law firm has decided that it wants to be less profitable (this is rare), then the only way in which costs can be cut is if their firms work differently. As said in relation to pricing, this is moving from pricing differently to working differently. Alternative pricing without alternative sourcing is unlikely to yield savings.

Alternative Legal Work Sourcing

In-sourcing — clients undertaking the work themselves

Legal process outsourcing — to 3rd party specialist providers

Off-shoring — to lower cost countries

Near-shoring — to lower cost countries that are nearby

Relocating — to less costly locations within the same country

Leasing lawyers — provision of flexible teams of contract lawyers

Sub-contracting — to lower cost, regional or overseas firms

De-lawyering — especially by using paralegals

Computerising — routine processes or large-scale tasks

Solo-sourcing — passing work packages to specialist barristers or academics

Co-sourcing — the sharing of legal work amongst various providers

Home-sourcing — legal work being conducted remotely

Open-sourcing — in the spirit of wikis, making legal content freely available

Crowd-sourcing — drawing on the input of large bodies of collaborating users

KM-sourcing — embracing knowledge management to recycle expertise

No-sourcing — taking the view that some tasks do not require legal attention

It is clear from client feedback that the potential for alternative sourcing extends well beyond high volume, low margin work. Clients are now focusing on the deployment of alternative sourcing on routine components of high value deals and disputes.

Source: Susskind, Tomorrow's Lawyers (2013)

3.7 **Project management**

The project management triangle on the right highlights the four critical dimensions of any project. It also helps us pinpoint the four problems that can beset legal work: projects are delivered late; projects exceed budget; the scope ‘creeps’; and there is slippage in quality. The discipline of project management is conceived as a formal way of avoiding each and all of these problems.

In the legal context, any legal matter (whether a deal, a dispute, or advisory) can be regarded as a project. And legal project management is the systematic planning, organization, control, monitoring, and progression of legal matters. It should help ensure delivery of service on time and within budget, to promote efficiency and effectiveness, and quality and consistency too.

While project management can be highly useful in support of conventional legal work, it is indispensable when legal work is decomposed and alternatively sourced (see Section 3.6). Project management ensures that all tasks undertaken are brought together and delivered to the client in a seamless way.

While young lawyers can and should be trained in legal project management, if a major piece of legal work is being conducted, the services of a non-legal, external project manager (perhaps from the construction or engineering world) can usefully be engaged.

Project Management Triangle



3.8 **Disruptive innovation**

In his classic book, *The Innovator's Dilemma*, Clayton Christensen lays out a very influential line of thinking — that some great businesses fail because they are late in recognising the impact of what he calls 'disruptive technologies'. Periodically, he says, new and innovative technologies emerge and these fundamentally transform companies and markets. In the early days of these disruptive technologies, however, they 'result in *worse* product performance, at least in the near-term'. He explains: 'Generally, disruptive technologies under-perform established products in mainstream markets ... are typically cheaper, simpler, smaller, and, frequently, more convenient to use.' So, when they first appear, many outstanding companies *and* their customers reject these new technologies. Meanwhile, smaller entrepreneurial outfits embrace and exploit them; and by the time their impact is fully recognized by the apparently invincible leaders, it can be too late. Through case studies in various industries, Christensen shows how disruptive technologies have frequently been ignored or rejected by leading companies and he points to the huge commercial opportunities that they thereby missed. Partners in law firms often respond by saying that they have been investing in technology for decades. According to Christensen, however, many market leaders have invested in the wrong types of technology. In a vital distinction, he contrasts disruptive technologies with what he called 'sustaining technologies' — those that 'improve the performance of established products, along the dimensions of performance that mainstream customers in major markets have historically valued'. So, successful companies have tended to inject capital and effort into improving and optimizing their current offerings rather than into developing new business models. Law firms must beware therefore of disruptive legal technologies — see the following page.

Disruptive legal technologies

1. Automated document assembly
2. Relentless connectivity
3. Electronic legal marketplace
4. E-learning
5. Online legal guidance
6. Legal open-sourcing
7. Closed client communities
8. Workflow and project management
9. Embedded legal knowledge
10. Online dispute resolution (ODR)
11. Intelligent legal search
12. Big data
13. AI-based problem solving

Source: Susskind, Tomorrow's Lawyers (2013)

3.9 **Winning more work**

In hard times, to maintain profitability, it is notable that law firm leaders tend to focus very largely on cutting their costs. Although this is sensible practice, it often distracts from the longer term and larger strategic objective of winning more work. Partners should be as obsessive about increasing their fee income as they are about slashing overheads.

Business people are baffled by law firms' neglect of this basic proposition — to survive and thrive, a legal business must strive to bring work through the door. While this may seem self-evident, many law firms' marketing activities do not withstand scrutiny — there is no shortage of effort, but there is a lack of direction, coherence, and management. A flurry of lunches, articles, conference appearances, and client visits will not yield work unless they are delivering messages that are relevant, alerting, and memorable.

Again, there are no simple, off-the-shelf solutions or quick fixes here. A complex blend of solutions will be needed. It is recommended that firms put in place the three basic building blocks noted opposite, using the techniques that are also laid out.

Not everyone is well suited to winning work. Some partners are better at doing the work and managing ongoing relationships. It can be counter-productive to expect and encourage all lawyers to slip into work-winning mode. Firms should put their best work-winners into the field and reserve the others for what they do best.

The three building blocks

1. Early involvement in the affairs of clients
2. High spontaneous awareness of the firm and its capabilities
3. Outstanding bidding by the firm when competing directly

In plain language ...

- early involvement
 - already being in there with clients when the need for external law firms arises
- high spontaneous awareness
 - when major clients are thinking about instructing external firms, yours is one of the first to spring to mind
- outstanding bidding
 - when making a pitch for work, standing out from the competition, in your written proposals and your oral presentations

Techniques most likely to succeed:

- first rate relationship management
- ongoing thought leadership
- strong branding
- reputation of the firm as expert
- reputation of individuals as expert
- positive past experience of working with the firm

3.10 Sector **Strategy**

The major accounting firms recognized in the mid-1980s that commercial success would follow from far greater commitment to understanding and satisfying the markets or sectors that they served. And so, with great success, they developed their sector strategies, an approach that successful law firms are now embracing. Many firms have set up sector groups to provide a focal point for services delivered to certain industries and to ensure compelling and consistent messages are delivered to these sectors. Some firms, but not many, have gone further and the sector groups themselves have become the trading entities, carrying their own P&Ls.

Sector strategy is a key component of firm-wide strategy. It is not simply about better marketing to clients. It is about prioritising the sectors that are vital for a firm, defining the target markets for the firm, and ensuring these markets are addressed in a disciplined manner.

Whereas a practice focus tends to be inward-looking, a sector focus is client-facing. Clients are looking for more than black letter legal advice — they want practical guidance, informed by deep insight into their industries, appreciation of market risks, and competitor intelligence.

In the end, sector strategy is about winning more work, so that existing clients want to re-instruct the firm, existing clients want to spend more time with the firm, and potential clients hear about the firm and put the firm on their shortlists. On the next page, some further guidance is laid out.

Focusing on the Client

What does sector strategy mean for clients?

- better grasp of market sentiment
- improved insight into risk
- a firm that speaks the language of the boardroom
- availability of benchmarking data
- proposal documents that resonate more
- more informed working relationships (on job)
- more fruitful relationships (between jobs)

Internal aspects of sector strategy

- co-ordinating all relevant resources (people)
- sharing know-how (including market sentiment)
- ongoing training and learning
- cross-selling
- market analysis and monitoring

External aspects of sector strategy

- marketing
- thought leadership
- different communication channels
 - social media
 - conventional media
- identifying distinctive capabilities
- relationship management
- branding — become part of the sector
- offering a distinctive service experience
- talking the language of the sector

NOTES

4

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ABOUT THE AUTHOR

Professor Richard Susskind OBE is an independent author, speaker, and adviser to law firms, in-house legal departments, and governments around the world. His main area of expertise is the future of legal and court services.

He is the author of numerous books, including *The Future of Law* (OUP, 1996), *Transforming the Law* (OUP, 2000), *The End of Lawyers?* (OUP, 2008), *Tomorrow's Lawyers* (OUP, 2013), and (with Daniel Susskind), *The Future of the Professions* (forthcoming, OUP, 2015). He has written around 150 columns for *The Times* in the United Kingdom. His work has been translated into 12 languages, he has been invited to speak in over 40 countries, and he has addressed over 250,000 people. He is President of the Society for Computers and Law, IT Adviser to the Lord Chief Justice of England and Wales, and Chair of the Advisory Board of the Oxford Internet Institute. He holds professorships at Oxford University, University College London, Gresham College, and Strathclyde University. A Scots lawyer by background, he holds a doctorate in law from Balliol College, Oxford, he is a Fellow both of the British Computer Society and of the Royal Society of Edinburgh. He was awarded an OBE in 2000 for services to IT in the Law and to the Administration of Justice.

In 2009, he was appointed Special Adviser to the Canadian Bar Association, since when he has also worked with law firms, in-house lawyers, judges, and government lawyers across Canada.



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