

A CANADIAN AUTHOR AND LAW-BUSINESS EXPERT WEIGHS IN

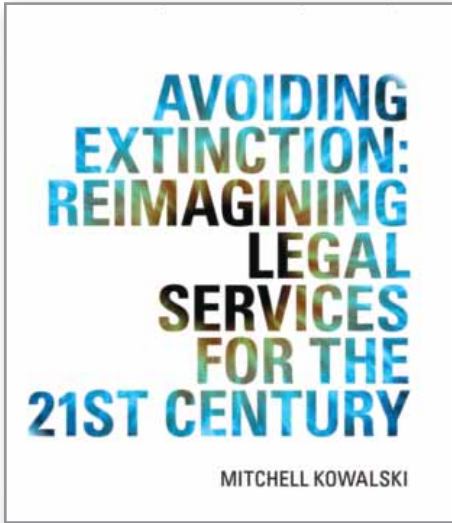
Some law firms think you can improve both quality and profit

By **Mitch Kowalski**, author

Author F. Scott Fitzgerald was not known for his legal knowledge, but his advice to legal writers is nonetheless valid: “One doesn’t write a book because you want to say something. One writes a book because you have something to say.”

If you’ve been part of the legal profession for any length of time, you’ve likely seen things that drive you – and your clients – bonkers.

For starters, we’ve enslaved ourselves to a fragile partnership structure that sacrifices long-term decision-making on the altar of short-term payouts.



We embrace the billable hour because it provides *us* with certainty – not our *clients*. And we invest little in finding more efficient ways to provide legal services, preferring instead to increase revenue through the annual January ritual of hourly-rate increases – whether we deserve them or not.

Some lawyers choose to keep their heads down, ignore things and soldier on. Others merely tinker around the edges. I chose a different path. I took Fitzgerald’s advice and wrote a book: *Avoiding Extinction: Reimagining Legal Services for the 21st Century*.

After more than two decades in practice, I had a lot to say about how lawyers could better deliver legal services. Better not only from a client’s perspective, but also from a lawyer’s perspective; a way to create a real

and lasting competitive advantage.

Nothing in *Avoiding Extinction* is fantasy. Everything discussed in the book is being used in some industry around the world. I have simply applied these best practices to a law firm setting. I never bought into the fiction that law is different.

The issues discussed in *Avoiding Extinction* force the reader to seriously consider what is truly essential in a legal practice, what a lawyer really needs to do (and not do). The book then forces readers to re-think what it means to be a lawyer in the new millennium.

To date, I’ve caught several glimpses of my concept in the book of the fictional law firm Bowen, Fong & Chandri (BFC) around the world.

In 2003, Cleveland’s Tucker Ellis (currently at 160 lawyers and 56 paralegals) rose from the ashes of the former Arter & Hadden. When partners and associates got together to start anew, they savoured the ability to start from a fresh slate. Their first order of business? Get rid of all the things they hated about the old place; among other things, 60% of the firm’s work is now done on a non-billable hour basis and not surprisingly, its team and its clients are all the happier.

Hunoval Law Firm in North Carolina has embraced lean-and-sigma techniques, which enable it to substantially lower its overhead costs and easily compete with vastly larger firms. Hunoval has gone so far as to partner with the University of North Carolina, Charlotte, to create a special Lean and Six Sigma training program for firm staff. (See sidebar for an outline of *Lean and Six Sigma* concepts. – Editor.)

Australia’s Slater & Gordon, the world’s first publically traded law firm, has created new career paths for lawyers and new metrics to determine how they are



Mitch Kowalski

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THE INSIDER’S VIEW OF KOWALSKI’S BOOK

A*voiding Extinction* puts into a unique context the current discussions many of us are having about legal innovation, as well as adding to them, according to the book’s author, Mitch Kowalski.

Here’s how he approached it:

“{The book} engages readers and compels them to read through to the end. The narrative style allows readers to see exactly what a new model law firm (Bowen, Fong & Chandri or simply, BFC) would look like, and how it would operate.”

Avoiding Extinction revolves around three main characters he invented, but who are actually a combination of people he’s known over the years. “First,” he says, “we meet Maria Fernandez, the harried General Counsel of a multi-national behemoth, Kowtor Industries, who is tired of being a cop and is looking for a true legal partner. She decides that instead of fighting ‘gators, she’ll drain the swamp. She gathers her in-house legal team together to determine what’s important to them and to their company, so that she can then sort out what value she needs to receive from her outside law firms.”

Next, he adds, “We meet Mark Reynolds, a mid-level associate who is thoroughly disillusioned with the practice of law. He sees BFC as his last kick at the can before he leaves the profession. He’s a new hire at BFC, and we follow him through his orientation to learn about BFC’s competitive advantage: it does the same work as its competitors, but in a completely different way.”

And, then, he concludes, “We meet BFC’s CEO, Sylvester Bowen, who is a strong and refreshing free-thinker on how law firms can operate in order to provide better, faster and more-affordable service.”

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paid and how they advance within the firm – proving that non-lawyer ownership has not created the apocalypse that far too many Canadian and American lawyers fear.

The likes of Axiom in the United States and Lawyers on Demand in the UK are changing the perception of in-house counsel about how corporate legal needs can be addressed. Cognition is Canada’s answer to these models, doing work that falls into three categories:

- ❶ Providing project or temporary lawyers for in-house departments;

- ❷ Quasi in-house work for start-ups; and
- ❸ Acting as a subcontractor for big firms on routine files in order to save client costs.

Out went private offices, expensive overhead, suits and hourly billing (mostly anyway), and in came the Profit 200 Award as one of the 200 fastest growing Canadian companies by revenue growth over five years.

Also in: Happy lawyers and even happier clients.

Riverview Law in the UK is less than a year old, yet it’s blown through its wildest projections – not because it has the best

lawyers (although having met some of its team, they are damn good!) – but because they place tremendous focus on, and investment in, process, knowledge management, information technology, client management and client-budget certainty.

Karl Chapman of Riverview Law is fond of telling me that I should stop saying that a firm like BFC doesn’t exist because Riverview Law is the real-life BFC!

In the wake of the *Legal Services Act*, which allows outside investment in British law firms, PwC London has created an advisory service to assist General Counsel in

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WHAT DOES ‘LEAN AND SIGMA’ HAVE TO DO WITH RUNNING A LAW FIRM?

Mitchell Kowalski talks about the firm Hunoval of North Carolina embracing ‘lean and sigma’ techniques to improve the firm’s operations. Here’s the kind of thing he’s discussing.

WHAT IS LEAN?

Lean (also known as *Lean Production*, *Lean Enterprise* and *Lean Thinking*) involves a set of principles, practices and methods for designing, improving and managing processes. The development of *Lean* is attributed to Taiichi Ohno’s articulation of the *Toyota Production System*.

Ohno aimed to improve efficiency by eliminating particular kinds of waste... which absorb time and resources but do not add value. Examples include mistakes which need rectification, unneeded process steps, movement of materials or people without a [useful] purpose, unnecessary waiting because upstream activity was not delivered on time, and the creation of goods or services that are not really needed by end-users.

A *Lean* process reflects the goal of continually reducing waste and improving work flow to efficiently produce a product or service that is perceived to be of high value to those who use it. Implementation of *Lean* involves systematic process-assessment and analysis.

The preliminary stages of *Lean* assessment include “value-stream mapping” in which key people, resources, activities and information flows required to deliver a product or service are made explicit and depicted graphically. The value-stream map is a key tool for identifying opportunities to reduce waste and more tightly integrate process steps, thus improving process efficiency...

WHAT IS SIX SIGMA?

Six Sigma, like *Lean*, is also a business-management strategy used to improve the quality and efficiency of operational processes. While *Lean* focuses on identifying ways to streamline processes and reduce waste, *Six Sigma* aims predominantly to make processes more uniform and precise through the application of statistical methods.

Six Sigma was originally developed by Bill Smith of Motorola in 1986 as a way of eliminating defects in manufacturing, where a defect [is] a product or process that fails to meet customers’ expectations and requirements.

The name *Six Sigma* refers to a quality level defined as the near-

perfect defect rate of 3.4 defects per million opportunities....

The *Six Sigma* improvement mode – Define, Measure, Analyze, Improve and Control (DMAIC) – specifies the following sequence of steps for understanding and improving a process:

- ❶ Defining the project’s goals and the requirements of internal and external customers;
- ❷ Measuring the process to determine current performance;
- ❸ Analyzing and determining the root causes of relevant defects;
- ❹ Improving the process by eliminating the root causes, and
- ❺ Controlling future performance of processes.

... Distinctive *Six Sigma* features include the expectation that process-quality improvements be translated into financial metrics to assess value, and the active involvement of top management....

WHAT IS LEAN AND SIGMA?

... Proponents of a combined approach [*lean and sigma*] assert that organizations can benefit from utilizing both the customer-orientation and focus on eliminating waste inherent in *Lean* along with the statistical tools and systematic defect-reduction strategies featured in *Six Sigma*. [That combination bypasses the need to force management to choose between a better bottom line and improved quality.]

Lean and *Six Sigma* are just two of numerous approaches that are in use for systematically analyzing and improving process flow and efficiency within industries. Other similar approaches include *Business Process Modeling*, *Business Process Reengineering* and *Workflow Mapping*, as well as a variety of total-quality management and continuous-quality improvement techniques, such as management accounting systems, the Japanese improvement system called *Kaizen* or the *Shewhart* system of statistical quality-control cycles which involve planning, doing, checking and adjusting.

The selection of a particular process-improvement approach will depend upon the specific circumstances and needs existing in a working environment, including the type of processes, the improvement objectives, plus the skills, knowledge and resources available in that setting.

– Edited excerpt from a much longer article by Sharon Schweikhart, Ph.D. and Allard Dembe, Sc.D at:


<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2835466/>

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driving better behaviour and value from outside law firms.

New ideas and new models will not stop at the Canadian border.

It's time to reconsider how we deliver legal services as the old model has reached the end of its natural life cycle.

As I've told law students on several occasions, there's never been a more exciting time to be a lawyer – as long as you're not a lawyer in the old mold. 

Mitch Kowalski regularly writes and speaks on innovation in legal services. Follow him on twitter @mekowalski or contact him at www.kowalski.ca His book, Avoiding Extinction: Reimagining Legal Services for the 21st Century, is published by the American Bar Association (2012). It's available in Canada at Indigo/Chapters, Amazon and at Ben Mc.Nally Books in Toronto.

SAVE THIS DATE

BCLMA & HUMAN RESOURCES SUBSECTION

MANAGING THE HOSTILE INDIVIDUAL

An Educational Event for all BCLMA members

Wednesday, February 13, 2013
Four Seasons Hotel, Vancouver
11:45 am – 1:30 pm

Space is limited!
Session available by webinar

More Information
WWW.BCLMA.ORG



BCLMA 2013 SCHEDULE of ANNUAL SURVEYS

Surveys provide valuable data to law office managers. The more firms that respond, the more accurate the results; we need your input.



Bob Waterman

The BCLMA surveys are distributed throughout the year at a time that should work for the majority of participants. Your comments are welcome on any of the surveys, so please contact Bob Waterman, Chair of the BCLMA Survey Committee, via email: BWaterman@RBS.ca

SURVEY	Distribution Date	Reply Deadline	Estimated Publication Date	Survey Co-ordinator
Associate Salaries	March 1	March 15	April 1	Bob Waterman
Law Firm Economics	April 1	May 1	June 14	Sandy Delayen
Staff Ratios	May 1	May 15	May 31	Wayne Scott
Support Staff Salaries	September 3	October 1	November 1	Raf Sansalone
Billing Rates	September 3	October 1	November 1	Raf Sansalone
Management Staff Salaries	October 1	October 15	November 1	Leslie Morgan

- The Law Firm Economic Survey will again be led by Wolrige Mahon LLP, which has conducted this survey for BCLMA for several years.
- The Support Staff Salary Survey remains the most popular poll. Results will be compiled by Western Compensation & Benefits Consultants and distributed by the CBA with significant input from BCLMA.
- Benefits and Charge-out Rates are part of the Support Staff Salary Survey.

We publish the names of all law firms who participate in the surveys, however, no direct links or reference to any of the results are made public, nor are they available for confidential viewing.

The BCLMA Survey Committee is:
Bob Waterman, Chair, from Richards Buell Sutton LLP; Sandy Delayen of Bull Houser & Tupper LLP; Raf Sansalone of Borden Ladner Gervais LLP; Leslie Morgan of Harper Grey LLP – Leslie also represents the BCLMA Board; Wayne Scott of Alexander Holburn Beaudin & Lang LLP, and; Jane Kennedy of the BCLMA.