

Practice innovation

It's time to do different things ... and do things differently!



Innovation! It may not be the first thing most lawyers think of when it comes to practising law. But there are compelling forces at play today that challenge our traditional model of legal services and invite innovation.

Globalization inter-mingles cultures and different political, social and economic models, resulting in multi-dimensional communities – giving us clients with diverse needs, expectations and demands. New and disruptive technologies defy engrained principles of confidentiality, control and privacy while others automate processes and, to some degree, “think” for us. A proliferation of tools promote more instantaneous and transparent communication and collaboration. And very significantly, the many parties who pay for the ever-rising costs of legal services are growing intolerant of such costs and are just not prepared to continue to bear them.

What does all that mean for lawyers? It means that it's time to reset our model – to start thinking “outside the box” with different services, skills and tools.

Fundamentally, what clients want today is access to more *legal preparedness: they want to be educated and more “in the loop.” They expect more due diligence, best practices, prevention, compliance evaluation, and risk management.*

Clients want their legal counsel to be more proactive in guiding them, in educating them on rights and responsibilities, and providing practical information: They want lawyers to direct more of their resources to the purpose rather than simply the legalities of a problem or issue. They want initiatives and deals to reflect healthy business principles and practices, not just legal

perspectives. They want to avoid or contain problems at an early stage or possibly deal with problems differently when they arise through personal or business channels rather than legal ones. And today's tough economy is making them more focused than ever on the need to control the unprecedented legal spending of the past decade and ensure that dollars spent reflect the value delivered.

Legal preparedness – its many shapes

So what does legal preparedness look like? It has many shapes including:

1. general education and awareness,
2. preventive law,
3. compliance evaluation, and
4. legal risk management.

1. General education and awareness

Education and awareness of the law, and its interpretation and application in a particular context, are the underpinning of access to justice. Education makes law more accessible by making it understandable and relevant. It ultimately empowers the individual, the organization or the public, to identify and understand rights and entitlements, and duties and obligations. Technology has been a key driver in enabling access to information at a more detailed level but it is not alone. What follows are some examples of how to make education and awareness support legal preparedness.

What clients want: The bare facts you can't ignore

The diversity of your clientele makes it even more important to be vigilant in identifying and meeting their differing needs and expectations. Although these needs may be wide-ranging, most clients have the same fundamental expectations, regardless of the type of legal services that may require.

- Clients seek and retain lawyers because they have needs that are rooted in some aspect of the law.
- Sometimes, clients do not know what they need and look to us as legal advisors to provide them with this knowledge.
- Clients want information and services provided in context to their needs.
- Clients do not want to wade through information that they do not need.
- Clients want more control over the information and results that we as lawyers produce for them.
- Clients want more certainty around the results expected to be achieved as well as the costs to achieve them.
- Clients are not prepared to pay for things that are done over and over again.
- Clients expect that the amount they pay will have a direct relationship with (be a function of) the results achieved.
- Clients (whether an individual or an organization) either have less money to spend on legal services or are determined to spend less on legal services.

ONLINE Q's & A's

There was a time when providing information about the law and its application only happened in the course of retaining a lawyer for a particular service. The Internet has changed that, prompting a meteoric increase in the quantity and quality of information that is available for free. The result: Clients expect more than just a basic level of guidance to be available for little or no charge.

Some legal thought leaders predict that the success of Wikipedia, the online community-created encyclopaedia, will spur a version explaining the legal world. In the meantime, some law firms continue to offer information in newsletters or on websites about legal issues, trends and developments still routed in legalese without reference to specific problems or questions.

But the creative types are tilling new ground with a more practical approach. They are making themselves available to share information and provide answers to specific 'questions that come up' for relatively insignificant fees.

Just Answer (www.justanswer.com) is such an example. Just Answer is a portal that makes hundreds of experts available on various topics including legal experts from different jurisdictions. Based on their reviews, client users feel their questions are being answered promptly, fully, to the point, and in a caring fashion. In short, they are then primed with information and guidance that enables them to take some incremental helpful action on their own terms.

"ORGANIZED" PRO BONO

Pro bono legal services is another example of education and awareness for legal preparedness. Although *pro bono* work itself

is not new, how *pro bono* services are being organized and delivered is today different.

The creation of Pro Bono Law Ontario (PBLO) in 2002 led to the launch of a new platform that, says executive director Lynn Burns, lets qualifying individuals more effectively access a broad spectrum of brief services and navigate the justice system more effectively. *Pro bono* services have expanded beyond traditional litigation representation into community economic development initiatives and advocacy for children and youth.

To support this new *pro bono* platform, PBLO coordinates and facilitates the bar's participation in *pro bono* activities. This includes advocating for regulatory reform, providing continuing legal education to lawyer volunteers and developing *pro bono* opportunities that cater to lawyers' capacity and interest. The call has also gone out to Ontario's legal community including the private, corporate and public sectors. The response has been substantial: 18 of the 25 largest law firms in the province have signed on. That means adopting formal *pro bono* policies, establishing committees and creating systems to track *pro bono* hours and recognizing *pro bono* work by the same measure as billable hours. Another 30 law firms also participate in specific projects. Some of the business projects also have attracted in-house corporate counsel as well as government lawyers to play leading roles in community projects.

But it's not only client users who benefit from this more organized and expanded *pro bono* offering. The more systematic approach has made it easier for lawyers to become involved in the community and contribute time and resources to projects that reflect their specific expertise and values – something that many of the

Resetting the toolkit with different skills

Lawyers typically come into the practice of law with diverse educational backgrounds, life experiences and skills – all developed outside of our legal training. The traditional model of practice built on precedent has not fostered much thinking outside of the box. Today, however, we need to engage or hone different skills to be effective in delivering the legal preparedness services just described. Here are some of the skills in demand and the value they bring to the table.

- **Client-centred** means approaching the issues from the client's perspective and developing solutions that protect or advance or empower them.
- **Proactive** means anticipating or identifying needs and taking the initiative to respond to them rather than reacting to events or requests.
- **Efficient** means achieving the desired result with the minimum use of resources, time, and effort.
- **Team-oriented** means recognizing the value of working together to leverage a variety of expertise and perspectives.
- **Multi-dimensional thinking** means looking at the client as well as the legal, personal, social, emotional and economic environment in which they operate in order to foster a better understanding of how to achieve the final result.
- **Creative problem solving** means engaging processes from business, psychology, economics, neuroscience and sociology to develop a solution that allows the client to appreciate and manage the circumstances.
- **Distilling and repackaging** means gathering information and legal advice into solutions rather than simply providing a recitation or application of the law or legal principles.
- **Relationship savvy** means being able to develop, manage and grow relationships, including extended relationships, and contacts in ways that regard the world as a potential client base.

lawyers say is extremely gratifying. For more information about Pro Bono Law Ontario opportunities, go to www.pblo.org.

COLLABORATIVE CLIENT COMMUNITIES

The disadvantaged and uninformed aren't the only client groups looking for less costly – if not free – information, guidance and resources. Corporate counsel from some of the largest companies in North America with limited legal budgets are asking that their legal advisors (current or prospective) provide a range of resources – awareness, analyses and precedents – at no charge.

An interesting example is the development of a networking and collaborative workspace. Legal OnRamp is an invitation-only web community that gives companies free access to major law firms' contributed work product (opinions, precedents and updates) as well as networking facilities such as wiki's and online chat rooms. It helps in-house corporate lawyers connect to each other and to law firms, using elements modeled in part after popular networking sites such as [Facebook](https://www.facebook.com) and [LinkedIn](https://www.linkedin.com). It also allows them to pose a general legal question on the site and have law firms provide responses *gratis*. If more detailed counsel is required, a law firm is engaged. If the lawyers from a particular firm do not keep contributing fresh content, they are subject to being dis-invited from the group. Time will only tell what and how much law firms are prepared to share and how demanding the in-house crowd will be.

2. Preventive law

A second pillar of legal preparedness – preventive law – focuses on anticipating problems and planning for them. Doing it right from the beginning figures large. It is also about assisting clients by identifying legal rights they might not even know they have.

The benefits are clear: Clients don't miss out on entitlements or run into unnecessary legal problems or take unnecessary risks. A classic example of preventive law in action is a legal health review from a particular perspective.

BUSINESS LEGAL CHECK-UP

Igor Ellyn, QC of Ellyn Law LLP in Toronto is a senior litigation and arbitration counsel whose firm is developing new ways to deliver preventive law services to small and medium-sized businesses.

Over the course of his 30-year career as a litigator, Ellyn concluded that many business litigation problems could have been eased, settled sooner or completely avoided by better preventive planning: better contracting drafting, better strategy and greater client awareness of and preparation for litigation.

The result: Canadian Business Legal Checkup (BLC) – a diagnostic audit of various aspects of the business to determine if they are compliant with the law and practice and which need attention. The true value of the BLC developed by Ellyn's firm is that it will

provide input of experts from various aspect of business law at a pre-determined cost.

The BLC requires the business owner to answer a series of questions that touch on all aspects of the undertaking. When the BLC is completed, the business owner receives a report red-flagging matters which need correction, improvement or further legal advice.

Clients can then take corrective action on their own or with further guidance of counsel, to ensure that the business is better situated to operate effectively and minimize risk in the future – risk of litigation as well as the significant and sometimes crushing costs that litigation generates. For more information about Business Legal Check-up, go to www.ellynlaw.com.

3. Compliance evaluation

Compliance evaluation involves assessing systems that an organization is obliged to have in place under a particular

regulatory scheme. It includes developing the systems as well as evaluating a system once implemented, with a focus on ensuring the organization and its personnel fully understand the relevant laws and regulations. It also includes measuring the degree to which their actions are in accordance with the procedures in place. When gaps in understanding and implementation are identified in advance and addressed, the risk of compliance failure and the many penalties and adverse effects that typically attach to such failure are avoided. In today's marketplace, compliance failure can also have a debilitating impact on an organization's reputation, so any initiative to help a client manage the compliance effort in a cost-effective way is highly valued.

COMPLIANCE POSITIONING SYSTEM

A progressive example of compliance evaluation is CRSTL Solutions' Compliance Positioning System (CPS), designed specifically to help Canadian financial institutions demonstrate compliance with obligations mandated by the Office of the Superintendent of Financial Institutions.

Resetting the toolkit with different tools

Using different skills is only part of the equation. Equally important is the need to use new or updated tools to enhance how services are delivered. Some are new, others have been refined over the years to meet new needs. All of them provide lawyers with opportunities to be more effective in meeting client needs today and tomorrow.

Triage is a program that helps clients navigate through issues and solutions, identifying the resources (which are often scarce) best suited to address the need(s), which are typically most urgent.

Systematic process is a collection of policies, procedures and checklists that ensure that a process is undertaken consistently, completely and in a timely manner.

Unbundling of services means delivering a particular solution that reflects a piece of a large legal process – one that is specific and expert-oriented to address the particular need as in a limited scope of retainer.

Project management is the discipline of planning, organizing and managing resources to bring about the successful completion of specific project goals and objectives while honouring the project constraints (typically being scope, time and budget).

File management system is a storehouse or catalogue of information about a file and its progress that can be shared

among those active on the file as well as with the client; also provides a view of that catalogues information about a particular type of file or group of files (by type of work; by client; by lawyer etc).

Knowledge sharing means identifying, sharing and re-using the specific knowledge and experience of others to provide the same or better solutions in a more timely, efficient and cost-effective manner.

Smart documents are documents created using an electronic workflow tool that develops content according to a decision tree constructed from the application of legal principles to the factual information used to answer the questions.

Collaborative spaces are technologies accessed through the Internet that support lawyers and their staff within firms and across firms (individuals or groups) working together and with clients to exchange information, ideas, documents and assessments on files, projects and initiatives.



Karen Bell and Felicia Salomon

CRSTL principal Felicia Salomon, a lawyer with experience as a litigator and corporate counsel, and insurance specialist law firm Blaney McMurtry LLP worked together to develop a compliance methodology delivered on a practical, accessible technology platform.

CPS is essentially a roadmap that allows the organization using it to navigate through the legislative and regulatory regimes that affect its business operations. At the heart of the system is a database that consists of assessment questionnaires designed to be completed by the employees with core responsibility for the regulations covered, and a set of executive summaries specifically outlining the requirements of the particular regulatory regime.

What makes the CPS solution so compelling is the degree to which speed, consistency, completeness and cost effectiveness are maximized when the client and his or her lawyer use this tool. Says Salomon: "We have been able to create a winning solution for clients and their counsel by doing two things – leveraging knowledge that is typically reapplied over and over again, and employing technology that can automate and monitor the management of the massive amount of information that compliance regimes tend to encompass." For more information about CPS, go to www.crstlsystems.com.

4. Legal risk management

A fourth pillar of legal preparedness is legal risk management – identifying, assessing, mitigating (to an acceptable level) and monitoring risks. The strategies include transferring the risk to

another party, avoiding the risk, reducing the negative effect of the risk, and accepting some or all of the consequences of a particular risk. Overall, the value of risk management is in its results – clearer understanding, better communication, increased process efficiency, more responsive client service and less costs flowing from crises or omissions.

ADVISOR AT RISK PROGRAMS

Although Ellen Bessner's advisor at risk program is not new, it stands as a good example of legal risk management at work.

While representing financial advisors in the investment and insurance industries in a variety of disputes, Bessner, a partner at Gowlings, noticed consistently that the advisors she was representing were not sufficiently aware of the many duties imposed on them.

"They were expected to know so much yet they did not have the tools available to self-educate and prepare to meet their responsibilities," explains Bessner. "I saw an opportunity to empower these professionals by helping them to be more effective in their relationships with their clients."

That foresight matured into the development of a series of risk management programs that she designed for advisors, agents and traders and their supervisors; the programs focus on how to reduce litigation and regulatory risk by better understanding the bases for liability, ethics and compliance. Their usefulness has been corroborated by the decision of investment and insurance regulators to approve these courses for continuing

Managing risk in changing times: Stick with the basics

Embracing change and developing different services and delivery systems does not mean that we can abandon our professional obligations as lawyers. On the contrary, it's more important than ever to adhere to the best practices that support us in fulfilling our responsibilities to our clients.

- **Know your client** – Be clear on who you are and are not representing so you can identify needs and provide the appropriate guidance.
- **Define the scope of the engagement with a written retainer** – Be clear on what you are going to do or not do. Avoid making assumptions based on what you have done for others.
- **Review, confirm and control client expectations** – Set out the timeframe, objectives and responsibilities of all involved. Reset expectations where they are not realistic.
- **Identify pricing at the start and get money up front** – Provide the client with the basis for your charges and how you intend to bill for services from the get-go. Ask for a retainer that sufficiently covers all initial work that you and the client agree needs to be done. If circumstances change along the way, update the client on how the costs will change and have the client accept the changes. And replenish retainer funds before they are exhausted.
- **Communicate, communicate, communicate** – Ensure that the client knows what is happening (or not happening) as the matter progresses. Avoid surprising the client with bad news – or a large account. Return calls and e-mails promptly. The more often and the better you inform your client, the more informed your instructions will be, and the more successful the overall relationship.
- **Declare completion** – When you have completed the engagement, check that concluding details have been covered and then tell the client you are done. Duties to former clients differ from those owed to current clients.
- **Don't dabble** – Serving the client does not mean doing everything yourself. Good and competent service means drawing on the expertise of others – lawyers and non-lawyers, as required – especially if and when your role extends beyond the legal realm.
- **Review your insurance policy** – Your LAWPRO policy provides coverage only for the *professional services* (a defined term) that you provide in your capacity as a lawyer. If you are providing services that fall outside the scope of coverage provided by your LAWPRO policy, you may want to obtain coverage for these services from other insurers.

education credits. Recently they have evolved to both live and online programs as well as a book that has been highly touted by the financial services sector. For more information, go to www.gowlings.com/advisoratrisk/.

LOOKING AHEAD

As the examples in this article illustrate, opportunities await those lawyers who commit to rethinking the legal services they provide as well as the way in which they provide the services. Whether you call it practice innovation or something else is not the point. It is the effort that counts. As the world changes, so do the needs and expectations of our clients. We need to be more

proactive and attentive to those needs and expectations than we have been in the past. The most effective responses will require a careful balance of creative thought and practical application. We must ensure that the skills we apply and the tools we employ are appropriate to support the marketplace of tomorrow. They will comprise the toolkit for doing different things and doing things differently.

Karen Bell LLB is a law practice management expert. She is the creator of The Resilience2Risk Program™, working with law firms and legal departments across Canada to help them drive productivity and growth by building resilience to the many risks inherent in the business of law. She can be reached at karen@karenbell.ca.