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## **FUTURE OF THE LEGAL PROFESSION**

**GET READY  
FOR THE NEW  
LEGAL SERVICES  
MARKET**

**DIVERSITY  
BEYOND GENDER**





## Responding to the challenge

Litigation	Transactions
document review	due diligence
legal research	legal research
project management	transaction management
litigation support	template selection
(electronic) disclosure	negotiation
strategy	bespoke drafting
tactics	document management
negotiation	legal advice
advocacy	risk assessment

The exact categories are not crucial. What is important is asking which tasks are law firms uniquely positioned to perform. From Susskind's research, in relation to litigation this is limited to strategy, tactics and, in respect of the US, advocacy.

But even if law firms are not exclusively positioned to perform most of these tasks, are they nevertheless the best option? For example, while project management could be performed by a generalist project manager, is a lawyer's project management capability nevertheless sufficient? Conversely, is a generalist project manager's lack of legal knowledge and lack of direct integration with the lawyers running the matter a material disadvantage? And in relation to document review or due diligence, how do we monitor the work quality of an outsourced provider, and can their output be efficiently integrated into the law firm?

These may be common reactions but they reveal some striking assumptions, such as that the law firm must be the overall coordinator and the standard by which others are measured. And whether you believe this is true, recent experience has shown that clients are becoming less and less wedded to this idea.

### Clients' perspective

I recently worked overseas on a number of major corporate transactions in which the client was grappling with these issues.

In one of these matters, a large part of the legal project management function was assigned to non-law firm project managers who built and ran the entire closing checklist. The reaction among the lawyers was understandably mixed, but the arrangement was successful for two key reasons. First, the project managers brought with them reporting, accountability, audit and issue resolution techniques which were key for the client, but beyond the expertise of most lawyers. Second, the gaps in their legal knowledge were addressed through strong collaboration with both the law firm and in-house counsel.

In another matter, a non-law firm due diligence provider was supervised by a specialist in-sourced legal team, who then managed the information flow back to the law firm. And in a different matter, the coordination between the various foreign law firms was also undertaken by a specialist in-sourced legal team. This had the advantage of the client feeling more in control and not having to rely on a lead law firm as the gatekeeper to information and status reporting, functions for which law firms have not historically excelled.

Obviously there were cost savings with all these approaches, but more importantly there were perceivable efficiency and quality improvements compared to the traditional model. And while these experiences were in a larger overseas market, I see no reason why clients could not adopt similar approaches in Australia. How then should law firms respond?

Law firms have often reacted defensively to these sorts of developments and spent their efforts highlighting the risks of using cheaper alternatives. Yet, in my experience, the quality of the non-law firms was superior to the law firms for the specific work in question.

In one sense, this should not be surprising since when broken down into their component parts, legal tasks are in reality often a blend of legal and non-legal work in differing proportions. However, the fact that non-law firms (without deploying any new technology) can produce better results is still troubling for many lawyers. Perhaps this apprehension stems from legal education and training: the standard demanded throughout university and in the early years of work is so consistently high that it is almost natural to assume that only those schooled in this way can have any hope of success.

Yet law firms are at a big disadvantage precisely because they have a saturation of people with similar mindsets, experience and skills. Unfortunately, lawyers do not have all the answers. But what decomposition helps us to do is appreciate the valuable experiences and skills of other professionals, and how they can improve the way legal services are delivered. It provides an excellent opportunity for lawyers, and in particular open minded young lawyers, to collaborate and learn different ways of tackling problems, and to re-evaluate and challenge standard operating procedures.

It can certainly be an unsettling experience for law firms to be questioned by non-law firms on work practices that have remained unchanged for many years. After all, law firms have historically been very successful businesses. But the reality is that non-law firms are now being engaged by clients on sophisticated legal tasks and the scope of work for law firms is being steadily eroded. The sooner lawyers appreciate why this may be, and what alternative suppliers are bringing to the table, the sooner we can work to improve the legal profession as a whole. ■

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<sup>1</sup> Susskind, R, *Tomorrow's Lawyers: An Introduction to Your Future*, 2013, Oxford University Press.