

# law practice management

newsletter

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## Wrestling with aggregators!

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### contents

1	Dear duncan ... <i>Wrestling with aggregators!</i>
3	News from New York: increasing profitability
7	Letter from London <i>Wiki's law: implementing social software at Allen &amp; Overy</i> <i>Who put the CRM into acronym?</i>
12	Practice development counsel
13	The art of working the room while avoiding the dark side of end-of-year celebrations
15	Insights from ALMPA: <i>Depression — a lawyer's personal perspective</i>
17	Case managed
20	A collective shrug of the shoulders
21	Recent publications

### Comment by Duncan Hart

On 11 October, the *Australian Financial Review* reported the launching of the first Australian law firm 'aggregator'. From the report, a group of Perth-based firms intends to acquire further firms and then float the combined entity.

This approach is not new in the professional services sector and many will remember the unseemly demise of accounting aggregators Harts (no relation) and Stockford. The one success, Investor Group, is still on the scene and BRW, in a recent survey, lists them as the fifth largest behind PWC, KPMG, E&Y and Deloitte with revenues of around \$160 million.

Everybody has a different model in mind when discussing the merits of aggregation.

There is usually a number of key assumptions:

- many small to medium firms operate well below their optimum — there are gains that can be made through introducing basic management techniques;
- many partners in such firms wish to retire but can see no way of realising their equity;
- there is a very limited market for such equity to be disposed of;
- there is very little liquidity to purchase such equity;
- an aggregation of firms may improve their profitability, market share and so on through common branding;
- a spread of firms can share clients, systems and professional/management personnel to provide an enhanced range and quality of services to clients;
- there is a lower cost of capital;
- aggregated firms will be able to attract professional staff more easily;
- there are economies of scale to be realised; and
- there are 'synergies' that can be exploited.

### The partner perspective

In order to build the required critical mass to sustain the cost of listing, a sufficient number of partners in sufficient firms needs to be persuaded that sale to the aggregator is a good option for them. Clearly, the basis of valuation of the firm is critical, as are the terms upon which payment is made and any 'handcuffs' associated with the offer. Usually, the one that causes the most difficulty is the period the partner must remain in the firm before exiting post-sale. If that is too short, then

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most of the goodwill the aggregator has paid for simply walks out the door and, worst of all, the partner may then compete against the old firm. This was a critical failure in the accounting experience. The partners literally 'took the money and ran'.

Bearing in mind how critical partners are to the value of professional service firms, any investor would be wise to check how effective the golden handcuffs are likely to be.

The partners who receive payment may be quite happy with the payment they receive for their practice. They may not be as happy, however, with the way their entitlements are calculated post-sale. The management the aggregator is likely to introduce may well be entirely new to the partner and, generally speaking, unwelcome. Much of the 'small firm' experience that the

Finally, there is the vexed issue of the professional staff who, pre-sale, may well have confidently aspired to partnership — all those individual arrangements will have to be handled with great care. The path to partnership (if in fact there is such an option) in the post-sale situation will need careful management in the newly integrated entity.

## The aggregator

There is no doubt that there is considerable value that remains untapped in the vast number (8000+) of law firms in Australia. The sector is extraordinarily unconsolidated, and with revenues exceeding \$10 billion, there is clearly enormous potential to try to unlock some of that untapped value.

Similarly, there is a lack of capital being deployed in this sector, and many

... there is a lack of capital being deployed in this sector, and many firms could dramatically improve their offering, management and reach if they had appropriate means in place to access such capital.

partner (and staff) value will quickly be lost as new marketing and IT systems, time costing and centralised billing are introduced and enforced, perhaps for the first time.

In the accounting environment, for instance, the participating firms were required to be involved in heavy promotion of financial services products with 'their' client bases being targeted. This was not viewed favourably by many of the firms concerned.

The terms of sale may also impose certain revenue/profit targets, which would need to be met to ensure the partner receives full payment of his or her equity. Again, this may be an unaccustomed discipline.

firms could dramatically improve their offering, management and reach if they had appropriate means in place to access such capital. The difficulties law firms have in extending their geographic reach, even to Asia, demonstrate how even the bigger firms tend to operate on a shoestring compared to their more serious commercial brethren.

However, as many have found in the accounting environment, the short-term demands of the market and the stringent application of management techniques, sits with difficulty in the professional services environment.

In the days when I was advising with respect to commercialisation projects, the 'vulture capitalists' had a

particularly pointed expression. They declared repeatedly that they were ‘... not investing in the intellectual property as such, no matter how impressive that might be, but in the management team that was going to bring it to market’. The quality and experience of the aggregator management team is therefore critical. Creating and ‘selling’ the required vision to the purchased firms is where the hard work lies, not simply in applying essential (but limited) economic rationales.

Unlocking value in diverse firms with disparate clients across wide geographical areas is a difficult task at the best of times. Common branding achieves little in federated law or accounting firms and little is gained without true national clients for all, or at least most, to service. The key relationship is between client and partner, and the majority of value is driven from that critical interface.

Economies of scale are much relied on, as are synergies. A word of caution, however — realising synergies requires a high level of planning,

communication and trust as well as relentless implementation. Achieving this across multiple offices with partners who may never have met each other begins to hint at the scope of the problem — here, video links help a lot, but ... in short, the economies of scale are well and truly offset by the costs of integration, at least in the short term.

### Conclusion

The hurdles facing aggregators are very similar to those which have been faced by every one of the top 10 or so law firms in Australia. Each had to spend enormous energy to persuade firms in other centres of the long-term benefits of a bigger, better, unified world. The access to a deeper pool of funds to ease the transition would no doubt have been helpful. I suspect it was not the funds so much as achieving the ‘buy in’ that was the key factor, and this will be no easier, in my view, for the aggregators to achieve than it was for those early firms. A compelling vision that extends beyond purchase and ‘economies of scale’ will be essential.

The management team and the

choice of firms they seek to aggregate will be the most important factors in their success. An aggregation of small firms does not make a ‘big firm’, either in expertise, clients or on any other of the key criteria sought by clients. Such an aggregation will have to learn the same core skills associated with migrating up the ‘client value chain’ to really capitalise on the funding they seek to raise from the market.

With the ability to incorporate and the availability of private equity, there are clearly other, perhaps more attractive, means of achieving the same objectives without the full scrutiny and demands of the market. The aggregators are obviously keen to explore the potential to put law firms on a more secure and commercial footing — and it remains to be seen if the profession is willing to take up that challenge. ●



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## News from New York: increasing profitability

Frank Maher LEGAL RISK

Profitability — and how to increase it — was the topic of a conference attended by many of the leading US law firms in July 2006. This article outlines some of the key sessions.

### Risk management

Out of 41 large recorded claims (that is, more than US\$20 million), Doug Richmond, Senior Vice-President of Aon, reported the startling statistic that only two involved error by the law firm; 29 arose from dishonest clients and 10 from conflicts. The logical conclusion from this was that to avoid claims you should focus your effort on conflicts and client intake.

Third-party claims are an issue being addressed by many law firms

around the world, in my experience. Perhaps the incidence of dishonest clients in the American statistics is higher than elsewhere (attributable in part, no doubt, as much to a greater willingness to plead fraud, as to the much publicised failings of corporate America) — but client-related risk is higher on the agenda, particularly with concern about the risks of acting for those who have connections with internet gambling companies that may offer services to customers in the US where the full force of the law is being brought to bear on those in the sector.

Apart from the concerns of acting for those connected with the gaming industry with recent arrests of gambling company executives, the

concerns elsewhere relate to issues such as vendor due diligence, particularly in connection with listings on the Alternative Investment Market in London, where it simply may not be possible to limit liability contractually.

Reliance by third parties on due diligence arose in a New York decision in August — *Mega Group Inc v Pechenik & Curro* (PC 819 NYS 2d 796 (2006)) — successfully defended, but only because the claimant failed to prove negligence.

At first sight it may appear to be hard to demonstrate the return on investment in risk management, though in one case I have managed to demonstrate a saving of £500,000 (A\$1.25 million) on a firm’s

insurance. One can, however, quantify the failure to manage risk by comparing the difference in insurance costs with comparable firms.

Insurance costs for 100 top UK firms are analysed by PricewaterhouseCoopers in their annual survey, *Financial Management in Law Firms 2005*, which reported that as a proportion of fee income, premiums represented less than

recognising that everybody is responsible for risk. I recounted my experience of using Desktop, a web-based risk management diagnostic tool firm-wide in major legal practices, confirming that people do not recognise this responsibility.

Testing carried out for a major international firm recently revealed that half of the respondents did not know who was responsible for risk

Supervision was identified by speakers as a particular area of difficulty — both the responsibility of supervising lawyers and disciplinary action for failing to supervise subordinate lawyers.

2 per cent of fee income for over three-quarters of the top 25 UK firms, a saving on the previous year. Further savings were to be expected for the current year following the significant reductions in premiums on the renewal in England and Wales on 1 October 2006.

There is little doubt that the larger firms regard investment in risk management as essential to their existence. A majority in the US now have general counsel whose function is to advise the firm on risk and ethics issues, a trend increasingly reflected in the UK. Legal Risk's *Top 100 Professional Indemnity and Risk Management Survey* (see (2006) 5(4) *LPM* 52) identified a growth in senior appointments in this area.

Some concerns were expressed that communications with internal counsel may not be privileged, highlighting the advantage of seeking legal advice externally, to which privilege should usually apply, provided care is taken.

An open culture is important, encouraging discussion with inhouse counsel and colleagues, and

management in the firm, and of those who claimed to know, most said it was someone else or did not identify who it was.

Other results from the same audit were similarly revealing. Severe problems on back-up diary systems were identified by 79 per cent of respondents — a major cause of law firm claims worldwide. A similar percentage identified no effective file review system. Twenty-eight per cent of respondents were unclear what was expected of them, or unsure that they could achieve their objectives.

While the responses in many areas were very positive, highlighting their strengths, there were small numbers identifying risk issues such as lack of care in checking emails, failing to keep up-to-date with the law, failing to carry out client identity checks, and failing to make attendance notes. It only takes one to make a claim.

Supervision was identified by speakers as a particular area of difficulty — both the responsibility of supervising lawyers and disciplinary action for failing to supervise

subordinate lawyers. Codes of conduct require it, probably in every state, a position reflected in England and Wales.

Bill Heinz, Partner and General Counsel of Jenners and Block LLP, explained that it was generally a defence for a subordinate lawyer if he was acting at the direction of a supervising lawyer on a point which is arguable. For the supervising lawyer, however, there is only a defence if he or she has taken measures to supervise, making it critical that firms implement a documented training program on rules of professional responsibility. Ethics training is an area where many firms in England have historically been lax, concentrating instead on legal training and skills training. Perhaps that will be set to change with the forthcoming revolution in regulation of the profession proposed by the UK Government's Legal Services Bill.

Over-specialisation can bring its own problems, with the example cited of a lawyer who said 'I don't do privilege.' Lack of knowledge of criminal law was also identified as a major risk issue — particularly obstruction of justice in cases where prosecutors or regulators may be seeking documents for an investigation.

Growing pressure from clients was another risk issue identified — an example being the imposition of engagement letters drafted by the client which deemed all affiliates and subsidiaries to be clients, in one case preventing a firm from acting on a matter which would have commanded an eight-figure sum in fees at a later date.

Risks associated with lateral hire partners were highlighted by Doug Richmond and me in our respective presentations. These issues were explored in more depth in my article 'Lateral hires: the good, the bad and the ugly' (2006) 5(9) & (10) *LPM* 125.

I also covered the issue of client due diligence. This, coupled with take-on procedures, is probably the most significant contribution to a risk management strategy.

Firms also need to guard against 'engagement creep', where they end

up doing more than they originally contracted to do, perhaps with inadequate assessment of the risk and little, if any, additional payment.

Firms are not traditionally good at scoping the engagement to exclude areas on which they are not advising.

Client due diligence is a culture, not an event — borne out by the publicity surrounding the problems which beset Enron, Parmalat, Worldcom and others who were no doubt good clients to have in their day. New clients were identified as a particular risk issue, which is consistent with the experience of UK insurers and those involved in the defence of claims.

My second session covered the London Landscape — including new regulatory change with the government apparently trying to seize control of the profession. There was particular interest in the war on client privilege arising from anti-money laundering legislation, on which the UK has the advantage of a few more years under its belt than the Australian legal profession. The session concluded with a discussion of what UK firms are doing in managing risk, and the legislative change which is forcing firms in England and Wales to undertake risk management and business continuity.

### Financial planning

Spreadsheets came under attack as tools for financial planning. It was said it is far better to use a product which handles the figures in real time. A case study was provided by Howrey LLP, who had implemented a product from Sartori. Lessons learned from the process were the need to test the IT architecture, particularly in connection with the access from remote offices. Security issues were also identified, such as keeping payroll data from IT staff.

Finally on this topic, a project manager is vital, and staff must be fully trained.

### Outsourcing

Outsourcing is very much in the news with the recent announcement that global firm Clifford Chance is set to save £10 million by transferring

300 jobs to Delhi next year. This will reduce the size of the accounting and IT functions in various centres around the globe.

Increasingly, firms are finding that clients who have outsourced functions themselves are asking why they should pay for lawyers in major financial centres to employ support staff at high cost when the lawyers could also be outsourcing to cut cost.

For US lawyers, though, in a country lacking the UK's historical connections, India is generally not yet on the agenda. However, significant savings are being achieved by outsourcing to US cities outside New York, where staff do longer working hours for less pay.

John Koon of International CoSourcing Group and Margot Usdan of Kramer Levin Naftalis Frankel LLP provided a case study of the savings to be achieved by a rigorous examination of a law firm's cost controls. Nearly half of the non-staff cost overheads were susceptible to review. The objective was to gain a proper understanding of the firm's spending and then obtain and implement supplier cost reductions — a process with which most firms will be only too familiar, having been on the receiving end of similar exercises.

Firms tend not to achieve the best savings, due to a combination of incomplete information, entrenched behaviour, organisational barriers and inadequate monitoring and tracking — including simple errors such as paying twice for the same thing.

The experience of Kramer Levin Naftalis Frankel, a 300-attorney firm with one office, had resulted in annual savings of US\$500,000 (A\$660,000). Interestingly, the exercise had included training middle-level managers in negotiation skills. The first phase of the exercise took a year, with savings in the following two months. Areas in which these had been achieved included IT hardware, telecommunications, library, fringe benefits, stationery and copying.

### Financial management

Another session covered Peer Monitor, which enables firms to compare their figures with other firms

in their peer group, whose identity is kept from them. The system pulls the data from the subscribing firms. One Canadian firm had found its 'docket to pocket' lock-up time was 194 days, compared to 124 days for their peer

call centre and a website for staff to log-in and record their whereabouts.

The biggest issues faced in Katrina were people: staff had nowhere to turn outside the firm and were arriving in reception — with relatives and pets.

Management liability insurance cover, similar to directors and officers (D&O) cover, is increasing in popularity. The firm's management may be sued for de-equitising partners, predatory hiring, or bad investment decisions, including inadequate due diligence on lateral partner hiring.

group — though even that figure would be regarded with some alarm by many a finance director in other jurisdictions!

### Management liability insurance

Management liability insurance cover, similar to directors and officers (D&O) cover, is increasing in popularity. The firm's management may be sued for de-equitising partners, predatory hiring, or bad investment decisions, including inadequate due diligence on lateral partner hiring.

A law firm's executive directors, who will often not be lawyers and might have had D&O cover in industry before joining the law firm, will expect the protection afforded by such a policy.

### Business continuity

The final session was a fascinating and moving account of the real life challenges of business continuity in the face of Hurricane Katrina. The speakers, William R Livesay Jr of Andrews Kurth LLP and Thomas W Mitchell of Phelps Dunbar, had extensive experience of issues on the Gulf coast.

Practical issues encountered included 200-mile traffic queues leaving New Orleans, the need for satellite phones (because mobile phones would not work), and problems contacting staff who had moved to far-flung parts of the country; the last point has now been dealt with by setting up an offsite

Transferring staff to other offices was a partial solution to keep the firm going, but accommodating them and their pets was another matter altogether.

Insurance claims caused difficulties for many firms. Firms should check their business interruption insurance, because if the building is not damaged there is generally no cover.

The speakers recommended setting up separate accounts for all incident-related expenditure (including, for example, marketing, leases and equipment). Most firms used an inhouse lawyer to advise on insurance issues, but the speakers again emphasised the need, identified above in an earlier session, to maintain legal professional privilege.

### Conclusion

The conference highlighted the opportunities open to all firms to be more competitive and to increase profitability through managing risk effectively and rigorous cost control. All firms would have found something to learn. ●



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# Letter from London

COORDINATED BY

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## Wiki's law: implementing social software at Allen & Overy

**Ruth Ward** ALLEN & OVERY LLP

Allen & Overy LLP (A&O) is an international legal practice with offices in 19 countries on three continents, 4800 staff and 450 partners. The firm was founded in 1930 and today advises governments, banks, major corporates and institutions operating around the world. But notwithstanding its tremendous growth in recent years, A&O still retains the feel of a smaller, more intimate partnership, with a strong collegiate culture and a reputation for innovation — as recognised in the *Financial Times's* 'Innovative lawyers' report.

The allure of social media for A&O was superficially clear. But initially we were not too sure what we needed or, indeed, whether something so 'cutting-edge' would really fit in among our lawyers. This article therefore documents the journey we took from those tentative first steps when we first floated the idea, to the global roll-out that is going on today.

### Social media and professional services

David Jabbari, A&O's chief knowledge officer (CKO), set out the strategic context for knowledge management (KM) at A&O in his recent 'Know it all' case study in *Inside Knowledge* in May 2006. A&O, like other professional service firms, realises that it is a 'knowledge-centric' organisation whose greatest knowledge assets are its people.

However, the traditional legal KM model has focused more on documents — acquiring them and storing them — rather than on people — putting them together and leveraging their know-how. It is this shortcoming that A&O's

KM strategy was devised to address.

However, our lawyers — our primary knowledge assets — are not necessarily the people you would naturally choose for an experiment in informal collaboration and knowledge sharing. Indeed, lawyers everywhere are often regarded as conservative and sometimes a little technophobic. We therefore prepared the ground carefully.

To begin with, we sought outside expertise to see how others had approached, implemented and benefited from social software technology. In particular, we profited greatly from the knowledge of Euan Semple, who had enjoyed great success at the British Broadcasting Corporation (BBC), establishing informal online groups and networks (see *Inside Knowledge*, March 2006). However, we did not want to simply roll out the same model that Semple had deployed at the BBC. That would have been counter-productive — lawyers and program makers are very different people with very different attitudes and needs.

We therefore returned to A&O from our trip to the BBC's White City headquarters, not with a blueprint that we could simply re-use but, instead, a clear view of what might work and what would not within our community of relatively conservative legal experts.

We realised that we needed to focus our initial projects on groups where there would be a high chance of early adoption. This would help us to create home-grown success stories that we could use to build awareness and interest elsewhere within A&O, driving a bandwagon that could help to support a wider roll-out later. We were certainly not planning a 'big bang'.

### Tech support

Fortunately, the IT department at A&O shared our enthusiasm for trialling social software and agreed that it would be valuable to deploy outside consultants in our initial trials to ensure that the implementation was as finely tuned to end-user needs as possible.

So we turned to Lee Bryant of new media consultancy Headshift (see *Inside Knowledge*, April 2006), whom we had heard speak at a conference in 2004, and who seemed to us to have the right mix of expertise, enthusiasm and realism to help us take our project forward.

We were not too sure whether we should implement blogs or wikis — Bryant advised us to implement a combination of the two. He also helped us to run our initial user workshops, making sure that they did not turn into time-wasting talking shops — and was fully involved in the development of the technical platform.

We focused on three streams of potential wiki and blog use in our initial experimental phase:

- internal work communities that had an ongoing need to communicate and collaborate;
- project teams creating and sharing knowledge, for example, on a new area of law; and
- general office-based internal communications via online newsletters.

We wanted to keep the initial stages focused and fast, so we selected just three groups in the firm, with leaders that we knew would be the most enthusiastic, to act as leaders and to recruit the other participants. We also ensured that the groups remained rigidly focused on the task at hand so as to minimise time-wasting and to expedite the process.

Our three pilot groups comprised a sub-group of our global Know-How KM community made up of 20

volunteers who trialled the Know-How group site, environmental lawyers who needed to build their knowledge about new EU directives and our Amsterdam office newsletter team.

change to the way people work. We have found that the best way to market a new project and to help people understand the opportunities a new initiative provides is to avoid

We have found that the best way to market a new project and to help people understand the opportunities a new initiative provides is to avoid buzzwords and to focus instead on the user experience.

We realised from this process that our lawyers were likely to take to the idea more fully than we had initially expected. We also realised that it would not have to be an either/or choice between blogs and wikis. With the right software, implemented correctly, we could do both, Bryant advised. He also helped to draw up the development plan based on the output from the groups.

That was in the early summer of 2005. One of the advantages of social software is that it does not take too long to get something up-and running. By September of the same year, we had put together a prototype that was sufficiently robust to put before our three groups, including site templates that would enable staff to launch their own blogs and wikis without the intervention of A&O's IT department.

### **A little know-how**

The finished product combined two main applications, 'Confluence' (for the wiki) and 'Moveable Type' (for the blog), combined to present users with a single, unified interface. Two demonstrably different products, or having to log off from one to log-in to another, would have been a turn-off for users

The system combines the following components: group blog, email alerter, wiki, categorisation, news aggregator, really simple syndication (RSS) and trackback.

For any IT project, let alone a KM project, it can often be a challenge to persuade staff of the potential benefits of using it — especially if it means a

buzzwords and to focus instead on the user experience.

So I would like you to imagine for a moment that you have just joined A&O's Know-How staff community, while I take you on a tour of our Know-How group site, which was the first site we launched. Know-How is the internal KM community at A&O and is mostly comprised of professional support lawyers.

We know that almost everyone at A&O spends much of their day logged-in to their email client, Microsoft Outlook, and so an email alerter was considered of primary importance. People posting information can specify that group members should be alerted immediately, or they can wait for the aggregated daily alert at lunch time, which also contains a précis of the posts and entries.

Links in the email take you straight to the relevant post on the blog or wiki. Each 'site' — such as the Know-How site — is only open to its members. However, we also have a restricted 'public' view of most of our sites, which just includes recent posts. This is really useful to me as the administrator of the Know-How group site, because if you post an issue or question that needs to be dealt with by someone outside the community, I can simply send them a link to the public blog so they can post a reply.

When you log-in to the site itself, you will see recent posts on the group blog and can navigate to a more focused view by selecting one of the categories that I have set. In addition, you can view content in terms of one

of the 'themes' that someone has tagged their post with or by using the date archive or search function.

To participate in a discussion, simply click on the icon on the home page and fill in the form. Images, links and other items of supporting documentation — from our document management system, for example — can easily be added to the post. This is essential to ensure that we do not duplicate reference and supporting documentation in our document management system.

You can also tag your post with one of the categories I provide as the administrator of the site and you can also set your own themes — basically tags that categorise documents according to their content. As well as using themes to navigate to particular content areas, there is also a themes page that highlights activity on the site by showing which are the most popular themes.

This site is for you — to ask questions and share knowledge and information about recent joiners, events, work projects and best practice.

There is also a wiki area that we call Group Space. Here, staff can find regularly updated information about training programs and recommended reading. There is also information about A&O's knowledge strategy and staff are invited to share details about their own business plans and priorities, and to see what others are planning. The wiki is also a useful tool for carrying out consultations and compiling reports when we need input from across the community.

The roll-out is ongoing. We started work on the project in early summer 2005, including the workshops, and by early autumn we had our pilot sites up and running. We are conducting the roll-out on a step-by-step basis, one group at a time, and at the moment about 10 per cent of A&O staff are hooked up.

## Power to the people

What people really love about the Know-How group site and our other sites is their ease of use. These tools speak powerfully to anyone who has an interest in publishing or sharing information, but who finds the formal

internal communications and publishing platforms too difficult and time-consuming. The vast majority of staff lack the time and are insufficiently 'techie' to build something themselves — or to even want to.

Our Know-How group blog has replaced the various email interest groups and ad hoc emails sent out with news of new joiners and upcoming events that we used to have, significantly reducing the amount of time the central knowledge team has to spend raising awareness, training and coordinating activities. Staff also have fewer emails to wade through every day.

As soon as our first sites went live we realised the potential value of using blogs and wikis across the organisation. So, we immediately embarked on an informal consultation with different departments and support functions across the firm. The response was overwhelmingly enthusiastic and positive: people immediately 'got it' and could see how they could valuably make use of these sites for their own teams and projects.

This was a relief, of course, but we were surprised at the level of understanding and buy-in from senior partners and support staff. We think that this, in part, was due to the fact that many of them have children who use Wikipedia, perhaps blog, and our sites give them an opportunity to tell their children, 'I blog too.'

It is an old chestnut that senior-level buy-in is always an important factor behind the success of KM and IT projects. Fortunately, A&O's global managing partner, David Morley, was exceptionally supportive as we sought buy-in to move from our initial experiments to broader firm-wide deployment, as it supports his strategic aims of improving our internal communications and breaking down the internal organisational silos across A&O, to help us respond quickly and effectively to our clients' needs.

With the support of David and others we were able to quickly move beyond our three initial test sites to a second phase of pilot sites for groups in our corporate legal department, marketing, IT and library services teams.

Our sites now have just over 500 members — 10 per cent of our total staff — and we are now planning to make these sites available on an 'on demand' basis across A&O, which means that in less than a year we will have gone from initial test to institutional tool. If only all our KM projects could be so speedily successful!

## Site components

- Group blog — this enables users to post and distribute blogs applicable to the purposes of their group — they are not necessarily publishable to the whole firm.
- Daily email alerter — people adding information to the site can chose either an immediate alert to be sent, or members will receive a daily aggregated alert.
- Wiki — we use these internally to help work on and plan projects, consultations and events, and to produce collaborative knowledge resources.
- Categorisation and social tagging — we provide a number of predetermined tags to categorise content and to make it easier to search, which we call categories. However, staff can also add their own 'social tags', which we call 'themes', so that discussions are categorised in a way that makes sense to them.
- Social bookmarks — our sites include group and personal bookmarks so people can share valuable web-links.
- News aggregator — also known as a news reader, provides a single place that someone can find all the content they want to view.
- RSS: no blog would be complete without RSS capabilities, so that people can subscribe to particular blogs or wikis.
- Trackback — just as blogs on the internet include a trackback function to track whether it has been quoted elsewhere, so do ours. ●



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# Letter from London

CONTINUED

## Who put the CRM into acronym?

**Simon Slater** FIRST COUNSEL

What is it with law firms? When viewed subjectively they can seem curiously complex organisations, but on any objective basis they are simple businesses. So why do they find it necessary to complicate matters by jumping on every management bandwagon that comes along? Business is pretty straightforward as a concept, isn't it? The most basic definition of marketing is to meet the needs of clients and customers with relevant services and products. Simple really — identify market and needs, design and supply service or product and everyone's happy. But in order to compete successfully in an increasingly discriminating world, three other elements are critical:

- clients must have a good — if not superior — *experience* when they buy your service;
- your service should in some relevant way be *superior* to your competitors'; and

make a consistently healthy margin on each matter? The answer is probably 'no'. We're dealing with people here — bright sparks. They *are* the product, the experience and the source of profit. And a management acronym, or FAD (fatuous annoying distraction), is the last thing they need.

CRM (customer relationship management) is but the latest in a long line of management fads to afflict law firms over the last 15 years. It was preceded by BPR (business process re-engineering), ERP (enterprise resource planning), IIP (Investors in People), MIS (management information systems) and TQM (total quality management). Only two of these have ever had my full support — IIP and MIS. A successful firm needs to invest in its people and its information systems, but it can continue to thrive without the other distractions.

The fact is that good firms do not need to embark on complex management initiatives in order to improve their performance. They need to keep it simple by adhering to the basic principles of business.

- you should make a superior and sustainable *profit*.

Can you be sure that all of your clients have a good experience every time they deal with you? Is your product or service superior to those of your competitors every time? Do you

The fact is that good firms do not need to embark on complex management initiatives in order to improve their performance. They need to keep it simple by adhering to the basic principles of business. They need less complexity, not more.

Take CRM — this is a fad I have never advocated in the professional services market. Instead, I have helped law firms develop more and better business from key clients. There's a big difference. Don't get me wrong, I'm all in favour of qualitative service reviews if they are carried out and followed through effectively. It is CRM 'programs' I have such grave doubts about.

In my view, many firms are in danger of over-managing their businesses by designing unwieldy, unworkable frameworks with the principal objective of exerting control. The trouble with controlling client relationships, controlling knowledge and controlling resources is that it tends to dampen all of the things that clients hold dear — initiative, flair, enterprise and good, old-fashioned service excellence. Why? Because putting a gloss on average service standards, frankly, doesn't wash, and it is not possible for most firms to operate to the highest common denominator.

Strange, isn't it, how firms such as Slaughter and May and Wachtell, Lipton, Rosen & Katz continue to confound us with the quality of their reputations? These are the last firms you would expect ever to get embroiled in these fads. Rather, they thrive on an uncompromising approach to people selection, a sharply targeted approach to the market, and an uncanny ability to turn away clients. Without CRM, Slaughter and May acts for more FTSE 100 companies than any other UK firm. If anyone's relationships are institutionalised, it is theirs. Could this be because they understand better than anyone else the fundamentals of business (outlined in the bullet points above)? The answer is, manifestly, 'yes'. It could also be that what they do is to do their job to such a high level of quality that they don't need a 'program'. Has this resulted in the most sustained word-of-mouth campaign the UK legal market has ever known? Yes.

Clients want to be in the Slaughter and May 'club'. Their lawyers too are proud to be members of a select community. And few

lawyers, if any, for whatever reason now enconced in other firms, hide the fact that they were trained by Slaughter and May.

It seems patently obvious to me that firms such as Slaughter and May simply focus their attention on the client interface rather than on themselves. They appear to be fearless in their pursuit of legal and service excellence, such that they have no need for a 'program'. They have no use for a means by which to mask their inadequacies or shirk from their responsibilities.

Marketing sophisticated legal services successfully relies on patiently building relationships and reputation by focusing on helping clients rather than *managing* them. And of course firms such as Slaughter and May or Wachtell, Lipton wouldn't call this marketing at all. They simply have a fantastic product meeting the needs of fantastic clients, creating unparalleled, positive 'word-of-mouth' and mouth-watering profits. There is no 'program'.

If such a firm were to adopt an acronym, it might indeed be CRM, but I can't help feeling that it would stand for 'client result maximisation'. If I am right, these firms probably have more than their fair share of truly client-focused people. This all goes back to selecting the right people to bring into the business in the first place. From the point of graduate intake, they are uncompromising about recruitment. They are uncompromising about retention and they are uncompromising about under-performance — at any level.

Call me strident, call me counter-intuitive, but it strikes me that all firms need to do is to enhance the client's *experience* of dealing with them. They can achieve this by sharpening their focus on achieving results for the client. The word-of-mouth and profits will follow.

Above all else, firms need a healthy dose of business common sense. That'll be BCS then! ●

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# practice



## DEVELOPMENT COUNSEL

Linda Julian JULIAN MIDWINTER & ASSOCIATES PTY LTD

### Determined to be different

The dream of just about every enlightened professional is to be so different and sought-after that there are few credible alternatives and minimal competition in a distinctive niche — one designed to fit like a glove.

That dream is reality for a privileged few. It's a far-fetched rainbow-chase for most because they lack the tenacity or commitment (or both) to do what it takes to turn a dream into reality.

Differentiation means having the courage not to follow the pack. It means not being just like all the rest.

A current example is: 'We are a full service commercial law firm'. It's hardly a differentiation strategy; more like a sentence to undifferentiated middle-of-the-pack status for most! (Last time we googled this phrase, it turned up a half a million hits in Australia alone).

### Undifferentiated offers

Many professionals proffer, as differentiation statements, what are 'sameness' statements.

To attempt to stand out with claims like these is to relegate oneself and one's practice to the 'hard to distinguish from all the others' category.

Ill-informed professional service differentiators include claims of:

- long-established;
- caring for clients;
- (non-specific) better service;
- cost-effectiveness;
- friendliness and courtesy; and
- skilled and experienced staff.

There are lots more. Just grab a handful of professional practice profiles and do a 'global search and replace' — most firm profiles would readily fit another — sadly, almost any other.

### Determinedly different

If you're determined to be different, think through what you do that is substantially different from most or all of the alternatives.

Here's a list to get you started:

- markets or industries you serve;

- geographies on which you focus;
- categories, characteristics, or scale of clients you serve;
- special or unusual services or work processes you offer;
- unique characteristics of your personnel or culture;
- special needs or problems on which you focus your efforts; and
- price — structure or quantum — at which you offer your service.

### Tough tests

Put your answers to the test. Do they really make you different?

If you're determined to be different — and to profit from distinctiveness — be tough with yourself in working out what sets you apart, and don't settle for the anonymity and pressures of middle-pack.

### Don't dilute it

If you're a stand-out professional expert in an area, you only dilute well-founded strong claims by attaching others that are weak.

### What does this mean in practice?

Well, if you're an insurance lawyer with a wealth of expertise in liability and professional indemnity, it will dilute the impact of your sales pitch if you also decide to claim significant expertise, say, in marine insurance, just because a few years back you did a couple of cases in that area.

If you're a corporate and commercial specialist, it will only water down the sales pitch you're making in your stand-

out area to also claim that you're an expert in a half a dozen other areas only tangentially connected.

For those whose claims to fame are as technology specialists, it does little to help make an effective case by adding a few more areas where they can 'get by'.

### Messages at full concentration

To unsophisticated consumers, a lawyer is an expert in all matters legal, a computer expert is expected to know about any computer system, and a management consultant can expertly advise any business.

Sophisticated clients know there are important differences.

The astute client looks to you for leads and evidence of distinctive niches in which you're expert to assess the degree of fit with their wants and needs.

### Boundaries on difference

You reinforce your case by being clear about where you're not the stand-out expert. You further strengthen your position by framing those limitations positively.

Whether it's a one-to-one pitch for business, a full proposal, or formal tender, don't dilute your core claims of exceptional credentials and fit by hyperbolising the rest. ●



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# website

# The art of working the room while avoiding the dark side of end-of-year celebrations

Ronwyn North

STREETON CONSULTING PTY LTD

The end-of-year ‘silly season’ is upon us so it’s timely to look at some of the risks presented by the events that you and your firm might host or attend for clients, suppliers or staff of the practice, and how to manage them.

Let’s start by considering what makes a good event. To state the obvious, it’s one where a good time is had by all, good impressions are created, and overall it’s a good investment of everyone’s time and the host’s money. A bad event is one that’s a waste of time and money.

However, there is a scale of ‘bad’. The sobering reality is that it is not unheard-of for celebratory events to go horribly wrong and end up with people sick, injured, under arrest or under suspicion, with adverse publicity and reputations trashed, and hip-pocket haemorrhages from damages claims, such as physical damage, personal injury, sexual harassment, and occasionally even professional negligence.

Whether you are host or guest, here are a few things to consider to ensure the end of year functions you are involved with are memorable for all the right reasons.

## Be clear about the event’s purpose and anticipated benefits

End-of-year functions are perhaps best described as ‘pleasure with a purpose’ and they provide a range of business opportunities, including:

- to thank people for the work they give you and celebrate close relationships;
- to collect market ‘intelligence’ (such as information about the business environment, legal needs, potential clients, perceptions of legal services and competitors);
- to make new contacts, catch up with people, get to know people better;
- to help others make useful contacts; and

- to stimulate interest in you and the firm.

However, there is a world of difference between a function that is a ‘thank you’ or social get-together, and a more calculated business opportunity to do some serious networking and self-promotion. While end-of-year functions may well be a mix of both, the scene will be set for disappointment if there is too big a mismatch of expectation between business and pleasure. People in ‘business mode’ may be less than impressed by the ‘party animals’ who just want to have fun, while people in ‘party mode’ may be bored or even offended by incessant ‘shop talk’.

Therefore, the organising and conduct of the event should be consistent with its purpose. That is, the nature of the event, when and where it will be held, who is invited, what the invitations say, and topics of conversation and other behaviour need to be well-matched. For example, a dinner at a restaurant for a select group of guests with their spouses will send a different message and have different dynamics from a large in-office cocktail party for business associates, or the office Christmas party.

## Make provision for the comfort and safety of guests

As hosts, organisers need to think through what might go wrong and do as much as they reasonably can to prevent it, while those in charge of the event need to know what to do if worst fears are confirmed.

Having a risk management plan<sup>1</sup> for the event will ensure that you take account of ‘comfort risks’ such as weather, seating, refreshments, toilets and so on, and more serious risks. These include:

- service of alcohol (responsible service

reduces the risks of the various kinds of adverse consequences arising from excessive consumption);

- food preparation, storage and safe handling (minimise the risk of food poisoning or tampering);
- security (against gate crashers and theft);
- fire and emergency evacuation;
- medical emergencies (availability of first aid and ambulance access); and
- post-event transport (ensure staff and guests get home safely).

Increased safety may mean increased cost, so a related issue in planning the event is making sure it is adequately funded (as opposed, for example, to cut-price catering, venue too small for the numbers or inadequately trained security staff).

As a guest, the safety considerations might include checking if there is a cloak room before taking your laptop or other valuables with you and thinking how will you get home afterwards. Once there, you might want to adjust what you eat and drink to the commitments you have the following day — some legal tasks don’t sit well with a hangover. And be prepared to bail out early at the first signs of trouble rather than staying on out of politeness while things turn ugly.

## Informing about standards of behaviour

Whether the event is internal or external to the firm, partners and staff should be reminded that end-of-year events are inescapably work-related and inappropriate behaviour may have consequences for continued employment or career. This may sound heavy handed or unnecessary, but human nature is such that people need to be continually and strategically reminded to take ‘prevention’ seriously. This is why there are road safety

campaigns before every major public holiday. Smart people do not always behave like smart people.

There are a great many stories of lawyers and/or clients behaving very badly indeed. Law firm principals can be vicariously liable, particularly in relation to sexual harassment. It is fair to say that many, if not most, of these incidents are alcohol-fuelled, which is why a commitment to responsible service of alcohol is so important.

Other kinds of 'social faux pas' can also risk casting the firm and its people in a bad light. Consider whether your people also need reminding of social courtesies. For example, some lawyers don't seem to realise that it's bad manners to:

- talk only to other lawyers, leaving clients or other guests to fend for themselves;
- look past someone you are talking to instead of maintaining eye contact, thus giving the impression you are hoping to spot someone more interesting to talk to;
- speak ill of members of your own firm, clients or competitors;
- tell offensive jokes or make suggestive remarks;
- do more talking than listening and asking;
- accept an invitation to a client function and then not turn up without apologising; and
- leave without thanking the host.

## Having the necessary networking skills

Whether the purpose of the event is primarily business or pleasure, end-of-year functions are a good opportunity to learn and practice the art of networking. Working the room effectively includes skills and techniques such as:

- finding out beforehand who's invited (looking at guest lists, table seating plans and displayed name tags);
- scouting the room to greet familiar faces and find out who's there before attaching yourself;
- introducing yourself so people remember you (your name and where you are from, name tag and business cards);
- initiating and sustaining conversations with people you don't know;
- remembering people's names;

- moving into and out of a group graciously; and
- finding out enough about someone to identify something you can do for them and have a reason to follow up.

How do you and your people rate? A terrific book on networking is *The Frog and Prince: Secrets of Positive Networking to Change Your Life* by Rezac, Thomson and Hallgren.<sup>2</sup>

## Inadvertently triggering professional obligations and liabilities

Knowing when it's appropriate to 'talk shop' and when it's not was mentioned earlier in the context of people having shared expectations of the business or social nature of the event.

However, any 'talking shop' at end-of-year celebrations carries with it the very real danger for lawyers of inadvertently triggering professional obligations and even liabilities. For example, blurring the line between professional and social interaction can lead to:

- breach of client confidentiality (from name-dropping to impress);
- receiving confidential information that puts you in potential conflict with a current representation, or is later used to conflict you out a future representation (for example, allowing a new contact to go into too much detail about a specific legal problem);
- inappropriate communication with another solicitor's client (for example, listening to someone complain about their current lawyer and commenting inappropriately);
- giving off-the-cuff legal advice (for example, going beyond providing general legal information out of desire to help or impress);
- agreeing, or seeming to agree, to take on a new client or new case without the necessary due diligence (for example, taking the case on the spot without conflicts checking instead of saying, 'Come and see me in the office'); or
- chatting to an existing client about their case in person or on the mobile in noisy distracting surroundings while juggling a drink and canapé (when you don't have a file, don't have the mental acuity to remember

what was said, and don't have means to make file notes to remind you of instructions or information taken).

While the disinhibiting effects of alcohol may increase some of these risks, the real issue is having the mindset that, with or without alcohol, an end-of-year function is not the time or place to do legal work or take on new legal work.

Until next year, safe practice! ●



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**Endnotes**

1. Googling 'event risk management'

produces sample risk plans and articles.

2. Rezac D, Thomson J, Hallgren G *The Frog and Prince: Secrets of Positive Networking to Change Your Life* Frog and Prince Networking Corporation 2003 <[www.frogandprince.com](http://www.frogandprince.com)> (or try googling 'art of mingling' for a list of other resources).



## Depression — a lawyer's personal perspective

Although there is much publicity about it these days, the illness of depression is still in the 'hush-hush' basket, as sufferers think they should be able to cheer themselves up, jolt themselves out of 'it' and get on with life. If they cannot, that almost inevitably leads to a sense of shame. Also a number of people who have run badly foul of the law, or have behaved dishonestly or unacceptably, have publicly raised depression as an excuse and explanation for their conduct, which does not help the honest sufferer. Finally, what solicitor would like it to be known of them that they are depressed and popping pills?

I trust that for between three and four decades I have been a conscientious, hard-working and dependable solicitor who has avoided overcharging clients, handled some very demanding cases, taken some big risks for clients to allow them access to the courts, taken only a moderate number of holidays, had the occasional difficult and unreasonable clients and, unfortunately, experienced extended financial problems along with the usual difficult contingencies of life. I now find myself with this illness, which manifested itself openly about six years ago. Perhaps it has been there 'under the covers' all my adult life. It is now

well-controlled with medication, but I am certainly not my former self, and I suspect I never will be again.

To practise the law requires a very high level of cognitive functioning. You do not realise the truth of this until your faculties are not as they were. You may find your memory is no good, and that you are experiencing what has been described to me by one treating psychiatrist (who had it in his own

To practise the law requires a very high level of cognitive functioning. You do not realise the truth of this until your faculties are not as they were.

family) as 'the dementia of depression'. This is definitely no place to be for a legal practitioner.

If you find yourself identifying with any of the symptoms listed below, *please* get yourself off to a doctor without delay and get referred to a psychiatrist who has a sound grasp of the illness of depression, and, regardless of your personal thoughts or opinions, follow the medical advice given to you. If you do not get proper treatment you

may lose the career you have worked so hard to build.

You will be told that it will get better, and this is true. It may take many months for the correct medications to be found, and they in turn may take months to work correctly. They will take the edge off the distressing symptoms, and will allow you to start to think your way out of the situation you are in, in a rational way. Be aware that recovery may not be quick or complete. It is possible that you have to take antidepressants for a very long time — even for life.

In my opinion, it is a good idea for everyone to have private health insurance. There are some excellent clinics, but you will need private health insurance to be able to afford them.

Now, for what I feel are the types of symptoms.

- Are you dithering and unable to concentrate at work?
- Do you find it hard to make decisions and just go around in circles?
- Do you over-delegate, expecting your secretarial staff to do work which is really legal work, and which is too difficult for them to do, and unreasonable to ask them to carry out?
- Do you find yourself procrastinating, particularly with the more difficult work or business decisions?

- Do you generally feel lethargic?
  - Have you been sending briefs to counsel which are not up to scratch?
  - Are you relying too much on counsel to get you out of difficult situations?
  - Do barristers end up doing solicitor's work for you?
  - Have you been regularly forgetting to obtain important information from clients, and having to ring them back for that information?
  - Do you find that all your work seems to have mistakes in it? They may be minor errors, but you know this is not right, as you are the one paid to look after the detail.
  - Do you sometimes close the door of your office and stare into infinity?
  - Do you find that you are easily distracted?
  - Do you find yourself ruminating, or powerfully attracted to news or talk which is in the nature of 'doom and gloom'?
  - Do you voice negative thoughts more often than you used to?
  - Do you notice that your responses to difficult situations are defensive and powered by emotion rather than measured and reasoned?
  - Have you tried to adopt positive thinking strategies, perhaps even religion, for comfort and healing — with no sustained success?
  - Do you experience constant and sometimes overwhelming feelings of dread, malaise and sadness?
  - Do you forget both important and trivial things?
  - Do you forget people's names and faces, even if you have seen or met them only a day ago?
  - Have you been misplacing things (files, papers, dictaphone, glasses, keys and so on) and does this seem to happen every day?
  - Do you come to work every day saying 'today is another day, everything will be different, I will get myself organised bit by bit ....' but fail to make any changes?
  - Have you forgotten the meaning of the words 'happiness' and 'joy'?
  - Has your relationship with your family become strained and you don't know why?
  - Have you been drinking excessively?
  - Have you become cynical?
  - When you are told that you are lucky or privileged to be a solicitor do you *really* believe that it is rubbish?
  - Have you had long periods, perhaps years, of disturbed sleep? Do you get up in the early hours of the morning, often at the same time and find yourself unable to get back to sleep?
  - Do you sometimes have great difficulty in getting out of bed in the mornings? Do the 'black' feelings dissipate over the day?
  - Do you avoid social functions where possible, expecting not to enjoy them when you have to go, and do you devise strategies to leave early?
  - Do you feel that you are totally self-absorbed, but are unable to find relief from or change this unpleasant condition?
  - Have you been having suicidal thoughts? Perhaps you initially reject these as childish and absurd, but gradually you find that you are planning suicide in minute detail, still knowing the absurdity of it. Sometimes the thought of 'checking out' becomes powerfully attractive and the plan is in existence. About this time you might experience intense fear, a loss of appetite, and lose weight
- It may be that one of your colleagues or partners exhibits some of these symptoms. Perhaps you may be able to find a tactful, caring way of raising the possibility that they may be suffering from depression with him or her. If you can find such a way, you will be doing them a tremendous favour. ●

*The lawyer who wrote this article has asked to remain anonymous.*

An article on depression by Dr John Gould, PhD in Psychology and specialist studies in neuropsychology and psychobiology, discussing the types and causes of depression and ways to deal with it, along with a helpful list of references (publications, websites and where to go for assistance), can be downloaded by visiting: [www.alpma.com.au/article\\_detail.html?article\\_id=46](http://www.alpma.com.au/article_detail.html?article_id=46).

# Case managed

Bevan Read VISUALFILES

## Case management

There are four basic functions of a case management system: to automate process, to store case information, to integrate various desktop applications into a single cohesive tool and to provide a communications route for third party interaction and collaboration (that is, e-commerce or e-business). It depends on the type of legal application as to which one of these is most important. For example, process automation is essential for high-volume low-value case types, however in a low-volume, highly specialised legal application, information retrieval and client collaboration may be key. Each of these four areas will see significant development over the next generations of case management software.

### Process automation

Process automation is the origin of the case management system, and sometimes this is still seen as the primary focus. Over the last few years, the ability of case management systems to support the development of highly tailored and flexible case paths has increased significantly. However, to do this they have become increasingly complex, and require more resource and IT ability to develop.

The challenge to case management system suppliers is to retain this functionality and flexibility but make it easier to deliver. The increasing use of 'visual' development tools is one road to improvement, but the ultimate goal must be to develop a 'learning' case management system, which the end user 'trains' to carry out the legal process.

Process automation can also cover more than the pure legal process; for example, simplifying the interaction with the finance department, maintaining quality standards such as ISO or Lexcel, capturing knowledge and, most significantly, underpinning customer relationship management (CRM) strategies.

### Information storage and retrieval

Most case management systems now provide a user-definable case database and document management (including

documents produced, images of documents received and, of course, copies of all email correspondence). This effectively replaces the paper file (although few people have actually discarded them), providing benefits of easy retrieval and improving case collaboration.

The challenge for case management systems now is to help the user extract the knowledge from this valuable data source. Ideally this should be more than just a query facility, perhaps prompting the user with previous experience as it becomes relevant to ensure that the user is aware of any valuable knowledge.

### Integration with other desktop tools

All case management systems now integrate with the standard desktop tools (WP and email), and may also provide integration with practice management systems (although in a lot of firms they will be the same supplier). Some also integrate with document management systems, such as Interwoven and Hummingbird (now Open Text), and CRM systems such as Interaction.

While these are all important and will continue to extend and develop, the increasing adoption of new technologies, such as telephone integration (CTI) and digital dictation, by the legal profession provides new opportunities for case management system suppliers to extend the functionality of their products.

The question as to whether case management systems should be Windows- or browser-based is still open to question, especially as Microsoft's .NET strategy still advocates a Windows client. However, what is certain is that more activity and integration between systems will occur on the server than current, and application installation and use across the internet will become a norm.

### Collaboration

E-business is entering a new phase and providing an internet browser interface will no longer be sufficient for many business-to-business relationships. Instead, there will be an increasing requirement for applications to integrate seamlessly across organisations via the

internet, and new technologies and standards such as 'web services' are being introduced which will need to be incorporated into future case management systems.

Generally, this development will provide a radical change in the way that businesses interact and rely on each other, becoming what the analysts Gartner term 'net liberated organisations'. Such organisations collaborate by sharing data and processes rather than communicating between private systems. While still a concept of the future — at least in the legal market — initiatives in the UK, such as the LSSA's XML project, NLIS and the increasing success of panel management firms such as LMS and Conveyancing Online, are all laying the foundations for this environment.

### Trends in case management

In summary, case management systems should become easier to develop, make the knowledge they contain more readily available, combine with other tools and technologies to provide a single coherent system for all lawyers to use, and provide the tool to allow legal practices to enter the next generation of e-business.

Case management systems are yet to realise their full potential in large law firms. Most case management systems have been developed to assist practice areas such as domestic conveyancing, debt collection and personal injury where volumes are high, the processes familiar and the individual case value not high. While many large law firms do have departments processing matters in these areas, they do not usually represent significant practice areas. Indeed, it is not uncommon for firms that have established such volume practices to have subsequently moved them into independent businesses or even sold them.

So is there a significant role for case management applications in large law firms? The answer is 'yes', and those roles are becoming more important, but they need a very different form of case management.

## The roles of case management

### **Matter management**

'Matter management' describes an application where the primary objectives are to provide a central reference point to access all data concerning a file, provide an integration platform between other business applications such as document management, CRM and finance and to manage key internal processes such as file opening, money-laundering checks and conflict checking.

### **'Activity-driven' case management**

The traditional 'process-driven' case management application follows a process from start to finish, guiding the fee earner through the necessary steps to complete the case. These applications are very effective where there is an easily identifiable case path with relatively few variations. This is not typical in the majority of cases managed in large firms.

An activity-driven case management system does not seek to 'drive' the case but, instead, presents the fee earner with a library of tools from which they can select what they need at the appropriate time. Such tools can include:

- short cuts to manage internal procedures such as disbursement authorisation and posting;
- precedent creation, providing the user with access to the appropriate precedents at the appropriate time and managing the process of authorisation and execution; or
- the management of simple processes that form part of more complex cases, (for example, due diligence).

Activity-driven case management applications also provide the central integration benefits described under matter management above.

### **Strategic case enablement**

The third role of case management is to help create and distinguish strategic 'service products' for the firm's clients. Most case management systems now provide a sophisticated browser interface which can be configured to look and feel like part of their client's own intranet application.

The aim is to insert the law firm's procedures as part of the day-to-day working practice of the client's employees. For example, if a law firm is providing a specialist employment service, they may provide the client's human resource department with an interface which will help them draft employment contracts. The HR specialist simply fills in a questionnaire regarding the new employee and the appropriate contract is generated. Special circumstances, such as the recruitment of a senior employee, may alert a fee earner to call the HR team to offer further advice. In addition, the interface may provide support for disciplinary proceedings, automatically generating warning letters and escalating repeat offenders, and always providing a route through to individual advice from the specialist lawyers.

Such an approach not only benefits the law firm by building closer links to the client firm (both on a technological and human basis), but the client firm is also assured that they are following correct procedures and have an early escalation point when exceptions arise. A service being developed in the UK by Beachcroft Wansbrough is an excellent example of how this approach can be applied to risk management.

## A new style of case management

Whereas in *process-driven* applications the case management system is the core business tool for the fee earner, the user of an *activity-driven* case management system is probably more focused on their email system. They may be unwilling to swap between two systems, and so a key requirement of an activity-driven case management system is to be embedded within the fee earner's core applications, such as their email system or the firm's portal.

Activity-based case management systems must be constructed as a set of components, some of which can be embedded in front office systems such as Microsoft Outlook, while others sit in the background managing administrative tasks, such as integration to the practice, and document and client relationship management systems.

They must also provide a flexible integration capability with support for standards such as XML and web services, enabling firms to develop interfaces with their clients and, of course, a flexible browser interface to allow the development of bespoke client interfaces matching their client needs.

## Using technology in innovative ways

Ranked 11th in the UK Legal 500, Beachcroft Wansbroughs has been a Visualfiles client since 1999. The latest product within its Risk Counsel Service represents an exciting business opportunity and demonstrates how large law firms are using their case management systems to create innovative products and services.

### Identifying the niche: employers liability risk

John Newman, partner at Beachcroft Wansbroughs, comments:

We identified that if we could insert our legal knowledge and experience at an earlier stage of the employers' liability risk process, before it reaches the claim stage, claims could be handled more effectively to everyone's benefit.

At present, there is a lot of pain in this process. It involves a number of organisations which all use their own independent systems, often paper-based. We saw a major advantage in bringing together these disparate parts into a single entry system used by all involved in the process. This provides everyone with a complete picture of the incident/accident and any subsequent claim, avoids duplication of effort and links all parties into a single cohesive process. In addition, using our knowledge and experience to build intelligent dialogues within the system enables those involved at the scene, for example, the line manager, the SHE professional or the first aider, to quickly and factually record details at the time of the accident providing a more accurate and complete record of the event and the actions taken. Finally, the new service gives the client a chance to view and evaluate their risk profile across the company as well as on a case-by-case basis.

### The solution — a new service

The new service, although reliant on Visualfiles technology, should not be

seen as an IT solution, but as a method of delivering Beachcroft Wansbroughs' knowledge and experience in a more effective and timely manner. We know our clients appreciate it when we assume a proactive role in risk management. Our involvement at the beginning of the process will allow us to identify risks at the earliest opportunity and then advise on procedures to minimise or even eradicate the risk. We expect this procedure to be especially effective in managing the cost to the client of accidents/incidents at work not just in context of the payment of claims, but also in context of disruption within the workplace when an accident/incident takes place.

### How will it work?

The risk management service will offer those involved in capturing essential information at the time of accidents, online support via an intuitive service delivery platform. It will be embedded within the client's intranet for ease of use. As soon as an accident occurs the first aider will be guided through a series of questions regarding the injury and treatment details and the line manager or supervisor through the equivalent of the accident book, utilising intelligent document assembly capabilities. In addition to this online functionality, Beachcroft Wansbroughs will also have someone available at the end of the phone to answer any queries which may arise. The initial investigation is still undertaken by the client's staff, but now in a more controlled way. This ensures that accurate information is stored at the time of the accident.

In addition, the claims management service can record details of all incidents where no injury or loss has occurred. Combining accident and incident statistics provides a more accurate risk analysis.

The risk managers within the client business will have full access to outstanding matters and a global view of the risk position of the firm at any time. Beachcroft Wansbroughs wants to have a closer relationship with the end user who can see the value that can be put back into the business. It is confident that over a period of time it can demonstrate very significant cost savings.

During implementation, Beachcroft Wansbroughs will look at all areas of the client's claim experience. Once it has put together the client specification, it will develop a bespoke interface for the client, one that matches their specific requirements and incorporates their own look and feel and unique corporate branding.

### When and for whom?

The pilot phase involves working closely with the client's insurer to manage their corporate expenditure. Working closely with third parties will also be essential to the success of the service as Beachcroft Wansbroughs' strategy does not include creating a competing team of claims handlers.

Who is the risk management service designed to benefit? As it stands, the product is ideal for large organisations, many of whom retain parts of their risk within a captive arrangement and who operate on a multi-site basis.

### The future

The concept of embedding a process within an IT service delivery platform that can then be accessed by all involved in that process will not stop with employers liability risk. Beachcroft Wansbroughs is already looking at adopting the same principles in other risk areas and also as a method of delivering both employment and property services.

The outsourcing of services, legal or otherwise, while often necessary, may leave the client feeling somewhat remote from the service being provided. The IT service delivery platform brings the lawyer directly into the client's office. It allows the client, the lawyer and any other service providers involved in the same process to look at the total amount of resources available to fulfil the client's needs and to match skill to task throughout all involved. ●



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Visualfiles was acquired by LexisNexis in July 2006.

# A collective shrug of the shoulders

Karen Mackay EDGE INTERNATIONAL

I have often listened to the frustrations of law firm leaders, partners and associates who are the professional talent — indeed the only true assets of a firm. They say they have shared stories about initiatives that got a lot of airtime at meetings of their colleagues and then nothing happened. The ideas are sound, the enthusiasm is evident and members of the group commit themselves to accomplishing something important. But as soon as they leave the room, the idea fizzles like a balloon that has been left long after the party is over.

My colleague Gerry Riskin calls this the ‘Mount Everest Syndrome’ — it begins with *big promises*. Perhaps the agreement to develop a group business plan includes commitments to increase profile in the usual ways (writing six articles, speaking at three conferences, personal visits to the group’s top 10 clients and telephone calls to a list of prospects.) The group promises to get all this done within three months.

Three months hence the group meets again and collectively shrug their shoulders and *deliver nothing*. Why? A major file meant everyone was simply too busy on billable work to get anything done. *All is forgiven*. After all, the best excuse for not investing in the future is being too busy with client work today.

As this cycle repeats itself, it creates *skepticism* and *cynicism* among group members. They stop working as a group and they focus on their own work, safe in the knowledge of what is rewarded (billable time) and comfortable in the knowledge that there are no consequences for inaction.

As we study culture in law firms we know that there is a direct correlation between the strength or depth of various aspects of culture and firm profitability. The aspect of culture relevant to this discussion is vision — that is, the degree to which groups create and share a vision for the group;

the degree to which people in the group actually believe that the group has a strategy and that it will be executed; and the degree to which people understand how their individual contribution breathes life into the vision and strategy.

It is the role of leadership to create a vision that connects with people on a personal level, is believable, and has the power to awaken desire such that individuals will take action. Within the framework of a vision, highly intelligent, highly autonomous professionals must set their own goals. The role of the leader is to create the vision and then to support and encourage individuals to join them and, further, to support and encourage individuals to achieve the goals they set for themselves.

Reflecting on the frustration expressed by these lawyers, three things come to mind.

First, the group may not have a history of executing. Part of the problem is that many law firms are led by volunteers — lawyers who are very involved in their practice and contribute to leadership and management roles as part of their non-billable contribution to the firm. They don’t aspire to leadership (if they did it would be met with suspicion). They have no management training (but the need to manage is critical). They rotate in and out of management roles and consequently long-term initiatives are difficult to execute. Committee membership changes, memories are short and individuals who have the best of intentions to make a difference come up short due to the pressures of their own practice.

Second, perhaps the goals were created by the leadership (an individual leader or a committee that forms the leadership team), not by the individuals in the group. The leadership can set a direction for the firm and share a vision, but professionals will have a

better chance at success if they set their own goals.

Third, the goals simply might have been too big — they were not incremental and achievable. In the example above, one article, one speech and one client interview that actually gets accomplished is more powerful than aspiration without accomplishment.

What about the role of individuals? Setting personal and professional goals that are appropriate to your level will keep you engaged. Achievement of those personal and professional goals will give you options. It is certainly

easy to keep doing what you already do well, but the challenge soon fades. In order to keep your career moving forward, set some goals for the next three months that are achievable. For example, I will:

- raise my profile (by writing for X or speaking at Y);
- listen and learn from an existing client (by visiting X);
- enhance my relationship with others in the office (by lunching with X); and
- build my network of contacts by setting aside one hour per week to talk to people on the phone (what hour on what day?).

By saying ‘I will’ rather than ‘I should’, you will have upped your commitment to your own success, your career, your group and your firm. You will also be able to support your colleagues who have taken on the often thankless job of leadership. ●



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## recent publications



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**Binny R and Steele K** ‘Think before you shred’ (2006) Issue 310 *Lawyers Weekly* 27–28. Looks at the new Victorian civil evidence legislation, which introduces tough laws controlling document destruction.

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**Burrell A and Jacobs M** ‘Lawyers cash in on Perth boom’ *Australian Financial Review* 22 September 2006 pp 1, 54. Discusses the increased revenues to Perth law firms from the WA resource-driven economy.

**Clark S** ‘Fostif decision opens contingency-fee can of worms’ *Australian Financial Review* 29 September 2006 p 58. Analyses the recent High Court of Australian decision in *Campbell’s Cash & Carry v Fostif*, which involved the litigation-funding industry.

**Dal Pont G** ‘The business of being a lawyer’ (2006) 80(9) *Law Institute Journal* 76. Notes the trend of consumers’ interest in why and how lawyers charge for their services.

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**Drummond M** ‘Cashman puts Victorian civil litigation in the dock’ *Australian Financial Review* 13 October 2006 p 53. Reveals the biggest review into Victorian civil litigation, being conducted by Peter Cashman.

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**Russell T** 'Making an MBA pay its way' (2006) Issue 308 *Lawyers Weekly* 22–23. Reveals the steps taken by some lawyers who have used an MBA to alter their career paths — inside and outside law.

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