

Take it outside

Lawyers have caught the outsourcing wave. From legal research and information technology to secretarial help and business development, law firms are delegating more tasks to outside providers.

By Emily White



Nobody really expects that law firms will do all their necessary tasks in-house.

Lawyers don't break out the mop and bucket to clean the bathrooms, and secretaries don't hop on bicycles or airplanes to deliver factums to opposing counsel. Functions like courier delivery, janitorial work, food services and others have long been assigned to other providers in all but the smallest firms.

But outsourcing — the ever-more-popular practice of taking an in-house job and contracting it out to a third party — is starting to inch closer to the core of legal operations. While “back office” jobs like photocopying, mail sorting, and faxing have already been outsourced in large firms, the latest trend in outsourcing is for “front office” functions to be outsourced as well.

Ron Friedmann, president of Prism Legal Consulting in Virginia, notes that some U.S. firms have hired business development professionals to take the place

of traditional rainmaking partners. Other U.S. firms have begun outsourcing their marketing and PR work. In the U.K., large firms are even beginning to outsource substantive legal work to smaller, lower-cost firms elsewhere in England.

While Canadian firms haven't yet taken these sorts of steps, outsourcing is on the rise here too. Sue Hodgkinson, chief administrative officer at Goodman and Carr LLP in Toronto, says outsourcing is “taking hold and is becoming more and more accepted.”

Legal research, information technology functions, and even some aspects of human resources are all starting to move out of Canadian law firms. The question

Pour bien accomplir son travail, il faut parfois savoir déléguer. Plusieurs cabinets l'ont compris et font appel à l'impartition en matière de recherche juridique, de technologie de l'information, de ressources humaines et de soutien administratif. Ils réalisent ainsi des économies en obtenant des services spécialisés à moindres coûts.

La tendance est bien visible aux États-Unis, souligne Ron Friedmann, président de Prism Legal Consulting. Les cabinets juridiques retiennent les services de spécialistes en développement des affaires afin d'effectuer le travail effectué habituellement par les associés spécialistes du développement de clientèle, les fameux *rainmakers*.

En Angleterre, de grands cabinets préfèrent déléguer une partie de leur travail à des cabinets de plus petite taille dont les tarifs sont moins élevés.

Au Canada, bien que les cabinets n'en soient pas encore là, ils flirtent tout de même avec l'impartition. Selon Sue Hodkinson, conseillère administrative en chef chez Goodman et Carr à Toronto, l'impartition « prend de plus en plus de place et est de plus en plus acceptée ».

De nombreux avantages

Les cabinets juridiques sont d'abord attirés par les économies qu'ils peuvent réaliser grâce à l'impartition. « C'est tout à fait logique d'un point de vue financier », estime Sarah Picciotto, présidente de OnPoint Legal Research à Vancouver. « Vous n'avez pas à payer pour des charges indirectes et vous ne payez que pour le temps de recherche dont vous avez besoin. »

Mais d'autres avantages découlent aussi de cette façon de faire. Les fournisseurs de services connaissent à fond leur domaine

puisqu'ils s'y consacrent à temps plein. Dick Jensen, directeur de la technologie chez Goodmans à Toronto, préfère avoir recours à des consultants à l'externe pour effectuer des tâches spécialisées telle que l'installation de coupe-feu.

Selon Sue Hodkinson, plus une tâche est spécialisée, moins il est logique pour un cabinet de s'en occuper à l'interne. Les cabinets reconnaissent désormais qu'ils sont des entreprises et que bien qu'ils soient des spécialistes du droit, « ils n'ont pas toujours l'expertise nécessaire pour accomplir toutes les tâches relevant de la gestion ». Il devient alors intéressant de profiter de l'expertise offerte par d'autres professionnels.

Au fond, l'impartition est le reflet d'une tendance vers une gestion plus efficace des cabinets, ces derniers se demandant comment ils peuvent accroître leurs profits de façon constante tout en demeurant compétitifs, croit Michael Harrinton, président du conseil des associés du cabinet Stewart McKelvey Stirling Scales à St. John's, Terre-Neuve.

Risques et coûts cachés

Mais tout ne va pas pour le mieux dans le meilleur des mondes. Wendy Gross, associée et avocate spécialisée en recherche chez McCarthy Tétrault à Toronto, souligne que l'impartition comporte des risques. « En ayant recours à l'impartition, avance-t-elle, vous comptez sur une tierce partie dont les intérêts commerciaux ne sont pas tout à fait les mêmes que les vôtres. »

Paradoxalement, l'impartition peut aussi parfois entraîner une perte d'expertise et de connaissances. En oeuvrant au sein du cabinet, Me Gross remarque qu'elle profite « des conversations de cuisine » et qu'elle est ainsi en mesure de connaître ce qui se passe dans

un dossier jour après jour. Elle peut aussi avoir accès au dossier et effectuer ses propres recherches factuelles, tout en discutant avec ses collègues sous le sceau du secret professionnel.

Les besoins spécifiques des juristes ne sont pas toujours bien desservis par l'impartition. « Les avocats ont besoin de solutions taillées sur mesure, constate Dick Jensen. Ils ne veulent pas discuter au téléphone avec un fournisseur qui ne comprend pas toutes les subtilités découlant de leur domaine de pratique et ils ne veulent pas être servis de façon générique. »

Fonctions principales du cabinet

Grâce à l'impartition, les cabinets sont en mesure de se concentrer sur leurs fonctions principales. La frontière entre ces dernières et les tâches accessoires semble toutefois de plus en plus difficile à établir. La quête de clients, la recherche juridique et la révision de documents ne sont-elles pas des composantes intrinsèques d'un cabinet?

La prochaine vague d'impartition poussera les juristes à se pencher sur cette question puisque c'est le travail juridique en lui-même qui sera délocalisé. En Inde, des cabinets ciblent déjà le marché américain en espérant que de grands cabinets choisiront de leur confier une partie de leurs dossiers (voir à ce sujet l'article *Horizons lointains* publié dans notre numéro de juin 2006).

Quoiqu'il en soit, la vague d'impartition semble être là pour durer. Les gestionnaires de cabinets comprennent petit à petit qu'ils ont tout avantage à profiter de l'aide que des tierces parties peuvent leur procurer. « La mentalité est longue à changer, déclare Sue Hodkinson, mais je crois que c'est en train de se produire. » N

— Mélanie Raymond

is no longer whether to outsource, but how to balance the benefits of outsourcing with the risks.

Financial benefits

Outsourcing began to gain steam about five years ago, after 9/11 sent shockwaves through the U.S. economy. Before then, says Lance Waagner, President of IntelliTeach Training and Helpdesk Services in Georgia, law firms tended to focus on the quality rather than on the cost of legal services. Now, however, firms are looking for ways to cut costs, and outsourcing has emerged as an optimal area of potential savings.

"It just makes financial sense," says Sarah Picciotto, President of OnPoint Legal Research in Vancouver. "You have

an opportunity to not hire us when you don't need us. There's no overhead, and you're only paying for the time that you need."

Allison Bennett, Alberta Manager for ZSA Legal Recruitment, agrees that outsourcing can translate into significant cost savings for clients. She notes that when a firm hires an external recruiter, it's spared all the "soft costs" of interviewing — hours that would otherwise be written off as non-billable.

Similarly, when a firm hires a third-party IT or human relations trainer, it doesn't have to bear the cost of in-house salaries; this approach makes sense especially when in-house staff is not routinely needed. Hodkinson notes it's much more efficient to decide that "we're going to spend \$50,000 in

Outsourcing roll call

What is and is not being outsourced by Canadian law firms today?

Here's a quick look.

Legal Research: Sarah Picciotto's OnPoint Legal Research handles assignments such as drafting arguments for use in court, providing memoranda of law and collecting cases for use in litigation. Picciotto notes that most of her clients are law firms of five lawyers or fewer, although she also works for government entities and in-house corporate counsel.

More complex research files, however, still remain in-house, at least at the large firms. Ruth Wahl of Ogilvy Renault LLP doesn't know of any Bay Street firms outsourcing their research. She stresses that it would be virtually impossible for her

detailed role to be outsourced, since she's on the front line — meeting with clients, deciding on strategy and giving advice to clients.

Information Technology: Wendy Gross of McCarthy Tétrault LLP in Toronto says many law firms are now outsourcing their telecom infrastructure, including voicemail and Internet service backbones, as well as their web hosting. Dick Jensen of Goodmans LLP is outsourcing specialized applications (such as the security of firewalls), as well as scanning, coding, and disaster recovery for e-mail systems.

Georgia's IntelliTeach provides IT training

and outsourced help desk services to more than 60 North American firms (or 45,000 total users). IntelliTeach has two Canadian clients, one that uses after-hours and overflow help desk services, and another that uses full-time help desk services (although this service is presently restricted to just one office of a national firm).

Human Resources: Recruitment is the primary HR function that firms are outsourcing. Other services include "soft skills" training sessions (such as sexual harassment prevention training), payroll and outplacement services. Articling students not hired back at Goodman & Carr LLP can use a third-party trainer to help transition to new employment. Sue Hodgkinson notes that outsourcing outplacement services would have been "unheard of" just ten years ago. **N**

— Emily White

outsourcing training costs, rather than having two or three people on site at probably \$50,000 plus."

Specialization pays off

Third-party service providers also bring an in-depth knowledge to the task at hand. "We're specialists," says Picciotto. "That's all we do." By focusing on legal research, her firm is always up to date with the latest research technology. ZSA's Bennett agrees that an exclusive focus on one subject produces results: "When you devote all your energy to [recruitment]," Bennett says, "you tend to have the right people for the job."

Specialization is often the deciding factor for many firms thinking about contracting out. "When I look to outsource," says Dick Jensen, Director of Technology with Goodmans LLP in Toronto, "I look at really specialist-type applications, such as security of firewalls. You need to be living and breathing that every day at a specialized level of knowledge, and you're better off, in my mind, to outsource that function to someone who sits in a dark room and does nothing but that all day long."

Hodkinson emphasizes that the more specialized an external function is, the less sense it makes for a firm to engage in it. It's not really appropriate, for instance, for Goodman and Carr to be providing outplacement training to employees. "We're not providing the best service to our people by trying to do that ourselves — that's not our business. That's somebody else's business."

Hodkinson says that law firms have come to recognize that they're running businesses, and that, while lawyers might be great at lawyering, "they may or may not have expertise at other management functions." It just makes more sense, she says, for firms to utilize the expertise that other people and organizations can offer.

Ultimately, outsourcing is part of a larger shift in which firms are thinking seriously about how they can most efficiently manage their businesses. In future, says Michael Harrington, chair of the partnership board at Stewart McKelvey Stirling

Scales in St. John's, firms will have to ask themselves: "How do we cap or curb the steady growth in overhead in a manner that can still leave us as competitive as we can possibly be?"

Risks and hidden costs

Outsourcing is not, however, a completely risk-free option. Wendy Gross, a partner with McCarthy Tétrault LLP's Technology Law Group in Toronto, stresses that all outsourcing arrangements come with at least two specific risks. "By outsourcing," she says, "you're relying on a third party whose business interests are not completely aligned with yours."

Moreover, outsourcing can often translate into "a loss of internal expertise," as well as the loss of the "institutional understanding of a function," says Gross. This means that when the outsourcing relationship ends, or if a firm decides to switch to a different third-party provider, the resulting

transition might be extremely difficult.

Ruth Wahl, chair of the research team at Ogilvy Renault LLP in Toronto, notes that there are hidden costs to outsourcing as well. As an in-house research lawyer, Wahl notes that she has ready access to the "water cooler" effect — the minute-to-minute awareness of what's happening with a firm's thinking and strategy on a file — and that this information would be lost if the research were transferred to a third party.

Moreover, as an insider, Wahl is able to conduct her own factual investigations and review entire files. That access allows her to draw her own conclusions about what research needs to be done and prevents complex files from heading off in the wrong direction. And when work is kept in-house, a lawyer is free to discuss files with colleagues without breaching privilege or confidentiality.

Outsourcing, especially in IT, can also risk changes in firm culture. "Lawyers need a very tailored solution," says Jensen. "They don't want to have to speak to someone on the phone who doesn't have a fairly good understanding of their specific area of law, and they don't want a generic level of service."

And if a call for IT support goes to an outsourcer in

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Finding a virtual assistant

By Edward Poll

One result of increasing client pressure for greater value and increased efficiency in the legal services cost structure is the growing popularity of administrative service outsourcing. One option for sole practitioners or small firms is a virtual assistant (VA).

VAs are legal clerks or other administrative specialists who work offsite and online, creating work product to your specifications and tailored to your practice. As an independent business owner, the VA is neither an employee nor a subordinate — he or she more closely resembles an accountant or any other business consultant. They become familiar with your practice and attuned to your business needs.

Virtual assistants should be selected like any other professional service provider. Such criteria as an informative and well-constructed website, a business track record stretching at least three years long, and adequate professional references should be given.

Conduct an interview, in person or by telephone, to ensure that the VA has the necessary technical sophistication. Specify the professional qualifications you want — say, skill at preparing documents for court proceedings, or an ability to manage client files. A virtual assistant should be able to do the work offsite, using software and e-mail capabilities that are compatible with yours, with a viable cost structure that you can accommodate.

VAs should not require such constant and extensive supervision that they become *de facto* employees, subjecting you to all the legal requirements that employers must meet. Note also that a VA relationship is different from that with a temporary employment agency, which provides more basic clerical assistance without developing an integrated working relationship.

Knowing what your needs are and what it takes to meet them is essential to finding the ideal VA outsourcing solution. Remember that your goal is to make things better for your clients and more efficient for yourself. ■

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Charlotte or Bangalore, the specific needs of the lawyer in Montreal or Calgary might be overlooked. "They're not going to know it's Dick Jensen on the 27th floor. It's just going to be, 'You're a user in this building.'"

These risks are real, but Friedmann emphasizes that "there are risks no matter how you do a task." He notes that managers, particularly in the law, often say, "We can't do this new thing because it might not work." But their unstated assumption is that "whatever they're doing now is working well. And that's an empirical question."

Core business focus

The interesting thing about outsourcing is that it allows firms to focus on their core business while raising questions about what that core business actually is. For Friedmann, "there is no absolute clear-cut line" about what functions should or should not be outsourced.

With rainmaking and substantive legal work being delegated by firms in the U.S. and U.K., and with traditional legal functions such as research and document review being outsourced in Canada, the dividing line between core and non-core functions is growing blurred.

And the next wave contains the once-unthinkable possibility that core legal work itself will be outsourced. Large corporate clients are already sending some jobs to less expensive law firms in smaller towns throughout the U.S. and to law firms in India (see "Over the horizon," *National*, June 2006, p. 22). Law firms themselves eventually will follow suit, because a lot of legal work, like other kinds of service, eventually finds its lowest price point.

But even apart from this more radical development, law firm outsourcing will continue to grow. Every third-party provider contacted by *National* for this article reported increases in business: ZSA is now working with almost all large and medium-sized firms in Canada, while OnPoint Legal Research is expanding to include witness interviews and file summaries, and IntelliTeach has seen its growth double twice in each of the past two years.

Law firms used to think that no one else could understand them, and that their cultures were too unique to allow for partnerships with third parties, says Hodkinson. This attitude

"is starting to fall away." Managers and senior partners are beginning to realize that, in the same way that they provide expertise to clients, outside organizations can bring expertise to them.

"It takes a long time for mindsets to change," she says, "but that, I think, is what's happening." ■

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