

The rise of Legal Process Outsourcing

Andrew King looks at outsourcing parts of the e-discovery process



Seeking more innovative ways of delivering legal services is becoming increasingly important for law firms. Over recent years there has been a gradual shift to outsource lower-end legal work, freeing up lawyers to focus on their core business: the law.

e-discovery is one exercise where parts of the process can be outsourced to more efficient and cheaper options. For many, the outsourcing of discovery work may require a shift in attitude as there has often been the perception that only lawyers can carry out discovery.

Professor Richard Susskind, author of *Tomorrow's Lawyers: An Introduction to Your*

Future (Oxford University Press, 2013), has outlined how much of the work undertaken by lawyers can be carried out more effectively by non-lawyers. Susskind identifies discovery (including the document review) being part of litigation that, in most cases, should not be undertaken in-house but should be done by outsourcing to more efficient and cost effective third parties.

Why outsource?

Historically, many firms have regarded discovery as an exercise that kept junior lawyers and law clerks occupied. This perception is becoming increasingly difficult due to the specialist expertise that is now

required for parts of the e-discovery process.

Outsourcing providers will generally be able to provide cheaper, higher quality, and quicker turnaround of e-discovery services. The outsourcing providers are specialists in what they do (as lawyers are with the law) as the work is repetitive and they have experience in doing it 'day in and day out'.

The main consideration for law firms is: are these non-legal tasks the best use of their legal expertise? Much of the e-discovery process is technical and process driven and does not need to be carried out by lawyers.

The key drivers to embrace outsourcing can be:

- Growing pressures to reduce the cost of litigation;
- The challenges created by the complexity of the technology and the volumes of data;
- Acquiring a competitive advantage over other firms.

Cost pressures

Most organisations face increasing pressures to reduce their legal spend. If law firms solely manage e-discovery in-house the costs can spiral out of control, largely due to the new complexities associated with electronic discovery.

The unpredictability of e-discovery costs can be better managed by outsourcing providers that can provide fixed-pricing models, delivering more certainty than the typical hourly rates of law firms.

In addition to cost pressures, the new High Court discovery rules expect parties to know more about their information at an earlier stage as well as come up with strategies to conduct a reasonable and proportionate search for information. All of this can be challenging unless you have the right expertise to undertake this new requirement.

Challenges with electronic information

Technology continues to transform legal services, but with it comes many challenges.

One of the big issues has been the exponential growth in the volume and sources of electronic information, with nearly all information now originating in electronic form. This explosion of information is making the discovery process more challenging for everyone.

As technology continues to evolve, the challenges will only become more complex. We are only now starting to see the issues posed by new communication mediums like social media and the impact of organisations allowing employees to bring their own devices (BYOD) into the workplace. These issues will have considerable ramifications for complying with e-discovery obligations.

In a paper-based world, much of the discovery work could be completed in-house. Despite the obvious inefficiencies, with adequate resource it was possible.

Do you have the technology and expertise?

To successfully conduct e-discovery in-house it is important to continue to invest in the right resource and technology. Attracting staff with the required skill set is not easy.

Due to the evolution of technology and new e-discovery practices the skills of internal resource and technology can quickly become obsolete. For many firms the responsibility for managing e-discovery in-house is becoming too burdensome, complicated, and costly. The ability to outsource work as and when your requirements dictate fits well with the unpredictable nature of litigation.

Do you want the risk?

There is considerable risk for law firms using their

own staff to undertake some of the more complex parts of the e-discovery process. No law firm wants to face the situation where their work may be called into question (by other parties or the Court), of how they may have collected or processed information. The ability to shift this responsibility to a specialist third party is appealing if anything was to go wrong.

All of these challenges have made it virtually impossible to conduct e-discovery in-house unless the appropriate resource and technology continues to be invested in. The challenges can usually be better managed by specialists that have the necessary tools at their disposal.

A competitive advantage

Outsourcing can 'level the playing field' when it comes to managing e-discovery exercises, as it allows smaller firms to offer cheaper and more efficient services.

The accessibility to the latest tools and methodologies of the outsourcing model helps smaller firms compete with larger firms that may have more resource at their disposal. Some smaller firms are able to work on larger matters than their internal resource capabilities would have previously permitted.

These drivers have led to the introduction of many legal service providers offering viable alternatives for law firm and organisations.

Legal Process Outsourcing

Legal Process Outsourcing (LPO) has been a growing trend internationally, largely due to the increasing demand for cheaper and more efficient legal services.

LPOs are usually located in low-cost centres. Traditionally, the perception of LPOs is of offshore locations like India or the Philippines, although some international law firms have set up their own legal outsourcing service to undertake lower-end legal work.

A significant proportion of large UK and US firms have been working with an LPO for a number of years. Australia has followed suit with many leading firms forming LPO relationships. Currently, few New Zealand law firms that have gone down this path, although this will probably change as New Zealand law firms face similar pressures to firms overseas.

When LPOs and outsourcing providers first emerged the main driver was solely cost efficiencies. Now further efficiencies like allowing law firms to focus on higher-end legal work is an important catalyst.

A popular model overseas is law firms providing their clients with the option to manage the work in-house (if they have the expertise), or to outsource to cheaper providers. The path will largely be determined by the requirements of the matter and associated cost and risk considerations.

Some larger organisations engage LPOs directly, which does raise the question going forward – is it more effective for the organisation, or their law

firm, to engage the outsourcing provider?

Managed document review

The success of the outsourcing model has led to some outsourcing providers offering document review services. Like other parts of a discovery exercise the document review is a repetitive process, which can be undertaken by teams of qualified lawyers away from the law firm. All of which can be performed cheaper and more efficiently than by in-house lawyers.

For many law firms, this may be a step too far, or too early for lawyers to relinquish this responsibility, but with the document review equating to 70 per cent of discovery costs it is an option worthy of consideration. It could be argued if there is any obvious difference to what exists at present with junior lawyers or law clerks conducting the document review.

Growth of outsourcing options

Until recently, one of the problems in New Zealand with outsourcing parts of the discovery process was the lack of quality options, and those that were available were expensive and not very sophisticated.

Today in New Zealand this has all changed with many more options to outsource parts of the discovery process and further more sophisticated options in Australia. These options can all provide more efficient and cheaper options for law firms and organisations to outsource discovery work.


Prior to engaging an outsourcing provider it is important to have the most up-to-date information about the provider and what they offer. Similar to selecting technology in-house, it is important to not let your practice or requirements be shaped by the capabilities of the provider - find the right provider and technology to suit your requirements.

Where to from here?

The legal world is changing, in a large part due to the complexities associated with the explosion of information and the challenges it can bring for lawyers. The adoption of more innovative technologies in conjunction with outsourcing parts of the e-discovery process can help provide cheaper and more efficient legal services.

Over time legal outsourcing will inevitably be used for other lower-value legal work but for now it is tailor-made for the process driven tasks of electronic discovery.

Legal outsourcing will not be right for every organisation or every situation, however leveraging the expertise of specialists to conduct parts of the discovery process can deliver more efficient and cost effective services.

Outsourcing parts of the discovery process will also help law firms focus on what they do best – the practice of law. 

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