

TECHNOLOGY FOR LAWYERS 2004

Better Faster Cheaper

BFC5: Lessons on Precedents

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Barrister and Solicitor

**Technology for Precedents: Lessons for Smaller Firms
from the Large Firms**

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Canadian Society for the Advancement
of Legal Technology | L'association canadienne pour l'avancement
de l'informatique juridique



Lessons on Precedents

By Hugh G. Laurence
Barrister and Solicitor

- Collecting
- Preparing
- Organizing

Collecting Precedents

- Your own work product
- Drafts sent to you
- Interesting examples you set aside
- Published precedents

Collecting Precedents

- What I work on frequently
- What others send me
- Interesting examples
- Just in case collections

Collecting Precedents

- Which draft should I save
 - Your own first draft
 - An even-handed, negotiated agreement
 - Agreements with interesting clauses

Collecting Precedents

- How do I save them
 - Storing in a folder
 - Using “save as” on your own drafts
 - Filing attachments to e-mail

Preparing Precedents

- Standardize your work product
- Make notes on interesting points
- Annotate drafts
- Index your collection

Preparing Precedents

- Alternate clauses
 - You can store in separate documents
 - Full agreements give context
 - Specific clauses can be inserted easily
 - Or you can store in the same document
 - In long list
 - Or hyperlinked

Organizing Precedents

- Alphabetical lists
- Subject lists
- Deal pages

Organizing Precedents

- Don't force the user to outguess the indexer
 - Store items in several places
 - Think of how others might use items
- Don't nest too deeply
 - Use categories at higher levels, searching at lower level

Organizing Precedents

- File folders
- Index documents
- Double level indexing
- Intranets
- Document management systems

Organizing Precedents

- File Folders
 - Use the operating system on your computer
 - Use the search facilities within a folder
- Index documents
 - Create a document in Word
 - Link to the document itself

Organizing Precedents

- Index documents
 - Asset purchase agreement, long form
 - A purchaser, long-form agreement with substantial representations and warranties
 - Asset purchase agreement, short form
 - For use between non-arm's length parties, with basic representations and warranties
- Each title a hyperlink to the document

Organizing Precedents

- Double level indexing
 - Create a description of documents of a particular type in a Word document, and link to them
 - Then create another Word document that describes various types of documents, each type described in its own Word document and linked

Organizing Precedents

- Intranets
 - Using web pages as indices
- Document management systems
 - Using commercial software to index precedents

Unfamiliar Precedents

- Need for education
- Need for experience
- The precedent as a tool

Beyond the Precedent

- Know-how and experience
 - Formalized knowledge
 - Informal know-how
- Who you know
 - Contacts outside your firm
 - Business contacts
 - Mentors and consultants

Beyond the Precedent

- Capital assets of the law firm
 - Structural capital
 - Documents, procedures written down
 - Human capital
 - Skills, experience and know-how of people
 - Client capital
 - Relations with clients, special value to clients

Beyond the Precedent

- Real knowledge management means managing ALL the assets
 - Go beyond what is written down
 - Use the human and client capital
- To do that, you have to think of these things, list them and think how to use them

Technology for Precedents: Lessons for Smaller Firms from the Large Firms

Joel Alleyne

It is often said that information technology will force us to operate in larger and larger organizations to reap economies of scale and to leverage the investments required. Over the twenty three years since the introduction of the original IBM PC, we have witnessed vibrant solutions at all levels and sizes of enterprises and indeed law firms. There is an argument to be made that personal computing tilts the playing field back in the direction of the smaller firm. Both small and large firms benefit from the use of this technology on every desk.

A handful of technology related trends have allowed professionals to be competitive at all levels and law firms are no exception to these experiences; indeed, smart lawyers everywhere have been making use of information technology in their practices. In the area of precedents, there are a number of advantages to using information technology.

The personal computer gave us the ability to control our own work. Coupled with word processing software, we can reuse old documents (precedents) or parts of documents (clauses) in ways unheard of when we work with paper. There are stories in every firm, large and small, about the individual who keeps her precedents in the filing cabinet and one can always trust her to retrieve the appropriate document from her files when required. But this system is labor intensive. We have to rely on this individual to 'remember and recall' useful precedents – often from memory. This can be improved by having a paper (or computerized) indexing scheme, but this too can be limiting. However,

if these documents are not organized electronically one often has to retype information to reuse it.

By now, most of us keep our documents electronically. But an electronic filing cabinet with thousands of documents is hard to use. Accordingly, we need some way to organize things. Most of us organize files by client and matter. Some even go beyond that and have categories of files within matters (correspondence, pleadings, agreements, etc.). Consider your organization scheme carefully. And, where two or more are gathered to practice together, it helps to agree on similar categories so that you can find things in the others 'pile'.

Recent thinking in the area of knowledge management is focusing efforts on the individual (even within large firms). The individual is the center of their universe and our efforts to provide them with access to precedents and other resources should pay dividends in their productivity and competitiveness.

Focus on the individual:

- Their effective use of the technology;
- Their more productive use of resources;
- Their personal organization systems – and consistency with organization systems across the firm.
- Help them organize
 - what they know (e.g. precedents)
 - who they know (and who to go to for their precedents)
- Keep them in sync with the bigger team.

Remember that precedents, and the larger area of knowledge management is as much about developing younger members of the team as it is about helping the more experienced lawyers use (and reuse) their own work product (and the product of the firm) more effectively.

Think 'less paper', a more reasonable goal than 'paperless'. Look for ways to make these resources available in a 'less-paper' environment. Organized electronically and accessible from anywhere.

Organize incoming correspondence and documents with both the client and reuse in mind. This may mean putting things in several places – or better yet, using keywords and other annotations so that you can search across the firm's resources.

Use the tools more effectively. You can annotate your documents electronically – using the profile and comments fields. This provides a richer way to find things when you need to. Remember that context is important and you can use comments and annotations to remind yourself why you did things a certain way, or to help another person who is using your materials to understand your thinking.

Get tools to clean your document metadata. (e.g. the Payne Metadata Assistant). There have been many cases where lawyers and their clients have been embarrassed by the discovery of prior information contained within documents – things they thought were edited out, but linger on for others to find. Cleaning documents is easy with a tool like the Payne Metadata Assistant. Going hand in hand with this, avoid the use of track changes – some firms ban this altogether.

Think 'finding' not 'search' – that forces you to think about how you are organizing things – with retrieval and the end user in mind. The main reason for

organizing documents is so that they can be found when required. Hence, the language we use to describe things is important.

The Internet affords us a number of opportunities and again is one of the things that helps to level the playing field. You can find precedents in a number of areas, including the Edgar and Cedar data bases. These are a great source of sample documents, clauses and the work product of some of the best minds in the business.

While the individual is important, it is equally important to focus on the needs of the firm or groups within your firm. Make sure that you are not creating islands of information and knowledge. Make sure that you connect your people – link them together with others within the firm as well as outside; and also, with clients. Networks, the Internet, email and Instant Messaging (IM) all provide affordable ways of making these connections.

Teach your people to be ‘intellectual capitalists’ – teach them to exploit the knowledge they have in as many ways as they can imagine.

Teach them to play in the new knowledge markets – trading what they know – recognizing its value. Precedents are instruments and currency in this new marketplace. Precedents need to be valued. We are all striving to find ways to recover for the use of these instruments to incent their collection and use across our firms.

Look for ways do exploit new technologies – like the Google Personal search tool which allows you to have the power of Google scouring through files on your desktop. While this is indeed a scary prospect for larger firms where the prospect of insular behaviour is seriously counterproductive; this tool has great potential for the smaller firm.

(Note: before deploying this, make sure the security exposures identified immediately after the launch of this have been dealt with).

When it comes to the use of precedent materials on the web, teach yourself and your people to use search better. Go beyond Google – try search tools like Alexa and Vivisimo. These tools enhance the search experience and provide other ways to look for precedents and other material on the web. Indeed, when searching, repeat your search in different search engines to give yourself a different perspective.

There are a number of key technologies that we have deployed or are considering deploying to assist in the area of precedents:

- Document Management systems:- as a means of organizing both transactional documents and key documents tagged for reuse;
- Document Assembly tools – to allow precedents to be re-used efficiently and effectively.
- Proof reading software (e.g. Elite Deal Proof) – for checking documents and also for sourcing information from sources on the web (e.g. Edgar)
- Intranet technologies (such as Microsoft Share Point) are ways to help organize files and resources within firms of all sizes.

Law firms, big and small, can benefit from the judicious use of information technologies to manage and share their precedent collections. Carefully done, we can have effective solutions for managing and using precedents in firms of all sizes.

Technology for Precedents: Lessons for Smaller Firms from the Large Firms

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LegalTech 2004

Personal Computers

- ✦ Facilitate
 - Access
 - Reuse
 - ✦ Documents
 - ✦ Clauses
- Only as good as the organizing schemes used



Personal Computing Tilts The Playing Field Back In Your Direction

- ✦ Large and small firms can use the technology
 - It is personal
 - It is scalable
 - It is affordable
- ✦ Local Area Networks provide the 'glue that binds'



Go With 'Less-Paper'

- ✦ Teach your people to work with electronic documents
 - Facilitates access/sharing (anyplace, anytime)
 - Hyperlink documents
 - Facilitates distribution
 - Electronically annotated (marginalia)
 - Electronic discussions
- ✦ Retrain to work with electronic documents



Organize, Organize, Organize..

- ✦ Organize your precedents electronically
 - Personally
 - Firm-wide
- ✦ Store documents in an organized fashion - whether in a database, on a DM system or using personal/network file storage

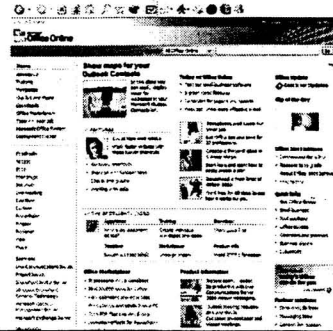


Focus On The Individual

- Help them to be more productive in your/their use of the technology
- Some methods and tools
 - Reverse mentoring
 - http://www.darwinmag.com/read/080101/ed_sidebar_1.html
 - Computer skills driver's license
 - International Computer Driving Licence (ICDL) is a competency standard for computer literacy in use in over 140 countries
 - <http://www.icdl.ca/>

Make Effective Use Of Your 'Office' Software

- Microsoft Office (or equivalent)



Focus On The Individual

- Capitalize on what you know
- Documents are how we record what we know, as well as store and retrieve it
- Documents are
 - 'Containers'
 - 'Darts' or 'missiles'
- Ref: *Social Life of Documents*, Brown and Duguid



Focus On The Individual

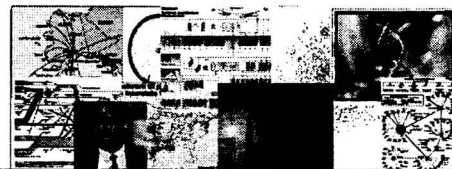
Leverage Who You Know (And Their Precedents)



But Also, Focus On The Network

Networks Are Pervasive

- ✓ Knowledge networks
- ✓ Social networks
- ✓ Physical networks



Focus on Connectedness ...

We are all social, connected beings

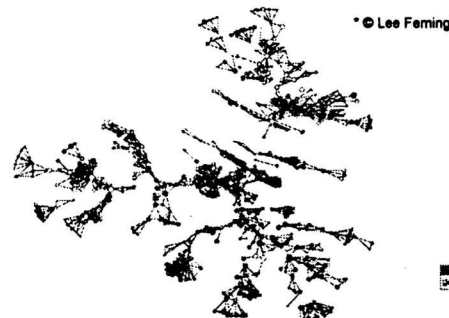
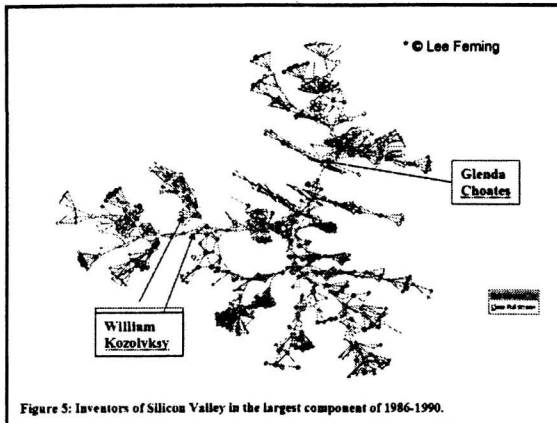


Figure 4: Inventors of Silicon Valley in 1985-1989 that became part of the largest component in 1986-1990. Color-coded by assigner: light green nodes are IBM, pink are Stanford University. Size corresponds to importance of inventor's patents, as measured by the sum of future citations divided by number of co-inventors on each patent. Graphed with Paick directed force algorithm.



Knowledge Management Levels

Within the firm, Knowledge operates at several levels:

- Corporate Knowledge
- Practice Group/Community Knowledge
- Individual Knowledge



Use Your Precedents as Key Currency in The Knowledge Marketplace

- Find newer modalities for facilitating knowledge exchange
- Matching demand and supply
- The experts exchange
- The question and answer exchange
- The talent exchange..

... leverage your precedents

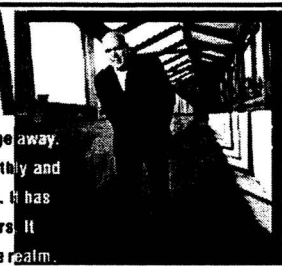


Focus On Knowledge Capital Flows

LISTEN

people don't just give knowledge away. Knowledge does not flow smoothly and for free. There's a market for it. It has buyers and sellers. It has brokers. It has a price system, coins of the realm.

Larry Prusak, IBM Consulting Group



Individuals Are "Intellectual Capitalists"

- "Let us treat people as investors in the company where they work - investors in as real a sense as public shareholders are. For they are truly capitalists: possessors of certain assets - brains, skills, energy - who choose where to invest them, at what level of risk, for what potential return"

Thomas A. Stewart, Fortune May 11, 1998



<http://members.aol.com/thosstew/bio.html>

McKinsey's Thinking - 2004

- "There are really three horizons to getting the most out of knowledge.
- First, you need to improve how knowledge flows in the organization given how you do work today.
- Second, you need to create a knowledge market that provides workers with access to knowledge that was previously inaccessible which improves how existing work is performed.
- And, then the final horizon would be to use knowledge market principles to re-think and re-design how to do work differently. Essentially, if you create a knowledge market, you find that your organization is based on how information flows. Then, you can really improve the organization."

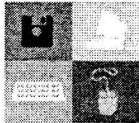


Lowell Bryan, a New York-based partner

<http://www.mckinsey.com/ideas/articles/knownwhatyouknow.asp>

Technology You Can Use

- ▼ Search tools
 - Google personal search
 - Google to search the web
 - Go beyond Google to tools like Vivisimo and Alexa
- ▼ Look for useful online collections, including:
 - Edgar
 - Sedar
- ▼ Online databases and services



Make Effective Use Of Related Technologies and Tools

- ▼ Meta Data Cleaning software
- ▼ Document management
- ▼ Document assembly
- ▼ Proof reading tools
- ▼ Etc.

