

Chapter I

Introduction

LET'S START AT THE VERY BEGINNING

This is not yet another book on business strategy for law firms to keep on the shelf. *Remaking Law Firms* is about innovation in law firms in the United States and other common law jurisdictions, mainly Canada, the United Kingdom, and Australia. We also intend it to be good reading. To these ends, we have talked to legal practitioners and other professionals and thought leaders in several parts of the world, and examined a plethora of sources. The book is the result of studying players in the legal services ecosystem in the United States and elsewhere for two decades. It offers a probing look at the trends and developments in legal services, and a well-formed and practical view of what larger law firms should be doing now to prepare for their futures.

Going far beyond the conventional and a description of the status quo, *Remaking Law Firms* sets out a compelling scenario showing how client demand will drive deep changes in the legal services industry. Our analysis of the present and narrative on the probable future (the *why*) leads to a comprehensive assessment of how firms can—and must—adapt to the new normal by changing, that is, remaking, their business models. Remaking, in the sense in which we use the word, is done in ways that include learning from, and cooperating with, newly established nontraditional legal services providers (the *how*). The underlying concepts are brought to life in examples and case studies from innovative law firms, as well as in-house departments, nontraditional legal services providers, consultants, and other types of professional services firms.

For us, the most striking insight to come out of the research for this book is an understanding of how the professional values of bespoke, technically excellent client service and perfectionism in a law firm can have the effect of compromising the delivery of excellent value, as defined by a firm's commercial clients. The upside of this conundrum is that the professional service ethos of practicing lawyers also provides the strongest available lever to drive cultural adaptation in law firms, if it can be demonstrated that clients want their legal services providers to

change—though firms must not fall into the trap of changing solely in a reactive manner based on explicit client demands.

Remaking Law Firms is about firms and other legal services providers serving corporate and commercial clients. It is not primarily addressed to small firms and individual lawyers that mainly serve consumers, because a number of the challenges that we discuss and the innovation examples that we highlight relate to the complex structure of large firms. Sole practitioners and those practicing in smaller firms, whether they serve consumer or commercial clients, may nevertheless find the book helpful. This is because challenges, such as clients demanding more predictability of time frames and costs, resulting in a need to practice more efficiently, and the need to meet increasing service commoditization by differentiation, diversification, and branding, similarly arise for those practitioners. And the implementation of solutions to address these and other challenges always necessitates the core competency of change readiness as addressed in this book.

BIGLAW AND NEWLAW

As defined in *NewLaw New Rules*, an earlier e-book collaboration of ours, the terms “BigLaw” and “NewLaw” that are used throughout this book do not designate the size or the founding date of the entities to which they collectively refer. Rather, they denote firms or corporations that share a business model with certain characteristics:

The phrase Big Law (two words) has been in use—mainly in the USA—for some time. It describes large law firms and by inference their business model. The late Larry Ribstein of the University of Illinois College of Law wrote *The Death of Big Law* in 2010. This major paper captured the prevailing understanding of the concerns about Big Law. [George Beaton] adopted the words Big Law and removed the space between them to create “BigLaw” as a mnemonic for the business model underpinning the operations of traditional law firms.

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Eric Chin coined “NewLaw” in his provocative post *2018: The year Axiom becomes the world’s largest legal services firm*. Eric’s NewLaw neologism is a collective noun describing legal services providers with new business models.¹

As participants in the discourse on BigLaw/NewLaw, we are excited to see that the occasionally antagonistic debate about the necessity to find new ways of serving commercial legal needs is giving way to nuanced discussions about the evolution of a legal services ecosystem, and the ways in which different legal services providers (law firms, in-house departments, and NewLaw corporations) with different business models and different focal points can interact for mutual benefit. This

1. GEORGE BEATON, *NEWLAW NEW RULES* (Beaton Capital 2013) (quoting Eric Chin, *2018: The Year Axiom Becomes the World’s Largest Legal Services Firm*, BIGGER. BETTER. BOTH? BLOG (Sept. 13, 2013), <http://www.beatoncapital.com/2013/09/2018-year-axiom-becomes-worlds-largest-legal-services-firm/>).

book adds to the dialog by collating and describing a number of those forms of cooperation.

THE LEGAL SERVICES INDUSTRY

Throughout this book, we will refer to the legal services industry and legal services providers. These terms necessitate some explanation. We prefer “legal services industry” to “legal industry” because it is more accurate in capturing not only the service-based nature, but also the competitive dynamics. We include in this industry traditional law firms, in-house legal departments, other entities providing legal services, and those directly supporting legal processes—specifically legal services outsourcers and legal knowledge providers. “Legal services providers” by analogy include enterprises and individuals that provide various building blocks of legal solutions, and that sell to clients who may or may not be lawyers. They may be affiliated with law firms, in-house legal departments, or corporations without internal legal services.

The size of the U.S. legal services industry is considerable, with numbers in the range of \$300 billion frequently cited.² We acknowledge that the actual share of this market held by nontraditional legal services providers is quite small at this point in time. We believe that worldwide, their share is less than 1 percent, based on a crowd-sourced estimate undertaken in late 2014. The importance of the alternative legal services providers at this point lies in their successful proof of concept and their enormous growth potential. Conceivably, every in-house department and every law firm that has not already reviewed its internal processes, especially those related to work of lower complexity, and has not allocated that work to the most efficient way of sourcing, is a potential customer for the nontraditional providers.

WHAT THIS BOOK DOES NOT COVER

The legal profession does not exist in a vacuum, and it is subject to a large number of normative influences including direct regulation, the structure of court systems, and other established dispute resolution processes. *Remaking Law Firms* does not address how these systems in the United States and elsewhere might contribute to law firms providing services in ways that have fallen behind clients’ expectations, and how they, too, would benefit from being remade to deliver services better, faster, and cheaper.

The book also does not discuss how changes in the legal services industry, particularly increasing digitization and commoditization, need to be reflected in legal education. Across the United States and other common law jurisdictions legal education by and large still focuses on building individual, legal analytical

2. See, e.g., Frank Strong, *What Size Is the Addressable US Legal Market?* BUSINESS OF LAW BLOG (Jan. 15, 2015), <http://businessoflawblog.com/2015/01/addressable-us-legal-market/>.

and research skills, neglecting a need to train lawyers in systems theory, multi-disciplinary cooperation, people skills, computer science, general business and economic concepts, and real-world application of academic concepts (comparable to medical schools, which now increasingly expose students to patients and communities in a carefully controlled manner from the very beginning of their studies). Nevertheless, for “tomorrow’s lawyers” in the sense coined by Richard Susskind (who might singlehandedly have done more than any other thought leader to put the need for innovation in legal services firmly on the agenda),³ this book is a useful tool for understanding the trends and forces that have shaped and will continue to shape the legal services industry, and for understanding the resulting challenges and evolving opportunities.

Similarly, beyond some material in chapter 2 on legal services deregulation in the United Kingdom and Australia that could possibly be a portent for what may lie in store for the United States, and the new technological competency requirement in the comment to the American Bar Association bar rules, this book does not address the need for regulatory or professional conduct rule changes that might arise from developments in the legal services industry.

OUR CONTRIBUTORS

This book was inspired by the exhilarating experience of crowdsourcing the e-book *NewLaw New Rules*, which brought together a large number of thought leaders from around the world to share their unique vantage points on what is happening and what may occur in the legal services industry. We wanted to capture that breadth of expertise from all walks of corporate and commercial legal and other professional services to supplement our own analysis of how law firms need to change to remain relevant in meeting their clients’ needs. To this end, the team, including Eric Chin, conducted semistructured interviews and corresponded with over 40 invited commentators between July 2014 and February 2015. We are very grateful to all our contributors (as listed in the Appendix) for generously volunteering their time. In providing material for this book, they guided our understanding of how they strive every day to serve their clients and manage their firms ever better in various direct and indirect ways. *Remaking Law Firms* would not have been possible without them, and they are proof of how members of the legal profession and other disciplines have taken up the challenge to remake legal services.

THE STRUCTURE OF THE BOOK

The book consists of two parts, the *why* and the *how* of remaking law firms. The first part commences in chapter 2 with an overview of the legal services industry

3. See RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (Oxford University Press 2013).

today. It describes the prevailing traditional law firm business model and some of its challenges, and contrasts it with other entities providing legal services. The taxonomy of legal services providers in the market today provides a concise description and basis for understanding the essential differences between types of providers (see Figure 2.1).

The legal services industry as such is analyzed using Michael E. Porter's five forces framework in chapter 3, reaching the conclusion that it displays all the signs of being mature. The consequences of maturity are explored and explained. To highlight the plight of most law firms, a case study describing a mid-sized firm that in spite of strong post-financial crisis performance has "maxed out" on the profit levers (as described in David Maister's profitability equation) concludes chapter 3.

Chapter 4 provides a detailed picture of the clients of the future—the main drivers of change in the industry, partly by increasing their own capacity to meet more of their internal clients' legal needs. The chapter starts with key demographic trends and provides evidence of continuing growth in in-house legal departments in order to increase the volume and complexity of legal services they provide to their internal clients. This trend is coupled with a decrease in external legal spend and a demand for external legal services to be priced and delivered in alignment with clients' business goals. The increasing consolidation of panels to maximize buying power and application of professional procurement processes are additional manifestations of this trend. Corporate clients, both those with and without in-house legal departments, are starting to use retainer-based services from New-Law providers. Sourcing options for in-house legal departments have evolved far beyond traditional law firms, and can involve captives and collaboration with New-Law firms. Clients' successes with bringing work in-house and using alternative legal providers are fueling a positive feedback loop.

Chapter 5, The 2025 Kaleidoscope Scenario, builds on the state of the legal services industry today and how clients' demographics, needs, and behavior are changing to provide a scenario of what the legal services industry might look like in ten years' time. Scenario building is a tool for firms to use in strategic planning in the face of uncertainty. It can be used to formulate and assess the business model changes and strategic options a firm must consider to sustainably serve its clients and at the same time achieve professional and financial success. Our analysis of the legal services industry makes a multifaceted scenario most likely, hence our use of the term "kaleidoscope" to describe it. Many forms of legal services providers will coexist, compete, and cooperate in ways that depend on clients' preferences, industries, and jurisdictions.

Chapter 6 is about diagnosing your firm's readiness for change. It contains a self-assessment tool (see Figure 6.1) to gauge levels of awareness of changes in the legal services market; to assess to what degree a firm is ready to remake, or is already remaking, how it wins work and does work; as well as to consider its overall readiness for change. Such a self-assessment is a starting point to direct change efforts based on an identification of strengths and weaknesses in specific

areas that are important in remaking the firm, and can also guide readers to areas of particular interest in the book.

Chapter 7, *Designing the Business Model*, provides a link between chapters 2 through 6, which illustrate *why* law firms need to remake their business model to meet the present and future challenges in the legal services industry, and chapters 8 through 13, which set out *how* this remaking is to be done. The chapter examines *what* is to be remade. It details the concept of the business model and applies it in the context of legal service providers. A business model encompasses both the narrative of how a business works and the quantitative considerations, including modeling, to provide evidence that if the underlying assumptions are correct, the business will be profitable. The business model of a law firm needs to articulate how work is won, how work is done, and how the enterprise is governed. Each of these dimensions can be further broken down into specific hallmarks. The business models of BigLaw and NewLaw firms are quite different in regard to each of those hallmarks, and individual firms lie on a continuum or spectrum, extending from BigLaw to NewLaw for a given hallmark (see Figure 7.1). Remaking a firm means designing its business model to move toward the more client-centric, more efficient, and more agile manifestations of hallmarks that characterize the NewLaw business model.

Chapter 8 is the first of the chapters detailing how the business model can be remade. It focuses on brand, marketing, and business development, because brands make legal services providers stand out in commoditized markets, and law firms are missing opportunities by focusing too much on personal partner brands rather than on a compelling, distinctive brand for the firm. Building a credible brand around differentiated and, for some firms, diversified offerings needs to proceed from an assessment of market- and client-derived insights. “Expert evidence” illustrates how this works in practice. These insights need to be matched with the particular strengths of the firm to define and execute its brand purpose, thereby contributing to a sustainable business model and creating a competitive advantage. The example of a NewLaw firm and its branding strategy demonstrates this point. Dedicated, professional business development staff add value by enabling more cost-effective business development, better quality client relationships, and more responsive client service, illustrated in a case study on the development of a professional sales force in the diversified professional services firm PwC.

Chapter 9 discusses pricing and fee arrangements as another crucially important component of a remade business model. The billable hour has long been a cornerstone of the traditional law firm business model, but in the interests of clients and firms, law firms need to move away from six-minute units as the dominant form of pricing. An overseas case study about a local council in-house department in the United Kingdom (Kent county) that initially moved to billable hours as a pricing mechanism, and subsequently on to Alternative Fee Arrangements (AFAs), both times in order to improve client service, provides a powerful illustration. There

is quantitative and anecdotal evidence that AFAs can be employed in a profitable manner, particularly if offered to clients proactively. AFAs also provide a way to increase realization rates if linked to prudent resource allocation. Sustainable and profitable pricing is a multidisciplinary challenge that needs involvement and data input from all parts of the firm as well as external sources. Fee arrangements that demonstrate alignment with and value to clients include fixed fees; bonus or hold-back components around client-defined metrics; and outcomes-related fees, retainers, and contingency fees.

Chapter 10 covers sourcing and outsourcing, because clients are increasingly becoming self-sufficient by bringing work in-house, and also sourcing from NewLaw, or expecting their law firms to cooperate with NewLaw providers to ensure work is done at an appropriate cost. Beyond that, cooperation with legal services outsourcers opens up the possibility for law firms to benefit from the significant investments in people, process, and technology, as well as economies of scale, that these corporations offer. The chapter contains examples of how cooperation between BigLaw and NewLaw firms can work, and also provides the perspective of a major client assessing sourcing options for its firm. Sourcing alternatives, including on-demand workers, captive entities (as an increasing number of law firms in the United States and the United Kingdom have set up), and third-party outsourcers are discussed. The most relevant considerations for the make versus buy decision by law firms are summed up elsewhere (see Figure 10.1).

Chapter 11 explains the rationale behind using legal process management (LPM) and process improvement as structured approaches to more predictably meet clients' and firms' expectations about quality, time, and budget for a matter. Technology enables effective and efficient project management and process improvement, but, as an expert points out, firms must not neglect the significant behavioral challenge in getting lawyers to work differently and adopt new approaches. The challenges and milestones in implementing a comprehensive technology-supported LPM initiative in a law firm are captured in a detailed case study about "Gowlings Practical" at a large Canadian firm.

Chapter 12 makes clear how technology, knowledge management, and analytics contribute to the success of a remade law firm business model. Given the significant spend law firms make on information technology (IT), it is important to derive maximum value from this capability. This can be achieved through an appropriate operating model, by structuring IT governance through senior management accountability and oversight, and by creating seamless IT integration with the operations of the firm.

Knowledge management is enabled through technology, and tools that optimize search and retrieval can increase both quality of work and margins. Expert systems are considered a specific type of knowledge management that allows firms to broaden their services and leverage their expertise beyond custom-made individual advice. Analytics is one of the next big challenges for law firms, since

much of their business is to provide information relating to legal risk management. Applying analytics to their internal data also enables law firms to improve internal processes.

Chapter 13 completes the *how* part of the book, discussing partners, innovation, and change. In our view, the implementation of plans to remake the business model of a firm is the most significant remaking challenge. As the saying goes, “culture eats strategy for breakfast.”⁴ The firms that intend to remain as successful as they are today in serving clients and making profits must welcome and embrace the changes discussed in the earlier chapters. Lawyers tend to be conservative and risk-averse, and their quest for perfection is at odds with an experimental approach that sees circumscribed failure as a necessary part of development and change. Very considerable resources are necessary to design and execute meaningful change initiatives in a law firm. This chapter provides examples of how firms have nevertheless successfully remade and/or added new facets to their business models, or have formalized processes for enduring innovation. Commentators point to the importance of tapping into the professional ethos of client service to drive change, and the importance of starting with small change initiatives that can be scaled up and modified if successful, possibly outside the parent firm. In this way, a firm can take the first strides on its change journey, simultaneously building specific initiatives and the crucial capability of change readiness.

Chapter 14 briefly sums up our insights and reaffirms our call to action for traditional law firms to start remaking their business models now. By the way, have you ever considered that today is the first day of the rest of your law firm’s life?

4. Apocryphally attributed to Peter Drucker.