



LAWYERING IN THE 21ST CENTURY

SUCCEEDING THROUGH INNOVATION



legal
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zone

Lawyering in the 21st Century

Constant change within today's society is undeniable and the pace of that change is particularly noteworthy. Everything is evolving at an accelerated rate across all industries. More and more in the legal profession – where the concept of innovation goes far beyond the latest technology – managing and adapting to the pace of change has become integral to attracting and retaining the top talent, clients and work.

Our recent summit on legal innovation tackled this topic head on. Organized and hosted by LexisNexis Canada and the Legal Innovation Zone at Ryerson University, *Lawyering in the 21st Century* brought together thought leaders and seasoned practitioners who offered novel ideas and practical advice for lawyers who are interested in staying ahead of the innovation curve.

Featuring an engaging combination of workshops and keynote speakers, attendees left with a new sense of purpose and motivation, inspired by the prospect of introducing innovation into their organizations. The presenters' key points and practical recommendations are summarized in this report.

Innovation is not only about technology. One of the most significant shifts in the legal industry over the past twenty-five years has been the change in the role, status and authority of in-house counsel. In his keynote address, Ben Heineman, Jr., previously Senior Vice President-General Counsel at General Electric from 1987 to 2003, referred to this shift as the “inside counsel revolution” and credited it for transforming both the legal profession and the business world.



Ben Heineman, Jr.

**THE INSIDE COUNSEL REVOLUTION:
THE CHANGING ROLE OF THE GLOBAL GENERAL COUNSEL**

According to Ben, this ongoing revolution is having an impact both inside and outside corporations. General counsel has increasingly become the primary counselor to the CEO and is comparable in importance to the CFO. There has been a corresponding shift of power from outside the company to inside: in-house counsel now has greater control over both matters and the money being expended – particularly in the era of what Ben calls a “productivity disconnect” where companies strive to do more with less while law firms continue to do less for more.

In his address, Ben went on to discuss several “framework ideas” that are at the core of the mission of the corporation and the role of the lawyer, and that underpin the foundation of innovation for inside counsel. He defined the corporation’s mission as the fusion of high performance with high integrity and sound risk management – optimizing the interests of all stakeholders while adhering to the highest standards of ethics and values, both legal and financial.

A second framework idea that Ben advanced was the evolution of inside counsel’s role into that of “lawyer-statesman.” General counsel’s function is no longer solely about the law; instead, they wear many hats and act as experts, wise counselors, accountable leaders, decision makers.

As lawyer-statesman, inside counsel have four ethical duties that must be observed: to their own institution and fellow employees, to the corporation's clients and other stakeholders, to the rule of law and administration of justice, and to securing the public goods upon which the company and society depend. Above all, it is critical for the lawyer-statesman to assume an active role in the organization, to undertake analysis before offering recommendations and to not simply do what business leaders request. The alternative? Potentially joining executives from Exxon, Worldcom, Siemens and VW in the hall of shame.



Ben referred to another framework idea that should act as a guiding principle for inside counsel: acting as partner to the CEO and guardian of the company. Though some might find it tricky to strike the appropriate balance and resolve the tension between these mandates, Ben maintained that doing so is possible and necessary, explaining that “the core of the general counsel role is to be a guardian; the partner role can

never undercut the guardian role, but being an effective partner makes the general counsel a more effective guardian.”

Achieving this objective requires participating in all dimensions of the corporation – from understanding the various aspects of the business, to being involved in all planning meetings, to contributing to the implementation of decisions – and fusing together the broad scope of knowledge that such participation entails. In Ben's experience, counsel may encounter some obstacles in pursuing the partner-guardian balance, but these can be overcome through a three-pronged approach:

- > The general counsel's character must be beyond reproach and include the traits of courage, tact, trust and a solid reputation outside of the company
- > The fibre and culture of the legal organization within the corporation must dictate that all inside lawyers adopt the goal of becoming partners and guardians
- > The general counsel must form alliances with the “nervous system” of the corporation – the CFO, and HR, Risk and Compliance heads

At the end of the day, inside counsel's success at becoming partner and guardian is dependent on their being able to articulate the value of the role and obtaining the buy-in of top-level decision makers within the company. This extends to the Board of Directors and the CEO who, Ben suggested, will adopt the concept of inside counsel as lawyer-statesman and partner-guardian out of necessity, given the current climate of increased commercial complexity.

It is critical to create a culture of integrity across the company, one that permeates all functions and responsibilities, from the leadership to human resources to employees. This is the fourth framework idea that Ben described. Compensation, he argued, should be tied to performance and integrity. Integrity should be part of the organization's education and training efforts. And employees should be given a voice so they can provide feedback and raise issues candidly.

These four framework ideas complement the tremendous inside counsel revolution that has taken place. By applying these fundamental principles across the myriad issues they face, including performance, compliance, ethics, risk and governance, general counsel can lay the groundwork for continued innovation.

KEYS TO SUCCESS

Ben recommended relying on four framework ideas:

- > The corporation's mission should be the fusion of high performance with high integrity and solid risk management
- > Inside counsel's role should become that of a "lawyer-statesman"
- > General counsel should act as partner to the CEO and guardian of the company
- > A culture of integrity should be fostered throughout the organization

Carla Goldstein began her workshop with a slide that read: “There is more to the delivery of legal services than just drafting a document or going to Court.” Her point, she explained, is that to be effective and to ensure client satisfaction, it is critical for lawyers to understand and explain the process that surrounds what they do.



Carla Goldstein

THE LEAN APPROACH TO LAW: INNOVATING LEGAL PROCESS MANAGEMENT

Carla spent several years as the Chief Strategic Innovations Officer at SeyfarthLean Consulting and its parent law firm Seyfarth Shaw, where she helped develop SeyfarthLean, the innovative approach of applying Lean Six Sigma to the delivery of legal services. The SeyfarthLean methodology incorporates process improvement, process management and technological solutions. The result? The creation of value and elimination of waste across multiple process steps.

At SeyfarthLean, Carla worked with scores of clients in the legal industry implementing the Lean methodology. This was followed by several years as the Associate General Counsel and Director of Strategic Initiatives for BMO Financial Group where she worked with the bank’s lawyers and outside counsel to drive innovative delivery models for legal services, including the use of process improvement, technology and pricing models not based on the billable hour. Carla drew on this extensive experience throughout her workshop at our innovation summit.

The main takeaways from Carla’s presentation: communication is key and change must be data-driven.

To understand value, she explained, it is vital to communicate – with your client or within the business – and ask the important questions: What are you looking for? What are your expectations? How can we get from “good” to “excellent”? In other words, it’s critical to determine how the stakeholder



you're serving defines value. Often, Carla said, a lawyer may be surprised to hear a client explain, "I don't care how long it takes you, I care about the value you deliver to me." And that turns the whole concept of billable hours on its head.

When trying to identify the issues within a process, it's equally important to gather and analyze data. As Carla maintained, "No one can argue with data." The

data collection doesn't have to be complicated, but it will help you get to the root of the problem. Lawyers tend to "solution jump" – they think they know what the problem is without looking at the data. She offered an example of the employee who is always late for work. Because there are multiple potential reasons for the tardiness – from having to iron clothes to missing the bus – it's important to drill down and find the real reason for the lateness (i.e. hitting the snooze button too often – which is controllable), instead of assuming it's something else (i.e. bad traffic – which is not controllable).

For Carla, process maps are at the core of improving current systems, and can be applied to any kind of work and not just commodity work. Mapping out an organization's processes using flowcharts is the first step in finding the most cost-effective, efficient way of carrying out tasks. This involves defining the tasks, identifying the resources required, determining the time needed for each task to be completed and listing the available tools (e.g., checklists, templates, etc.).

Eliminating inefficiencies (such as bottlenecks, unnecessary steps and using inappropriate resources) and leveraging knowledge management tools (such as technology, training, communications) enables the creation of what Carla called a "future state" process map – the new and improved way of doing things. Then it's time for the implementation phase, where the new process is adopted and refined. Throughout, it's critical that there's buy-in from the upper echelons of the organization and that controls are put in place to ensure that everyone is adhering to the new process – essentially the only way of guaranteeing success.

KEYS TO SUCCESS

According to Carla, this is how to start:

- > Make sure you have support from the top
- > Ensure you have a strong driver of the change who has a "voice at the table"
- > Start small: Pick a simple, well-defined process
- > No one can argue with data
- > Work with a finite project team
- > Pick an area that isn't politically charged
- > Look for champions
- > Work with a receptive client

In his keynote address, Zev Eigen, Global Director of Data Analytics at labour and employment law firm Littler Mendelson P.C., offered an engaging look at how law firms can incorporate data science into their practices and processes.



Zev J. Eigen

TURNING BIG DATA INTO BIG INSIGHTS

Zev explained that data science involves three main tasks:

- > Predicting “stuff,” as in the likelihood of something happening or the outcome of a case
- > Classifying “stuff,” as in measuring data and classifying it based on past experience
- > Pattern mining “stuff,” as in identifying the patterns in data

According to Zev, it's time for the legal industry to embrace data analytics. The best way to do so? Hire someone and make it their job. The value that data scientists and their skill sets offer should make them an essential addition to any law firm. Law is still seen by most as a profession, and not as a business. By changing that mindset, many data analytics and technology solutions that are business-oriented will be viewed by law firms as must-haves, instead of nice-to-haves. Accordingly, here is a lot of potential for innovation, – from optimizing processes within a firm or legal department to using data science on behalf of a client and selling it as a software solution.

An example he provided of the ongoing advances in data science is neural networks – a tool that mirrors how the brain works. First, there's input – data goes in. Then, there's a hidden layer where there's interaction between the data points, such as gender, time, height, etc.

Finally, there's output of the prediction based on the data. Data scientists optimize models and train neural networks to get better and smarter over time. One potential benefit to lawyers? Increasingly accurate predictions of litigation outcomes – a benefit most would agree offers significant value.

Zev also pointed to advances in deep learning and natural language processing systems, and envisaged a time in the not-too-distant future where it will be possible to derive from all of your past writing an optimal brief based on specific new parameters.

Zev also discussed the value of relational analytics and how relational data can measure the way that work gets done across the people in an organization: understanding how people work together is integral to improving processes at law firms. To advance and succeed at law firms, people need to be connected horizontally to others who will help them get their work done and need to be connected vertically to others who will help them get ahead. Relational analytics can help identify the pathways for implementing this strategy.

To incorporate data analytics in your organization, Zev recommended the following approach:

- > Pick an area with room for improvement (e.g., predicting outcomes, hiring diversity)
- > Identify data scientific solutions
- > Experiment, measure, retest
- > For example, how are you hiring lawyers? Are you making decisions based on resumes? Instead, apply an experimental design to test alternative, innovative or disruptive measures that question the status quo. Use relational data to differentiate high-performing and low-performing lawyers. Or use machine learning to predict the likelihood of high performing employees. Then use those data to hire.

KEYS TO SUCCESS

- > Pick an area on which to focus – don't try to "boil the ocean"
- > Ensure there's a person responsible for carefully vetting the process
- > Be informed consumers of vendors – educate management-level decision makers
- > Integrate data scientific approaches into decision-making processes, but don't replace discretion wholesale
- > Ensure that multiple data sources are examined and cross-validated

At first blush, design and law may seem to be unlikely productivity partners, but according to Margaret Hagan, Director of the Legal Design Lab at Stanford Law School's Center on the Legal Profession, design thinking provides innovative opportunities to improve the ways we deliver legal services and work in legal organizations.



Margaret Hagan

LAW BY DESIGN: A MOVEMENT TO MAKE THE LAW MORE ACCESSIBLE, MORE USABLE AND MORE ENGAGING

Designers tackle issues from the end-user's perspective and aim to offer solutions that solve people's problems. This shift to the consumer's point of view is a relatively novel approach for lawyers, encourages them to consider the needs of their clients when developing new processes or service delivery models and enables them to provide proactive (value added) legal services. By considering how people act and think, Margaret explained, we can better understand what they want and let that guide how we develop, purchase and use technology.

Margaret's design process – the one that she teaches to her students at Stanford and that workshop participants would test – involves working through five main steps:

- 1. Discover:** Map out the relevant stakeholders and start talking to people. Build an interdisciplinary team and go out “into the field” to uncover stakeholders' needs – both explicit/transactional and implicit/experiential. Discover users' wants, needs, frustrations and where there are opportunities for improvement using interviews, observations, surveys, questionnaires – and most of all, empathy.



2. Synthesize: Take all of the learnings from step one and synthesize the information into a focused design brief. At this juncture, Margaret explained, it's critical to focus on a single user and use case for the initial prototype – and to avoid overly generic or abstract solutions. The solution can then be scaled to other users. Get a thorough understanding of that user (including their goals, needs, technology preferences and what engages them) and then map out the high and low points of their service experience. It is then

possible to spot the opportunities where a new tool, service, organization or other intervention could improve their experience.

3. Build: Brainstorm and generate ideas for new possible solutions. Gain perspective by imposing varying constraints, i.e. what is possible with an infinite budget versus a limited or no budget? Consider borrowing innovations from other fields. Then build a prototype without spending a lot of resources – use sticky notes or storyboards to mock up the new design or act out the solution. Get feedback from users through the next step.

4. Test: Do this over and over. Take your prototype through the build-test loop as many times as necessary until you get it right. Viable solutions can be reached more quickly by building out hypotheses and testing them, than by over-planning or over-researching. Plus, it's better to discover problems early on than after a major investment.

5. Evolve: Time to make decisions: Should the design continue on? Who else should be looped into the process? What needs to change for the design to be viable and scaled up? Where should resources be allocated?

KEYS TO SUCCESS

It's beneficial to shift your mindset from that of a lawyer to that of a designer:

- > Flip your view of the delivery of legal services by considering the wants and needs of the end user
- > Be intentional about the design process: define the challenge, come up with ideas, build a prototype
- > Put the new concept through prototype test loops and continue refining it

Cheryl Cran, change leadership expert and the final keynote speaker at our innovation summit, provided a motivating review of the rapidly evolving nature of work and the importance of change leadership. Her address, *The Future of Work is Now: Embracing Innovation in the Legal Industry*, urges legal professionals to make the adoption of an innovation mindset a priority.



Cheryl Cran

THE FUTURE OF WORK IS NOW: EMBRACING INNOVATION IN THE LEGAL INDUSTRY

According to Cheryl, there are five radical changes that leaders must make in order to be “future ready”:

1. A radical shift in mindset about what work is and how to do it
2. A radical ability to see multiple perspectives at once
3. A radical creative solutions approach
4. Become radically authentic
5. Adopt a radical candid and caring coach approach

Implementing these changes will enable legal professionals to thrive in an industry that is shifting from being litigation-driven to innovation-driven, where more and more, clients are seeking innovation business partners – not traditional lawyers. And as Cheryl explained, innovation is not just about technology – it’s about creativity, multiple perspectives, collaboration. In the future, everyone will have to possess fundamental leadership skills such as critical thinking, decision-making ability and discernment.

These are the skills, Cheryl maintains, that will lead to a higher level of innovation.



As part of the process, it's critical to consider the fundamental question: How can we enhance the customer or employee experience? Getting there requires focusing on people, clients and outcomes first, and then incorporating technology as an enabler later. By moving away from working in silos and towards greater collaboration and creativity, an innovation mindset can take hold and drive transformative change in an organization.

To show that the benefits of adopting this approach are very real, Cheryl relied on a quote from Ken Grady at Seyfarth Shaw, LLP: "Clients have become far less tolerant of less mature business practices from lawyers and have started aggressively exercising their intolerance by pulling legal services away from law firms that are not showing the discipline to improve their business practices."

KEYS TO SUCCESS

Focus on innovation as an imperative by:

- Leveraging real time creativity
- Leveraging multiple perspectives
- Stretching to think differently

Summary

Several themes recurred throughout the presentations and workshops at *Lawyering in the 21st Century* and are worth noting. First, innovation is about more than just having the latest technology. Rather, it requires a fundamental shift in focus from the producer of the service (lawyers) to the consumer of the service (clients). It is time to improve processes and the delivery of legal services by considering the wants and needs of the end-users. Second, to achieve the best results, it's important to start small and get it right. As Zev Eigen recommended, don't try to "boil the ocean." Finally, the adoption of an innovation mindset requires buy-in from the top executives at the organization – who must also possess the change leadership skills to manage the transformation effectively.

