

# LAW AND TECHNOLOGY

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## ABSTRACT

This Paper reports the role of technology in the legal profession. Technology has revolutionized the way, ease, speed and time with which we conduct our activities. Business transactions are conducted faster, learning and teaching are richer and generally the legal profession is better positioned. Technology including Information and Communication Technology (ICT) now plays a quiet essential role in legal education and practice. The impacts of technology have been felt in all the legal profession, from legal education to Government to the practice of law. Within courts, federal agencies and other executive bodies, the Government has made technology an essential part of creating efficiency, promoting access to justice and easing monitoring, reporting, communicating and processing requirements. Law firms have quickly learned the competitive advantage of adding technically based services to their practices and meeting the expectations of their technology saving clients. Technology therefore covers the electronic and digital products that give us access to information.

## COMPETITIVE LEGAL PROFESSIONALS' USE OF TECHNOLOGY IN LEGAL PRACTICE AND LEGAL RESEARCH

### 1. INTRODUCTION

Advances in the information and communication technologies have led to the availability of a range of primary and secondary legal research publications online via the internet or the world-wide web, rather than on other storing devices such as compact discs or publications in the print media.<sup>1</sup> Not only has information and communication technology (ICT) impacted on the availability of legal profession resources, but its effects are also noticed in various law-related areas such as legal practice management, legal education, corporate governance and the law per se.<sup>2</sup> The question addressed is whether the application of ICTs has an impact on the practice of law, and specifically whether information and knowledge management affects the process of legal research in modern legal practice. It finally discusses the impact of technology has had on the skills required of competitive legal professional.

<sup>1</sup> Robertson, Du Plessis, *et al* *Legal Research Skills* 2007 *PER* (Central Law Publications)

<sup>2</sup> <http://www.directlaw.com> (last visited on 2 march, 2020)

## 2. SKILLED LEGAL PROFESSIONALS

Most law students enter their careers as candidate attorneys and associates in law after completing the higher educational requirements of the profession and are admitted to the profession under regulation of the Attorneys Act<sup>3</sup> as amended. As aspirant attorneys they will be expected to be able to handle many different tasks including clerical tasks, word-processing, research assistance, and will also be introduced to legal practice time management and the billing practices typical of law firms. As they advance, their responsibilities will increasingly include the many aspects of giving legal advice, which is the core function of lawyers: the using, manipulating, and conveying of legal knowledge.

In time and with practice, trial and examination, lawyers are considered competent once they have assimilated the relevant skills, attributes and values associated with conveying legal knowledge in a manner appropriate to each matter undertaken on behalf of a client. The competent lawyer thus has knowledge of general legal principles and procedures and extensive knowledge of the substantive law and procedure for the areas of law in which the lawyer practices. He or She is skilled in investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action. Also, he or she can confidently implement the chosen course of action through the application of appropriate skills.<sup>4</sup> These skills include a problem-solving ability, legal research, analysis, application of the law to the relevant facts, negotiation, and writing and drafting, as each matter requires.

In addition, modern legal professionals require general and business management skills including client relationship and development skills, information literacy skills, and computer literacy skills such as the use of presentation technologies and digital lawyering tools.<sup>5</sup>

In becoming more efficient, the modern lawyer increasingly uses electronic communication tools, for example email, to communicate with clients, other lawyers, courts and agencies. This not only includes the basic skills, for instance, knowing how and when to use email, but also how to set up facilities that address the specific needs of the law firm's clients. This could include using telecommunications in combination with other communication technologies such as Web conferencing, mobile, Wifi, VoIP or Skype-based communication in client relationships. Providing electronic notice of events important to the client, managing unstructured information in emails, and communicating in the client's preferred method connotes competence. Furthermore, the modern legal professional has electronic publishing skills such as the capacity to produce multimedia legal documents and file or deliver them electronically to clients. Also, modern lawyers have reasonable fluency in the use of programmes that produce legal work. For example, in litigation practice using automated litigation

<sup>3</sup> Attorneys Act 53 of 1979.

<sup>4</sup> See in this regard Tjaden *Legal research and writing* 3; Collins Computers in Legal Education.

<sup>5</sup> Galves 2000 *Harv Journal of Law & Technology* 165-301.

support tools and methods might become a required skill and the lack of this skill might incur malpractice liability if the lawyer loses a case to a lawyer who does use litigation support technologies.

### 3. LAWYERS AND LEGAL RESEARCH

Legal research is one of the critical skills that lawyers employ on behalf of their clients.<sup>6</sup> Although certain areas of law do not require the same amount of research as other areas, competency in legal research remains essential to any lawyer regardless of the area of specialization or type of practice. Legal research should not be considered only as information seeking. It is in fact a combination of a variety of information- and knowledge-related activities. Currently, legal researchers may perhaps at times experience skill inadequacies because they are confronted with a large variety of commercial databases as well as an enormous, constantly expanding array of Internet and other electronic information resources. In addition, publishers of electronic information resources are frequently adding new search functionalities and other improvements to their products. These features often differ from product to product, requiring researchers to acquire or adapt skills for successful information retrieval.<sup>7</sup>

Since the law is a profession and professions have an assumed expertise in a specific body of knowledge, lawyers are considered as knowledge workers. Knowledge workers are defined by their relationship with information. Lawyers as knowledge workers adhere to a minimum standard of professional competence and the premise is that lawyers have a professional responsibility to research and know the law to serve in a client's or the public's best interest. A lawyer's duty to research and know the law has a strong ethical component. Equally important is the application of malpractice standards not only to traditional legal research, but also to electronic research.<sup>8</sup> For example, the Internet currently provides access to information resources that previously would not have been readily available, and this requires modern lawyers to possess a high level of electronic research skills to find, amass, manage, evaluate and use all readily available, relevant and authentic information to serve a client's case or matter. The question is whether lawyers – professionals who are recognized for having knowledge and skill superior to those of the ordinary person – can be expected to be more skilled and proficient than the average layperson in their use of ICTs. In terms of legal professional responsibility, the answer is 'yes.' In the information era lawyers cannot claim to be knowledge workers without effectively using the ICTs, the Internet and other electronic resources for legal research if the situation so requires.

Many lawyers nowadays do not ignore the change that was brought forward by the advent of the Internet, computerised legal databases and other electronic media channels. They recognise that legal research encompasses using and mastering both print and electronic resources. In the area of electronic resources, this involves the acquisition of skills and the knowledge of information resources that are either subscription-based,

<sup>6</sup> *Introduction to law and legal skills*; available at <http://www.legalresearch.org> (last visited on 15 Jan,2020)

<sup>7</sup> *Supra*<sup>note3</sup>

<sup>8</sup> Adams, *Trial*, 58-59.

such as Jutastat, Butterworths/LexisNexis and WestLaw, or freely available, such as SAFLII, Polity or Concourt for South African court decisions and legislation, bills and regulations, and Cornell LII, AUSTLII, BAILII, CANLII, WORLIDLII, and Courtsnet for international cases and legislation. Then there is also a variety of directories and search engines, such as Horters, the online directory of SA legal professionals, FindLaw (with access to the West Legal Directory of legal professionals) and Google or Yahoo for general information searching, as also the invisible Web and its vast resource potential.

In the situation where a lawyer is presented with a legal problem in an area of the law with which the lawyer is unfamiliar, print sources will typically aid the lawyer in analysing the facts; evaluating what legal concepts may be relevant; finding concepts in secondary sources; identifying primary authority; synthesizing the principle contained in the primary sources; and applying the principle to the legal research problem. However, in a digital information environment researchers might follow different approaches and search for information in *ad hoc*, tailored ways, such as extracting key terms while analyzing the facts and using these terms as key words in performing computerized searches to locate cases with similar facts and other applicable primary sources, or to find secondary resources that will direct the researcher to primary resources.

In summary, although the primary skill that characterizes the legal profession will remain intellectual capability, lawyers as legal researchers must also be able to effectively manipulate the modern tools of information technology and knowledge management.

#### 4. INFORMATION AND KNOWLEDGE MANAGEMENT IN LEGAL PRACTICE

In both information management (IM) and knowledge management (KM) the concept of "managing" refers to the handling, directing, governing, controlling, coordinating, planning and organizing of all the information and knowledge processes of an organization, as well as the products of those processes. Firestone<sup>9</sup> notes that since knowledge is a form of information, it follows that KM is a form of IM, with KM being the more robust form.<sup>10</sup> The key to successful KM lies in applying an integrated approach<sup>11</sup> and adopting the best fit approach for the law firm and its context. The essential idea of KM is that individual and organizational knowledge, if shared and re-used in a manner that avoids starting each engagement from scratch, makes the law firm as a business function more effectively, saves time, creates efficiency, and improves the quality of service delivery.

##### Law firm knowledge management

The practice of law is knowledge intensive. Lawyers are generally highly skilled professionals who use and produce a wide range of types of information and knowledge. The services that lawyers offer often contain

<sup>9</sup>Firestone *Enterprise Information Portals* 171.

<sup>10</sup>For instance, KM includes aspects of learning, which is not one of the major concerns of IM. Cf Johannsen 2000 *Journal of Documentation* 42.

<sup>11</sup><http://elj.warwick.ac.uk/jilt/02-2/gottschalk.html>

"knowledge" packaged in various formats. Some practical examples of law firm KM are listed under. From these examples it can be noted that not all KM activities require expensive KM applications. It is therefore necessary to determine the value of managing law firm information and knowledge resources before initiating a costly KM programme. The value of KM can be measured in terms of its benefits, including:

- Quicker problem-solving
- Better decision-making
- Enhanced customer relations
- Improved client service
- Productivity and efficiency
- Knowledge sharing
- Developing lawyer's research skills
- Fewer mistakes
- Less work redundancy
- Reduced research development costs
- Increased lawyer work independence
- Competitive advantage
- Market visibility
- Ability to direct work to skilled specialists
- Consistency of work product across offices or practice areas
- Faster delivery times
- Quality control
- Reduced frustration in searching for documents
- Client collaboration.

## 5. COMPETENT LEGAL RESEARCHERS AND COMPETITIVE LEGAL PROFESSIONALS

The survey also investigated lawyers' opinions on the competencies of legal researchers. Participants indicated that being a competent lawyer involves knowing how to find appropriate information; knowing where to find appropriate information; providing timely<sup>12</sup> and accurate information to relevant people; developing a personal system for finding information; oral communication skills; written communication skills; decision-making skills; problem-solving skills; creative thinking skills; presentation or public speaking skills; building working relationships; organizing and managing information resources; keeping up with new information; and computer competency.

This suggests that the legal research skills considered important by most participants includes knowing how and where to find appropriate information, keeping up with new information, providing timely and accurate information to relevant people, written communication skills, and problem-solving and decision-making skills. Another skill of importance to the respondents seems to be the ability to organize and manage resources. Of less importance were creative thinking skills, developing a personal system for finding information, and computer competency. The skills that were not essentially associated with legal research by the participants were oral communication skills, building working relationships, and presentation or public speaking skills.

## 6. CHALLENGES TO THE EFFECTIVE UTILIZATION OF TECHNOLOGY IN LEGAL EDUCATION AND PRACTICE –

Despite the huge benefits conferred by the use of technology in legal education and practice, there are some challenges that make the effective utilization of technology in the legal profession seem impossible. The first challenge is the lack of internet or technology culture among law teachers and their students on the one hand and lawyers and their clients on the other hand. Many law teachers, students and lawyers are still in the analogue and paper world, unwilling to change or adapt to the sweeping technology culture. This could be due to sheer conservatism or a general distrust for the internet and technology.

## 7. RECOMMENDATIONS –

Given the significant challenges preventing the enormous benefits of technology to be felt in the legal profession, some important steps must be taken to avert this situation. First, users of technology in the legal profession must be made aware of the benefits of technology to them. Law faculties and colleges should organize educated seminars/sessions on the benefits of technology to law students and law teachers. Lawyers must go on conferences and seminars regularly. These outings will expose them to the latest developments in the legal profession through the use of technology.

<sup>12</sup><http://elj.warwick.ac.uk/jilt/02-2/gottschalk.html>

## 6. SUMMARY AND CONCLUSION

The ability to conduct legal research is one of the many essential skills a lawyer needs in legal practice. The proliferation of electronic legal resources and search tools has heightened the legal profession's awareness of the importance of research skills for lawyers. Lawyers who are often pressured for time could benefit greatly from skills that would allow them to utilize the full capacity of IT, KM and digital searching in their legal research activities. The availability of digital legal research tools has clearly influenced the threshold of the skills required for the mastery of legal research. These include advanced proficiency in the use of technology, competency as competitive legal researchers, and astuteness in law firm information and knowledge management.

