

By Glenn Kauth | Publication Date: March 2009 | © Canadian Lawyer Magazine Inc., 2009

Early in the decade, Mark Hicken found a way to get clients to do the bulk of their own wills online. Using a web-based questionnaire, clients would submit information about their assets and beneficiaries, all of which would feed into software that would create the first draft of a will.

Hicken, a Vancouver lawyer, would then receive the document and, after what were often fairly brief consultations with the clients, could create a finished product. “It really did work very well, and the clients really liked it,” says Hicken of the system he helped develop.



The goal at the time was to market the product to other law firms through a B.C.-focused web portal. But facing a reluctant audience and following the withdrawal of sponsor Telus Corp., Hicken let it die. The problem, he argues, was largely one of timing. “It was probably too early.”

Hicken is now focused on practising wine law but says few of his colleagues have jumped on the innovation bandwagon. “I am surprised that more law firms aren’t doing it for that sort of simple transactional work,” he says.

Essentially, Hicken was practising a rudimentary form of e-lawyering. While commonly defined as offering services over the Internet, a key component is usually “online document assembly.”

Through the Internet, clients could do most of the work — Hicken estimates an online system would do up to 95 per cent of it — themselves. Then, a lawyer could offer legal advice, either by phone, in person, or on the web, to complete it. In return, clients would pay a lower fee, while Hicken would benefit by being able to serve more people.

Another Vancouver lawyer, Nicole Garton-Jones, runs what is essentially a virtual estates and family law firm, Heritage Law, from home. Her staff and fellow lawyers also operate remotely, sending documents to each other over the Internet and largely communicating with clients by phone and e-mail. She can meet with them in person through a deal she has with the lawyer who bought her real estate practice in exchange for use of his office space.

Garton-Jones has implemented the beginnings of an e-lawyering practice by having people fill out a basic questionnaire before taking them on as clients. That way, she gets much of the information she needs to create a will before interviewing them. “When they come in, the first half hour to 45 minutes of the meeting is already done,” she says. “Because we’re paperless, I can just save that right into their file. What would be better is if that form fed directly into a . . . HotDocs automated assembly. I haven’t put that piece together yet, but that would be great.”

Elsewhere, however, the e-lawyering phenomenon has caught on more quickly. From his office in Florida, Richard Granat runs a busy family law practice for clients in Maryland. By having clients fill out an online questionnaire and with the help of a paralegal, he can finish an uncontested divorce file in 15 minutes to half an hour. On average, he handles three files a day — at \$300 per case, he’s earning decent money. Granat offers other legal services outside of regular business hours. Using chat and e-mail to provide legal advice, for

example, he gets \$35 per question. "It's really on the lawyer's marginal time, when he's not working in prime time, so it pays for them to do it as well," he says.

The whole concept of e-lawyering revolves around what Vancouver lawyer and document-assembly consultant Darryl Mountain calls "disruptive innovations" that gradually take over functions traditionally performed by law firms. "Within the legal industry context, a disruptive innovation is a low-end commoditization that marginalizes the conventional law firm business model," he wrote in an article for the *International Journal of Law and Information Technology*. But, he notes, disruption isn't necessarily bad news for lawyers since they tap into what author Richard Susskind has termed "a latent legal market." "The way disruption normally works is it changes non-consumers into consumers," says Mountain, who points out that younger people who otherwise forego getting a will might choose to do so through a cheaper, flat-fee online service.

In Britain, companies have already taken the e-lawyering concept to a higher level as law firms begin to offer increasingly complex legal services online. Richard Cohen, a lawyer who has pioneered the concept there, says his web-based firm can now handle "contentious areas of law" involving multiple documents. With landlord and tenant matters, for example, the eviction process is such that it no longer requires a hearing before a judge. The proceedings now happen through paperwork, meaning law firms can process the matters online.

E-lawyers can also help guide unrepresented litigants. A lawyer offering service online will help clients prepare documents and guide them through the process for a fixed fee without going on the record, says Cohen.

A big factor behind the concept in Britain is a legal reform movement that has opened the profession to outside entities. Changes to the Legal Services Act, for example, mean non-lawyers will soon be able to take ownership in law firms. Only lawyers will be able to manage them, but the separation of ownership and management has already led banks and insurance companies to get into areas of law currently not restricted to the profession. Once the ownership changes take full effect, Cohen predicts outside investors such as financial institutions will get into the legal business wholeheartedly. "If you change the structure, it will attract investment. Investment will drive costs down and give the consumer a better deal," says Cohen, who notes that under traditional partnership models, law firms have struggled to raise the capital necessary to finance technological advances.

So far, the changes mean Britons are getting service from places such as call centres staffed by paralegals working under the direction of lawyers. At the same time, Cohen's firm, Epoq Group Ltd., recently launched MyLawyer, an Internet-based platform that enables other law firms to offer e-lawyering services on their own web sites. In the United States, Granat offers a similar product, DirectLaw, which allows firms to provide online services in areas such as family and estates law. They pay a subscription fee to access the technology.

For the most part, the firms that have signed on to DirectLaw have been small ones run by people Granat calls "early adopters." And typically, most of them have been younger. But here in Canada, at least one large firm, Gowling Lafleur Henderson LLP, has adopted some aspects of e-lawyering by taking certain repetitive, standardized practices and making the information available to clients online. In Hamilton, Ont., Gowlings partner Mark Tamminga helped build a database that has almost completely automated his firm's mortgage enforcement practice.

The work, which is heavily focused on specific tasks on certain dates, is "easily captured in a database and easily built with document assembly," he notes. "Once you've captured it in a database — especially if it's a Microsoft SQL database like we have here — you can spin that to the web easily. That allows your clients to have a look at what's going on with their files without their having to call you about all the files that they're wondering about." The system has worked so well that the firm is extending it to areas such as workers' compensation cases in Ontario and small-business loans. "For us, it definitely speeds up the process, gives the

client confidence, and gives the clients answers to their own questions because they maintain their own monitoring system,” says Tamminga.

So far, the firm hasn’t moved into online document assembly, which would allow clients to input information over the web to perform some legal tasks automatically. “Online document assembly is not easy,” says Tamminga. “To create those systems, build the appropriate security, and have the data live in the right place — that’s quite difficult to do. I think ultimately it will happen, but the tools aren’t there yet.”

Of course, people like Granat are already doing it. Moreover, Granat insists he can answer the standard objections, such as concerns over client confidentiality and claims that e-lawyering represents an unauthorized practice of law. “We haven’t had any ethical barriers,” he says, noting the American Bar Association is currently drawing up best practice guidelines for online legal services that he hopes will address any concerns.

E-lawyering has the potential to increase access to justice by making legal services cheaper. Proponents of civil justice reform, such as Osgoode Hall law professor and chairman of the Canadian Forum on Civil Justice, Trevor Farrow, welcome the idea as one option for improvement. “It might well be a helpful addition to the tool kit.” Still, he cautions that any moves to facilitate e-lawyering, including changes to encourage the unbundling of legal services, should first consider any implications for a lawyer’s professional obligations. “There are some challenges, [such as] who your client is, who’s actually doing the work, [and] what the retainer looks like,” he says.

Proponents of e-lawyering argue that change is inevitable and law firms — particularly big ones — must adapt. It’s a point Susskind makes in his new book, *The End of Lawyers?* He argues lawyers can meet the challenge disruption poses by combining legal services with other disciplines. At the same time, he predicts the emergence of “legal knowledge engineers” who will lead the creation of e-lawyering smart systems.

Of course, Canada doesn’t yet have a Richard Granat or a Richard Cohen to spearhead such systems, thus launching e-lawyering is largely left to individual practitioners such as Garton-Jones. She hopes her lean and profitable operation will make her law firm recession-proof, but getting there was complicated and expensive. “I made mistakes. I spent way more than I needed to spend at the outset. I would do it again and I’m happy with it, but it’s certainly not going to be right for every lawyer.” Nevertheless, after spending an estimated \$50,000 already, she plans to expand her automated services.

Tamminga, too, says while Gowlings is eager to apply its smart systems to other practices, he’s not worried about Susskind’s predictions on technology’s threat to the profession. “If we were owned by an accounting firm [or] if we were owned by the public, this practice would still exist because it still has to get done.” He also rejects the notion law firms will fold if they don’t move fast enough. “In many ways, we’re all doomed if we don’t get on. But everybody was doomed in 1920 if we didn’t get phones. We got phones in the right order at the right time without panicking. Lawyers aren’t very good at being first adopters, but quite often they don’t have to be. I’ve grown increasingly skeptical of the dire predictions. I don’t think extinction is coming our way.”