



The Illusion of Innovation at Canadian Law Firms

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Introduction

The legal profession in Canada is undergoing a paradigmatic shift in the way it relates to the civil justice system, clients and itself. Significant changes in technology, client sophistication and a general resistance to change have brought the tenuous viability and effectiveness of the traditional law firm business model into sharp relief. Compounding these issues is the lack of access to justice for the middle class; this has been recently acknowledged as a crisis in the civil justice system by the Supreme Court of Canada in the landmark case *Hryniak v Mauldin*. It is thus becoming increasingly clear, from a legal perspective and the perspective of business strategy that the traditional, corporate law firm must change and innovate to remain viable and serve the needs of their clients and the public at large. This paper attempts to determine, using a data based approach, the extent to which law firms have embraced an ethic of innovation and to what extent they would be receptive to innovation within their traditional business model.

Current Context: A Need to Innovate

The Viability of the Traditional Law Firm

The DNA of the law firm as a business entity can be traced back to the Inns of Court in London and the Craft and Trade Guilds of Europe.¹ This structure has been carried on into the modern law firm with the ultimate result that “law firms are not organized as functionally specialized hierarchies like their corporate counterparts” but, rather, are better described as three-tiered, stratified apprenticeships consisting of associates, partners and senior partners.² This model has not changed in over a hundred years, largely due to the fact that it promotes credibility in the eyes of clients and allows for optimal leadership in technical and specialized areas.³

However, this model has been “stretched and strained by the rapid growth, increased competitiveness and greater complexity” of the legal work required of law firms. Similar to observations made during the Industrial Revolution, this apprenticeship model “is limited in its capacity to deal with size, scale and complexity.”⁴ While some law firms have shifted toward a more corporate model incorporating roles of “senior managers” and “managing partners,” it has been noted that “the ability of senior management to exercise effective leadership in a partnership is severely hampered by the ambiguous nature of their authority and the highly contingent governance structures within which they must typically operate... they have been elected by a majority of their peers and can be deposed by them at any time.”⁵ While it is fallacious to argue that the traditional partnership model should be done away with altogether, its viability – absent any meaningful change or evolution – is being increasingly questioned.

Furthermore, “widespread use of information technology has enabled firms to automate and standardize many repetitive procedures and protocols... has resulted in reduced costs and increased margins but also in the commoditization of many types of transactions and matters.”⁶ The use of information technology, in this sense, has resulted in the expanding use of salaried lawyers and paralegals for standardized transactions⁷ and the increasing use of offshore legal outsourcing for routine, repetitive and low margin work.⁸ Aside from the ethical problems that such business

strategies may raise,⁹ technology use in this way promotes increased competition in the (already extremely competitive) legal services industry, with smaller firms able to compete on par with their larger counterparts. This, again, challenges the viability of the large law firm.

However, the use of information technology, in this sense, has not only been adopted by large law firms but also, increasingly, by their clients to reduce their legal costs. Indeed, due to a large number of mergers and acquisitions in the past couple decades, the client base of many large law firms has shrunk tremendously.¹⁰ Further, the need to reign in budgets in times of increasing economic austerity have resulted in corporations “not only courting offers from multiple firms from outside legal work, but also expanding their in-house legal departments in hopes of increasing efficiency and cutting costs.”¹¹ For the large law firm, this means an assault on two fronts. Law firms face a high chance of being undercut by smaller, more cost-effective competitors and also the trend of their own clients using information technology and outsourcing (or “insourcing”) to reduce their legal costs.

The relationship of large law firms with clients has become increasingly tenuous in this sense due to the preferred model of hourly billing. While complaints about billing practices have been at issue since Roman times,¹² the industry-standard billable hour has been increasingly under fire in recent years. The justification for the billable hour was, initially twofold: “lawyers should be paid for their time and effort, and the client is able to control legal costs by specifying who will do the work and at what hourly rate.”¹³ However, this model has serious issues, both internally and on a market level basis. Lawyers themselves have indicated that this system “makes a lawyer focus more on the hours rather than the results of the case, and indirectly penalizes more efficient or experienced lawyers.”¹⁴ More importantly perhaps is the fact that the billable hour model distributes “risk and reward inequitably between law firms and their corporate clients and provide[s] few incentives to efficient legal solutions.”¹⁵ Indeed, clients are searching out new billing models that favor their interests and budgets and are, in larger scale than ever before, rejecting requests for proposals involving strict billable rates. While the desired model is not identifiable at this point – and indeed, likely varies by industry – a recent consulting study spells out the clear fact that:¹⁶

“What clients want is a new model of service. Not the milking of cash cows with undefined fee arrangements. Not layering of untrained junior associates on conference calls or unwillingness to provide referrals to other lawyers (even within the same firm!) who might know a given subject better. What clients want is access to knowledge and to participate in its creation. They want working with a firm to be simple. They want to be more important than the firm’s compensation structure or its internal practice group divisions. Most of all, they want to be listened to.”

Crisis in the Civil Justice System

The billable hour model has caused significant challenges in terms of access to justice for the middle class. As legal aid programs are only available to the very impoverished, the billable hour model – in conjunction with the complexity and length of litigation – places access to the civil justice system out of reach of even the wealthiest of the middle class. Indeed, in *Bosworth*, the Ontario Superior Court indicated that:¹⁷

“[I]t is no longer appropriate to rest upon the historic way of doing things. Doing things as we have always done them has created a crisis of access to justice (or inaccessibility of justice).”

Furthermore, in *Diemer*, the same Court specifically addressed the contribution of the billable hour model to the access to justice crisis and the manner in which the billable hour model creates a conflict of interest – and therefore asymmetrical goals – between a client and his counsel. As detailed above with regard to the law firm business model, the billable hour model promotes inefficiency and long, protracted proceedings. While corporate clients may have the market power to dictate alternative billing practices, such leverage is fundamentally out of reach for the ordinary citizen (who, ironically, pays for the system through her tax dollars). Indeed, as detailed by the Court:¹⁸

“A person requiring legal advice does not set out to buy time. Rather, the object of the exercise is to buy services. Moreover, there is something inherently troubling about a billing system that pits a lawyer’s financial interest against that of its client and that has built-in incentives for inefficiency. The billable hour model has both of these undesirable features.”

The crisis in access to justice, in this sense, has led to a significant decline in the number of civil actions filed across Canada, a smaller fraction of civil claims getting to trial and a significant increase in the number of self-represented litigants. Indeed, as detailed by the Supreme Court of Canada, “when court costs and delays become too great, people look for alternatives or simply give up on justice. Sometimes, they choose to represent themselves, often creating further problems due to their lack of familiarity with the law.”¹⁹ While, from a business perspective this might seem to be a simple market issue of supply and demand, it is important to realize that the function of lawyers and law firms is more fundamental to civil society than that of any other business. As such, it is fundamentally important that law firms promote access to justice and assist in the mitigation of the access to justice crisis.

Indeed, in the recent landmark case of *Hryniak v Mauldin*, the Supreme Court of Canada indicated the need for a fundamental paradigm shift in the very nature of the civil justice system to mitigate and remedy this crisis. Justice Karakstannis of the Supreme Court detailed that:²⁰

“a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pre-trial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.”

While, given their important role in civil society, it is the duty of law firms and legal practitioners to assist in this culture shift, the judicial reasoning cited above, specifically that of the Supreme Court of Canada, presents a more pressing concern to law firms. Indeed, pre-trial procedures and the

conventional trial are where the majority of legal fees are accumulated. The judicially mandated simplification or removal of these procedures would, pragmatically, reduce in legal fees across the civil justice system. This includes both the middle class for whom access to justice is currently obstructed, but also for corporate clients on whom law firms rely for profits. Indeed, such measures have already been instituted in Quebec with regard to pre-trial discovery procedures. As such, in *Hryniak*, the Supreme Court appears to be indicating that either the civil justice system must become more affordable or the system will make itself more affordable. Clearly, law firms must adapt within this context; both to promote access to justice on a societal level, but, also, in order to ensure their future viability.

Purpose of this Study

Given this context, it is evident that the traditional law firm must innovate and develop creative strategies to cope with the civil justice crisis, promote access to justice and remain viable in the dynamic business landscape. My purpose in this paper is not to propose solutions to these complex problems; it will take years of study, trial and observation to identify viable solutions. Rather, this paper attempts to take a small first step toward resolving these issues by asking the question: *how receptive are law firms to innovation?*

Innovation, within the context of this paper has been defined as broadly as possible in line with the Organization for Economic Cooperation and Development (OECD) definition of innovation presented in the *Oslo Manual: Guidelines for Collecting and Interpreting Innovation Data*.²¹ To this end, the definition of innovation used in this paper is an amalgamation of process innovation and organizational innovation, the two types of innovation most relevant to professional services firms.

Innovation: A novel method in, or form of, business practices, workplace organization or relationships with external stakeholders, that promotes new or significantly improved production or delivery of services.

One respondent eloquently encapsulated the ethic of innovation specific to the legal services industry and to which law firms should aspire in this sense. This perspective of innovation formed the guiding focus for the discussion and analysis below; expanding upon the OECD definition:

“Innovation is about making the law and legal services more accessible to more people and organizations. We need to rely on new technologies, offer flat fees, be paperless and mobile as much as possible, and work closely together with our clients by involving them in the process as much as possible.”

Innovation, in this respect, is thus inordinately important for law firms, especially within the social, business and legal context described above. It is apparent that significant innovation and radical change are needed for traditional law firms to remain viable. However, informal interviews with senior partners and associates, and practical experience, at law firms indicate that getting basic changes through management committees is a “hard-fought battle.”

This paper attempts to characterize, based on a data driven and analytical approach, first, how innovative law firms currently are in practice. Anecdotal data and previous work in this field – based on the section above – indicate that the answer to this will not be promising. Secondly, and perhaps more importantly, this paper will attempt to characterize how receptive law firms are to change and innovation. This will, hopefully, increase awareness of the initial steps that must be taken in order to address the pressing problems the traditional law firm is encountering as a business model.

Methodology

In collaboration with Juniper, a boutique innovation strategy firm run by two former practicing lawyers, several key indicators of innovation in the professional services industry and at law firms were discussed and identified.²² Key substantive questions were formulated around how innovative respondents perceived their organizations to be and whether innovation could actually be observed in these organizations in terms of key indicators. These practical indicators were determined based on industry experience of the author and the founders of Juniper and included: leadership for innovation at law firms, alternative fee arrangements (AFAs) or billing practices, and the effective use of technology.

The survey was designed such that respondents would need to answer key questions surrounding their demographic data, tenure, position and professional background prior to being able to answer substantive questions. This allowed for more detailed analysis based on, for example, tenure and seniority. Desired respondents were expanded beyond practicing lawyers at law firms to include academics, law students and other legal service professionals. This allowed for the examination of broader, industry wide trends when needed; while also allowing for data to be filtered to include only practicing lawyers with a specific tenure when needed. Respondents who did not fit into any of the desired categories were ejected from the survey. The survey was hosted on Juniper's online platform and included their branding and logo to add credibility to the study. Data was collected (the survey was live) during the months of October and November of 2016.

Distribution of the survey took place mainly through the social networks (e.g. LinkedIn) of the author and the founders of Juniper. Key contacts were also asked to spread the survey through their professional networks, specifically to senior figures at large law firms. These individuals were asked to spread the survey to their legal contacts. The survey was also broadly distributed by alumni at the faculties of law at the University of Toronto, McGill University, and the University of Ottawa via closed social media groups. Ultimately, an attempt was made to distribute the survey as broadly as possible while maintaining the targeted audience to prevent the data from being skewed by extraneous responses.

Potential Sources of Error

While rigorous standards of data collection were maintained throughout the study, there might have been several sources of error introduced into the data at this stage. However, it is important to note that, at the time of writing, there has not been any indication that the data has been tainted by any of these issues. Indeed, throughout the data collection process, steps were taken to mitigate these

confounding factors and protect the robustness of the data. Nonetheless, these potential sources of error are important to keep in mind when interpreting the discussion and analysis sections below.

First, it is possible that, as with any study involving the distribution of a survey through social media, that false respondents may have participated in the study. Distribution of the survey in a targeted manner to only those in the legal community adds some confidence to the robustness of the data in this respect. Second, despite wide distribution, the total respondent size remained relatively small at 105 respondents. It is possible that the sample size could have been increased by distributing the survey more widely – keeping in mind the problem of false respondents – or allowing more time to respond to the survey. However, given the scope of this study and the limitations on time and resources, 105 respondents seems a reasonable number from which to draw conclusions.

Finally, through conversations with some respondents, especially senior members of law firms, it was noted that many of these individuals felt uncomfortable answering many of these questions and thus indicated that they left some questions blank or refused to answer the survey altogether. This is what initially spurred investigation of some of the key trends pursued below. Partial answers were filtered out easily during analysis. However, what is more concerning is the potential for misrepresentation (inadvertent or intentional) if questions were answered reluctantly. This is a characteristic of such studies and, given the fact that individual perceptions and opinions are being examined in many cases, is a part of the data. Indeed, awareness of this source of error serves to enhance robustness of some of the overall trends seen below.

Discussion

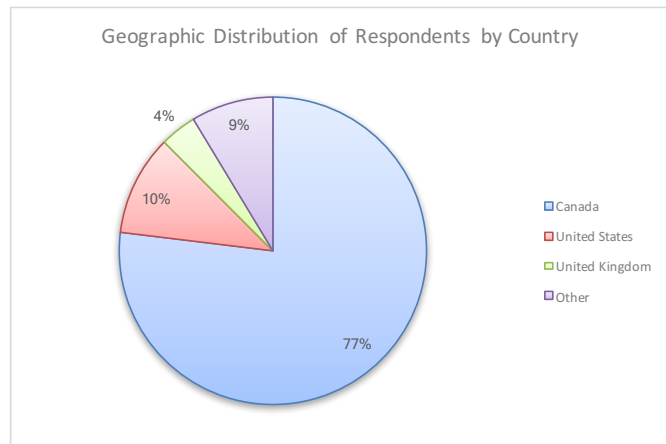
Characterization of Respondent Sample

As detailed above, 105 respondents participated in this study. Based on geography, professional status and tenure, it is possible to characterize the respondent sample as being predominantly Canadian (or, more broadly, Western), diverse in terms of age, and approximately evenly divided by gender. Most respondents had a significant amount of experience in the legal services industry and can, therefore, be assumed to be aware of the state of, and challenges facing, the legal profession and industry at large.

Indeed, given the data collected, it is extremely likely that the majority of respondents have seen legal practice change and evolve over the past 10-15 years. The diversity of perspectives, in this sense, is perhaps best illustrated by the fact that 42% of respondents have worked in 2-3 law firms, and 14% have worked in more than 3 law firms. The ultimate point is that the sample of data collected is representative of Canadian lawyers who are experienced in, and have knowledge of, the legal services industry. This enables robust observations and conclusions to be made surrounding the state of innovation and challenges or obstacles to innovation in the industry to be made from the data extracted from the sample.

Geographic Distribution

Respondents were predominantly North American with 77% of respondents being Canadian, and 11% being American. Four percent of respondents are from the United Kingdom. This represents a distinct sample from Common Law jurisdictions (with the exception of a large proportion of respondents from the Civil Law jurisdiction of Quebec) and Western backgrounds. The remainder of respondents (approximately 9%) are from multiple international locations including the Civil Law jurisdictions of Belgium and France (approximately 5%). As such, it is possible to geographically characterize respondents as being largely North American and, specifically, Canadian.

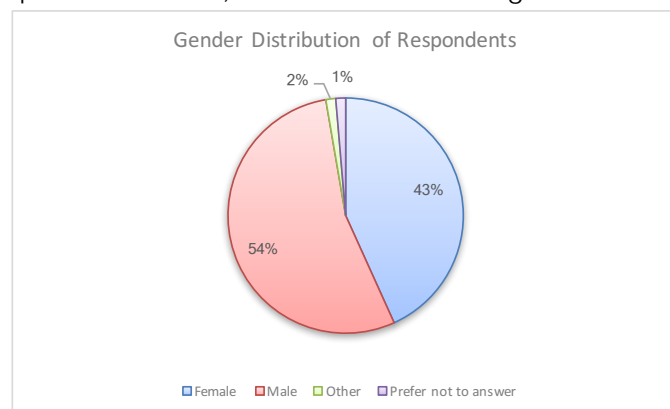


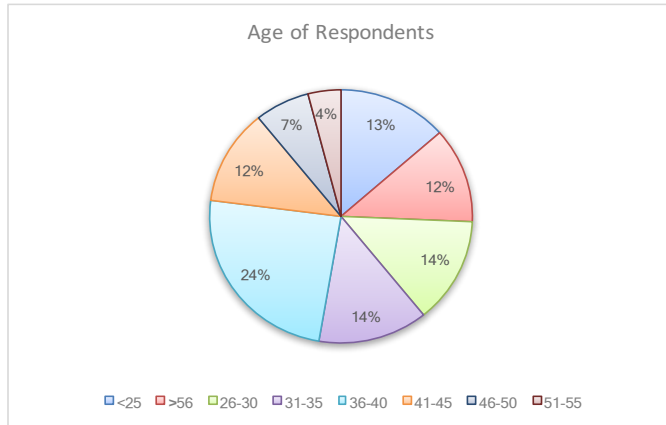
Of the Canadian respondents, 42.5% are from Montreal and 22.5% are from Toronto. This distribution represents network effects from the distribution of the survey (given that a large proportion of key contacts are located around McGill University in Montreal) and the largest practice centers in the country. This is followed by the cities of Ottawa (5%) and Calgary (3.8%). Interestingly, the majority of other respondents identified as being from suburbs of the above large practice centers including, for example, 1.3% from Longueuil and 2.5% from Laval (suburbs of Montreal) and 1.3% of Brampton (which is part of the Greater Toronto Area). This might slightly higher numbers of respondents from large Eastern Canadian centers than listed above. West Coast Canada is, unfortunately, poorly represented with only 5% of respondents from Vancouver.

Respondents outside of Canada are concentrated around large practice centers. Indeed, almost all respondents from the United States identified as being from Boston or New York City and, in the United Kingdom, almost all respondents identified as being from London. As such, it is appropriate to characterize respondents as being largely Canadian with some international elements. The vast majority of respondents are also from large practice centers, which often house large firms.

Demographics

Respondents are approximately evenly split between male and female with 10% more male respondents. This is in line with the tendency of the legal profession to be traditionally more male dominated and the unfortunate tendency of women to opt out of the profession in later stages of their career.²³



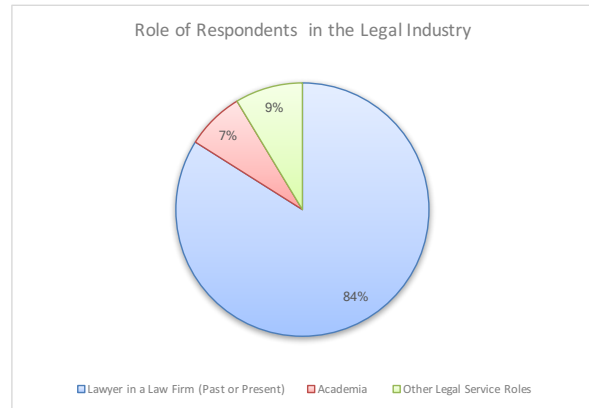


Ages are also distributed as expected of practicing lawyers, with approximately 75% of respondents identifying their ages as between 26-55 years. Furthermore, the majority of respondents are aged between 26-40 (52%) and the largest age segment, by a significant amount, is 36-40 years (24%). Respondents, therefore, are younger members of the legal profession but are experienced and have been in practice for some time; likely long enough to have

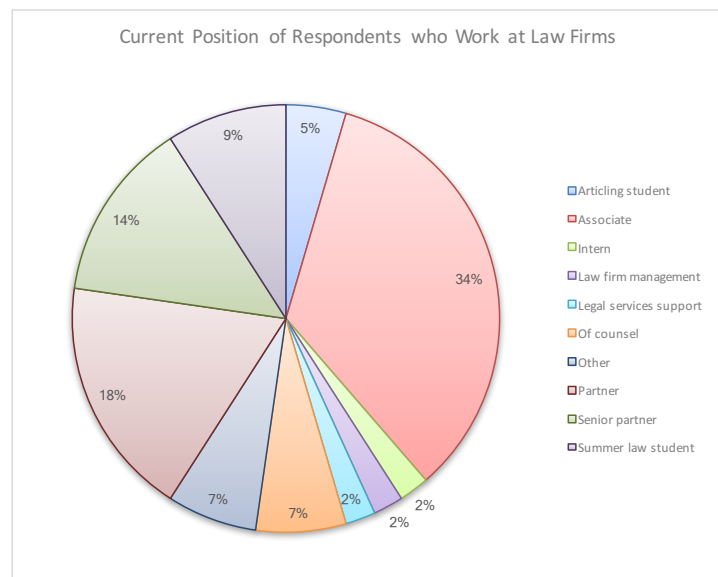
observed major changes and shifts in the legal services industry and the market for these services.

Professional Status

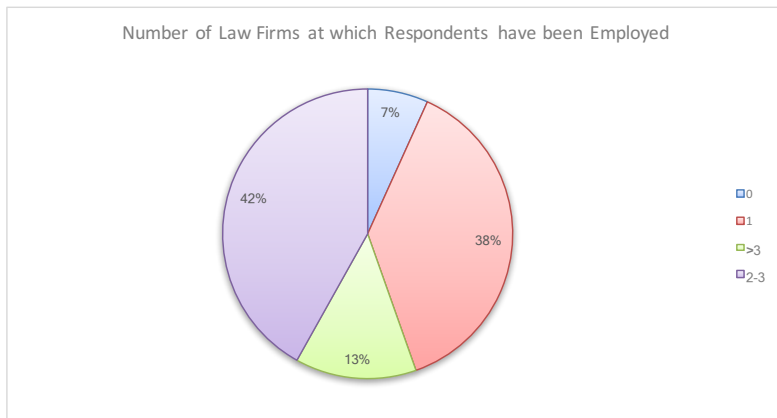
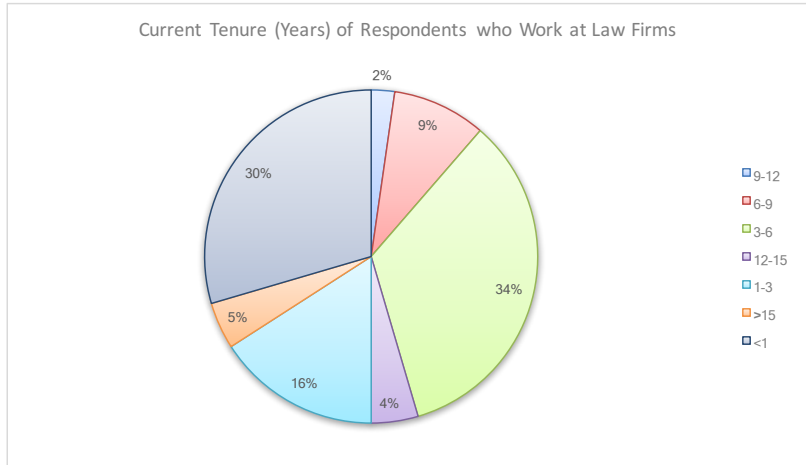
A vast majority of respondents (84%) either have worked in the past three years, or are currently working, as a lawyer at a law firm. This figure includes current lawyers, law students, and articling students. Minor numbers of respondents currently work in academia or the provision of legal education (7%) and in some other capacity including law student career services and alternative legal startups (9%). Therefore, respondents are overwhelmingly representative of the demographic that we hoped to target – lawyers who currently work, or have in the recent past worked, at law firms. The organizations or firms at which respondents work were roughly evenly divided between large organizations (31% employing over 101 people working in areas related to the law; with 28% employing over 251 individuals), mid-size organizations (33% employing between 11-100 individuals), and small organizations (36% employing 1-10 individuals).



The majority of individuals working in law firms were also relatively senior. 41% of respondents identifying as either “associates” or “of counsel” and 32% identifying as “partners” (18% as “partners” and 14% as “senior partners”). Another 2% of respondents identified as “law firm management.” Only 14% of respondents identified as students (either articling or summer students or as



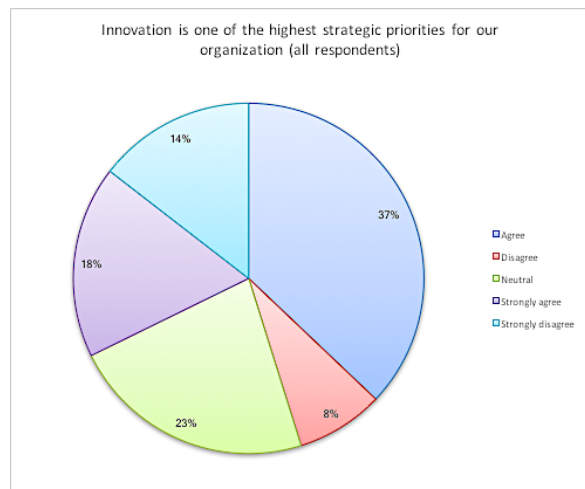
interns). This distribution indicates that the majority of respondents are well experienced and attuned to the challenges and landscape of the legal services industry. This is confirmed by the fact that the majority of respondents who worked at a law firm (70%) identified as having at least one year of experience at their current firm. The largest group identified as having 3-6 years of experience (34%) and 20% had over 6 years of experience. Only 30% of respondents claimed to have less than one year of experience working at their current law firm; this corresponded directly to students and interns who responded to the survey.



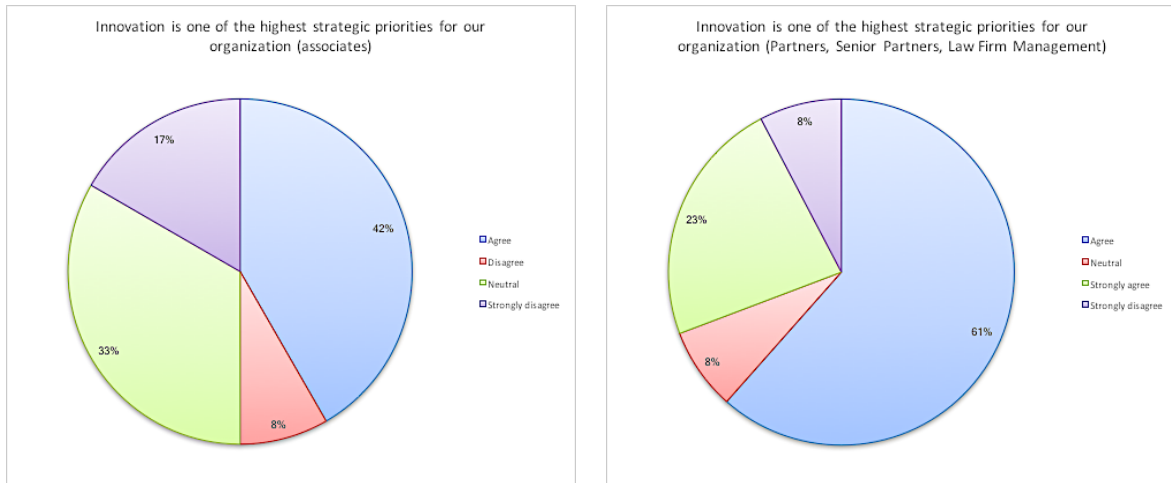
Respondents were, therefore, on the whole, extremely experienced and knowledgeable regarding the landscape of the legal services industry; with significant tenure and a vast amount of experience. Indeed, only 7% of respondents had never been employed at a law firm with the largest group (42%) being employed at 2-3 firms and 13% being employed at more than 3 firms.

Perceptions of Innovation

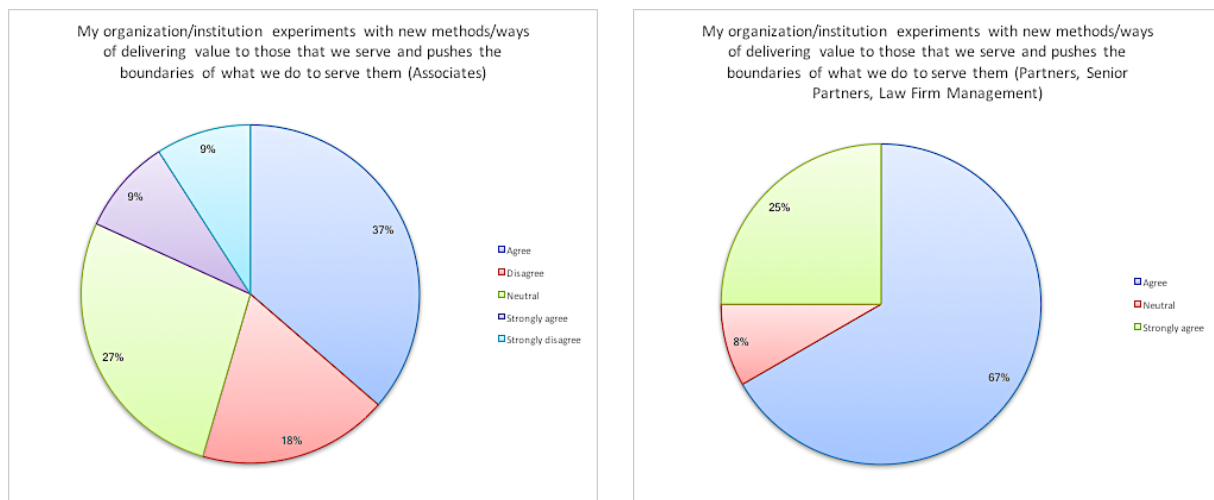
It appears that innovation is viewed as a high strategic priority at the organization of all respondents; with 55% of all respondents agreeing or strongly agreeing that “innovation is one of the highest strategic priorities for our organization.” Only 22% of respondents disagreed with this statement (with 14% strongly disagreeing). It appears that, across all areas of the legal community surveyed, respondents believed that innovation was a high strategic priority. Consequently, most respondents agreed with the perception that innovation was occurring at a rapid rate within the legal services industry.



However, on consideration of individuals working at law firms – associates and partners – an interesting trend is revealed. Namely, that partners and senior management (for brevity, simply “senior managers”) perceive law firms to be significantly more innovative than associates. Compared to the aggregate, only 42% of associates agreed that innovation was one of the highest strategic priorities at their firm (no associates strongly agreed with this statement); but 25% disagreed with 17% strongly disagreeing. By contrast, 84% of partners, senior partners and firm managers agreed with the statement (23% of these strongly agreed) while only 8% strongly disagreed (none disagreed).



The divergence in perception between partners and associates could be argued to simply be one of asymmetry in communication or access to information. Indeed, partners and senior management would have significantly more perspective regarding innovative measures. However, if this were the case, wouldn't associates be aware of this on some level? Can asymmetry of information truly account for an almost twofold increase in agreement (and a 23% increase in strong agreement), on the value of innovation; a value which would inevitably affect associates' daily workflow? Nonetheless, it should be noted that a large proportion of associates (42%) – though not a majority – and partners (84%) have the perception that innovation is a high strategic priority for their firms.



It would appear that there is a more profound problem in perceptions of innovation on consideration of the manner in which law firms experiment with new methods of delivering value to clients and pushing the boundaries of what they do. Again, a divergence between the perspective of associates and partners is clearly visible. Paralleling their belief of innovation being a high strategic priority, 43% of associates believed that this statement was true (37% agreed, 9% strongly agreed) and that firms did, indeed, experiment with new ways of delivering value to clients and pushing the boundaries of their practice. However, 18% of associates disagreed with this and 9% strongly disagreed. By contrast, an overwhelming 92% of partners, senior partners and management agreed with this statement (67% agreed, 25% strongly agreed) and none disagreed. Again, there is a strong divergence between the perspective of partners and associates but a large proportion of both groups appear to believe that firms are acting innovatively in this capacity.

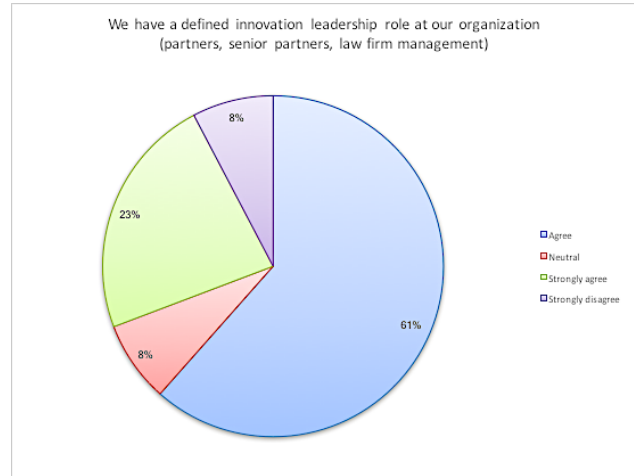
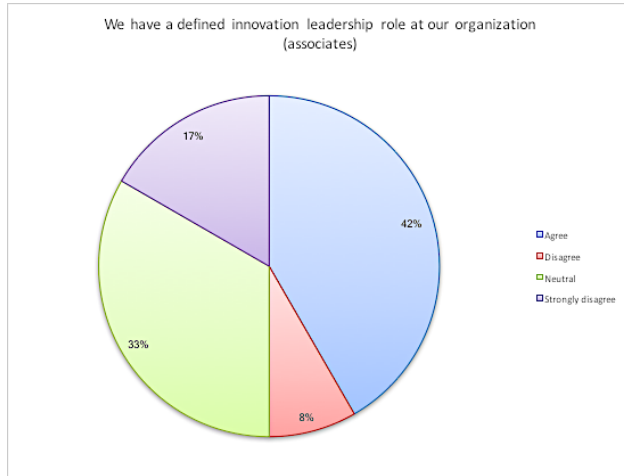
This data is extremely revealing of two trends that are described above. First, it appears that both associates and senior management (partners, senior partners and firm management) have the perception that their firms are innovative: that innovation is a high strategic priority; and that they are delivering new value to clients and pushing the boundaries of what they do. Second, and adding more nuance to this observation, it appears that senior management believes almost unanimously that their law firms innovative; in contrast to associates, a large proportion of whom disagree with, or are ambivalent (neutral) about, the fact that the firms at which they work are innovative in the ways described above. This immediately raises the question of which perception is correct. Does the perception of a large proportion of associates and the vast majority of senior management match the reality surrounding innovation at law firms? Or are the dissenting associates – whose practice “in the trenches” would inevitably be affected by innovative measures – correct in believing that, absent the perceptions of the majority, innovation is not really present at law firms?

Innovation in Practice?

On consideration of implementation of actual innovative measures, a third trend emerges and it appears that the latter group is correct. Namely, that while both associates and senior management have the *perception* that law firms are innovative, pragmatic implementation of measures which might seem innovative in the current context (described above) is extremely lagging. In short, while lawyers (who work at law firms) *perceive* their firms as being innovative, this is not the *reality*.

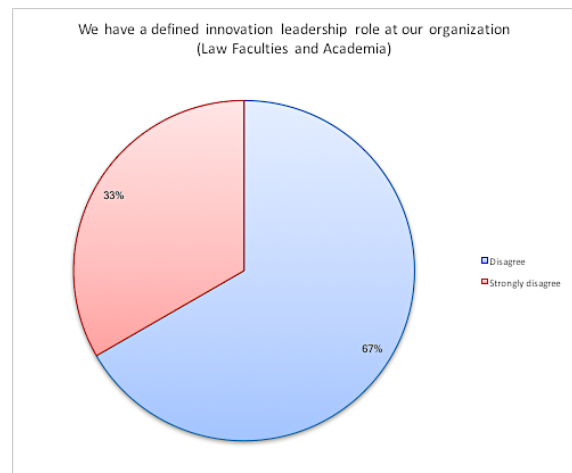
This trend is illustrated when respondents were asked whether their law firms had a “defined innovation leadership role.” Here, 42% of associates agreed (with none strongly agreeing) while 25% disagreed (with 17% strongly disagreeing). Interestingly, an entire third of participants were “neutral” or ambivalent; in other words, they likely did not know whether there was any innovation leadership at their firm. This is troubling since associates, doing the day to day work of the firm, should be aware of any innovative measures being implemented, and who is overseeing their implementation. Therefore, for over half of associates (58%), there was either no leadership for innovation or no awareness of any innovation leadership at their firm. Of note is the fact that the 42% of associates above who had the perception of their firms being innovative did not correlate directly with the 42% of associates who agreed that their firm had a defined innovation leadership role. This is important since management literature has shown that a strong leadership role is required in order to catalyze,

implement and sustain long term innovation. The absence of such a leadership role leads to detrimental effects of innovation within an organization.²⁴



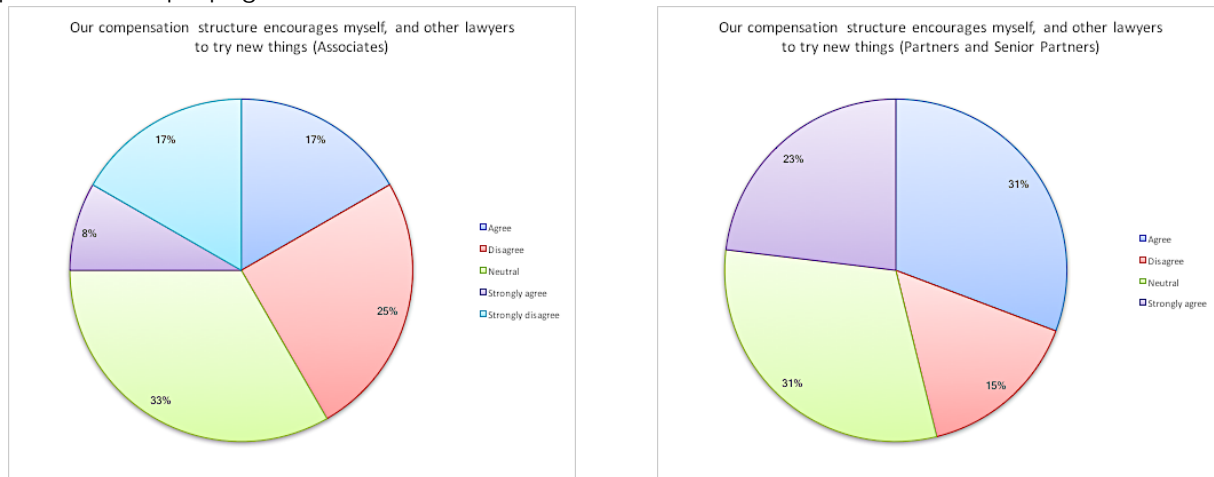
On consideration of the responses of partners, senior partners and law firm management, the same trend described above is observed. An overwhelming majority (84%) of this group agreed (with 23% strongly agreeing) that their firms had a defined innovation leadership role and only 8% strongly disagreeing or being neutral about this statement. This asymmetry between associates and senior management is, again, troubling. Since associates are the individuals who would be most affected by innovation measures, it would make sense, as per the above, that they would be exposed to (or aware of) an innovation leader in the firm. However, the majority of associates – in contrast to the vast majority of senior management – observe no innovation leadership role at their law firm. It appears that, while management may be attempting to lead innovation efforts (or might have the perception that they are leading innovation), the reality on the ground for the majority of associates is that this is either not happening at all, or is not happening in any concerted manner. The possible reasons for this will be discussed in the next section of this paper, but suffice it to say that that data indicates that there is a significant divergence between perceptions of innovation and actual implementation of innovative leadership at law firms.

On a side note, it is important to notice that when considering the responses of individuals who work in law faculties and academia, none agreed or were neutral with the statement that their organization (law faculty) had any defined innovation leadership role. In fact, 100% of respondents disagreed with this statement with one third strongly disagreeing. While this might have significant implications for innovation in legal academia, it is especially concerning given new lawyers’ perceptions of innovation and innovation for the legal profession going forward. While it is beyond the scope of this paper to analyze



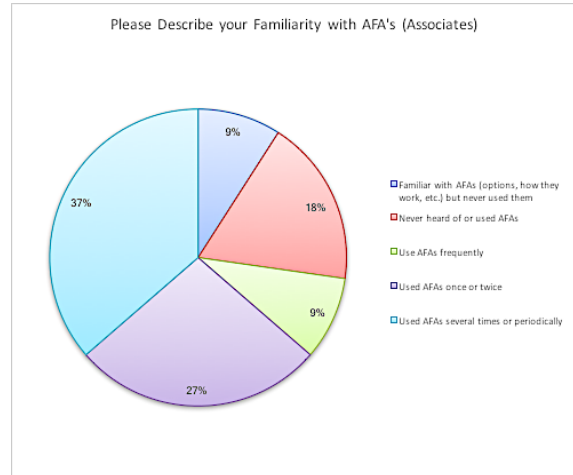
this in detail, given the aforementioned importance of leadership in implementing innovation, it is critical that law faculties impart the ethic of innovation onto future lawyers such that the “cultural shift” described by the Supreme Court in *Hryniak* is able to take place and be sustained. Absent any defined leadership in innovation and thus absent any concerted effort to innovate in terms of legal education, it is difficult to see how this will be possible.

The divergence between the perception of innovation and the reality of innovation on the ground becomes increasingly clear when considering compensation structures at law firms. When asked whether the compensation structure at their firm encourages themselves and other lawyers to try new things, the overwhelming majority of associates either disagreed (42%, with 17% strongly disagreeing) or were neutral or ambivalent (33%) about this statement. Interestingly, the 42% who disagreed with this statement strongly correlated with the 42% of respondents who had the perception that their firms were innovative, described in the previous section. Again, partners and senior partners had significantly different responses with 54% of respondents agreeing (23% strongly agreeing) with this statement and only 15% disagreeing. Again, this divergence signals that while partners and senior partners may believe that they are *motivated* to implement innovation, there is very little incentive for associates to innovate. This lack of financial incentive is important since it inhibits associates from innovating in their everyday practice by, for example, using technology to become more efficient in delivering client services. Furthermore, as associates become partners, these values become engrained through the process of socialization which might account for the divergent perceptions of partners. As discussed at length below, this is characteristic of the billable hour and partnership model which perpetuate a vicious cycle as associates eventually become partners and propagate the same ethic to their associates.

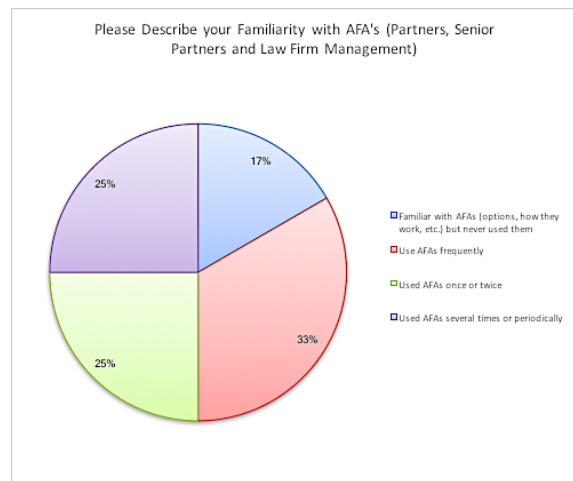


Indeed, while partners and senior partners indicate that their compensation structure encourages them to try new things, this does not appear to be the reality. This trend is alluded to by the lack of

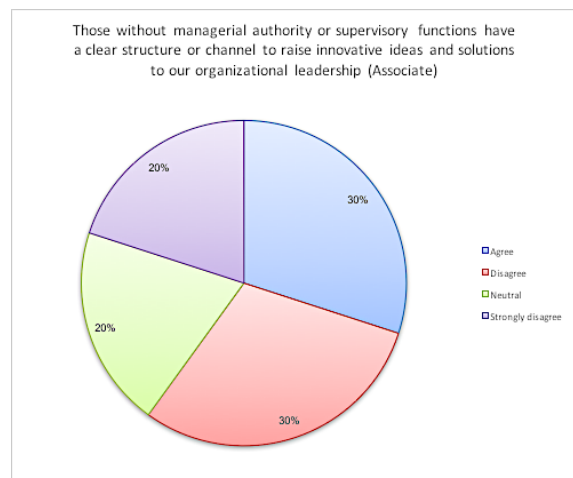
any innovation leadership to guide associates as described above. However, this trend is more prominent in terms of the implementation of alternative fee arrangements (AFAs). Indeed, while all respondents who identified as partners, senior partners and law firm management had heard of AFAs (0% indicated that they had never heard of AFAs), 17% indicated that they had never used AFAs in practice and 25% indicated that they had used AFAs only once or twice. Only a third indicated that they used AFAs frequently. This is in spite of the fact that there is overwhelming demand for AFAs by clients in lieu of the standard billable hour model. It thus appears that, while partners and senior partners at law firms believe that their firm's compensation structure encourages them to try new things, this is not being implemented in reality and in terms of an innovation which clients would largely support.



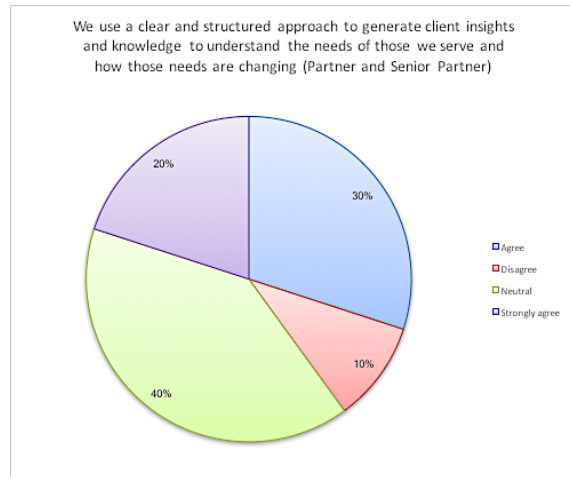
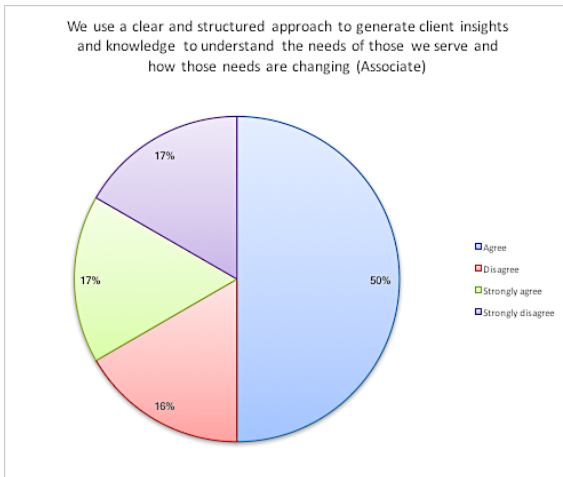
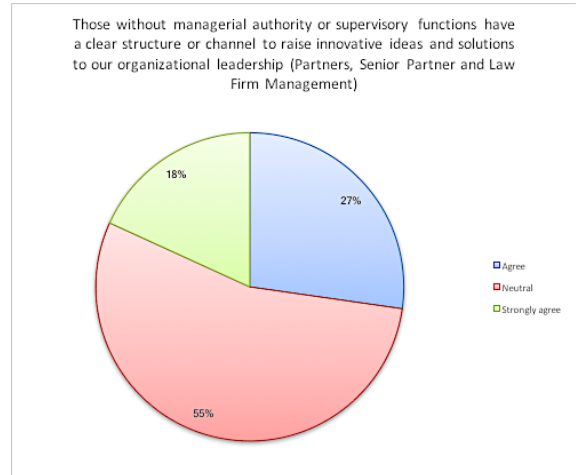
This data also supports the above assertion that associates are not being encouraged to try new things or being exposed to innovative leadership. Indeed, roughly 20% of associates had never heard of AFAs; and only 9% indicated that they had used AFAs frequently. Anecdotal data and industry experience indicates that senior associates are called on to respond to RFPs for clients and, as senior associates make up a large number of respondents in the associate category, the fact that nearly 20% had not heard of AFAs is concerning. This indicates a lack of leadership, incentives and structures in which associates can innovate. As discussed below at length, as associates become socialized in the firm's culture through the partnership vetting process, this dearth of actual innovation becomes engrained in their practice.



A lack of incentives, leadership and structures in which to innovate is evident throughout the data collected. Indeed, when asked whether those without managerial authority have a structure in which to raise innovative ideas to leadership, half of associates indicated that they did not (30% disagreed; 20% strongly disagreed) while an additional fifth of respondents were ambivalent or unsure about any such channel (20% neutral). Thus, 70% of associates lacked awareness of any clear channel in which to raise innovative ideas to firm



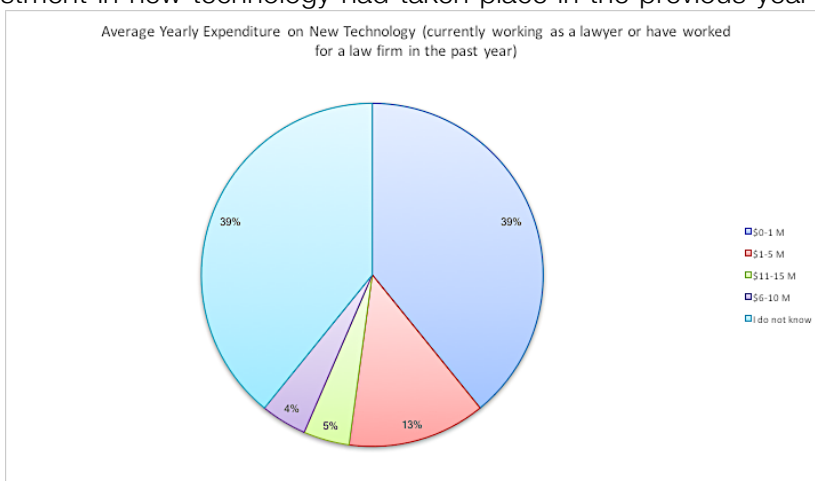
leadership. Partners, senior partners and firm management also overwhelmingly felt unaware of any such channel (55% neutral). While 45% of senior management respondents agreed that there was a clear innovation channel (18% strongly agreed, 27% agreed), there is a clear asymmetry between associate and management awareness of any such channel. This indicates a clear lack of structure and leadership in innovation at law firms since the statement explicitly refers to a channel for those without managerial authority (associates) to raise innovative ideas to organizational leadership (partners, senior partners and firm management). While a vast majority senior management respondents believe that firms are extremely innovative, this appears to clearly indicate that the reality is much different. The absence of a clear channel to bring forth innovative ideas is important in this sense as it provides a justification for the asymmetry of perspectives on innovation between associates and partners – indeed, how could associates believe that a firm is being innovative when there is no clear outlet for their ideas – and also is a clear indication of the flaws of the partnership model described below.



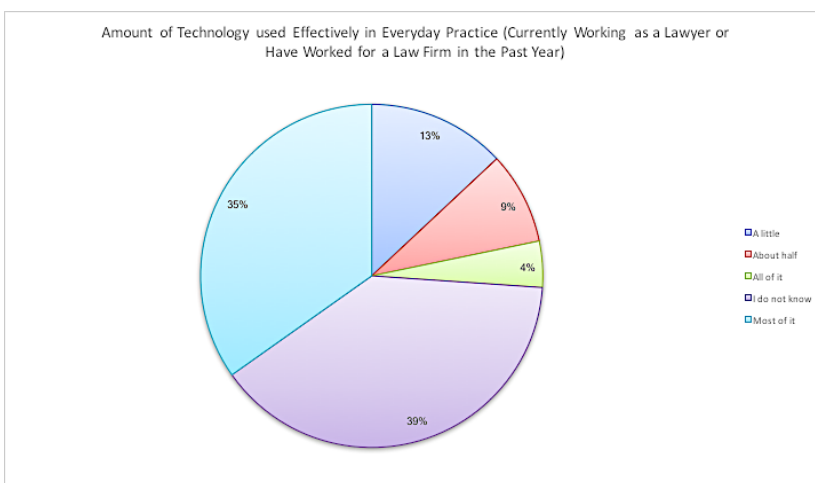
The practical ramifications of the reality surrounding innovation, or lack thereof, at law firms can be seen in terms of the generation of client insights and the use of technology, both of which directly impact clients and the ability of, and manner in which, other professional service firms innovate. First, it was extremely surprising that only 50% of partners and senior partners agreed (20% strongly agreed) that their firms use a clear and structured approach to generate client insights and knowledge to understand the needs of clients. A further 10% disagreed with this statement and 40% were neutral or ambivalent. This represents a clear lack of innovation and capacity to innovate. Indeed, other professional service firms – accounting and consulting firms for example – have used extensively developed and sophisticated client insights and analytics in order to innovate meet the

specific needs of their clients for quite some time.²⁵ A lack of client insights and data based analysis prevents law firms from innovating which, in turn, prevents them from meeting client needs in an effective way. Interestingly, the data indicates that this absence of client driven innovation stems from a fundamental lack of the factors discussed above: innovation leadership, a structure in which to innovate and incentives to innovate. Essentially, this underlies the fact that many clients feel that law firms are not meeting their needs in the current context.²⁶

A second practical ramification of the lack of innovation can be seen in the use of technology to improve everyday practice. This is indicated both in terms of investment in technology and the effective use of technology. An overwhelming majority of respondents who were lawyers working in law firms, or who had worked in law firms in the past year (78%), indicated that they either did not know whether, or how much, investment in new technology had taken place in the previous year (39% did not know) or that minimal investment had taken place (\$0-1M, 39%). The remaining respondents in this category indicated low to moderate investment in new technology.



More interesting is the fact that only 4% of these respondents indicated that all new technology was being used effectively. Of those who indicated investment in new technology at their organization was over \$1M in the past year, only 40% indicated that “most of” the new technology was being used effectively while another 40% indicated that “a little” of this technology was being used effectively. The remaining 20% did not know how this technology was being used. This, again, likely results from a lack of leadership in innovation and a structure in which innovation can



take place. This prevents a clear approach to the implementation and effective use of new technology. Further, the inability of a viable channel to present innovative ideas may prevent those who use, or are interested in new technologies (particularly at the associate level) from indicating how technological solutions could be implemented and used effectively throughout their firm.

Analysis

To summarize, from the data presented in the previous section, three major trends can be clearly defined:

1. Associates and senior management (partners, senior partners and managers) at law firms have the perception that their organizations are innovative; but this does not align with the reality that very little is practically being done by way of innovation;
2. There is a significant asymmetry between the views of associates and senior management surrounding both perceptions of innovation and the degree to which practical innovative measures being taken;
3. There is a fundamental lack of leadership in innovation, incentives to innovate, and structures and channels to promote innovation in law firms.

From an extensive review of the literature, there appear to be two key characteristics of the modern law firm from which the dearth of innovation, and lack of structures for innovation, seem to be derived. These characteristics were alluded to above (see Current Context) and contribute to many of the current challenges facing the business model of the modern law firm:

1. The conventional partnership model as an organizing structure which promotes “groupthink” and inhibits creative and innovative thinking; and
2. The ubiquitous billable hour model which disincentivizes innovation.

It would appear from the data presented that these two characteristics must be drastically adapted to the current context – business, social and legal – in order to maintain the viability of the conventional law firm. This underscores the importance of innovation in the context of the law firm and the significant obstacles to innovation within the context of the conventional law firm.

The Partnership Model

Structural Issues

The nature of the conventional partnership model of governance, which dominates the majority of law firm structures, has been described above. In short, “law firms are not organized as functionally specialized hierarchies like their corporate counterparts” but, rather, are better described as three-tiered, stratified apprenticeships consisting of associates, partners and senior partners.²⁷ The structure of this partnership model makes innovation and change inordinately difficult;²⁸ both from a practical and social point of view.

It was also detailed that, while some law firms have shifted toward a more corporate model incorporating roles of “senior managers” and “managing partners,” it has been noted that “the ability of senior management to exercise effective leadership in a partnership is severely hampered by the ambiguous nature of their authority and the highly contingent governance structures within which they must typically operate... they have been elected by a majority of their peers and can be deposed by them at any time.”²⁹ Indeed, the head of a large law firm is reported, in primary research, to have described his role as a partner as:³⁰

“I am responsible for a large group of partners, all of whom are very bright, at least as bright as I am, all of whom have big egos, all of whom are owners of the business with as much

right to vote and draw profits I have. The process of being in charge for leading is about building consensus - it's not easy because most people I attracted to this business because they are independent, you like doing their own thing. Essentially they want to be left alone until it's something that kind of connects with them and then it's – 'why wasn't I consulted.'

Building on this, the head of another large law firm indicated that:³¹

"It's like I'm the eldest brother. I'm not the dad; there is no mom and dad. It's like I've got to the top because I'm the oldest or the tallest or whatever, but I'm still their brother."

Within this context, it is easy to see why the data above indicates a lack of clear structure and leadership with regard to innovation. It is difficult to have a clear plan or concerted effort at innovation – with regard to technology, analytics or any other defined innovative measure – without clear leadership. When efforts are directed at “building consensus” rather than effecting actual change, it is not difficult to see how efforts at innovation flail and become limp.

Compounding this lack of clear leadership for innovative measures, the partnership structure might also partially explain the asymmetry between partner and associate perceptions of innovation. While partners or senior management might view a measure as being particularly innovative, by the time it reaches the associate level and is practically implemented, the compromises made to build consensus might well result in a significant reduction in the novelty or innovativeness of the measure. This is seen consistently throughout the data where partners view the firm as being consistently and significantly more innovative than associates; in some cases, almost twofold.

This may represent a key tension within the partnership structure. Namely, that partners “must not lost sight of the fact that the interests of the collective are made up of the interests of multiple individuals and that at any moment these individuals may stop thinking as part of the collective and start acting on the basis of their self-interest.”³² As such, significant sociological and political controls are put in place to preserve collectivity and prevent the influence of self-interest, This might encourage any controversial – and innovative – measure to flounder in light of any opposition, however minor. Indeed, as detailed by a senior partner at a prominent law firm:³³

“...partners want leadership, but a leadership that reflects rather than directs the general tenor of the partnership. It's a very difficult thing to get right.”

In short, the flat, two-level hierarchy of the conventional law firm creates a lack of clear leadership and an inability to implement innovative measures due to a necessity to build consensus for any innovative or controversial measure to be implemented. In effect, as detailed by a senior partner in the early stages of data gathering, this is a symptom of “too many chefs working on the same dish with the same ingredients.” Because they must all agree on what to do – with no clear leadership – nothing ultimately gets done while, simultaneously, the majority have the perception that they are doing something extremely innovative.

Socialization

Related to this is a further, more engrained reason for the partnership structure systematically both casting the illusion of innovation and, also, inhibiting true innovation from taking place: the socialization process by which associates become partners. The purpose of the process of socialization, according to primary source research, is to allow a professional to become self-regulating and to institute an “internalized set of norms throughout [the lawyer’s] professional and organizational training.” Consequently, the lawyer becomes “constrained in his capacity to exercise truly independent judgment.” However, of note is the fact that “these norms do not seem oppressive to him because they have become an integral part of his own identity.”³⁴

An interesting illustration of the consequences of this socialization process is the fact that, throughout the literature, law firm partnerships are described in terms of “One for all and all for one” from Dumas’ *The Three Musketeers* and as a “Band of Brothers” from Shakespeare’s *Henry V*. As detailed by Professor Empson, “it is worth noting that both references are military in origin and are, by definition, exclusively male.”

This characterization of the partnership as a form of armed comradery amidst conflict underlies the ultimate result of the socialization process, the “partnership ethos”:³⁵

“This process of socialization is fundamental to the partnership ethos, which requires the interests of the individual to be reconciled with those of the collective... the prospective partner must show that he or she can be trusted to act in accordance with the wishes of the partnership as a whole. As part of this process of socialization, professionals come to believe that [the] partnership is superior to the corporation as a form of governance... it is necessary that they develop this somewhat rose-tinted view of partnership in order to become fully committed to the partnership ethos.”

The socialization process thus serves to form “groupthink” among associates in hopes of becoming partners; and among partners once they ascend to this level. Groupthink, defined by Janis following the Vietnam War and taken from Orwell’s *1984*, refers to “the mode of thinking that persons engage in when *concurrency-seeking* becomes so dominant in a cohesive ingroup that it tends to override realistic appraisal of alternative courses of action.”³⁶ Professor David B Wilkins describes the formation of groupthink in law firms in terms of the analogical “tournament for partnership” whereby associates are pitted against one another to compete for a small number of coveted partnership titles. During this process, diversity – in terms of race, gender and ideas – is rejected or eschewed through socialization a socialization process which strongly favors those who think (and are) similar to the majority white male partnership.³⁷

In short, those who wish to become partners must assimilate and conform to the values and norms of the current partners in the hopes of being selected. The impetus to become socialized in the values of the current partnership becomes evident and competitive as associates quite literally compete to gain their favor. In this way, the socialization process promotes and enables groupthink within both associates and, more prominently, those selected to ultimately join the partnership. As noted by Professor Empson:³⁸

“Whilst the partnership ethos can meld a disparate group of senior professionals into a collective identity, the very exclusivity which makes it attractive to those within the partnership serves to exclude, and potentially alienate, all of those outside the partnership.”

Indeed, this tendency to exclude and alienate, inherent within the partnership socialization process, means that “minorities and women [and those that think differently] are less likely to gain the kind of important opportunities and encouragement that give them an incentive to invest in building a long-term career in the firm”³⁹ which would, consequently, enable them to effect change or bring a different perspective to the firm. This has significant implications for innovation since “studies in a variety of areas demonstrate that under proper conditions, diverse groups can produce innovation and greater productivity.”⁴⁰

This also prevents those who may have innovative ideas from bringing them forward for fear of being perceived as too “radical” or “individualistic” to join the ranks of the partnership. Indeed, this phenomenon was illustrated in the data wherein associates largely disagreed or were ambivalent that they had incentives to try new things or had a clear structure in which to raise innovative ideas to the partnership (senior management). The consequences of this phenomenon of groupthink were detailed by one of the respondents to the survey:

The practice is more of a "robotized" type of practice now (file control, reporting, monitoring, to the hilt), hence lack of space for creativity...

In sum, partners, as detailed above, think uniformly and must build consensus without any effective leadership in terms of innovation. This ideology is passed onto associates through the socialization process, thereby driving a cycle of groupthink and a pervasive – but fallacious – perception of innovation. In this sense, “these socialization processes represent a potentially serious block to change... by socializing and selecting individuals to join the elite company of partners, a partnership risks becoming a self-perpetuating collection of ‘clones.’”⁴¹ Combined with the structural barriers to innovation inherent in the partnership model, innovation becomes extremely difficult to achieve within the law firm.

This phenomenon of socialization and groupthink can help to explain the significant asymmetry between the views of the partners and associates surrounding innovation seen in the data. As associates, in some cases (as the respondent above) have not become fully socialized, they are less likely to be influenced by the groupthink and partnership ethos of the firm. However, by virtue of being exposed to the partnership ethos and the socialization process, associates’ perceptions of innovation are drastically different from the reality surrounding innovation. Furthermore, they have no incentive to innovate since any radical, divergent idea may be perceived as being outside of the partnership ethos and compromise their ability to obtain the coveted status of partner (see below for more on this with regard to the billable hour). As partners have been fully socialized by virtue of the “tournament of partnership” and dissenting voices have been drowned out, this group views the firm as being far more innovative than the associate group and, even more so, than the reality.

The partnership model thus creates significant barriers and misperceptions when it comes to innovation leadership, the structures surrounding innovation and the actual implementation of innovative methods. By promoting uniformity of thought among partners and associates, the partnership model disincentivizes and suppresses innovation via the socialization process, and fosters a flat hierarchy without any clear, concerted form of leadership poses. The model is, therefore, in itself, a significant barrier to innovation. Paradoxically, it is essential to innovate the partnership model itself before significant, systemic innovation efforts can be sustained. While by no means am I suggesting that the partnership should be abolished – indeed, the sense of comradery it maintains is enviable to many industries and integral to the practice of the law – there is a clear need for adaptation and change within the current context.

The Billable Hour

The same cannot be said regarding the billable hour model. The issues with the billable hour, and its role as a facet of the law firm business model requiring change, have been demonstrated above (see Current Context). To reiterate, the model of hourly billing creates an irredeemable conflict of interest between clients and lawyers by incentivizing inefficiency and protraction of proceedings. Lawyers themselves have indicated that this system “makes a lawyer focus more on the hours rather than the results of the case, and indirectly penalizes more efficient or experienced lawyers.”⁴² This challenge with hourly billing for law services has even gained judicial recognition. The Ontario Superior Court has detailed that “there is something inherently troubling about a billing system that pits a lawyer’s financial interest against that of its client and that has built-in incentives for inefficiency.”⁴³ The incentive system promoted by the billable hour model can thus be used to clearly demonstrate the need for innovation within the law firm.

However, the incentive structure created by the billable hour model can also be used to explain the findings in the data collected, especially with regard to the structures within which innovation (or lack thereof) takes place within the law firm. It is interesting to note in this context that, while it may seem ubiquitous today, the billable hour is itself a relatively recent innovation from the 1950’s and 1960’s. Hourly billing and timekeeping in general were implemented during this period to respond to economic studies which indicated that “attorney compensation was failing to keep pace with inflation and was lagging behind that of other professionals, particularly physicians.”⁴⁴ This was not meant, strictly speaking, to maximize profits but simply to ensure that lawyers had an income commensurate with their skills and professional status. Indeed, “hourly billing made sense for the corporate clients who considered their attorneys similar to their employees who were paid according to the time they spent on the job.”⁴⁵

However, beginning in the 1980’s and up to the present, the focus shifted increasingly from maintaining profits to inordinate maximization of profits.⁴⁶

“When attorneys first started to use time keeping, the idea was that this was simply one yardstick amongst many to assess the value of their services... As firms grew in size during the second half of the twentieth century, greater emphasis was paid on recording billable hours as a means of maximizing fee income to pay for the growing numbers of associates.

This method “not only reduced satisfaction levels of attorneys, particularly the associate members, in large corporate law firms, but also led to dissatisfaction on the part of their clients.”⁴⁷ A senior litigation lawyer indicated the current effects of this practice:

“The economics of hiring a lawyer have become so expensive that the self-represented litigant is frequently encountered compared to when I commenced my practice in 1974.”

However, the billable hour model presented, and continues to present, such a large opportunity for profit – specifically at the point of extensive pre-trial discovery⁴⁸ - that it has been institutionalized and diffused by those who are most powerful in law firms (partners) in order to maintain their self-interests. Indicative of this was the sentiment of one respondent, working in tax law, who indicated that his practice was “in the dark ages.” Another respondent, who works in a successful legal consulting practice (outside of a conventional law firm) went so far to indicated that:

“one of the reasons why my practice is successful is because big firms still charge for paperclips and sneezing. The legal model is at least 25 years out of date. Everyone wants to keep their Benz (sic) but I think they will have a big surprise coming their way very shortly.”

However, the historical origin of the billable hour indicate that it was not always intended to maximize profits. Indeed, in the 1950’s-1960’s, justice remained accessible to the average middle income individual. However, the norms toward profit maximization propagated by the billable hour model have been institutionalized within law firms, making law firms and their practices extremely resistant to change. It would not be unreasonable to say that the billable hour model has spun out of control and become deeply engrained in the business model of the modern law firm. Indeed, as indicated by Professor Huseyin Leblebici:

“The period between 1950 and 1990, which is sometimes called the golden age in law practice, brought great prosperity to the practice of corporate law but also a set of intricate practices that are highly institutionalized and very resistant to change in delivering their services and building their professional human capital.”

This institutionalization relates back to the issues with socialization in the partnership model described above. The partnership “tournament” system described above effectively creates an “active internal labor market for human capital without expensive monitoring costs.”⁴⁹ The promise of partnership ensures that associates participate in monitoring their billable hours and attempt to maximize their billable hours while they are associates. It is imparted upon them strongly that this is a key factor in who will win the “tournament.” They are socialized to do this from their first day – and even their student summers and articles, being taught to monitor their time; even if it will not be collected by their supervising partners. Indeed, on my first day working for a large law firm, the associate managing students indicated that it was “extremely important” to keep track of billable hours and time sheets even though students’ time would rarely ever be billed to clients. Fledgling

lawyers thereby become socialized to use and accept the billable hour system – effectively, it becomes normalized as the standard.

Compounding this cycle is the psychological concept of deferred compensation inherent in work at law firms. It is evident from the above that law firms incentivize associates to perform by basing partnership decisions on a mixture of social values, seniority and productivity. This system goes to the core of the modern law firm’s partnership model. Associates’ compensation does not directly correlate with the hours they bill; they are basically salaried employees. Rather, according to a partner working within a large law firm, the firm keeps about one third of revenues generated by associates as profits; these profits are distributed amongst the partners. Another third typically goes to overhead while the remaining third pays the associates’ salary (which is not correlated to the hours worked).

Associates’ motivation to maximize billable hours is thus not based on their own personal (salaried) income but, rather, is fueled by “the implicit promise that they would be at the receiving end when they become partners.”⁵⁰ Effectively, the billable hour model becomes institutionalized and resistant to change within the law firm as associates – who put in years of long hours maximizing their billings and not seeing the full benefits of their efforts – win the “tournament of partners” and, as partners, feel entitled to share in the exorbitant profits which they deferred. They have a strong incentive not to change the billable hour model (or the firm). Ultimately, as they become partners, they impart this perspective on new associates working under them; thus creating “a vicious cycle of growth not responsive to market forces.”⁵¹ This makes not only the billable hour model resistant to change but also keeps the law firm structure by which it is facilitated erudite and resistant to innovation.

The billable hour, in this context, assists in explaining the trends observed in the data. Clearly, both partners and more senior associates have an incentive to maintain the status quo based on the respective profits they earn and have the potential of earning in the future. If one had invested years of their life in the hope of a deferred payout, it is unlikely that they would give this up easily. This helps to clarify findings regarding the absence of channels for associates to bring forth innovative ideas and the lack of perceived innovative leadership at firms. More importantly, this explains the large number of associates and senior managers who disagreed with the statement that their compensation structures encouraged them to try new things. Especially with regard to associates, it is clear that it would be in the best interests of senior management to maintain partnership structures to reap maximal profits. Partners, who agreed that they are encouraged by compensation systems to try new things in larger proportions are likely still profiting from the billable hour model through the work of the associates they direct; and any innovation they perceive to be taking place could simply be minor alterations or adaptations to the normalized billable hour model.

While data collected from respondents who are in law firms’ senior management might seem to indicate that the partnership model promotes innovation through their compensation structures, it is likely that this is not the reality. Indeed, in light of the aforementioned socialization process and the need to build consensus within the partnership, it is unlikely that any real innovative practice is attempted and systemically adopted. Rather, the perception held by senior managers in this sense is likely to be an offshoot of the larger symptom of groupthink whereby the firm itself is perceived as being innovative. As seen above in a variety of instances, this perception is not the reality.

With regard to the incentives created by compensation structures – such as the billable hour – specifically, it should be noted that the adoption of alternative fee arrangements (AFAs) was seen to be extremely low for both partners and associates. At a time where AFAs are being increasingly demanded by clients and the justice system, this seems incongruent with the direction that innovative practice should be taking. This is difficult to reconcile with the data collected from senior management that their compensation structures are promoting innovation. It is clear that the billable hour model, as a system of compensation for lawyers continues to directly hinder innovation in this respect by de-incentivizing innovation by promoting self-interest. The lack of adoption of AFAs, in this sense, can be similarly explained by the institutionalization of the billable hour model and the corresponding financial incentives it creates for internal stakeholders of the law firm to resist change and remain erudite.

Conclusion

It is clear that the data collected indicates a clear need for innovation within the conventional structure of the law firm; especially related to the conventional partnership structure and the billable hour model of compensation. By no means do I mean to advocate that the traditional law firm should cease to exist. Quite the opposite, this data attempts to advocate for its adaptation and continued viability within the current legal and social context. The law firm is an essential social structure and must be preserved. Doing so will be the true challenge.

Indeed, from the data, it is clear that the law firm business model, as it currently stands, creates a lack of structures to promote innovation, incentives to innovate, and innovative leadership. It also creates groupthink which promotes asymmetry between internal stakeholders' perceptions of innovation and the reality surrounding innovation which results in significant asymmetry between the perceptions of innovation of senior management (partners, senior partners and law firm management) responsible for directing innovation, and associates who operate on the ground to implement innovative practices. An examination of the literature indicated that this lack of innovative capacity, at least in part, is due to flaws within the conventional partnership structure and its associated socialization processes. It is also due to the larger problem of the flawed incentives created by the ubiquitous billable hour model which has been adopted almost universally throughout the legal services profession.

Bluntly, as expressed by a respondent working as in-house counsel, the conventional law firm is

“resistant to change, focused on staying needed, but ultimately irrelevant.”

This study indicates that, not only is innovation needed with regard to the operations of the conventional law firm but, also, that it is essential to innovate and change the very structure and foundations of the modern law firm. A failure to innovate will likely have significant adverse impacts for the law firm as an institution and, more importantly, for the legal profession and justice system as a whole. This is indicated in the Supreme Court's decision in *Hryniak* which acknowledges the civil justice crisis.

Absent immediate innovative measures, we risk the entire future of the profession crumbling. Should the law firm – a crucial social institution – fail to adapt to the current context, we risk social and economic chaos. The early tremors of the impending catastrophe are clearly visible through the current state of the justice system. Indeed, as eloquently detailed by a respondent who is a contract attorney from New York:

"I believe the legal profession is reflecting the stratification of our society as a whole, with a cadre (~10%) of the profession earning extremely high amounts, and the rest increasingly struggling to find their way in the marketplace[...] I pursued law as a career because I believed in justice and public service, only to discover that the law is more about power than justice. The only positions that seem to provide a living wage are those that serve the interests of the powerful, whereas those whose legal rights are routinely violated cannot afford to pay me, so I cannot afford to work for them. This results in a system where the law ceases to effectively govern social relations - where those most vulnerable to abuse cannot access any remedy to that abuse. In such circumstances, abuse becomes more systemic. In the absence of justice, resistance to law and order is also inevitable, in my view. I am very pessimistic about the future, both for myself and this profession. I am three years out of law school and still struggling to survive. My decision to pursue a career in law, right now, feels like the biggest mistake I have ever made.

The goal of this study, at the outset, was to impress upon the reader (hopefully decision makers at large law firms) the need to take initial steps toward innovating within the law firm in order to ensure that the law firm remains viable as a business entity. The goal was also to begin to remedy, at least in part, the civil justice crisis. However, the ultimate result, as per the above, has been more profound.

This study should serve as a warning bell for large law firms that innovation will not be immediate or spontaneous. Law firms must realize that resistance to innovation and conformity are deeply engrained in their structures. This study indicates the need to innovate on the foundations of the law firm itself. It will take effort, time and perseverance to change the very norms upon which the foundations of the law firm is built. Law firms cannot afford to sit idly by and hope the situation remedies itself overnight; action must be taken immediately to promote innovation and creativity. In this sense, this study hopefully represents the first step in reforming the current myopic model of the law firm and promoting a self-awareness in the legal profession that will make law firms – and justice – more sustainable and accessible.

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- ¹ John J Gabarro. "Prologue." *Managing the Modern Law Firm: New Challenges, New Perspectives* (2007): xvii at xx.
- ² *Ibid.*
- ³ *Ibid* at xxii.
- ⁴ *Ibid.*
- ⁵ Empson, Laura. "Your Partnership." *Managing the Modern Law Firm: New Challenges, New Perspectives* (2007): 10 at 27-28.
- ⁶ *Supra* note 1 at xviii.
- ⁷ *Ibid.*
- ⁸ Robertson, Cassandra Burke. "A Collaborative Model of Offshore Legal Outsourcing." (2010); xviii.
- ⁹ Bennett, Steven C. "Ethics of Legal Outsourcing, The." *N. Ky. L. Rev.* 36 (2009): 479.
- ¹⁰ Brian Uzzi, Ryon Lancaster & Shannon Dunlap. "Your Client Relationships and Reputation." *Managing the Modern Law Firm: New Challenges, New Perspectives* (2007): 91 at 91.
- ¹¹ *Ibid.*
- ¹² Huseyin Leblebici. "Your Income." *Managing the Modern Law Firm: New Challenges, New Perspectives* (2007): 117 at 122.
- ¹³ *Ibid* at 127.
- ¹⁴ *Ibid.*
- ¹⁵ *Ibid* at 128.
- ¹⁶ Davide Pisanu & Mike Ross. "The Real Reason Canadian Law Firms are in Big Trouble" CBA National (2016). Online: <http://www.nationalmagazine.ca/Blog/June-2016/The-real-reason-why-Canadian-law-firms-are-in-big.aspx>
- ¹⁷ *Bosworth* 2014 ONSC 4832 at para 13.
- ¹⁸ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 36.
- ¹⁹ *Hryniak v. Mauldin*, 2014 SCC 7 at para 25
- ²⁰ *Hryniak* at para 2
- ²¹ OECD/Eurostat (2005), Oslo Manual: Guidelines for Collecting and Interpreting Innovation Data, 3rd Edition, OECD Publishing, Paris. Online: http://www.oecd-ilibrary.org/science-and-technology/oslo-manual_9789264013100-en
- ²² These are discussed in detail in an article written by the founders of the collaborating consulting firm; see *supra* note 16.
- ²³ Webb, Shannon R., and Catherine Loughlin. "Shifting Attitudes in the Next Generation of Male Lawyers: Will the Kids be as Important as the Courtroom?." *Western Journal of Legal Studies* 6.3 (2016): 4.
- ²⁴ Bel, Roland. "Leadership and innovation: Learning from the best." *Global business and organizational excellence* 29.2 (2010): 47-60; Carmeli, Abraham, Roy Gelbard, and David Gefen. "The importance of innovation leadership in cultivating strategic fit and enhancing firm performance." *The Leadership Quarterly* 21.3 (2010): 339-349.
- ²⁵ See for example: Sarvary, Miklos. "Knowledge management and competition in the consulting industry." *California management review* 41.2 (1999): 95-107.
- ²⁶ *Supra* note 16.
- ²⁷ *Supra* note 1.
- ²⁸ *Supra* note 16.
- ²⁹ *Supra* note 5 at 27-28.
- ³⁰ *Ibid* at 28.
- ³¹ *Ibid.*
- ³² *Ibid* at 27.
- ³³ *Ibid.*
- ³⁴ *Ibid* at 24.

³⁵ *Ibid* at 27.

³⁶ Janis, Irving L. "Groupthink." *Psychology today* 5.6 (1971): 43-46.

³⁷ David B Wilkins. "Your People." *Managing the Modern Law Firm: New Challenges, New Perspectives* (2007): 37 at 60-61.

³⁸ *Supra* note 5 at 33.

³⁹ *Supra* note 37.

⁴⁰ *Ibid* at 51.

⁴¹ *Supra* note 5 at 34.

⁴² *Supra* note 12 at 127.

⁴³ *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para 36

⁴⁴ *Supra* note 12 at 125.

⁴⁵ *Ibid* at 126.

⁴⁶ *Ibid*.

⁴⁷ Kritzer, Herbert M. "Lawyer fees and lawyer behavior in litigation: what does the empirical literature really say." *Tex. L. Rev.* 80 (2001): 1943.

⁴⁸ *Ibid*

⁴⁹ *Supra* note 12 at 132.

⁵⁰ *Ibid* at 132-133.

⁵¹ *Ibid* at 131.