

The Lawyers Weekly Outsourcing still dirty word in Canadian legal world

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Law firms looking to contain costs and enhance their human resources are turning more and more often to a newer, apparently popular, option: outsourcing.

According to a study by Crisil Research and Information Services Ltd., India's leading ratings, research, risk and policy advisory company, the United States legal offshoring business alone is worth US\$25 billion, and Canadian industry experts attest to its growing attraction here at home. Firms themselves, however, are silent on the issue. Certainly, none of the firms contacted by *The Lawyers Weekly* were willing to speak on the record about their use of outsourcing.

On the surface, the reluctance seems unnecessary. Clearly, outsourcing can save a firm money.

"The economy and issues around costs of running a legal department or law firm are significant," said Gavin Birer, founder and president of Legalwise Outsourcing Inc. in Toronto.

"Clients are reluctant to pay more. Salaries and benefits continue to rise. Firms are looking to maintain profitability," he added.

Stephen Taran, president of Taran Virtual Associates, The Legal Outsourcing Network, in London, Ont., about 200 kilometres southwest of Toronto, gives the example of an Ontario client who would normally bill \$350 an hour. With his client's permission, the lawyer outsourced 10 hours of legal work. The hourly rate for that service was \$100 an hour. The lawyer then billed the client at the rate of \$150.

"We're typically a profit centre for our clients," said Taran. "Our rates are below market price."

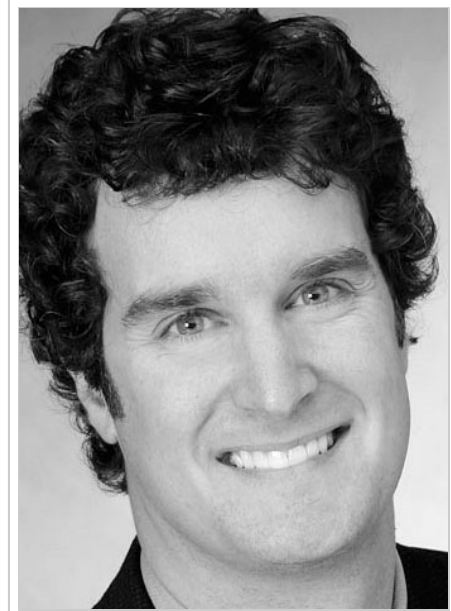
There are other advantages to outsourcing, he added. Chief among those are managing growth, increasing career satisfaction by tipping the work/life balance and enhancing client service.

"Clients demand instant service these days. This is a way of managing the workflow," Taran noted. Law firms turn to outsourcing for one simple reason, said Birer. "It really is needs driven. It may be case specific or on an ongoing basis."

So why the reluctance to acknowledge use of outsourcing firms? First, lawyers may not be personally at ease with the process. "Lawyers need to feel comfortable delegating," said Taran. "They need to understand that by delegating they are actually getting more control over their time."

Of course, lawyers need to understand to whom they are delegating. There are two types of services available to lawyers and their firms looking to send work outside their own walls. There is what Taran calls "outsourcing," or using licensed lawyers within the boundaries of your country. Then there is offshoring, or hiring lawyers outside your national boundaries. India is currently the legal hotspot for offshoring. The industry there is expected to be worth US\$4 billion by 2015, according to Forrester Research Inc., an independent technology and market research company in Cambridge, Mass.

Perhaps the greatest financial savings can be had by offshoring. That may explain why its popularity continues to grow, at least south of the Canada-U.S. border. According to an article in the *New York Law Journal* more than a year ago, "Outsourcing legal work to India is no longer a novelty. It's a reality."



Stephen Taran

That reality does not necessarily sit comfortably with lawyers in Canada. "Any time there's a perceived loss of physical contact with the people from whom you receive the service, there is a certain amount of reluctance. You prove yourself first," said Birer, whose firm employs lawyers full-time in India.

There may also be legal concerns for the hesitation. "There is a lot of reluctance to go offshore. You don't have the regulatory protection," said Taran, whose company employs only lawyers based in Canada.

Nor the same financial incentive. While hourly rates for legal services may be lower in countries like India, those services must be classified differently. "Outside Canada, the fee is a disbursement because they're not Canadian lawyers," said Taran.

"You can't gross up a disbursement but you can legal time," he added.

Concerns about offshoring are reflected in an unusual, and ultimately unsuccessful, legal action led by Newman McIntosh & Hennessy (NMH), a Maryland law firm. The firm was recently suing India-based Acumen Legal Services, as well as former President George W. Bush, in Washington, D.C. federal court.

NMH, which is now folding, contended that the U.S. government was intercepting all or most of the data sent by lawyers to foreign legal outsourcing providers as part of an anti-terrorism campaign. The firm was originally seeking a court order against "all United States-based attorneys" who outsource legal work to India, and "all foreign legal outsourcing providers." It subsequently requested permission to launch a class action suit. Permission was denied, and the firm withdrew its lawsuit shortly afterwards.

The case reflects anti-offshoring concerns in the U.S. Last year, the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility addressed a number of concerns around the ethics of offshoring. The committee concluded that U.S. lawyers are free to outsource legal work as long as they follow the rules regarding competence, supervision, protection of confidential information, reasonable fees and authorized practice.

Law societies in Canada are beginning to grapple with the issue. Some, like the Law Society of Upper Canada, have guidelines in place and are helping to inform lawyers. Two years ago, the society also held a continuing legal education seminar entitled "Understanding Offshoring, Outsourcing and Other Alternatives for Cost Cutting." The seminar explored the benefits of outsourcing along with the ethical and professional risks. The course audio-stream is still available online.

One thing is certain. Outsourcing is here to stay. Indeed, the service is growing in Canada.

"We are definitely seeing an increase in the number of inquiries we are receiving and the number of clients we are servicing," said Birer.

Those firms, he added, "come in all shapes and sizes."