

2020 VISION

What will a successful law firm look like more than a decade from now? Here's a preview of what to expect and a chance for you to make the changes now and stay ahead of this inevitable curve.

By Mitch Kowalski

This is an edited transcript of a speech given by Nancy Kwan, CEO of BFC Law Professional Corporation, upon being chosen Canada's Legal CEO of the Year for the second time in 2020.

Thank you very much for this honour, which I accept on behalf of all the shareholders and stakeholders of our organization. I have been asked to say a few words tonight to help explain BFC Law Professional Corporation's remarkable run of success.

It's no secret that BFC strives to be the legal service provider of choice through the efficient, cost-effective and timely delivery of quality legal services. Indeed, while the name of our firm refers to our founders Bowen, Fong & Chandri, some of our lawyers and staff playfully yet proudly suggest that BFC actually stands for "better, faster, cheaper."

At BFC, we continually strive to provide a better customer experience, and that client-centric approach drives everything that we do. There are many things that BFC does differently from the traditional law firm, but time permits me to touch on only a few of the reasons for our success. These I have grouped under four broad headings: Structure, Overhead Costs, Knowledge Resources, and Billing Practice.

Process will be king

By 2020, the Process Revolution will be well underway in the legal industry. Law firms have long handled work by giving a file to a lawyer to: (a) identify the legal problem and work out a legal solution, (b) using a pen, a legal pad, and whatever precedents are on hand, (c) taking as long as required and docketing time spent along the way. Already, however, efficiency tools are appearing not just through technological advances, but also through business process theory and the rise of logistics.

From workflow analysis to project management, from business process outsourcing to just-in-time delivery systems, process improvement techniques are becoming ubiquitous in business. A lot of law firm work product will prove susceptible to the application of workflow and logistics tools, greatly reducing both the cost of this work and the price it can command from clients. Process efficiency gains will rewrite the rules of what lawyers can profitably sell. ■

— All sidebars by Jordan Furlong

Structure

The practice of law in Canada has not evolved much from its roots as a solitary, insular profession in which individual lawyers do all the legal work, prepare and jealously guard all documents, and of course, make all the money. Not surprisingly, this structure creates a self-absorbed and deeply mistrustful culture. Sharing work, or passing it on to someone else, no matter how low-value it might be, is not part of a traditional lawyer's DNA.

BFC wanted to change that mind-set. We wanted a structure that did away with individual ownership and rights, and moved us toward what Stephen Mayson, then-director of the Legal Services Policy Institute, called a culture of "custodianship, stewardship, responsibility, and accountability."

Simply put, our lawyers contribute for the good of BFC so as to leave it in better shape than when they first arrived — with respect to the quality of BFC's know-how, its reputation, its client base and its financial situation. The solution was to create a separate and distinct corporate legal entity of which lawyers and staff could truly feel a part. The sum has become greater than the parts.

Our corporate structure also aligned with our belief that consensus decision-making is a recipe for inertia that, more often than not, puts personal interests ahead of the collective good. Our corporate structure forces us to use a "board of director" decision-making model. And in accordance with good governance practice, all members of our board are independent of BFC and most of them are general counsel for Canadian companies.

Board members are paid not only directors' fees, but to ensure they have a stake in our success, shares in BFC itself. Like all effective corporate boards, ours charts the strategic direction of BFC for its good, independent of the personal interests of BFC's individual lawyers.

Moreover, professional managers who are members of the law society, like me, are hired as officers in order to further ensure that decisions are made in the best interests of BFC as a whole. Senior lawyers who would be partners in the traditional law firm structure are not only shareholders of BFC, they also receive Senior Vice-President titles and an annual salary with a bonus structure. They operate their practice groups in accordance with BFC's strategic plan, manage quality, and manage clients, much as they would in a partnership.

A vital component of our independent management and corporate structure is the discipline to retain portions of BFC's annual earnings to fund long-term goals or to act as a buffer in a tough economy. A partnership structure inhibits such retention, creating a disincentive for the long-term planning and expenditures necessary for sustained success.

Overhead Costs

Successful businesses minimize their overhead costs. In line with our efficiency goal, we quickly attacked our biggest expense: human resources. Our vision is to remain lean but flexible for sudden increases in workload. To do this, we outsource as much routine work as possible to low-cost legal service providers.

We have found that every legal service can be broken down into steps, each of which can be categorized along a sliding scale, from routine to what UK legal visionary Richard Susskind was the first to call "bespoke," or personalized advice. BFC seeks to outsource and perform more efficiently as many steps in a file as possible while still maintaining high quality.

We have outsourced our legal research, document preparation, due diligence and similar work to lawyers in India. As part of a new lawyer's orientation with BFC, she spends two

months in Mumbai with our local legal service provider to understand what work is being sent to the outsourcer and how that work is being done. In addition, a component of a BFC lawyer's annual evaluation deals with her efforts to find efficiencies in her practice.

We no longer have Canadian night staff: the work they once did has been outsourced to the Philippines. Our technology allows real-time connection between our lawyers and our overseas night staff at no cost. To facilitate these efficiencies, all work is done "in the cloud" (through outsourced servers running "Software as a Service"). No BFC document sits on any particular computer, and all documents

are accessible to authorized users anywhere in the world. Appropriate security and disaster recovery measures are in place for our data.

Part of the fallout from the Great Recession of 2008-12 was that more lawyers became willing to work on contract or do piece-work. Locally, we have pools of lawyers who work from their homes strictly on a project basis. Most are former associates from other firms who want more family time and are happy to be paid on a piece-work basis. They constitute our "just-in-time" capacity — they fill gaps when we have major deals and save us significant employment costs.

We do not, unless there are extenuating circumstances, hire

La firme de l'avenir

À quoi ressemblera un cabinet juridique qui a du succès dans 10 ans?

Voici la transcription d'un discours prononcé par Nancy Kwan en 2020, au moment de recevoir pour une deuxième fois le prix de la PDG juridique de l'année au Canada. M^e Kwan est PDG de BFC Corporation professionnelle légale.

Merci pour cet honneur, que j'accepte au nom de tous les actionnaires et personnes impliquées dans notre organisation. On m'a demandé de dire quelques mots ce soir pour expliquer le succès remarquable de BFC Corporation professionnelle légale.

BFC se targue d'être un fournisseur de services légaux de choix grâce à ses services efficaces, ponctuels et abordables. À BFC, nous prônons une approche centrée sur le service à la clientèle et cet objectif détermine tout ce que nous faisons.

Il y a plusieurs choses que nous faisons différemment des cabinets juridiques traditionnels, mais le temps limité ne me permet aujourd'hui que de parler de quatre aspects principaux : la structure, les coûts, la gestion de la connaissance et la facturation.

Structure

Simplement dit, nos juristes contribuent à l'avancement de BFC en ayant le souci de le laisser en meilleur état que celui dans lequel ils l'ont trouvé — et pas seulement au plan des connaissances, mais aussi au plan de la réputation, du développement de la clientèle et de la santé financière.

Le véhicule que nous avons favorisé pour créer ce sentiment d'appartenance a pris la forme d'une entité corporative distincte, dans laquelle, conformément aux bonnes pratiques de gouvernance, les membres de notre conseil d'administration sont indépendants de la firme.

Coûts

Les entreprises qui ont du succès minimisent leurs coûts d'opération. Pour y arriver, nous nous sommes attaqués à notre poste de dépense le plus important : les ressources humaines.

Nous externalisons le plus de tâches de routine possible à des fournisseurs de services à bas prix. Cette impartition — qui englobe la recherche, la préparation de documents, etc. — est faite en Inde.

De même, nous n'avons plus de quart de travail de nuit au Canada : ce quart de travail est maintenant fait aux Philippines, ce qui permet aux employés des deux côtés du monde de travailler en même temps.

L'espace de travail est notre deuxième poste de dépense. Là encore, nous avons abandonné les modèles traditionnels. Nous avons maintenant deux lieux de travail : un centre de réunions, où les juristes peuvent rencontrer leurs clients; et le bureau lui-même, à l'extérieur de la ville, non seulement moins cher à louer, mais aussi épargné par les bouchons de circulation, et souvent plus proche du domicile des employés.

Gérer la connaissance

La gestion des connaissances (GC) est une partie intégrante de nos activités. Un directeur de la GC siège sur l'exécutif. Et tous les avocats doivent, sur une base quotidienne, signaler les documents devant être répertoriés. Ces documents sont ensuite transférés en Malaisie,

où une équipe détermine s'il est pertinent de le faire, en regard du contenu de notre base de données.

Facturation

Le facteur le plus important expliquant le succès de BFC, finalement, est sans doute la manière dont nous fournissons des services légaux qui nous a permis de changer nos pratiques de facturation. Tout est maintenant fait sur une base forfaitaire. Même le litige fonctionne par coûts fixes.

Pendant trop longtemps, les juristes n'ont accepté aucun risque par rapport à leur inefficacité. Nos avocats ne sont pas jugés par le nombre d'heures qu'ils travaillent, mais plutôt par leur efficacité à utiliser les ressources mises à leur disposition pour fournir leurs services.

Conclusion

Il y a longtemps, en 2009, le Washington Post, qui imprimait encore son quotidien en format papier, a écrit que la fin annoncée des journaux était en large partie due au fait qu'ils avaient été « trop prudents et trop lents », survivant grâce à leur monopole, jusqu'à ce que quelqu'un change les règles du jeu. Pour plusieurs, il était alors trop tard pour s'adapter.

C'est la même chose pour la profession juridique. Pendant toute son existence, elle n'a vu aucun besoin pressant pour se transformer, se rendant vulnérable face à des groupes émergents comme BFC, qui ont changé les règles du jeu.

Si vous voulez continuer à fournir des services légaux en 2020 et après, je suggère que vous évaluez toutes les composantes de votre système de fourniture de services, de manière urgente.

Faites-le non seulement pour le bénéfice de vos clients, mais aussi pour votre propre survie. Le terrain légal a changé, et il n'y aura pas de retour en arrière.

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The coming end of the associate

By 2020, the law firm pyramid may well have been replaced by the law firm diamond. More efficient processes and more cost-effective service providers will inexorably erase much of the previously billable rote work of associates in their first few years. And since most associates never make it into the partnership anyway, firms will soon ask themselves exactly why they develop and maintain vast grazing herds of associates. They won't find a good answer.

The future law firm likely will have a few senior partners or stakeholders at the top, a few young future stars in development at the bottom, and a series of client-service professionals in the middle. This will have profound effects on how new lawyers are trained and on how future lawyers are educated — large law firms will no longer be willing to subsidize the new lawyer learning curve. ■

anyone straight out of law school. Many of our competitors still follow the expensive and inefficient practice of hiring large groups of students and then, over a period of three to five years, “culling the herd” to find a few good lawyers who they hope will eventually make partner. In our view, this is a tremendous waste of resources. We put little effort into attracting talent from law school — we prefer to grow by lateral hires, letting other firms make the investment of training our lawyers.

We can afford to do this because we suffer little attrition. Lawyers and staff tend to stay with us, and few of our lawyers are poached by competing firms. This is because ex-BFC lawyers experience great difficulty moving clients away from our efficient and cost-effective approach. Furthermore, after working at BFC, lawyers find it difficult to go back to working with the inefficiencies of a traditional law partnership.

Our second-largest overhead component, of course, is physical space. Here again, we threw out the old law firm belief that expensive office space in a downtown location is a necessity. Our review of clients' interaction with lawyers showed that for most practice areas, it is rare for clients to actually come to the BFC office; in fact, we encourage our lawyers to meet clients at their offices.

If clients do come to the BFC office, it is in connection with a transaction closing or document execution, events that are not constant. We also found that it was rare for a client to actually sit and meet in a lawyer's personal office. As a result, we felt that we could achieve tremendous cost savings by moving to a hub-and-spoke system:

The Hub

We maintain meeting room space downtown (the Hub), equipped with staff, computers and the like. This space also contains hoteling niches where lawyers have workspace and telephone/internet access. Remember, all our systems are cloud-based, so lawyers and staff can work anywhere.

Office management handles all boardroom and hoteling niche bookings.

The Spoke

BFC's day-to-day legal work is done at a public transit-accessible location outside the downtown core (the Spoke). Not only is rent much cheaper there, our staff and lawyers find the Spoke to be closer to their homes, which reduces their travel time and increases their quality of life. In the Spoke, we have moved away from separate offices for lawyers, which allows for the efficient use of smaller rentable space with better HVAC flow (further reducing costs). Small meeting rooms throughout the Spoke accommodate privacy as needed.

Knowledge Resources

We believe, as do many legal thought leaders, that the packaging and selling of legal knowledge is the core of our business. Accordingly, our Knowledge Management (KM) director is on the executive team and plays a vital role in our business.

Contrary to the law partnerships of old, we see KM as much more than a software solution supplemented with a KM director hounding lawyers for precedents. Our KM philosophy, which borrows heavily from the writing of longtime KM expert Matthew Parsons, is holistic; it has become an integral part of how every lawyer at BFC works.

Each BFC lawyer (no matter how junior or senior) is required to flag possible KM documents on a daily basis. Compliance with this requirement forms part of the lawyer's annual evaluation. Documents are sent every night to our KM editing team in Malaysia (run by a resident BFC lawyer), whose members review each document and determine if it adds something new to our database. All business development presentations are also templated and handled by KM to ensure consistent firm image, wording, content and messaging.

Our Professional Development (PD) director is also a member of the executive team. He works in concert with the KM director to ensure that our lawyers, particularly the younger ones, receive consistent exposure to files so as to develop the habits and skills necessary for BFC's success.

Mentoring is an important part of our PD

Price will be decoupled from costs

Lawyers and clients have long assumed that the price of legal services is somehow connected to its cost. A lawyer could figure out her cost of providing a service, build in a percentage for profit, and arrive at a price; internal costs could always be passed on to the client. Aside from unusually rote work, lawyers could control their price to a great extent.

By 2020, clients will have made substantial inroads in identifying the value they derive from legal services and will not pay more than that amount. This will oblige lawyers to control their internal costs in order to ensure a profit. “Price” will be what the market will pay; “cost” will be whatever the lawyer incurs to deliver her services; lawyers' profit will be difference. ■

program. Senior lawyers are evaluated on their mentorship of junior lawyers and how they help those lawyers reach mandated milestones (for instance, a corporate lawyer milestone might be to lead a certain type of transaction). Unlike too many of our rivals, we insist that lawyers acquire specific technical, managerial, client, and interpersonal skills, as well as the ability to manage staffing and outsourcing to budget. Advancement within BFC is based upon a lawyer's ability to get a transaction done at a profit.

Billing Practice

Perhaps the most important aspect of BFC's success, however, is that changing how we deliver legal services gave us the freedom to change how we charged for them.

All fees are fixed, agreed with the client ahead of time, and set out in our retainer letter. That letter contains our service level agreements and key performance indicators, all of which are tied to "fee at risk." In other words, if we miss our KPIs or veer from our SLAs, our fee is reduced. Conversely, we have also put in place a bonus structure, such that we can earn additional fees for superior service or for achieving other specified results.

Transaction fees are typically set as a percentage of the purchase price in question. Litigation is also done on a fixed fee basis — if you find this surprising, remember that 90% of matters settle before trial. It's a fallacy to suggest that litigation fees can't be fixed or done on a piece-work basis, in which the price of every step or procedure, such as a motion or trial, is fixed beforehand. This pricing reinforces the need for superior KM and efficient use of personnel, since failure to do so cuts into our profits.

It is the responsibility of every file's lead lawyer to manage quality control and to achieve our internal budget for that file. If a project goes over budget, we examine internally what went wrong and how it can be corrected in the future. We do not make it the client's problem.

For too long, lawyers have refused to accept any risk for their inefficiency; unlike other businesses, they have had no incentive to control client costs. BFC has turned this model on its head, and our clients approve. In that same vein, we do not charge clients for any disbursements, since these have already been factored into our retainer letter.

Moving to fixed-fee, non-disbursement billing has been a success on many fronts. It allows us to issue accounts quickly and

New forms of compensation

By 2020, billable-hour compensation — performance judged and rewarded on the basis of hours billed — could already be fading from lawyers' memory. Lawyers compensated for the number of hours invoiced to clients inevitably tend to make efficiency, timeliness, value, and service secondary to maximizing the time taken to address a client request. This serves neither lawyers nor clients well.

As billable-hour billing starts to loosen its grip, as is already happening, billable-hour compensation inevitably will follow. Firms will have to actually figure out what their lawyers are worth to them and to their clients. Multifaceted performance expectations and other sophisticated ways of assessing a lawyer's performance will become more common, especially for millennial lawyers for whom "logged time" is an irrelevant marker of value. ■

eliminate the accounting and administrative costs associated with recording hours, tracking disbursements, and correcting inevitable errors.

Lawyers waste little time on docketing and are no longer tempted to dishonest time-keeping practices. Our lawyers are judged not by how many hours they work, but rather by how efficiently they use BFC's resources to perform top-quality work. If a lawyer spends all night and weekends on a straightforward task, it suggests that he or she is managing the task poorly.

Conclusion

What all of this demonstrates, I believe, is that the delivery of legal services is never static and is certainly not condemned to ancient business models. Many of our rivals still cling to some or all outdated practices, but a small though growing cohort of competitors are adopting many

of BFC's practices as their own.

Way back in 2009, the *Washington Post*, when it was still printed on paper, wrote that the coming demise of newspapers was due in large part to the fact that they were "too cautious and too incremental," surviving on their monopolies until someone changed the rules of the game. At that point, for many papers, it was too late to adapt.

The legal profession is no different. For its entire existence, our profession has seen no pressing need to change, leaving it vulnerable to upstarts like BFC who have changed the rules of the game. If you wish to continue to provide legal services in the 2020s and beyond, I suggest you critically evaluate every component of your service delivery systems.

Do this not only for the benefit of your clients, but for your own survival. The legal terrain has shifted, and there is no turning back. ■

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Multiple income streams

By 2020, even a streamlined firm with hyper-efficient lawyers won't have achieved maximum profitability if its only source of revenue is the work product its employees churn out in real time. Packaged knowledge and process systems, side businesses and parallel projects operated by para-professionals — these self-directed non-lawyer activities will either generate income or solidify client relationships, or both, while lawyers are otherwise engaged.

Already, some firms today are "earning while they sleep," having constructed online compliance training programs for their clients that generate revenue, while the lawyers whose expertise helped create those programs are doing other billable work. Law firms will discover that greater internal efficiency can free lawyers from mundane billable tasks to focus on high-value tasks more worthy of their skills and judgment. ■