

LAWPRO[®]

changing direction

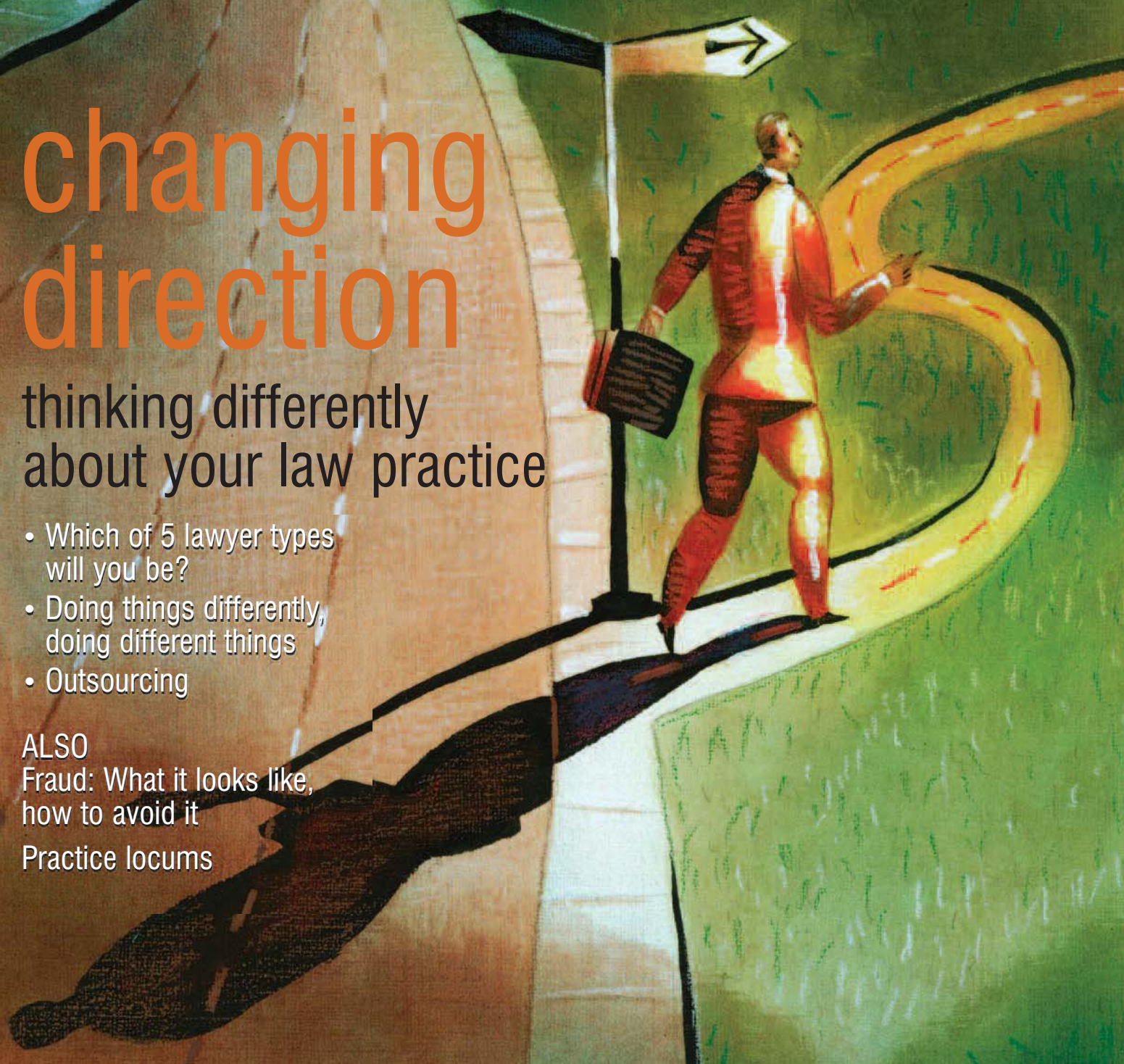
thinking differently
about your law practice

- Which of 5 lawyer types will you be?
- Doing things differently, doing different things
- Outsourcing

ALSO

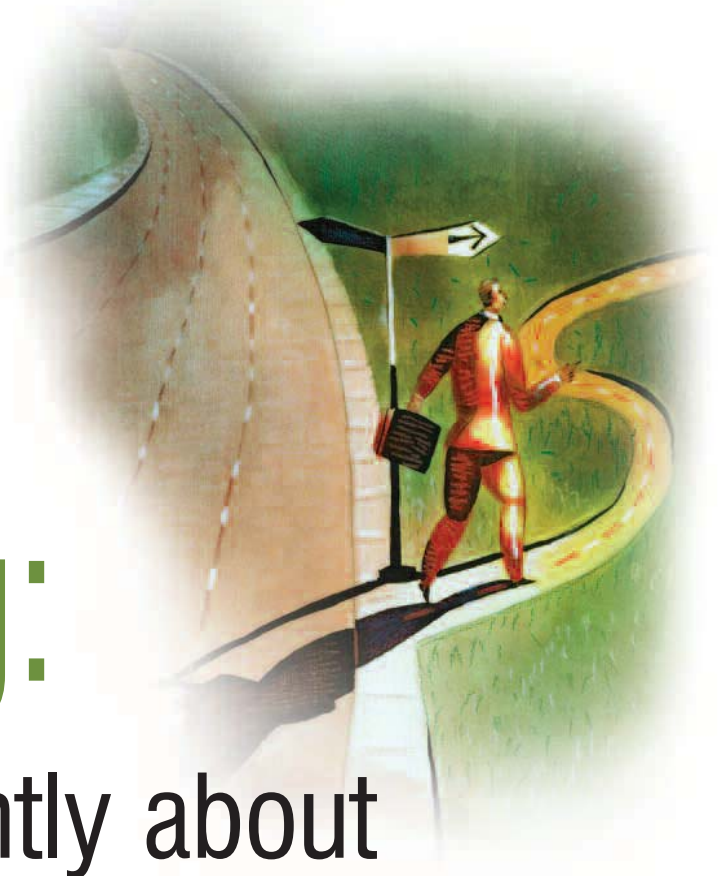
Fraud: What it looks like,
how to avoid it

Practice locums



Strategic resourcing:

Thinking differently about delivery of legal services



Strategically sourcing legal services may not be a new phenomenon, but the current economic downturn, coupled with the growing realization that the legal profession needs to rethink its business model to survive in the long term have put one such option – outsourcing – in the spotlight, say two outsourcing providers.

Both Gavin Birer, president of Toronto-based Legalwise Outsourcing Inc., and Stephen Taran, president of Taran Virtual Associates (TVA/The Legal Outsourcing Network), say lawyers and law firms large and small are giving the outsourcing option a second look – largely because it addresses some of the pressure points facing lawyers and law firms today.

“The pressure on lawyers and law firms to run efficient businesses, especially in this climate, is tremendous. Clients want more for less, but they also want firms to know and understand their needs, issues and concerns – to be proactive advisers and problem-solvers,” says Birer. “Giving lower-skilled, repetitive work to someone who is overqualified for that kind of work is a waste of firm and client resources. We as lawyers need to be thinking differently and looking at how we can better service clients with quality services at reduced costs and improved turnaround times.”

Many clients, says Taran, use his firm’s outsourcing services as a profit center. For example, a litigator who spends 10 hours on research at his hourly rate of \$350 would be charging the client \$3,500 for that prep work; an associate might be billed out at \$1,250 for the same work. But TVA’s charge for that same work would be closer to \$600. Even if the lawyer grossed up that rate, he could still pass on significant savings to his client, says Taran.

“Strategically outsourcing what they cannot cost-effectively do themselves gives lawyers an opportunity to better service their

clients – opening the door perhaps to a successful discussion about topping up the retainer or taking on other work that the client may be sending elsewhere – or even devoting a portion of that time to building work on the practice and do some business building.”

But cost control and improved profitability are not the only reasons to reconsider the outsourcing option, says Taran, “Firms are starting to understand that they need to offer a more balanced lifestyle to their associates and future leaders; they’re starting to see that outsourcing the repetitive, lower-skilled work not only helps keep overhead down, but also makes for happier, more engaged and ultimately valuable associates.” Could outsourcing displace associates or other legal service providers? Not at all, says Birer. “It takes the mechanics out of the process – and gives associates the opportunity to do work of a higher standard.”

TVA: Outsourcing to local lawyers

TVA’s network of 75 lawyers (most practising in Ontario) will undertake a wide variety of assignments: drafting documents or corporate agreements; doing specific legal research; appearing as a lawyer’s agent (to argue motions for example); or acting as a backup to a lawyer at trial.

“If you’re a sole practitioner, you can’t afford to take on an injunction that would take you out of practice for weeks at a time; but we can help by taking on the other work in your practice. Or if you don’t have the resources or skill set to take on the specific matter for an existing client, we can take on that assignment, enabling you to better service your client’s legal needs. We’ll even step into your practice to let the sole practitioner take a vacation – making it possible for you to generate revenue while you’re on holiday.”

Adds Taran: “Outsourcing often levels the playing field for small firms and sole practitioners.”

Larger firms often use TVA’s lawyers on files where they cannot justify the cost of an associate or more senior lawyer, such as agency work for court appearances, for specialized services (such as wrongful dismissal reports that he’s standardized for a flat rate) and more recently for electronic discovery work.

The process starts with his project manager, a seasoned lawyer, who works with the client to undertake conflicts checks, receive instructions, determine the parameters of the project and suggest

which lawyers could do the work. Budgets and deadlines are all agreed to ahead of time. Quality control resides with TVA’s project management team: “The client delegates fully to us – he or she tells us what is needed and we take it from there and ensure we deliver a quality finished product.”

Legalwise: Offshoring to India

Legalwise outsources work to a stable of lawyers that it employs in India – hence the term offshoring. All are trained in Canadian law, and are employed to work only for Legalwise. Lawyers sign confidentiality agreements – and work for a salary that’s a fraction of what associates in Canada might be paid.

Offshoring, says Birer, works best when there is a flow of repetitive work: for example, document review, drafting standard documents based on existing precedents, subjective and objective document coding and the like. “I know of one law firm that charged more than \$1 million to review documents and prepare the schedules for an affidavit of documents. That, in my mind, is unacceptable and not sustainable in today’s economy. This is a good example of the kind of work that can be outsourced, for a fraction of the cost.”

Before taking on an assignment, Birer insists on an in-depth conversation with prospective clients (whether the client is a lawyer working in an in-house legal department, or a lawyer working in a law firm) to better understand how the client is structured, the project and how the work is currently being done.

With a better understanding of the big picture, Birer then drills down to see where his offshoring solution can add value for his client. “A good upfront discussion and analysis that includes a test of the proposed work and a review of the client’s precedents, are key. Our goal is to build a long-term relationship with our clients and to do that we need to understand fully the client’s needs.”

Control of the work – including conflict checks, defining expectations, assigning the work and quality assurance on the finished work product – reside with Legalwise’s Canadian team. The information management system which Legalwise’s India-based lawyers access resides in Canada. Control over access to the system and the lawyer’s permissions also reside with Legalwise’s Canadian team.

“As a lawyer, you don’t often find yourself in a time when something new and compelling happens,” says Birer. “Real change is coming to the legal industry around the world through offshoring – and if done right, this change can benefit everyone.”

On being a virtual associate



The day Rebecca Jaremko Bromwich took her walk through the snow (literally) and came face to face with a sign for Taran Virtual Associates (TVA), she knew she'd found her answer to practising law a little differently.

An idealist with a strong interest in marginalized clients and environmental issues, she had a definite idea of the kinds of clients she wanted to work for, and the cases she wanted to take on. Six years and several moves later, she's a committed virtual associate.

Cindy Cohen signed on with TVA back in 2000 to help make ends meet when she opened her own practice – but has stayed with TVA for the freedom that comes with being able to pick and choose what to work on and when.

"Flexibility is the main reason I got involved," says Cohen, who is today one of TVA's most senior lawyers and runs a busy sole practice. "I get to decide whether I have the time to focus on a job. And if I can't take on an assignment, it doesn't hinder my chances for the next one."

The work from TVA varies: Rebecca's done legal research and tribunal appearances, undertaken examinations for discovery, attended at court, done witness interviews and drafted facta. She also has provided research on some significant and cutting edge cases. "It was exciting to be a ghost in the machine participating in the process of evolving law, especially when it means helping level the playing field so smaller firms or sole practitioners have access to the help of an associate on an ad hoc basis," she says.

For their part, clients say they like being able to outsource some of their work. It not only allows them to take on cases they might not be able to otherwise, but also contributes to their work/life balance. One client who had discovered his small claims court case conflicted with a European trip was pleased to discover he had won his case while on holiday.

Cohen points out that using a virtual associate not only saves clients money, but also helps lawyers avoid the commitment and overhead that comes with taking on new staff. "TVA will fill the void a firm may need to fill on a temporary basis without the obligation to keep that position filled going forward."

For lawyers considering taking the plunge into outsourcing work Cohen advises that they stick with their comfort zone and not overextend themselves.

"It's a great way to stay busy and earn some extra money," Cohen says. "But it's important that you stay within your skill set and not take on more than you can handle."

You also need to be a strong self-starter who can plan and see through a project, says Rebecca. And, adds Rebecca, "treat it as a long-term proposition," rather than a way to fill time. "Be prepared to do it for at least a year."

Tim Lemieux is practicePRO coordinator at LAWPRO. Gary Edgar is communications advisor with LAWPRO.

Virtual associates

help when you need it

For Hamilton lawyer Dermot Nolan, the term virtual associate (VA) sums up perfectly the benefits of outsourcing: “The VAs are the ‘associate down the hall’ that I can call on when I need help on a specific file – but those associates are not on my payroll, not part of my fixed overhead, and are already well trained and supervised.

“It’s a completely ad hoc thing – I use a VA only if and when I need it – and that’s the real plus,” he adds. “When I need intensive legal research done – for example I might want someone to do serious legal research or an independent case study of three or four legal issues – that’s when I might call on the resources of a virtual associate. I tell Taran Virtual Associates (TVA) what I need, my deadline and my budget, and they take it from there.”

A certified litigation specialist, Nolan ensures that his clients approve of the outsourcing and, with their approval, his firm bills TVA’s charges as disbursements. He views the virtual associates’

work as a resource on which he builds: “The VAs’ work is just a starting point. My job is to take the information they have provided and use it to help develop the final product. I’m still the quarterback and I take full responsibility for effectively advocating on behalf of the client, using all the skills and resources available to me – including the VAs’ input. It is much the same as it would be if I had delegated the research to a reliable associate down the hall.”

A long-time user of TVA’s services, Nolan has not hesitated to recommend the service to colleagues. “These are experienced, capable Ontario lawyers who speak the language we speak and know what we are looking for. They also provide useful insight and perspective, and sometimes specialized expertise on an esoteric subject. For us, as a small/medium-sized firm, VAs can give us extra heft without some of the headaches that would come with unnecessary expansion.”



Offshoring saves

legal team time, money



Cindy Cross and Gavin Birer

When faced with a huge – but repetitive – assignment that they did not have the in-house resources to handle, Travelex's¹ Legal Department decided it was time to give offshoring a try.

And thinking ahead, Travelex decided to also benchmark the services of Legalwise Outsourcing Inc. against those of more conventional providers.

The task: To review and summarize leases for the company's 615 retail operations as a first step in renewing insurance coverage for these operations.

The test: To determine who could do the work faster, less expensively and still deliver a quality product.

The set-up: Travelex's retail operations were split into three groups, with Legalwise, an articling student and a contract lawyer each assigned to analyze and summarize key provisions in the leases for a specific region.

The result: "Legalwise did the job in three days instead of the 8-10 it took the other providers at a rate less than half of what we paid the articling student," says Cindy Cross, VP and General Counsel. "The quality of the work was comparable – but we had the added benefit of Legalwise's management and quality control skills on the project."

In fact, Travelex was so impressed that it contracted Legalwise to design and build a database to help the Travelex legal team manage the company's global business and IT contracts. "We needed a single contracts database that ensured the more than 800 contracts around the world would be consistently managed." The success of that venture has already prompted Cross to look for other ways to streamline and standardize the masses of data she and her team need to manage: "Despite our limited internal resources, we can now better manage our global responsibilities – and deliver better service for the company."

¹ Travelex is a non-bank foreign exchange provider operating in 140 countries around the world

How to reduce the risks associated with outsourcing

Outsourcing work on a matter that your firm is handling means that tasks normally done by you or others at your firm are being done by someone outside your firm. Keep in mind your obligations to provide clients with competent and cost effective legal services.

Although over time you may develop a relationship with one or more outsourcers (which in turn will give you greater knowledge of and trust in their services), you should take steps to address the inherent risks that arise when work is outsourced.

When you are outsourcing legal work, reduce your risks by keeping in mind the Rules of Professional Conduct and the following issues:

You are ultimately responsible for the work you delegate: In most cases, the primary lawyer on a file can expect to be held responsible for the work on it, even if that work is delegated (i.e. outsourced). Pay attention to Rule 5.01 and By-Law 7.1 which outline what you can and can't delegate.

Know the competencies of the people you are outsourcing work to: Make sure you are dealing with someone who can competently do the work you are outsourcing. Check the credentials of the individuals working on your matters. Make sure they have experience in the relevant practice area. Ask to see samples of work they have done. Ask for and check references. Ask your outsourcer what it does to ensure quality control.

Communicate with your client: Your client should be advised and consent to having work on his/her matter done by a third party outside your office. Ideally this should be highlighted in your retainer or engagement letter. This is extremely important as in appropriate circumstances it may exempt you from civil liability, creating a direct retainer of the outsourcer by the client. However, that depends on how the relationship is being structured.

Be clear with your client on outsourcing costs: Outsourcing has the potential to reduce a client's legal costs – something your client will likely approve of. But make sure that you and your client agree, at the start of a matter or when you have more information as it progresses, what the outsourcing costs might be and how they will be billed to the client.

Avoid conflicts: Ensure that the outsourcer you are using takes appropriate steps to check for conflicts of interest on any work going to them.

Protect client confidentiality and privilege: The Rules of Professional Conduct oblige you to protect the confidentially

of client information and that any disclosure requires the consent of the client. Make sure you obtain your client's consent before there is any disclosure to an outsourcer, and ensure that outsourcer has taken appropriate steps to protect client confidentiality. Take care not to waive privilege on privileged information.

Carefully manage outsourced projects and budgets: When engaging an outsourcer, treat him the same way you treat your clients: Clearly communicate and confirm in writing expectations as to the scope of the work to be done, timing and deadline, deliverables and costs.

Hold outsourcers responsible for their work: Outsourcers should be responsible for the work they do for you. Attempts in their contract to limit what liability or exposure they may have for their work should be respectfully refused. In fact, if the work is not being outsourced to another practising Ontario lawyer, an indemnity from the outsourcer protecting you in relation to claims involving the outsourced work is likely appropriate. As well, ensure that the outsourcer carries errors and omissions insurance appropriate in its scope and terms to cover the work, and continues to carry this insurance in the following years during which a claim is likely to arise.

LAWPRO insurance issues: Putting aside the actual merits of a malpractice claim, an unhappy client will ultimately look to hold you responsible for work done by you or others on your behalf in relation to a client matter.

Generally, your Law Society coverage with LAWPRO will respond to allegations of negligence in respect of your legal services for the client, including aspects of that work that you may have outsourced. If legal work is outsourced to you as part of your law practice, as an insured lawyer under the Law Society program LAWPRO would respond to claims of negligence against you in relation to this work as a matter of course. Otherwise, the party doing the outsourced work would not find protection under the Law Society program policy.

Excess insurance issues: Keep in mind your potential exposure for outsourced work, as you consider whether the costs of a malpractice claim may exceed your \$1 million per claim /\$2 million aggregate Law Society program limits. If your firm purchases optional excess insurance from LAWPRO, that excess policy also responds to allegations of negligence in respect of your legal services for the client in the ordinary course, including aspects of that work that may have been outsourced by you. But, not all excess insurers necessarily afford this protection. Those buying excess insurance from others should obtain written confirmation from their excess insurer(s) that their outsourced work is covered.