

Personal injury lawyers - changing the legal paradigm

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Few areas of legal practice are more suited to automation than insurance and personal injury litigation. There are two reasons for this :-

- 1 the process is focussed upon clearly defined outcomes (win / lose, quantum awarded)
- 2 the process, although reasonably complex, can be defined as a series of "if then else" scenarios each triggering a particular event or document construction.

In fact, any legal process that satisfies these two criteria is a candidate for *process* automation. Conveyancing, the preparation of wills, debt recovery and liquidation proceedings are further examples. In each of these areas, innovative firms are leading the way with automated document generation and task management solutions. So why is it that many firms continue to resist the opportunity to automate process?

Outcome vs process

Perhaps the reason for this resistance is best summarised in a question recently posed by a lawyer attending one of our technology seminars - "Why should I embrace technology when it just means I'll be working faster which means I'll be charging less?"

Is our profession so focussed upon justification of the process that we have forgotten why we are here?

The old adage "don't let the process overtake the outcome" comes to mind. It would seem that many lawyers have become so obsessed with revenue streams based upon the *process*, such as time recording, they have lost sight of the *outcome* the client is trying to achieve.

What do clients care whether it takes their lawyers 15 minutes, 30 minutes or 10 hours to deliver a the result they are after? Nor do they care whether five staff

with cumbersome typewriters or a single operator with high powered pentium performs the grunt work in the back room.

What they do care about is the outcome. In personal injury litigation this is the liability decision and quantum award, and this is where their perception of value is focussed.

The plaintiff lawyer has responded to this challenge with a contingency based charging structure. The "why should I do it faster because I'll be charging less" philosophy is, therefore, quite inconsistent with the mindset of a plaintiff lawyer.

Plaintiff lawyers are absolutely outcome focussed. They have to be! The end result is paramount and the *process* needs to be extremely cost efficient. There is no time based billing to cultivate inefficiency and there is a real incentive to minimise the time and costs involved in processing the work.

Process automation

This is why plaintiff lawyers are typically more willing than most to investigate technology solutions. Quite simply, they need to make the process as cost efficient as possible because inefficiency in the process directly reduces their profit margins.

So too, conveyancing, wills and debt recovery processes in successful law firms need to be absolutely outcome focussed and streamlined. This is the only way they can compete. Clients now shop around for the best "quote" for these services and they will often take the cheapest option available. Even corporate clients are seeking quotes for bulk processing through formal tenders. Firms that cry "there is no profit in this for me" have often failed to adequately automate routine tasks.

Indeed, many lawyers have now

begun to acknowledge the need for technology, however, the rationale varies greatly from firm to firm. There are those who use it to reinforce traditional cost structures and to entrench outmoded practices and there are those who use it as a tool to re-invent and re-define legal process with a focus upon the outcome. Many plaintiff lawyers fall into the latter category. They are inclined to ask again and again "Is there a better way to do this?", they see technology as a tool that supports constant process improvement and, unlike many of their colleagues, they don't get sweaty with excitement at the thought of automated time billing software!

Re-inventing the "product"

So let's take this concept a little further. A focus upon the outcome forces us to clearly define our product in a very tangible way. What are we trying to achieve and what exactly are we here to produce?

Professor Richard Susskind in his text "The Future of Law" provides some premonitions about our industry and the changes it will see over the next decade or so.

One of his major predictions is that the current legal paradigm involving the provision of one on one advice will gradually shift to involve the dissemination of information from one to many.

This shift in focus will, he suggests, be facilitated by broad uptake of new technologies. Technology, particularly on-line technology, will enable high quality information to be disseminated by law firms moving ever so slowly into the space traditionally dominated by legal publishers. On-line technologies will become a direct distribution channel and firms that are willing to create their own tangible products will use these mechanisms to find new markets and leverage their skill set.

Indeed, a number of law firms have already identified the opportunity to commercialise their knowledge in a new way by creating a packaged commodity.

Many have heard about the national firm that prepared a Taxation Law CD ROM for its key clients as a subscription service some years ago. Clients could browse the content, search for key concepts and print out articles, all without incurring time based legal fees. The fee structure was entrenched in subscription revenue.

Perhaps the most potent example we have seen in recent months, however, is the law firm specialising in plaintiff personal injury litigation that is launching an on-line service to deliver quantum assessment information to other PI lawyers. The service will be updated daily. It includes powerful search tools and plaintiff profile facilities. The service can be located at www.themis.com.au

This is a firm that has truly leveraged its skill set to define a new product for a new market that even comprises its com-

petitors. Professor Susskind suggests that this model - specialist lawyers servicing other lawyers - will become increasingly prevalent as our profession adapts to meet new commercial realities. Is it any surprise that plaintiff lawyers are among the first to actually do it? ■

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File management and maximising party/party costs

The humble file note

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This article discusses a simple strategy which can maximise costs on a party and party basis. Whilst this area of practice is not the most onerous or complex, it is an area which is often overlooked in the face of other work pressures.

The starting point to recovering costs both on a party/ party basis is good file management. A file must be well organised in order for the costs to be recoverable. The starting point to a good file management is the file note.

The real nemesis of the busy practitioner is the need to adequately file note work. Time and time again we have all been told that we must contemporaneously file note every transaction. The usual answer is - who has the time? Perhaps the question is better asked - Can you afford not to?

For example, under the New South Wales Assessment system, a Costs Assessor has a wide discretion to allow or

disallow claims made for costs. The difference between having costs allowed or disallowed may be the evidence provided by a file note which substantiates the claim. Similarly, the file note can also be used as an effective tool to substantiate verbal communications between practitioners and between practitioners and their clients.

Deciding what to file note within time constraints can be difficult enough. In order to begin to adequately file note you need to have a system in place. There are numerous ways to prepare file notes, on computers or the hand written file note. With written file notes, design a standard pro-forma file note for use throughout your office. File notes must also be kept in the file. If you do not already have a system in place, implement one through consultation with partners and staff. Obviously the system that you choose must be as practical as possible or

it will ultimately fail. Call a meeting and ask all your staff members how they record and what they record, decide what is most appropriate for your staff and make the necessary arrangements for its implementation.

Most staff members will file note regularly if they know what they need to file note and why they should be doing it. In this respect it is advantageous to discuss the positive benefits of file noting as well as the consequences of failing to make file notes:-

- someone picking up your work when you are ill or on vacation will not know what you are up to in the matter;
- you will forget your own work - how many of us can remember all the phone calls we made yesterday? What chance have we of remembering the attendances that took place months or years ago?



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