

The legal industry is rife with talk of the need for change in order to survive. This paper calls on legal educators, professionals and the judiciary to lead a change in order to thrive. The legal industry is in a state of flux: it is no longer enough to excel at the practice of law, the legal industry must shift its focus to the business of law. How each organisation embraces this change, and the future however it may look, is largely up to the individual organisations to consider and determine. Like any industry, how you do what you do will set you apart and set you up for success, failure, or somewhere along the line in between. But how is this to be done? Who should take charge initially and in the long run to implement and deliver the kinds of education and training that will ensure young lawyers are fit to practice in a commercially viable manner that ensures access to justice for all now and for generations to come?

Regardless of which segment of the legal industry you work in, the one consistent resource that all lawyers and law students have access to is legal information professionals: or perhaps more commonly, and fondly, known as law librarians. Law librarians exist in our firms, courts and universities and are a prime and untapped resource for bridging the gap for students, law schools and law firms between study and practice, giving a well rounded education preparing students and lawyers for their lives as a lawyer, a professional, an advocate, a member of the legal industry and a member of society in the real world.

Despite the ignorant and often touted idea that librarians are redundant, as everything a practitioner needs is now magically available online, legal information professionals are already ensuring their survival and increasing

their value to their organisations and the legal industry as a whole by expanding the services they deliver to their organisations by looking beyond the library. There are a number of ways in which legal information professionals can drive commercial and business success in the twenty-first century by identifying opportunities, driving innovation and implementing change within their firms, court services, and universities. This paper looks at the evolution of legal practice so far and how law librarians can contribute and lead the paradigm shift that is required for the future.

### **The history of lawyers**

It may surprise readers to learn that the practice of law is the oldest profession in the world (Frank, n.d). Priesthood is often thought to hold this title, but in the true sense, it is not a profession, but a calling. (Frank, n.d) Lawyers even predate doctors, as medicine was considered a trade and practiced almost exclusively by slaves in Ancient times (Frank, n.d). If we fast forward from the ancient times of Augustus and Montesquieu (Frank, n.d), we find ourselves in 12<sup>th</sup> and 13<sup>th</sup> century England where the Magna Carta is born and the establishment of the Inns of the Court facilitated the clergy with the development schools of law. Whilst these schools were quickly abolished by Henry VIII, the gathering of lawyers, judges, professors and students had produced a guild that introduced organisation and structures. (Frank, n.d)

The formal study and scholarship of law in Europe dates back to the 11<sup>th</sup> century; Cambridge and Oxford law schools can trace their history back as early as the 16<sup>th</sup> Century. Formal legal education in America was not common until the late 19<sup>th</sup> Century; however, both Columbia University and

the University of Pennsylvania were providing legal education from the turn of the 19<sup>th</sup> Century. Education in both jurisdictions combined formal study, private education and extensive clerking or apprenticeship requirements.

Law firms started to appear and grow from one to five lawyers in the late nineteenth century; by the twentieth century, large law firms were emerging. Smigel's seminal work (Nelson, 1988) tracked American firms in the 1950's and found barely 100 large law firms in America, but by 1984 this number had more than doubled. This history of the profession gives a clear insight into how the modern law firm evolved. The legal profession is inherently hierarchical: in its scholarship, in the courts and in its professional practice. Experience and knowledge are the most valuable commodity, seniority is rewarded and respected.

Scholarly optimism in the 1960's led to the growth of the legal profession and the birth of the corporate law firm in the later decades of the twentieth century. The belief that the elite of the legal profession could drive not only legal but social change was realised in the late twentieth century, in particular through the influence and growth of large law. The corporate law firm was not only a commercial success but was committed to civic and professional values and they succeeded in and continue to prove their capacity to contribute to the shaping of legal outcomes, legal rules and legal procedures. (Nelson, 1988)

### **The current state of affairs**

Perhaps the only thing more impressive than the rapid rise of the corporate law firm in the late twentieth and early twenty-first century is its spectacular

decline. The very same lawyers previously dedicated to the establishment and growth of the commercially successful large corporate law firm are now lamenting a model that is rapidly becoming commercially unsustainable and is undermining and eroding the fundamental principles of legal process, social justice and judicial impartiality.

June 2015 marked the 800th anniversary of the Magna Carta: the foundation of justice and liberty in the modern world that establishes no man is above the courts that uphold the law of the land, not even the King. And yet in 1996, the Hon Justice Michael Kirby (1996) questioned the presence of billable hours in a noble profession, where the duty of the profession should be to the court and to the client. As the economic pressures have continued to grow exponentially over the last twenty years, it is increasingly apparent that role of the advocate is taking a backseat to the need for commercial viability. The commercialisation of law is eroding the court's supreme position, making profit their ultimate master. Increasingly corporate lawyers are finding themselves to be mere functionaries, subservient to the dictates of their corporate clients (Bagust, 2013).

In 2017, the legal professional finds itself at a crucial juncture: how can law firms and lawyers co-exist?

### **Shifting the focus from the Practice of Law to the Business of Law**

The dialectic leads to a new hybrid – the business of law.

Legal practitioners need to reconcile their professional requirements for expertise, esoteric knowledge, autonomy, high ethical standards, status

achievement and self-regulation with the reality that in the current market they must sell their services just like any other businessperson. (Feinberg, 2011).

The debate over the impact over the billable hour is verbose and too expansive to cover in the paper. It is important to note that despite the loud and constant rhetoric to the contrary, whilst some new models are enjoying varying degrees of success, overall 90 per cent of legal work is still awarded to firms following the traditional model (Tebbel, 2015). It is important to understand that the billable hour is here to stay, at least for a good many years to come and lawyers and law firms need to understand how to work with it and how to move away from it when appropriate.

Commercial success doesn't come from winning cases, it comes from making money. It doesn't matter how good a firm legal work is unless a significant amount of profit is made the law firm and the lawyer will not survive in today's market. And when significant amounts of money aren't coming in, law firms don't just struggle, they don't just tighten their belts, they don't just go bankrupt – they completely collapse and the destruction affects clients and the community at large. (Morley, 2015) The literature suggests that the real issues that cause successful law firms to collapse in months, or even days, are high overheads (Tebbel, 2015), expensive top-end premises (Tebbel, 2015), poor client relationship management (Tebbel, 2015; Morley, 2015) and partner run (Tebbel, 2015; Morley, 2015). *Partner run* operates through a self-reinforcing spiral of withdrawal: when one partner leaves, it damages the firm, so another leaves, then another and another, each exit

causes damage to reputation, profit and staff retention across all levels in the firm. (Morley, 2015)

The business of law facilitates professional practice alongside profitable and sustainable business practices because it shifts the focus away from pure billing profits, which create and encourage many of the poor practices which cause decline or collapse. The business of law model requires lawyers to expand their professional knowledge base, and for the partners to consider the many factors that it takes to run a successful business and not simply focus on practicing law. Lawyers need to learn to work with professionals from across the legal industry and within their own organisations, including information professionals, business consultants and experts, managing directors, project managers and marketing agents to develop skills such as effective client management, research, brand creation and business and people management.

The business of law as a concept emphasises profit-making through more complex business models and the development and use of soft-skills and not through inefficiency and overbilling. (Feinberg, 2011) The biggest consumers of legal services in today's markets are sophisticated clients, repeat users who are informed in both substantive and procedural law. (Feinberg, 2011) Sophisticated clients are better positioned to evaluate levels of service and value for money and will not tolerate inefficient processes that raise costs and create the potential to erode or violate trust. (Feinberg, 2011) The business of law model requires effective and informed leadership at partner level, an understanding of industry trends and the ability to ensure the firm is able to respond quickly when necessary.

## **A Paradigm Shift - the role of the library, knowledge and information service**

The recipe for success clearly needs more than a mix of legal professionals and business professionals; it requires a blend of skills that is a true amalgamation and not symbiotic. Law librarians and information professionals are strongly positioned to drive this transition, and in doing so, prove once and for all their intrinsic value to the delivery of a better legal education in both universities and law firms. The two key ways in which the library can support solicitors and firms is by doing that which the library is already known for: the effective and efficient supply of information and the delivery of relevant and complex training. Information professionals are trained in their tertiary studies in research, client management, service delivery, project management, budgeting, negotiations, marketing; the library often becomes a business within a business in the modern age, with high and ever increasing demand for resources and support with money for staff and resources decreasing by the day.

Each organisation is different and needs to approach the business of law as an ideology, rather than an out of the box solution. The following points are not intended to be a checklist, but a list of possible ideas to start a think tank or dialogue within your organisation and across the industry as a whole. If you have legal information professionals in your organisation, discuss these ideas but also probe for details of initiatives that they themselves already have in place or initiatives that they believe could or should be considered. Bring professionals from across your organisation into this dialogue; bringing all of the departments in an organisation together ensures a broad and well-

considered approach to what the organisation needs and can and should deliver moving forward.

## **Look to the library – education and training for the Business of Law**

### **1. Due diligence support services**

It is not uncommon for legal information services to provide partial or full due diligence support services for the benefit of preparing advice to clients. Even if your library does not already provide this, there are plenty of free learning tools available to help students, practitioners and information professionals learn to interpret, analyse and make recommendations on income statements, records of accounts receivable and payable, balance sheets, tax returns, utility accounts, bank loans and lines of credit, audits, lease arrangements, intellectual assets, credit searches, historical information and stocks.

Partners, practitioners and students already trust the quality of the research and advice that comes from their information services, so use this to your organisations and the industry's advantage. The library should be proactive in its delivery of due diligence support services. This support may come in many different ways: providing formal and informal training on analysis and interpretation, preparing guides and circulating alerts, or offering research services to non-legal professionals. The library and business professionals in your organisation, particularly in law firms, are not held to the strict confinement of the billable hour, which in many instances gives them far more freedom to learn from each other and explore the ideas and

options available for training each other and collaborating on projects and initiatives, as well as rolling out cross-disciplinary learning and development in formal or informal study options.

These skills and services may not always be practical or accepted by the partnership, but at a minimum they ensure that development of business interpretation and analytical skills in your information staff and also ensures that your organisation promotes these skills and services to your students, fee-earners and senior management teams. This demonstrates that business knowledge is not only vital, it is readily available and supported by academics and professionals within the organisation. Raising an awareness of the skills and then demonstrating their value through practical application is the crucial first step to shifting the focus. Ultimately students and young lawyers may not undertake the training or have the opportunity to put the skills into practice, but the very idea that they exist, are useful and are valued by the firm will be an important learning curve for practice.

## **2. White Papers and Seminars**

A white paper is an authoritative report or guide that presents a complex issue in a concise manner to help readers understand an issue, solve a problem or make a decision. It can also be used to propose and deliver a solution or innovation to your organisation or client that they were not even aware was needed.

The white paper format enables the professional and considered presentation of ideas by clients, management and senior partners, as

well as within schools and across the university and courts. The White Paper is especially useful when the idea or solution is controversial, challenging or the value is not immediately obvious. A white paper can be delivered with a presentation or an internal marketing program. But it can be also be delivered by email – to one person or many - or printed and left on someone’s desk: this may be the only way of getting to present your idea to a busy or unresponsive management team. Large change can be confronting, and delivering a paper gives the reader time to consider the idea which can have more positive results and greater buy in in the long run. A white paper, or any form of business report, is significantly different from an essay or exam, and learning to write in this style is crucial for students and young lawyers. One of the survey respondents from a government organisation cited the single biggest challenge in mentoring and supervising graduates and young lawyers is their complete lack of understanding of how to draft a memo or response that makes an actual point or presents a useable argument, it is especially challenging, almost impossible, to get this kind of work crafted in a timely and therefor commercially viable manner.

The white paper can also be used strategically, to stop bad ideas or solutions from reaching implementation for the organisation, the industry as a whole or for your clients. Preventing your organisation or client from making a costly financial, strategic or cultural mistake, may not take the traditional format of legal advice or opinion, yet in the modern market it is just as valuable and essential for lawyers to understand how to deliver this kind of information and advice to both

their organisations and their clients. Use these opportunities to teach lawyers how to understand the steps involved in making considered and complex business decisions, purchasing arrangements, cost benefit analysis and long term impact studies.

Requiring students and young lawyers to develop and present seminars is another way to prepare them for independent thought, time management, creative and interesting presentation skills and techniques, as well as preparing them for confident public speaking, a skill that will be required of them in meetings and in court. Insisting their presentation includes question time ensures they understand the need for comprehensive preparation and practice the ability to think and speak on their feet under pressure. The library can help facilitate the delivery of these seminars in both universities and firms as part of formal or informal professional development programs.

### **3. Law Schools and Recruitment Processes**

The legal industry is well aware of the disparity between where students are when they graduate and where they need to be to begin practice. "Closing the gap" is an on-going and important debate, but the challenge, particularly for academic law librarians, is the opportunity to teach and develop these skills. Legal research skills are vital for graduates, but law schools and academics are often reluctant to give up legal knowledge based units or lecture time. The *priestly eleven* are fiercely protected, and with pressure on law schools to provide shorter study periods and shorter overall degrees, expanding

legal education to include significant research and practical business skills training seems impossible.

However, the large emphasis that the legal industry places on academic performance and qualifications during the recruitment process has the potential to facilitate change in the law schools even if the schools themselves do not realise it. With more and more universities pumping out more graduates for fewer positions, future students will look to enrol in the law schools with the highest rates of graduate employment. As more and more firms begin to look for these business and commercial skills, the universities that offer these courses and well-rounded business ready graduates will become the universities of choice for both incoming students and employers.

The recruitment agents surveyed for this paper all agreed that business skills, often referred to as commercial skills, are valuable to law firms. However, whilst senior solicitors and new partners will be expected to bring both skills and a client base with them, it is not yet common for firms to stipulate these are necessary skills when hiring graduates and junior lawyers. Large law, in particular, look for academic excellence in legal subjects; those surveyed believed that their in-house programs, formal and informal, in place to teach and develop these skills in juniors are sufficient. A Human Resources professional from a mid-tier Australian law firm indicated that he looked for and valued these business skills, but the partners in his firm were focused primarily on the graduate applicants performance in core legal subjects. The current education system fails for this mid-tier

according to the recruitment professional as his firm does not provide access to business skills training and development programs. Non-legal firms looking to hire in-house counsel rate commercial training and skills very highly and expect that their new hires, junior and senior, will come with at least the basic skills.

This creates a catch-22: law schools won't teach these skills until they are proven to positively impact graduate employment. But law firms will not fully appreciate the benefits and insist graduates have these skills until they see them in practice.

For academic law librarians at universities not teaching these subjects, one of the most effective ways to see these skills included in future curriculums is to start offering the courses themselves or finding ways to facilitate the provision of these classes and training sessions from within other areas of the university. Generation Y is known to be, with Millennials predicted to be, over-achieving, socially responsible professionals who are keen for ways to accelerate their career progression. With an increasingly competitive job market, students will jump at the chance to gain extra skills and experience to add to their resumes.

There are a few universities already leading the charge, with a respondent from one US university indicating their law school already offers units in establishing a legal practice, accounting for lawyers, business planning, business lawyering and business law. These units have not been in place long enough to gauge their impact on graduate

placements, but the course titles alone indicate an advantage for any student who's curriculum vitae includes them. A respondent from a South Australian University indicated that many students now take on double degrees, with their second discipline being business related, such as commerce, management or marketing. A mid-tier human resources professional indicated that a double degree with a similar GPA is more valued than a standalone bachelor of law.

#### **4. Client Relationship Management and Legal Project Management**

Client relationship management (CRM) is more than just basic customer service and meeting deadlines, it is the active management of an organisation's interactions with current and future clients. It involves sales, marketing, customer service, value and high quality products: with the product for law firms being legal services. Each firm will have a different approach to client management; any new skills or systems need to be developed in line with the organisations core values and strategic plan. It is important that students and solicitors at all levels are aware of Client Relationship Management and Project Management as concepts and learn how to develop these skills. Law librarians are once again in an excellent position to promote these skills, as this is how we deliver our services to our clients, the students, academics and lawyers we work for: we are engaged, involved full-service providers of high quality resources, research and training to our clients. Promote CRM as a skill, circulate materials and resources, deliver training sessions and lead by example.

Legal project management, sometimes confused with CRM, is an emerging area of expertise for lawyers and legal professionals focusing in on the expert management of particular matters. Legal project management is about providing legal services, rather than just substantive legal work. It is about finding ways to deliver better value to clients, a better experience and a better outcome. Promote legal project management as a skill, circulate materials and resources, and deliver training sessions. Academic law librarians should consider delivering sessions to academics and students on this important skills. Firm librarians should evaluate if this is an area of expertise suitable for their library to provide and consider training courses, accreditation and delivering these service to their fee-earners for clients.

## **5. Working with Vendors**

The legal service suppliers and product vendors are a vital part of the legal industry, however they come from significantly different professional and educational backgrounds, including experience and qualifications in sales, commerce, marketing, procurement and client relationship management. As consumers of legal information products legal information professionals, law firm management and academics deal with sales, marketing and client support professionals regularly. In these dealings, we are exposed to excellent, average and poor service and project management from these professionals. Wherever possible, involve your students and young solicitors in these negotiations and exchanges to expose them to good and bad client service and management. Experiential learning is powerful and will prove a fast and effective learning and development tool. Expose your

students and solicitors at all levels to excellent and terrible service, and facilitate reflective thought processes and dialogue around the impact this had on them as a consumer and then help them to translate their learning into better experiences for their clients.

## **6. Collaboration**

Librarians are no strangers to the concept of collaboration. Legal information professionals are experts at sharing ideas, innovations, solutions, challenges and resources and this is a skill we should continue to leverage. Legal organisations, particularly law firms, can be extremely protective of their intellectual property and resources. It is our job, as educators and information professionals, to teach them the benefits of collaboration and sharing, as well as how to encourage and develop innovation and commercial advantage. Collaboration can be successfully achieved whilst protecting client confidentiality and the organisation's intellectual property.

Information professionals also need to work together to promote the business of law and develop the skills to lead the change. Professional development, resource sharing, solution sharing and facilitation of the dialogue around the paradigm shift will enable law librarians to sit at the forefront of change and become valuable ambassadors to their organisations, both universities and firms, and eventually the industry as a whole.

## **7. Involvement with professional development programs**

Continuing professional education is now compulsory for lawyers in Australia and this provides an excellent opportunity to include accredited training sessions and workshops on client relationship management, networking, legal project management and other business skills in on-going training and education programs. Encouraging students to deliver training to each other, or to attend training delivered by business students, is a cost efficient and low impact way of introducing this form of training during the students' time at law school. For training and education programs in firms, involve senior partners in the planning of sessions to ensure buy in across the firm and to ensure that the training delivered is in line with the firm's culture and business philosophies.

Young lawyers are often the most enthusiastic learners. Use this to your advantage and encourage the students and junior lawyers to attend a broad spectrum of formal and informal training in addition to accredited programs. This is beneficial as it molds the work practices of juniors at the beginning of their careers, which is infinitely easier and more effective than managing change in senior lawyers. It is also likely that senior lawyers will already possess the more basic business skills, developed organically through mentoring and experience so pitch formal training at a high level to capture their interest and ensure participation.

A respondent from Canadian law librarian working in a government library indicated that her organisation does not deliver the training in-house but it does encourage and support attendance by lawyers,

management and library staff to attend external corporate skills training including leadership, coaching and customer service.

## **8. Resources**

It is essential to make room in the library collection and budget for appropriate resources that will encourage and facilitate the broader knowledge and thinking that is required for a major shift in ideology to take place. These resources should be added to newsletters, alerts and current awareness services and integrate them with blogs and other promotional library and course materials.

## **9. Identifying and implementing local and international trends**

Current awareness has long been under the stewardship of the law librarian. In order to facilitate this paradigm shift, the information and trends we teach and track must go beyond the substantive law.

Students and lawyers at all levels must be taught the importance of and helped to make time in their working week to read publications that explore legal trends and industry movement in their local and international fields. Follow the trends in practice and look for ways to incorporate these into course materials or additional information and training opportunities for students. For firms, it is vital to create a dialogue or forum to share important developments or ideas with your senior management teams and offer to support and partner with all departments in the firm to introduce changes that will be valuable to your organisation.

For example, in Australia the appointment of CEO's and Practice Managers instead of the traditional managing partner model has begun. This new model recognises the running of a law firm requires a different skill-set. It also enables senior partners to stay focused on their clients and legal work without the pressures and interruptions of running a business.

### **Conclusion - Looking to The Future**

Libraries have always been, and always will be, a cost centre for any organisation. It is difficult to measure the value they deliver to students and solicitors, which makes them a target for budget and staffing cuts. However, despite the lack of obvious and tangible measures of their commercial success and contribution, law librarians continue to evolve as professionals and continue to develop structures and initiatives within their organisation and the legal industry as a whole that play a vital role in delivering value and increasing profits. The legal industry can learn a lot from law librarians, and should be utilising their skills, experience and enthusiasm to teach, train, guide and support students, universities, firms, courts and the legal industry as a whole as everyone moves together towards a new and different industry in the future. Just because you cannot count or measure a skill or contribution in a six-minute block, doesn't mean it isn't vital and necessary to your organisation: information professionals are well versed in understanding and finding ways to identify intrinsic value and contribution, a skill and process that is vital in the business of law mindshift. Kirby (1996) describes a tension between traditional law as a learned profession and modern business practices, but goes on to say that traditional practice is not the answer we need moving forward. Librarianship and libraries as we know

it have changed considerably over the last decade, some would say to a point that they are almost unrecognisable and yet the core values and services remain and continue to develop to meet user and organisational needs. As a profession, law librarians understand that it is not about weathering or surviving the storm of change, but embracing the opportunities presented by the fundamental and major shifts needed to support the legal industry in the modern world. We must all work together to lead and drive the required shift, to create a future for the legal industry that delivers social justice in a commercially sustainable model.

*[Examples of libraries and firms already putting these into practice have been collected by an email survey, sent to the Australia, Canadian, International and UK law librarians list and conversations with recruitment agents and solicitors based in Perth, Western Australia.]*

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