



Features

Benchmarking Knowledge Management in U.S. and UK Law Firms

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What is Knowledge Management?

Law is a knowledge intensive industry. Fundamentally, the business that lawyers are in is the sale of their knowledge.

At the outset, it is important to consider what is knowledge. There are numerous ways that knowledge can be defined. It can, for instance, be distinguished from data and information where data is defined as raw facts and figures and information is defined as structured or patterned data, or data which had been given some meaning by evaluation. In this context, knowledge could be defined as information plus the ability to use the information to act or innovate; knowledge is the ability to cause things to happen.

Lawyers use and produce a huge range of kinds of information. They are highly skilled professionals with specialist expertise which they use to help clients achieve solutions to their problems. At a base level, legal information itself is nevertheless a commodity which lawyers collate, manufacture and package for sale. Legal knowledge is used to procure, produce and manage legal work. Knowledge management in a law firm is about finding better ways to achieve those procure, produce and manage tasks. Its objective is to provide a competitive advantage to a law firm.

Law firms are already sophisticated managers of knowledge. They have to be - that is the nature of their business. In some respects they are therefore justified in thinking that 'knowledge management' is merely the latest fashionable term for describing their existing knowledge sharing initiatives. However, most firms could significantly improve the way in which they manage their knowledge. Though knowledge is the core of their business, it is surprising how many firms are resistant to investing in improving its collection, storage and dissemination.

There are many different views of what is encompassed by 'knowledge management'. As one attorney at a law firm in the U.S. put it: "Yeah, we do knowledge management - we've got Interaction". A great number of organisations have Interaction to help them manage client relationships, but that is only one component of knowledge management. Surely one also needs some knowledge of the law to serve the clients about whom one stores information in Interaction?

'Knowledge' at a law firm includes:

- knowledge of the law;
- knowledge about clients and their industries;
- marketing information; and
- financial information (about clients and about the firm).

Those are the basics. The trick to implementing a successful knowledge management strategy is to pull all of them together in a way that makes sense to the lawyers who are doing the transactional work. Not only does the knowledge management solution have to make sense, but it must improve productivity (to justify the cost of investing in knowledge management systems), should make lawyers' jobs easier and perhaps result in greater work satisfaction for a lawyer (by making them confident that their output is first rate). In a perfect world, a good knowledge management system might even offer the opportunity of a better work / life balance to a practising lawyer.

Visiting the U.S. and UK

Gilbert + Tobin very generously sponsored me to undertake a study of knowledge management systems in U.S. and UK law firms in early 2002. The goal in visiting firms in the U.S. and the UK was to attempt to identify best practice in knowledge management in law firms in those countries, and also to identify what might be considered to be average or standard practice. It is not claimed that the findings and observations in this paper are representative of either U.S. or UK law firms - the sample surveyed was far too small. Also, the conclusions are mine alone and based on my views of what is good knowledge management practice in a law firm.

In the U.S., a range of law firms on both the east and west coasts were selected to be surveyed based on them meeting 2 or more of the following criteria:

- highly ranked in the *American Lawyer* 'Tech Scorecard';
- a reputation for innovative thinking about technology or knowledge management;
- more than one office nationally or globally (with the commensurate issues regarding knowledge sharing); or
- recommended by an informed colleague.

UK firms were selected by reputation or recommendation by colleagues or both.

All firms selected have predominantly commercial, corporate and commercial litigation practices.

Most, but not all, of the firms selected are global organisations. Part of the reason for this choice was that there is a greater need for implementation of knowledge management strategies when people are geographically dispersed. In a small firm located in a single office in a single city, much knowledge sharing can simply be achieved by wandering into the office next door and having a conversation. This becomes more and more difficult as the locations, number of people and volume of corporate knowledge grow.

In total, 12 U.S. firms and 6 UK firms were surveyed. Although most people interviewed were generous with their time and with sharing generalities about their knowledge systems, often they did not share practical details that may have been commercially sensitive. Clearly this will have impacted on the possibility of making specific conclusions, though not on the possibility of developing some general theories about the state of knowledge management in the markets in which the surveyed firms operate.

U.S. General Findings

Many firms in the U.S. are waiting for the 'killer app' that will, in one swift installation, meet all their knowledge sharing needs. This is highly unlikely to happen. It would require artificial intelligence of a degree of sophistication that is neither available nor immediately foreseeable.

Of those U.S. firms that are conscious of the fashion of calling knowledge sharing initiatives 'knowledge management', few have given consideration to the potential scope of 'knowledge management'. Most have delegated, either expressly or by failing to take any action, the knowledge management function to the information technology director. This may be one of the reasons that the focus on knowledge management in the U.S. is on technological solutions.

In many cases, U.S. firms have as their de facto knowledge managers talented people who are innovative thinkers, but the firms haven't given those persons the support needed to implement fully fledged knowledge management solutions. In some cases this has, understandably, resulted in a degree of frustration on the part of the knowledge managers.

The technological approach neglects the people factor in knowledge management systems and generally fails to recognise that 'knowledge' is something more than information. Technology today can relatively easily gather, store and disseminate information - the wealth of material available on the internet is testimony to this. Consequently a purely technology based solution has a tendency to elevate the level of the information flood, thus overwhelming attorneys with more information than they can possibly use and requiring them to sift through all of this material to find that which is most valuable. Knowledge effectively remains locked in the heads of individual attorneys because other attorneys can not easily identify what is high value information from the mass of information available to them. On the other hand, this approach does mean that there is a relatively high acceptance and visibility of technology in U.S. law firms, which provides a solid foundation on which to build more sophisticated knowledge systems.

In a few cases it seems that U.S. firms merely claim to be doing knowledge management for marketing purposes (ie without actually doing it, or by taking only minimal steps to do it).

Of the U.S. firms who were expansive enough to share information, only 2 are doing what could be called fulsome 'knowledge management' - i.e., as opposed to merely managing an aspect of knowledge (e.g., client information, documents) - and a third firm has started on the process. There were another 3 firms of those surveyed who have given much thought to what is the scope of knowledge management, but who haven't yet taken any innovative steps to do it. The remainder either hadn't given it much thought (i.e. talking about it in terms of implementing a document or client relationship management system), or were principally concerned with the marketing implications of being perceived to be doing or not doing it, or simply weren't concerned about it.

Those U.S. firms who weren't apparently concerned about it seemed to be of the view that they would not achieve a significant return on investment from knowledge management. This is a core problem facing knowledge managers in any law firm which charges its clients on a time basis. Law firms in the U.S., UK and Australia charge for their time rather than for the value of their knowledge. Whilst it may be argued that the value of a lawyer's knowledge is built into her hourly rate, there is nevertheless in the hourly rate an intrinsic disincentive to be efficient about managing knowledge. The less well organised is your knowledge, the more time it will take you to customise it for a client, package it and sell it and the more you can charge for it. The tempering factor on this is the market - if a competitor is turning around work more quickly (and therefore more cheaply), a lawyer must be able to match the competitor's performance in order to remain in the market. If, however, the market is not highly competitive by reason of, for example, imperfect knowledge of consumers, the disincentive to efficiency in knowledge management will remain. This leaves a question over the efficiency and competitiveness of the legal services market in the U.S., at least at the higher value commercial end of that market.

U.S. law firms lag behind the UK and Australia in terms of their conceptualisation of knowledge management. It would appear that the lack of innovative knowledge management in the U.S. means that U.S. firms are in some respects less efficient than Australian and UK firms in both knowledge sharing and, as a corollary, work production.

UK General Findings

Many UK firms have been doing knowledge management (by other names) for many years. Linklaters, for instance, constituted its first knowledge sharing committee in the 1960s. Consequently, 'knowledge management' is a much more sophisticated concept in UK firms than it is in U.S. firms.

Technology is less of a driver in the UK than it is in the US, and more of an enabler. Because UK firms have been sharing knowledge more effectively for longer than firms in the US, they initially developed more labour intensive, manual systems for doing so (ie prior to the availability of suitable technology). This means that knowledge systems in UK firms tend to be of high quality and to have high added value. Concepts of how

technology can be utilised or squeezed to get 'more bang for your pound' for knowledge systems are also therefore more sophisticated in some UK firms.

UK firms are more accepting of the labour intensive, manual filtering, classification and dissemination of knowledge in order to ensure that knowledge which is shared is of high value (as opposed to the indiscriminate or automatic dissemination of all information). The business culture and processes for doing this are well established. What is being sought by UK firms is ways of improving these processes and making them more efficient by the optimal use of technology. It is recognised by UK firms that currently there is no technology that will eliminate human input if quality in knowledge systems is to be retained.

The leading UK firms have well developed precedents and know how systems. These are maintained by full time professional support lawyers (PSLs) who are senior lawyers (and in some cases partners) and who are experts in their fields. The functions of PSLs, depending on the firm and the practice group, may include: development of precedents, maintenance of know how databases, filtering and dissemination of current awareness information, and training.

Though lawyers in each of the markets under consideration are relatively high consumers of technology, many of them are notoriously bad at using it. In some firms, PSLs are expected to have a higher than average understanding of technology (though this understanding may still not be very high in absolute terms). This is likely to impact on the efficacy with which technology is utilised for knowledge dissemination.

Technology in UK firms is, on average, on a par with that in US firms and in some areas (eg document assembly and delivery of online legal services) is superior. By way of contrast, mobile technology is better developed in the US than in the UK. It is not necessarily the technological products that differentiates U.S. and UK firms as many of those products are the same. It is in the way that the technological products are used that distinguishes UK and U.S. firms, with the UK firms generally using them more effectively.

The use of technology to deliver online legal services is an area in which UK firms are a long way ahead of their U.S. counterparts. Online legal services have barely started to register in the thoughts of US firms. For those of the US firms that have considered it, the litigation risk in the U.S. market seems to be a significant disincentive to the implementation of online legal services.

Many of the UK based global firms are also more concerned than U.S. firms with convergence and compatibility of technology. This may be because of their relatively greater experience of mergers with European and other international firms and the integration and knowledge sharing issues that arise as a consequence. Convergence and compatibility of technologies is a key issue in implementing a successful knowledge management strategy.

In the larger UK firms, the knowledge initiatives are global, but are all driven and informed by the experience of the head office firm in London.

Significantly, most UK firms actively promote a knowledge sharing culture. This may involve tangible rewards for knowledge sharing, or significant disincentives to the opposite, or both. For example: contributions to knowledge systems are, in some firms, a significant component of a lawyer's assessment for an invitation to join the partnership; and failure to use a current copy of a firm precedent, in at least one firm, has resulted in termination of employment (because of the risk involved in not using a precedent or in using an older version of a precedent).

In UK firms, knowledge management is more likely to be informed by a formal strategy that is actively supported and enforced by the partnership. The leading UK firms all have knowledge managers (by one name or another), most of whom are lawyers (rather than IT professionals). The legal experience is a distinct advantage. However, one global firm employs a former management consultant as the knowledge manager and another employs a librarian - both are highly skilled, competent and successful in the knowledge management role. The appointment of a knowledge manager and PSLs demonstrates the commitment of UK firms to sound knowledge management practice.

Summary of Differences Between the U.S. and the UK

In summary, the principal differences in knowledge management between UK and U.S. firms are as follows:

UK	U.S.
Reward a knowledge sharing culture	Individual attorney success promoted
Partner leadership	Lack of partner interest
Knowledge managers appointed	IT director is de facto knowledge manager
Knowledge management strategy in place	No equivalent (with some exceptions)
Employ PSLs to develop knowledge systems	No equivalent (with some exceptions)
Leverage knowledge systems to train lawyers	No equivalent (with some exceptions)
Technology an enabler	Looking for the killer app that will do knowledge management
Value added precedents systems*	Limited use of precedents*
Well developed know how systems	Manual transaction history capture (if any)
Some document assembly	Limited document assembly, if any
Some document assembly	Limited document assembly, if any
Leverage knowledge to develop e-products	No e-products

* The term 'precedents' is used by different people in different ways. Here the word is used to refer to documents which have been drafted as generic transaction documents incorporating a range of variables which address different real world transaction scenarios. Transaction documents are generated from the precedent document by a semi-automated process (e.g., the lawyer merely dictates the variable alternatives to produce a first cut of the transaction document).* The term 'precedents' is used by different people in different ways. Here the word is used to refer to documents which have been drafted as generic transaction documents incorporating a range of variables which address different real world transaction scenarios. Transaction documents are generated from the precedent document by a semi-automated process (e.g., the lawyer merely dictates the variable alternatives to produce a first cut of the transaction document).

A final observation on the difference between UK and U.S. firms is that UK firms commenced knowledge sharing initiatives before they became global mega-firms. Consequently, they are now able to build on those systems. U.S. firms do not have this legacy of knowledge sharing culture. Consequently, the task of attempting to build knowledge systems in a large firm is now overwhelming, which may be a reason it is not being done successfully by U.S. firms.

Some brief observations on Australian firms

The larger Australian firms have more in common with the UK firms than the US firms.

In terms of technology, the larger Australian firms are probably at a similar level to the UK firms (though on a lesser scale) and in some cases may have a slight edge in the document assembly sphere. Both the Australian and UK firms are ahead of the US firms in terms of leveraging technology for knowledge management.

Most of the larger Australian firms (e.g., Blake Dawson Waldron, Freehill Hollingdale and Page, Mallesons Stephen Jaques, Minter Ellison) have invested significantly in precedents and know how systems supported by precedents lawyers (the pre-cursors of PSLs). Some of the medium sized firms are also taking similar steps (e.g., Gilbert + Tobin, Gadens).

Like their larger UK counterparts, some of the Australian firms are developing sophisticated systems for delivery of online legal services. The firms that stand out in this area are Blake Dawson Waldron and Gilbert + Tobin.

Conclusion

Many law firms in each of the U.S., UK and Australia have been grappling with aspects of knowledge management for a long time. Leading firms have implemented systems to better manage portions of their knowledge. With the growth in the recognition of the value of the intellectual capital of organisations over recent years there has been a corresponding growth in the vocabulary around its management - this is what has become known as knowledge management. Law firms are now being challenged by the need to better manage their collective knowledge as an asset of their business. This has ramifications that touch most aspects of a legal business. Some firms, particularly the leading UK firms, have embraced this challenge and are in the process of implementing comprehensive knowledge management systems. Some firms, including leading Australian firms and a small number of leading U.S. firms, are on the threshold of embarking on comprehensive knowledge management strategies. Most firms, and particularly those in the US, are still coming to terms with the concept. The objective of knowledge management is competitive advantage and those firms which succeed in doing it well are likely to be the survivors in their regional, or in the global, marketplace.

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