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**The Evolution of Law-Related Knowledge Management in
North America – Opportunities for Law Librarians**

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Knowledge management (KM) in its current form has existed as a formal discipline within business management for around 20 years, enabled in part by the availability of technology that makes it easier to capture and organize value-added information.¹ Within the legal industry, formal knowledge management has existed for a similar period of time in the United States,² with KM in the Canadian legal industry developing more recently, making its first significant appearance in Canadian legal literature just over a decade ago.³ In the United Kingdom, many would agree that large U.K. law firms have led the field in KM for a number of years.⁴ Within law firms, most early law-related KM focused on helping lawyers “work smarter” by tapping into their tacit and explicit knowledge. By mentoring junior lawyers and participating in continuing legal education, lawyers were leveraging their “tacit” knowledge. By recycling precedent agreements and legal research, for example, lawyers were leveraging their “explicit” knowledge.

While it is overly simplistic to describe early law-related KM as training lawyers or harvesting and organizing precedents and research, such a description does describe the core of early KM activity in law firms. However, law-related KM has evolved, and depending on the law firm or organization, law-related KM can mean different things to different people. In what I recently described as the “7 faces of legal knowledge management,” I see law-related KM as

¹ Wikipedia contributors, “Knowledge management,” *Wikipedia, The Free Encyclopedia*, online: http://en.wikipedia.org/wiki/Knowledge_management.

² An early use of the phrase “knowledge management” in the American legal literature was by Robert L. Oakely in “Report on the Meeting of the Library of Congress Advisory Committee” (1988-89) 20 AALL Newsl. 258.

³ See Joyce Hampton, “Lawyer Breaks Glass Ceiling in High-Tech Industry” 18(5) *The Lawyers Weekly* (5 June 1998).

⁴ One of the leading books on law firm KM is by British knowledge manager and author Matthew Parsons in *Effective Knowledge Management for Law Firms* (New York: Oxford University Press, 2004).

evolving into a potentially wide range of related activities depending on the law firm or corporate/government legal department:⁵

1. Document / Records Management
2. Precedent Development
3. Legal Research / Intranet Content Delivery
4. Professional Development / Training
5. Litigation Support
6. Practice Management
7. Client-Facing Initiatives / Alternative Fee-Billing

I propose to briefly review each of these 7 faces of legal knowledge management with a focus on the role that law librarians can play in furthering law-related KM, a role that I think has been both under-appreciated by lawyers and insufficiently leveraged by law librarians. My goal is to identify law-related KM activities for law librarians and to make a call to arms for colleagues to be more actively involved in the evolution of law-related knowledge management beyond any important but traditional library and legal research role.⁶

1. Document / Records Management

If law-related KM includes the task of providing “support for faster, more effective legal services to clients” by “capturing, organizing, updating and making available explicit legal knowledge content (in the form of precedents, research, and best practices checklists),”⁷ then document management plays an important role in helping in this process. Most law firms or legal departments

⁵ Ted Tjaden, “The 7 Faces of Legal Knowledge Management” in *Law Tech Canada: Exploring New Frontiers in Technology Solutions* (Toronto: Insight, 2009) (16 November 2009). Available online: <http://www.slaw.ca/wp-content/uploads/2009/11/Tjaden-The-7-Faces-of-Legal-KM-LawTech-2009-November.pdf>. I have borrowed heavily from my “7 faces” paper in this current paper.

⁶ In this paper, my reference to opportunities for “law librarians” should not be taken to exclude opportunities for library technicians and other persons working within the law library or other non-lawyers working within a Knowledge Management department. Opportunities exist in law-related KM for a variety of persons with appropriate skills, regardless of job title

⁷ *Ibid.* at 7-8.

have some form of document management in which they keep their clients' documents, documents that can then be harvested and recycled as precedents, used to develop checklists, or collected as research work product.⁸ Law librarians have an opportunity to apply a number of their standards skills in connection with their organization's document management system:

- **Taxonomies:** There are many advantages of a document management system having a good taxonomy for the way in which documents are profiled or described, starting from the creation of standard folders for client matters (e.g, Accounts, Correspondence, Transaction Documents, Research, and so on) and including the creation of standard classes and sub-classes of types of documents. Good document profiles make subsequent retrieval by browsing or searching that much easier.
- **Naming conventions:** Related to taxonomies is the need for organizations to have good naming conventions for their documents (since most "Description" or "Title" fields in document management systems are free-text fields). Librarians are also well-equipped to develop such conventions for their organization.
- **Search guides:** Since one of the bigger challenges for lawyers is being able to retrieve information from their document management systems, librarians are also well-poised to develop good search guides that set out the various Boolean operators and other techniques for finding information.
- **Evaluation of technologies:** Librarians are also generally well-equipped to evaluate database technologies and can play an important role in working with the firm's or organization's IT department in determining which technologies are best-suited for document management or other KM initiatives.

⁸ The recycling of agreements as precedents has in fact be recognized (and implicitly endorsed) by the Supreme Court of Canada in the following comments of Binnie J.: "Recycling precedents is the life-blood of corporate law practice. A document prepared for Client A is part of the lawyer's work product and may go through numerous iterations in the service of other clients. The practice of law would be hopelessly inefficient and costly for clients if transactional documents had to be reinvented rather than customized." See: *Strother v. 3464920 Canada Inc.*, 2007 SCC 24 ¶ 111.

Likewise, although records management tends to not necessarily be under the direct control of knowledge management departments, the way in which law firms or legal departments control the life cycle of their records – from file opening to file closing and destruction – greatly impacts risk management, one of the 7 faces of law-related knowledge management discussed below in item 6. Who more so than librarians trained in information science are better placed to take a leading role in law firm or legal department records management? Most law firms and legal departments will readily admit they are not giving records management the treatment it needs and lack sufficient wherewithal to improve the situation. Law librarians are trained – or can easily train themselves – on issues of best practices in the handling of records and document retention schedules, and I see records management as a vastly under-tapped opportunity for law librarians within their organizations.⁹

2. Precedent Development

Although the drafting and annotation of model or precedent agreements often requires the skills and experience of a seasoned deal lawyer – skills and experiences that even most law-trained law librarians do not have – there is still a strong role for all law librarians to play in how law firms or legal departments harvest, organize and update precedents. For internal precedents, law librarians can help organize and profile precedents to improve browsability, an important task since keyword searching for precedents is not always the most effective way of finding precedents, especially where there may be a series of related or supplementary documents that are easier to understand when viewed together in a folder. For external precedents, many lawyers and students may not always be aware of the wide variety of materials available online by subscription¹⁰ and from print treatises on substantive areas of law.¹¹ As such, although precedent

⁹ There is a relatively well-defined literature dealing with records management, particularly as it impacts law firms or legal departments. See, for example, any of the following resources: Bryan Finlay, *Electronic Documents: Records Management, e-Discovery and Trial* (Aurora, ON: Canada Law Book, 2010); George C. Cunningham & John C. Montana, *The Lawyers Guide to Records Management and Retention* (Chicago: ABA, 2006); Jean Barr et al., *Records Management in the Legal Environment: A Handbook of Practice and Procedure* (Lenexa, KS: Association of Records Managers and Administrators, 2003); and Ronald M. Anson-Cartwright, *Records Retention: Law and Practice*, looseleaf (Toronto: Carswell, 1989).

¹⁰ Some of the online “forms and precedents” subscription services include: *Canadian Forms and Precedents* (LexisNexis Canada, print and online); *Williston & Rolls Ontario Court Forms* and *British Columbia Practice*

development is often thought as being in the realm of deal lawyers, there is a role for law librarians in precedent development.

3. Legal Research / Intranet Content Delivery

Of the 7 faces of law-related knowledge management, this aspect – legal research and intranet content delivery – is at the core of what librarians do, so not much needs to be said at a conference of law librarians on this aspect. However, in being one of the first in Canada to formally merge a separate Library Department with a separate Knowledge Management Department into a unified department within a major law firm, I strongly believe in the formal integration of library and KM services. When integrated, such a department becomes a “one stop shop” for information, whether internal information from within the firm (such as internal precedents, checklists, or research memos, for example) or external information (such as research on primary or secondary sources of law). For law librarians who are currently isolated within their firm’s or organization’s administrative hierarchy, there are advantages to consider reaching out to align yourselves with the KM Department.¹²

Because so much of law-related information is hybrid (between print and online or both), law librarians also have an important role to play to organizing access to both internal and external research and law-related resources. As such, HTML and web design skills remain critical for all law librarians since many law firms and organizations are using software such as Microsoft SharePoint for their intranet to make this information available. Law librarians therefore need to be taking the lead in such areas within their organizations. And to the extent that most primary sources of law (case law and legislation) are available online along with many secondary

(LexisNexis Canada, print and online); *O'Brien's Forms and Precedents* (Canada Law Book, print and online); *Litigator* (Westlaw Canada); *Warrens' Forms of Agreement* (LexisNexis, print and online); and various sources on Westlaw. The Practical Law Company also offers a subscription service for commercial law-related precedents aimed at either UK lawyers (<http://uk.practicallaw.com>) or US lawyers (<http://us.practicallaw.com>).

¹¹ Although there are the fairly obvious print-only sources of precedents (such as *Carswell's Forms and Precedents: Corporate Precedents* by Thibault and Trottier), it is worthwhile for librarians to track for their users those print treatises that also contain forms (e.g., *The Law of Confidential Business Information* (Canada Law Book) by Fairbairn and Thorburn contains an appendix of useful precedents relating to confidential business information and many lawyers or students might overlook such treatises as also being sources of forms and precedents).

¹² Other departments within a law firm or organization where there are natural affinities with library and KM include Marketing, Professional Development and Information Technology where, even if there is not formal integration, there is great value in ensuring good communication among persons within these departments.

resources also being available online by subscription (e-books, journals, encyclopedias and various reference tools), the ability to “deep link” to such resources using online research guides is invaluable.

In addition to organizing information, law librarians have an important role in filtering information to minimize the risk of lawyers being subject to information overload. The ability to push out information via RSS is one useful technique. In addition, law librarians are well-equipped to do media and legislative and case law monitoring using a variety of free and subscription services. To the extent that law librarians have the time to review and package such current awareness information before it is sent out, users are very appreciative knowing that the information they are receiving has been vetted for relevancy.

4. Professional Development / Training

Although there is no guarantee that all law librarians are good trainers, the reality is that most are since training is a big part of what we do. Since the “tacit” knowledge inside lawyers’ brains is often the most valuable knowledge in the “knowledge management” equation, and since tapping into this knowledge is always a challenge, training of junior lawyers and students is a very effective means of transferring knowledge. Increasingly, law firms and organizations will be looking to Web 2.0 and video technologies to capture continuing legal education (CLE) training and make it available for later use (especially as CLE becomes mandatory in most jurisdictions). Law librarians are therefore well poised to assist in this knowledge transfer through supporting internal continuing legal education CLE training of lawyers and students and developing online guides and training materials that institutionalize the training and knowledge content. In addition to supporting internal CLE training, law librarians can easily make available external CLE materials to supplement in-house training.¹³

¹³ In Ontario, for example, AccessCLE provides online access (for a fee) to a large number of CLE papers from Law Society of Upper Canada seminars – see: <http://ecom.lsuc.on.ca/home/accesscle.jsp>. There are currently around 2,500 seminar papers available ranging across 12 different practice areas or topics. The *Canadian Legal Symposium Index* on LexisNexis Quicklaw (1986 to current) is also a great resource for indentifying CLE papers by topic.

5. Litigation Support

Although litigators will often have their litigation precedent needs met under activity 2 described above (Precedent Development) and their legal research needs met under activity 3 above (Legal Research / Intranet Content Delivery), the prospect of e-Discovery and litigation support is adding a new area for possible law-related KM Support. The reality is that it will be litigation law clerks (or paralegals) who will do the lion's share of e-discovery work. However, law librarians also have a role to play in several areas. Since a big part of e-discovery is searching electronic documents to find relevant or privileged documents, experience with online searching is an important element as is the preliminary investigation and evaluation of e-discovery tools, things that most law librarians should be experts at doing. In addition, in Canada at least where e-discovery is more of a recent development, many lawyers remain uncertain how e-discovery will impact their clients and their practice. As such, most litigators would welcome their law librarians monitoring e-discovery case law and trends.¹⁴

On the issue of litigation precedents and research – an important aspect of litigation support – I will have the pleasure of demonstrating at the Innovation Gallery at this conference an online guide we created at my firm called “How to Plead: Essential Elements.” This guide is a good example of the one stop shopping for law-related information earlier described to the extent it combines in a single online guide access to internal and external litigation pleading precedents and internal and external research on pleadings-related issues.

Although, some may regard it as being unnecessary to isolate litigation support as a separate element or “face” of law-related KM, the reality is that litigators – compared to business lawyers – have different sets of documents, research, timelines and other issues. If a firm or organization has a strong litigation focus, it can therefore be advantageous to treat litigation-related KM separately from corporate/commercial KM.

¹⁴ One excellent recent resource in Toronto is the blog from Fraser Milner Casgrain on the new amendments to the Ontario Rules of Civil Procedure, many of which focus on e-Discovery – see: <http://www.ontariorulesofcivilprocedure.com>.

6. Practice Management

The last two facets of law-related KM to be discussed – practice management and client-facing initiatives – would on their face seem to involve law librarians the least of all KM-related activity. However, this assumes a traditional view of the law librarian in a time when law librarians are – or should be – more entrepreneurial and results-focused. The practice management element of KM provides opportunities for law librarians to work more closely with management and the operation of the firm or organization in a number of ways, including such things as developing firm standards for the “look and feel” of documents, supporting the management of conflicts of interest and ethical walls and other risk management issues, and conducting competitive intelligence on competitor law firms. As mentioned in my earlier paper,¹⁵ it is always important for anyone doing legal KM to remember that we are not implementing processes or projects for the sake of something to do – it is about clients and trying to ensure that any KM initiatives are implemented with the bottom line – increase revenues, decrease expenses, promote lawyer and employee retention all in the goal of meeting client needs, all important things that are constantly in the minds of upper management. By aligning themselves with such goals, law librarians have an opportunity to imbed themselves in the important administrative and practice management functions of the firm or organization.

7. Client-Facing Initiatives / Alternative Fee-Billing

Although law-related KM tends to focus inwards towards the internal value-added information and knowledge within the firm or organization, there is an increasing trend – if not need – for law firms to focus on the client and how to leverage their KM initiatives to more directly benefit clients. Once again, there are opportunities here for law librarians, including gathering business intelligence on clients and industries to help lawyers to better understand their clients and markets or working on virtual deal rooms or extranets to provide access to information for clients. In addition, but subject to any restrictions on licenses to online

¹⁵ *Supra* note 5.

subscriptions, law librarians in law firms should discuss with their lawyers the possibility of offering the firm's library (and KM) services to corporate clients who lack such resources. There is also the need – with clients increasingly being in charge of the lawyer/client relationship¹⁶ – for law librarians to anticipate trends such as alternative fee billing,¹⁷ legal project management,¹⁸ and other quality control measures (such as lean Six Sigma) and offer to senior management to take a lead role in implementing research into these areas for management.

Conclusions

To the extent that law-related KM continues to evolve, it is important for law librarians to adapt to and take advantage of these changes. Depending on the firm or organization, law-related KM may involve aspects of document or records management, precedent development, legal research and intranet content delivery, training of students and lawyers, litigation support, practice management and client-facing initiatives. Law librarians who integrate KM into their daily work routine will not only add interesting challenges to what they do but will also increase the amount of opportunities to fully leverage their skills and positively impact their firm's bottom line.

¹⁶ See, for example, the recent March 22, 2010, report by Eversheds LLP called "Law Firm of the 21st Century: The Clients' Revolution," available online by request at <http://www.eversheds.com>.

¹⁷ See, for example, Mark A. Robertson & James A. Calloway, *Winning Alternatives to the Billable Hour*, 3d ed. (Chicago, IL: American Bar Association, 2008). See also: The Alternative Fee Lawyer Blog (<http://thealternativefeelawyer.blogspot.com>).

¹⁸ See, for example, Stephen B. Levy, *Legal Project Management* (Lexington, KY: DayPack Books, 2009).

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