

OUTSOURCING: If used wisely, it may be the one technology based tool that actually decreases stress, enhances profits and leads to greater career satisfaction.

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Some innovations, like the internet, will stand the test of time. Outsourcing promises to be one of those innovations. The term ‘outsourcing’ originated around 1980² and it means simply: to purchase (goods) or subcontract (services) from an outside company or individual, rather than hire internally. Work can be outsourced ‘offshore’, ‘near shore’ or ‘home shore’/ ‘on shore’.³ In the Canadian legal context, these terms have taken on the following meanings:

- ✓ Offshore refers to legally trained individuals who are located overseas, like India;
- ✓ Near shore refers to service providers who are in different countries but are relatively close in proximity, have similar cultures and speak English without a strong accent. For example, Canadians would refer to American mid-west lawyers as being ‘near shore’; and
- ✓ Home shore/onshore are interchangeable terms that mean, essentially, practicing lawyers⁴ located in Canada.

Simply put: outsourcing work – offshore, near shore or onshore -- is a way to enhance firm resources and better manage deadlines and tasks.⁵ With proper technology, lawyers “can work on a matter anywhere, anytime and access any document they need...”⁶ It is not a fad⁷ and, according to some, “Combined intelligently, core competencies and extensive outsourcing strategies can improve returns on capital, cut risk, provide greater flexibility and make companies more responsive to the needs of the customers – all at lower cost.”⁸ Creative new firms, sole practitioners, lawyers practicing in association with other lawyers, or at small and midsize firms may be in a better position compared to larger firms to capitalize on the advantages that onshore outsourcing has to offer since they are more likely to be able to adapt.⁹

Of late, offshore outsourcing seems to have caught the attention and imagination of the media. Pundits suggest two primary reasons to outsource legal work offshore are that: first, work can be turned around literally overnight; and second, hourly rates can be substantially lower. Criticisms include:

- 1) security issues concerning lawyers giving outside access to sensitive client information;¹⁰
- 2) outsourcing appears to threaten the livelihood of the domestic workforce;
- 3) a lawyer could be aiding the unauthorized practice of law if the lawyer outsourced legal support services overseas to a “non-lawyer” and did not adequately supervise the work;¹¹
- 4) when billing for services of non-lawyers, in some jurisdictions, absent a specific agreement with the client to the contrary, the lawyer should charge the client no more than the direct cost associated with outsourcing,

plus a reasonable allocation of overhead expenses directly associated with providing that service.¹² Therefore, the exercise of outsourcing offshore may generate revenue but not profit.

The majority of these criticisms are mitigated by strategic outsourcing onshore (to Canadian lawyers), who are subject to the same code of conduct and ethical considerations to which you are subject. An additional advantage to outsourcing onshore is that it can combine having the right people, in the right place, at the right time to best serve your client's unique needs. For example, lawyers can now efficiently contract lawyers to attend at court or discoveries without incurring travel costs and, more importantly, time lost in transit.¹³

To capture the essence of the concept of outsourcing professional legal work to a qualified Canadian lawyer, Taran Virtual Associates coined the phrase "virtual associates" to refer to their contract lawyers.¹⁴ "Virtual associates" are practicing lawyers who work off site and online, using their own equipment and software, creating work product to your specifications and tailored to your practice, on an assignment by assignment basis. The work product is supervised by a practicing lawyer called a project manager. As an independent contractor, the virtual associate is neither an employee nor a subordinate. The virtual associate and project managers are professionals who recognize that every project could be their last if the lawyer or firm they are assisting, and the ultimate client, are not satisfied with their work product. It is a collaborative relationship – the virtual associates specify the type of work they are interested in doing and they are not required to do anything unless they have committed to do it. The lawyer client, on the other hand, can outsource with confidence, knowing that the virtual associate has been pre-qualified and has the skill and expertise to deliver quality work.

Virtual associates are an outsourcing strategy that can provide lawyers with all of the best solutions for help. Lawyers get a professional team member and are relieved of the cost (and potential liability) that hiring a full time associate can present. Best of all, busy lawyers can delegate without frustration the work that they prefer not to do, and free up time to do the work that they enjoy, do best or that generates financial stability. All of which ultimately enhances career satisfaction.¹⁵

Anyone who has ever managed even one person understands how important it is to be able to delegate. When delegating work internally, one of the primary goals (because often a task may be performed better and faster by the lawyer delegating it) is to create an opportunity for the person to whom you are delegating to learn or develop a new skill. Experts say that you likely will not delegate effectively if you: believe you can do the task better/faster yourself; or worry that the lawyer to whom you are delegating might not do the task properly and, because you are ultimately accountable, your professional reputation may be at risk.¹⁶ Like delegating, outsourcing involves getting the job done through others. They both involve entrusting another with responsibility or authority. An important distinction between delegating and outsourcing is that delegating allows people to learn by doing whereas when you outsource the goal is to send the work to someone who is familiar with the practice area and already has the skills or abilities

needed to complete the work. Therefore, outsourcing eliminates much of the frustration and time loss typically associated with delegating. When outsourcing, ensure that the firm has a policy that lawyers have appropriate experience and are not 'learning on your client's dime.' If you have confidence in the person to whom you have assigned the project, it is a way of increasing your time, allows you the freedom to focus on what you should be accomplishing and to better see the big picture.

As you become more senior, consider only doing tasks that nobody else can do. Review your file list regularly, prioritize your work,¹⁷ and determine what makes sense for you to delegate internally and what you will outsource. Experts like Kathleen Brady and Edward Poll agree that the likelihood a project will be successful may depend on how well it is planned. It is critical to have defined and approved goals, a committed team and a viable plan of action that can accommodate change. By investing time at the beginning of the file and thinking it through, you can clearly define the goals and objectives, assign the tasks, and assess the progress to ensure you get the end result you want, which will ultimately save time. At the beginning of the assignment, consider:

- What is the goal or desired end result?
- How many people do I need to accomplish the goal? What type of skills do they need to possess?
- Can some of the tasks be carried out in parallel, perhaps by different teams?
- Will delegating critical tasks to someone else free me up to troubleshoot as problems arise?
- Are there competing projects that are going to take up key resources?

Any tasks that you cannot complete efficiently, that you do not have time to complete, or that could be performed when you are not there or unavailable, are tasks for delegation or outsourcing. Never keep work because you have not organized the file or have fallen behind. Developing the discipline required to delegate or outsource certain tasks to others, on a timely basis, by reviewing the file in advance, is a way of developing good organization and practice skills and is an effective way to address a substantial cause of malpractice claims. According to Daniel Pinnington:

Most lawyers are surprised to learn a failure to know or apply substantive law is not the most common error that lawyers make. It is only the fourth most common error at firms of all sizes. The biggest claims risks, and the biggest opportunity to reduce claims exposure, lie in the basic lawyer/client communications, and in time and deadline management...

Missed deadlines and time management and related errors are the second biggest cause of LawPRO claims in all sizes of firms... Lawyers at firms of all sizes seem to have a dusty file or two that sits on the corner of their desks for far too long, and makes procrastination-related errors the third most common time-related error. (p. 25)

The eight most common malpractice errors represent more than 90 percent of the errors for all sizes of firms. In terms of risk management and claims prevention, taking some proactive steps to address these claims is your best opportunity to reduce claims exposure...(p. 27)¹⁸:

“Lawyers need to delegate more often, if only to respond to clients who are demanding that work be delegated when and where appropriate to keep costs as low as possible. Clients don’t want to pay for inefficiency.”¹⁹

To increase profit, you must decrease costs, increase revenue or plan to achieve a combination of both.²⁰ Outsourcing is a practice whereby lawyers can cut down on fixed costs. Typically, virtual associates are available at hourly rates that are below the market rates charged in metropolitan centers. This is possible because virtual associates are often located in areas where billing rates are lower but quality is just as high. Also, virtual associates do not have the overhead that firms often carry in larger centers and therefore can be profitable at substantially lower rates. In 1997 the Law Society of Upper Canada said that “It is our opinion that the [outsourcing] agencies are performing a very useful service to the members of the legal profession and those clients they serve.” Furthermore, it is in order that the lawyer or law firm gross-up the fee so long as “it is revealed to the client and the client consented”.²¹ Therefore, not only is onshore outsourcing a source of revenue, it is potentially profitable. Take a hard look at the numbers and calculate the cost and benefits of adapting to include outsourcing as compared to hiring a full time employee, remembering that outsourcing work smartly can free you up, as well as your full time associates and partners to do higher level work. Carefully consider and calculate what makes sense for you to do, and not to do. It has often been said that law firms are made up of ‘finders’ (those who develop client opportunities), ‘minders’ (those who maintain client relationships once they become clients) and ‘grinders’ (those who do the work and often prefer to avoid client contact, if they can). Firms may make the mistake of focusing on training associates to be ‘grinders’, when it is in the firm’s long-term best interest to develop the skill sets of ‘finders’ and ‘minders’. It may make sense to outsource repetitive or low level work. Firms may also need to find alternative ways to get work done to keep talent.²²

To enhance profitability through outsourcing, consider:

- Outsourcing the work for which you cannot bill your full hourly rate, and devote your valuable time to more profitable work²³
- Capitalizing on ready access to up-to-date technology (without necessarily incurring the fixed cost for it) and research skills of lawyers who are efficient;
- Managing peak periods without adding overhead that may not be justified;
- Increasing your client base by accepting clients that you might otherwise have declined given your overall workload;
- Increasing time for client development;
- Reducing cost of traveling; and
- Offering a greater array of services utilizing the skills of virtual associates.

Allison Shields suggests that lawyers consider preparing a “don’t do” list to help them to manage time and reduce stress. To prepare this list, Shields suggests that you think about your strengths and weaknesses and try to be brutally honest. Are you a great speaker, but a poor writer? Perhaps writing articles, and drafting motions or briefs should go on your “don’t do” list. You are far better off to work with your strengths and let others work with theirs to help you. You must learn to prioritize what you will do and what it makes

sense for others to do. If you are like most lawyers, you believe that you must do everything ... or at least, appear to be capable of doing everything. Perhaps that is why so many lawyers are unhappy.²⁴

Outsourcing may also be an essential practice tool that will help you to provide exceptional customer service. According to Karen MacKay:

In the perfect client service firm everything would be designed around the client... The perfect firm of any size would leverage technology in very powerful ways that would enable lawyers and clients to collaborate, use knowledge and anticipate client needs. Leveraging technology enables small firms to have a much stronger “punch” than their size would normally permit.²⁵

Your goal should be to have customers who would advocate this product or service to family and friends, and more importantly, to colleagues. And if you rely on word of mouth referrals, in other words, clients who refer other clients, perhaps you need to think about the bigger picture: What will make them come back – doing the research yourself or having it done efficiently by a lower cost lawyer? What will make them refer others – doing the work yourself or getting it done quickly and efficiently? If you or your firm were subjected to a customer service survey, would you find yourself listed as one of the top providers of legal services of your type in the community?

Keep in mind, the more you explain in that initial meeting how things will transpire, the more comfortable the client will be. This is your best opportunity to manage the client’s expectations. Be proactive and explain to clients that you use outsourcing to handle a client’s matters on a cost effective basis. Explain the benefits of having a junior lawyer or a lawyer who has developed some expertise in the practice area handle the task. It is important that you have the client’s consent to outsource or delegate work.²⁶ Managing client expectations and communicating with them is an enormous part of your job, and your skill in this area may significantly impact the likelihood that your client will be a satisfied client, and that you will be spending less time addressing complaints. The five most common malpractice errors all involve client communication and basic practice management issues, all of which are “easily preventable”.²⁷ Ultimately it is about effective time management. Keeping your client apprised of progress eases client stress and tells them that you are on top of things. As you become busier, client management takes up more time. It is often putting out fires that keep lawyers busy on a day-to-day basis. As well, there are few things that are more frustrating than unreturned phone calls. Two or three successive phone calls without a response are likely to create the impression that you are too busy to do the job well, or that you don't care. Through outsourcing you can free up time for this all important client contact.

To outsource onshore effectively:

- 1) Start with a small project and build from there.
- 2) Outsource aspects of the file if it does not make sense to hire and train lawyers for the specific task. For example, outsourcing subjective codification of documents in jumbo litigation files is both time and cost efficient. Web-enabled hosted review systems are very popular, which facilitate access to databases for multiple

reviewers to have access from different locations. Document review in discovery is becoming more complex and time consuming in this age of new technology. The question is: How do we do it, efficiently? Especially for big firms, outsourcing may be the answer. As well, more firms are using software to capture precedents, yet few firms have dedicated the resources required to turn what is becoming a mountain of data into something usable. It may not be cost efficient to hire a full time lawyer to manage resources, but again outsourcing the project may be.

- 3) Work with someone who really understands the unique aspects of a law firm because their owners and consultants are or were practicing lawyers.
- 4) Check for an informative, well constructed website. Keep in mind that outsourcing is growing because of technological sophistication and innovation and you should gain confidence in the firm's ability to deliver based on its web presentation.
- 5) Conduct a personal consultation, ask for references and check them.
- 6) Consider the length of time in business. Some experts suggest you should look for a firm that has been successfully in business, full time, for at least 3 years.²⁸
- 7) Review retainer agreements to ensure that you can outsource and the work can be marked up to earn a profit. Ask for samples of retainer agreements.
- 8) Confirm that your word processing system is compatible and that the virtual associate has ready access to compatible email, document handling and database capabilities.
- 9) Make sure the outsourcing firm you use understands the importance of and complies with the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) and that, at minimum, its policies regarding managing security and privacy comply with the Lawyers' Professional Indemnity Company's risk management initiatives.²⁹
- 10) Understand the firm's docketing policy and insist that they docket in detail. Make sure they bill you at regular intervals, preferably monthly rather than just at project completion, so that you can monitor progress and bill the ultimate client on a periodic basis.

The bottom line is that using outsourcing strategically could enhance your profitability, the quality of your practice and your career satisfaction. It is one technology-based tool that should, if used properly, reduce stress and enhance career satisfaction.

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² *Random House Unabridged Dictionary*, © Random House, Inc. 2006.

³ *Random House Unabridged Dictionary*, © Random House, Inc. 2006 and *Wikipedia*.

⁴ For the purposes of this article, the term “practicing lawyer” means a legally trained individual, who is called to the bar and is in good standing with a law society in at least one jurisdiction in Canada, carries appropriate insurance and is subject to the same professional/ethical standards.

⁵ “If a new practice tool could improve your profits and give you more flexibility while improving client service and enhancing your job satisfaction, would you try it? It’s no wonder that more and more lawyers across the country are hiring contract lawyers.” Deborah Arron & Deborah Guyol, *Contract Lawyering* (Seattle: Niche Press, 1995) at p. 117. Associates surveyed by Canadian Lawyer are challenging the demands placed on them opting instead for quality of life. See Kristen McMahon, “The 2005 *Canadian Lawyer* Associates Survey: New Generation Gap” *Canadian Lawyer* (November/December 2005)

⁶ Daniel E. Pinnington, *managing a BETTER PROFESSIONAL SERVICES FIRM*, (2006), p. 39 available at www.lawpro.ca/magazinearchives.

⁷ Joseph Rosenbaum, “Outsourcing Work Facing New Frontiers: Greater Reliance on Technology Increases Complexity of Decisions on Whether to ‘Farm Out’ Tasks”, *New York Law Journal* (Tuesday November 13, 2001) at p. s4

⁸ James Brian Quinn and Frederick Hilmer, “Strategic Outsourcing”, *The McKinsey Quarterly* (1995), Vol. 1.

⁹ Eric D. Beinhocker, “The adaptable corporation”, found in *The McKinsey Quarterly: The Online Journal of McKinsey & Co.* and is adapted from his book *The Origin of Wealth: Evolution, Complexity, and the Radical Remaking of Economics* to be published on June 1, 2006 by Harvard Business School Press (North America) and Random House (the United Kingdom and the Commonwealth).

¹⁰ I have not found reference to specific problems in the legal context. In other industries, notably banking and software, there have been serious security issues. In April of 2005, there was a case involving the theft of \$350,000 from four Citibank customers that occurred when Indian call center workers in Pune, India, acquired the passwords to customer accounts and transferred the money to their own accounts opened under fictitious names. In 2005, Intel discovered and fired 250 Indian employees after they faked their expense reports. NASSCOM, which is a forum of IT and ITeS companies, has attempted to address these fraud concerns in India by creating the National Skills Registry. That database contains personal and work-related information, enabling employers to verify a staff member's credentials and allowing police to track the background of workers. Presumably, when outsourcing legal services offshore, Canadian lawyers can check with local law societies or bar associations to verify credentials and good standing. A word of caution; however, according to *The Economist*, July 1, 2006, p. 40, the court system in India is backlogged and one might rather suffer any fate rather than try to settle a commercial dispute in that jurisdiction.

¹¹ A non-lawyer could describe both: a foreign lawyer not admitted to practice in the jurisdiction the advice is being sought, or in any other Canadian jurisdiction; and a layperson.

¹² The Association of the Bar of City of New York Committee on Professional and Judicial Ethics, *Formal Opinion 2006-3* (August 2006).

¹³ See Beverly Spencer, “Legal Recruitment and Outsourcing”, *Canadian Lawyer*, Vol. 24, Issue 10 (October 2000), Alison Hughes “Lawyers for Rent”, *Business London* (May 2004), and Sarah Efron,

“Legal Business on Emerging Markets: Outsourcing trend spreads to the legal profession”, *Lawyers Weekly* (August 19, 2005).

¹⁴ Alison Hughes, “Lawyers for Rent” *Business London*, (May, 2004)

¹⁵ *Canadian Bar Association Future Initiatives Survey*, Submitted to: Canadian Bar Association July 2004 by the IPSOS-Reid Corporation

¹⁶ Daniel E. Pinnington, *managing a BETTER PROFESSIONAL SERVICES FIRM*, (2006) p. 11-2, Kathleen Brady, “The Art of Delegating” (October, 2006), Wendy L. Werner, “Inside vs. Outside: When Does it Make Sense for Law Firms to Outsource?” (April, 2006)

¹⁷ According to Jim Calloway, in “Technology & Stress: Good tool, bad tool”, *LawPRO Magazine* Vol. 5, No. 2 (Summer, 2006) at page 12, “You must practice prioritization, which may be the most important job and life skill of the 21st century.”

¹⁸ “Solo, small and large firms make same errors”, found in *LawPRO Magazine* “Work & Wellness”, Summer 2006 (Vol. 5, No. 2), also available at www.lawpro.ca/magazinearchives, see also Daniel Pinnington, “Failure to know or apply the law: Only 6% of Malpractice Claims”, *LawPRO Magazine*, Vol. 2, Issue 2, (Summer 2003).

¹⁹ “Daniel E. Pinnington, *managing a BETTER PROFESSIONAL SERVICES FIRM*, (2006), p. 11

²⁰ Edward Poll, “Take the mystery – and Fear – Out of Budgeting Your Engagements”, (November, 2006); Terri Olson “A Primer on Analyzing Law Firm Profitability” originally published in *Georgia Bar Journal* Vol. 2, No. 2 (October 1996) p. 54; Joel A. Rose, “Ten Ways to Increase Firm Profitability” (2004) found at www.joelarose.com/articles/ten_way_firm_profit.html

²¹ See the full text of the letter from the Law Society of Upper Canada addressed to Stephen Taran dated May 9, 1997 at www.virtualassociates.ca, <http://www.virtualassociates.ca/PDF/Law%20Society%20of%20Upper%20Canada.pdf>

²² See Ann Macaulay, “How to Attract (and Keep) the Best and Brightest Legal Talent” found at www.cba.org/cba/practicelink/WWP/retention.aspx.

²³ Shields, Allison, “Too Much to Do Too Little Time” (July 2006) Allison Shields, president of Legal Ease Consulting Inc.

²⁴ *Ibid*

²⁵ “Delivering on the client service promise” *LawPRO Magazine*, Vol. 5, No. 1 (Winter, 2006) and is available at www.lawpro.ca/magazinearchives.

²⁶ See Daniel E. Pinnington,, *managing a BETTER PROFESSIONAL SERVICES FIRM*,(2006) and letter from the Law Society of Upper Canada addressed to Stephen Taran dated May 9, 1997 at www.virtualassociates.ca, <http://www.virtualassociates.ca/PDF/Law%20Society%20of%20Upper%20Canada.pdf>.

²⁷ Daniel Pinnington, “Helping Your Practice Soar” *LawPRO Magazine*, Vol. 2, No. 2 (Summer 2003) p. 29 also available at www.lawpro.ca/magazinearchives. Edward Poll, “Successful Business Development Means Closing the Communications Gap” (October, 2006).

²⁸ Edward Poll “Virtual Help: An Outsourcing Relationship With a Virtual Assistant Can Complete Your Team” (April 2006)

²⁹ See, for example, LawPRO's publication: *managing the SECURITY AND PRIVACY of electronic data in a law office* (2005).