

**ENGAGING IN UNNATURAL ACTS:
barriers to successful Knowledge Management in Australian law firms**

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"There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things." - Michavelli

1. Introduction

In a world of rapid technological, social and economic changes, knowledge is fast becoming a strategic resource. Attempts should be made at generating new knowledge and maintaining already existing one. Knowledge Management purports to be a methodology and a tool for achieving the "farming and harvesting" of intellectual assets. However, due to a number of technical and soft issues, a large number of Knowledge Management initiatives face barriers that could, if not dealt with, lead to its failure. Some of these issues arise from the fact that there is no clear definition or understanding of the paradigm of Knowledge Management. Other issues arise from mis-application and over-reliance on IT as a Knowledge Management solution. But by far the most important issues arise because of people: their perceptions, interests, socialization and psychology.

No where are the barriers seen in full function as they are in attempts to provide Knowledge Management consultation to legal firms. Although there are few technological issues in this area, due to the resistance by the profession to espouse technology in everyday work, social, psychological and cultural barriers to Knowledge Management (and even to IM) abound. This does not preclude the fact that there are two very successful knowledge management ventures among the Australian law firms. It simply means that such attempts are more of an exception than the standard.

The paper provides a literature review based and personal experience assessment of the legal environment in Australia as it relates to the various barriers to successful Knowledge Management

ventures within the profession. It also attempts to provide a set of tactics and techniques to overcome these barriers, and a proposal of what should be the ultimate solution to what seems an almost universal problem in Knowledge Management – the unnatural act of sharing.

2. What Constitutes Knowledge Management?

As one might expect in a relatively new field whose body of research is still forming, there is no widespread agreement on a definition of knowledge management or a description of its core components and practices. Some commentators take a narrow view, and focus on the role that technology plays in assisting organizations to store and access knowledge; others take a more expansive view, and consider an organization's overall culture, organizational design, processes, human dynamics, and performance measures.

Analysts say the term means something different to every firm, and advice firms to learn to define what Knowledge Management is for them and then focus on developing a Knowledge Management system that can effectively capture this knowledge. Knowledge Management is a very broad umbrella and includes by necessity many people of diverse educational and experiential backgrounds. Many of these people are outside the field of IT and Computer Science and are playing an important role in defining and developing the overall understanding of Knowledge Management.

[Stephen Denning](#) (2000) says that there is “no agreed definition of “knowledge management” even among practitioners, and that the term is used loosely to refer to a broad collection of organizational practices and approaches related to generating, capturing, disseminating know-how and other content relevant to the organization's business. Some would argue that “knowledge management” is a contradiction in terms, as knowledge is not just an explicit tangible “thing”, like information, but information combined with experience, context, interpretation and reflection. Knowledge involves the full person, integrating the elements of both thinking and feeling. Hence some object to the implicit suggestion in the use of the term “knowledge management” that knowledge can be so managed, as revealing a fundamental misunderstanding of the nature of knowledge. Many practitioners increasingly see “knowledge sharing” as a better description of what they are about than “knowledge management”. The Knowledge Management Forum [<http://www.km-forum.org/>] has a number of definitions of Knowledge Management, ranging from the Knowledge ManagementF creator Brian Newman's who defines Knowledge Management as a “**collection of processes that govern the creation, dissemination, and utilization of knowledge**” ;Thomas Bertels' “**the management of the organization towards the continuous renewal of the organizational knowledge base**” and Denham Gray's “**an audit of "intellectual assets" that highlights unique sources, critical functions and potential bottlenecks which hinder knowledge flows to the point of use**”(Knowledge Management Forum, 1996). David Skyrme has a working definition of Knowledge Management. “**Knowledge Management is the explicit and systematic management of vital knowledge - and its associated processes of creation, organization, diffusion, use and exploitation. In the strategic sense, knowledge management means transforming personal knowledge into a corporate resource that can be widely shared throughout an organisation and appropriately applied.**” (Skyrme, 1999). All these writers agree that that Knowledge Management is an ongoing process.

Karl Sveiby, on the other hand, finds Knowledge Management difficult to define, and that the best way to do so is by looking at what people in the field are doing. Sveiby divides these into vendors and users, each working on one of two tracks: managing information or managing people ([Sveiby, 2001](#))

Yogesh Malhotra of Brint [<http://www.brint.com/>] states that neither IT alone nor people alone can create successful Knowledge Management projects. Malhotra defines Knowledge Management as “obsolescing what you know before others obsolete it and profit by creating the challenges and

opportunities others haven't even thought about" ([Malhotra](#), 1999). A few years later, Malhotra came up with a more structured definition. Knowledge Management, he states, **"caters to the critical issues of organizational adaptation, survival, and competence in face of increasingly discontinuous environmental change. Essentially, it embodies organizational processes that seek synergistic combination of data and information-processing capacity of information technologies, and the creative and innovative capacity of human beings"** ([Malhotra](#), 2001).

Gene Bellinger ([Bellinger](#), 1998) defines Knowledge Management as consisting of all the activities required to develop, maintain, and evolve the "knowledge environment", and support its interaction with people. The term "environment" encompasses the hardware and software in use, the people with whom one interacts (either directly or online), the knowledge base, and the whole set of interactions between these components.

In an interesting study by the [Delphi Group](#) (2001) of knowledge management in corporations, they surveyed 500 professionals with experience and interest in electronic document technologies. 43% of those folks saw knowledge management as, "an opportunity to add value to information inside the organization." 37% saw knowledge management as a, "major new strategic initiative for staying competitive."

The Gartner Group [www.gartner.com] defines Knowledge Management as what **"promotes an integrated approach to identifying, capturing, retrieving, sharing, and evaluating an enterprises information assets. These information assets may include databases, documents, policies, procedures, as well as the uncaptured tacit expertise and experience stored in individual's heads"** ([Harris & Dresner](#), 1999). According to another source **"Knowledge management is the identification, evolution, control, and ethical and moral use of knowledge to achieve an organization's objectives. Knowledge management encompasses the people who create and use knowledge; the processes by which knowledge is created, maintained, and accessed; the artifacts in which knowledge is stored (manuals, databases, books, intranets, etc.); and the technologies that enable and support the creation, evolution, and use, as well as the secure distribution and storage, of knowledge"** ([IDT Inc.](#), 1999).

American Productivity & Quality Center [<http://www.apqc.org>] defines Knowledge Management as **"a conscious strategy of getting the right knowledge to the right people at the right time and helping people share and put information into action in ways that will improve organizational performance."** ([Ewyk](#), 2000) This comprehensive definition of knowledge management translates into a seamless organization that is able to manage and bridge its vertical, horizontal, external, and geographical boundaries, with trust at the center of its core values. This definition focuses on people "in whom knowledge truly resides" – the major asset of any organization, private or public.

Knowledge Management can also be seen as something that allows a corporation/business to:

- Harvest and generate high value information, even in a globally distributed environment,
- Identify and replicate its best practices,
- Better understand the key issues facing it. ([Weinberger](#), 1999)

[Platt](#) (1997) says that Knowledge Management is a concept "of many names", and includes among others such things as records management, case management, marketing information management, document management and contact management.

In summary, therefore, one can say that Knowledge Management is comprised of the following phases (activities): knowledge creation/generation, knowledge transfer/sharing, knowledge accumulation, knowledge adoption and diffusion ([Nissen, et al](#), 2000). Each one of these phases faces barriers, both cultural and technical.

3. Knowledge Management Consulting in the Current Legal Profession Environment

For most legal firms, the collective knowledge of the legal 'team' is a core asset. The problem that needs addressing, however, is that majority of law firms neither believe in 'teaming-up' nor in 'collective knowledge'. This makes knowledge sharing (and therefore Knowledge Management) very difficult to implement.

A law firm can be understood as a social community specializing in the speed and efficiency in the creation and transfer of legal knowledge ([Nahapiet and Ghoshal, 1998](#)). A law firm is a collection of fiefdoms - each lawyer has his or her own clients and keeps the information about them private. This, however, makes it difficult for management in a large law firm to find out who is a client of the firm and who is working on a deal with whom ([Laudon and Laudon, 1998](#)). One of the greatest objectives of Knowledge Management in law firms seems to be consistency of work output in an increasingly global market. Knowledge Management support systems in law firms are concerned with capturing and codifying knowledge, creating knowledge, distributing knowledge and sharing knowledge ([Edwards and Mahling, 1997](#)).

Information involved in the practice of law can be categorised as administrative data, declarative knowledge, procedural knowledge, and analytical knowledge. **Administrative data** includes all of the nuts and bolts information about firm operations, such as hourly billing rates for lawyers, client names and matters, staff payroll data, and client invoice data. **Declarative knowledge** is knowledge of the law, the legal principles contained in statutes, court opinions and other sources of primary legal authority. **Procedural knowledge** is knowledge of the mechanics of complying with the law's requirements in a particular situation: what documents are necessary to transfer an asset from Company A to Company B, or what forms must be filed to create a new corporation. Declarative knowledge is sometimes labeled know-that and know-what, while procedural knowledge is labeled know-how ([Nahapiet and Ghoshal, 1998](#)). **Analytical knowledge** is the conclusions reached about the course of action a particular client should follow in a particular situation. Analytical knowledge results from analyzing declarative knowledge (i.e. substantive law principles) as it applies to a particular fact setting. Treating law firms as Knowledge Management setting seems to make sense. Information technology used to support Knowledge Management may revolutionize law firms. Effective support for Knowledge Management initiatives can serve as a competitive advantage and as a professional aid to law firms.

However, there are significant hurdles to be overcome in order to embed successful Knowledge Management in the law firm context, all of which may be categorized according to firm culture: individuality, time, success and lack of incentives. Individuality is encouraged in most law firms; lawyers are not noted for their team-based approaches to legal work or for their willingness to share their expertise. Time is money in a law firm; any time spent sharing knowledge and experience is time not spent billing. Success can be the enemy of innovation; many larger law firms have done very well without any recourse to Knowledge Management or even particularly innovative use of IT. Lack of incentives obscures the existence of a knowledge marketplace ([Terrett, 1998](#)).

According to [Goffee and Jones \(1996\)](#) categorization of types of organizational knowledge, majority of law firms fit the description of "mercenary": solidarity is high while sociability is low. Such cultures are characterized by:

- Most communication is business-focused
- Can respond quickly and cohesively to a perceived threat
- Priorities are decided quickly and enforced with little debate
- Generally intolerant of poor performance
- Low levels of loyalty

- Individuals are disinclined to cooperate

Majority of law firms also consider “management” as something unprofessional. When Prof. Weisbord was researching strategic management in New York law firms, she visited “one of New York's oldest, largest, and most prestigious law firms, where [she] tried to persuade a senior partner to allow [her] to survey his firm for [her] study on law firm growth strategy. His horrified response was that [the] study “was anathema to the profession of law; law is not a business.” ([Weisbord](#), 1997)

The perception of the Information Manager (there are only 2 Knowledge Managers in the whole of Australian legal profession, both in USA based firms that operate in Australia), also form barriers to the implementation of a Knowledge Management project. Information Managers are seen as “functionaries” who cater to the needs of the lawyers and managing partners, or as purveyors of services – seldom as professionals. They are seldom invited to participate in the management meetings, and only then if the matter has a direct relation to IT, research, library services or whatever it is that the Information Manager is responsible for. The law staff does not socialize with the IM (or IMS) staff, and IMS offices are more often situated next to the Administration staff than to the lawyers. The one recent precedent-setting exception is Blake Dowson Waldron’s Liz Broderick, whose IT strategy implementations won her the right to partnership in the firm ([Liverani](#), 2001). But then, Ms Broderick is also a lawyer in her own right. Her partnership status would have been questionable if she was only an Information Manager.

The law firm culture can be summarised as follows:

- Philistine by nature
- Last of the cottage industries
- Stable environments
- Hierarchical, reactive, conservative
- Smart and highly educated people
- More bosses than there need to be
- Lawyers are used to getting answers
- They are trained to focus narrowly and to find fault and have difficulty focusing on broad opportunities
- Credibility is everything – “lawyers never forget” (they also never respond to emails or phone calls)
- Lawyers understand customer service concepts more readily than business or management concepts
- Their time is valuable
- Most lawyers do not view management as a profession
- Cultural and technological changes perceived as threats
- Gender biased (important, since majority of Information Managers – non IT ones – in Australia are women)

The implications for an Information Manager trying to implement a Knowledge Management initiative are as follows:

- Hard to get lawyers to see beyond what they need for their clients
- Can be very hard to establish standards, as exceptions often outnumber policies
- Frustrations mount quickly when things go wrong or get messy
- Changes cannot be pushed too hard or too quickly
- Hierarchy and bureaucracy protract decision-making processes
- It is difficult to get lawyers to invest quality time for any purpose other than billable work
- Can be hard to get funds needed (if partners view IT investments as “cost”)
- Follow the demand

- Sometimes have to work by finding people who are willing to follow and can be vocal
- Have a vision beyond day-to-day complaints
- It can be challenging to understand what the decision criteria are

4. Types of Barriers

4.1. Soft Barriers

Lawyers fear that if they ask how to do something, this will be interpreted as a gesture of extreme incompetence. This is especially problematic for younger attorneys confronted with the gap between what they learned in law school and what they need to know to practice law. Of course, this is a dangerous belief for any lawyer. Ethical practice requires consultation with colleagues. If the fear of exposure of ignorance prevents this, the consequences can be serious for all involved. In "The Soul of the Law," [Sells](#) (1994) describes what he calls the "cult of individualism" in the legal profession. Lawyers learn that they are expected to be self-sufficient, strong, knowing, aggressive and confident - in short, super-human. Concerns about openness to attack are intensified by the adversarial atmosphere many lawyers experience in their firms. But the requirement to be cautious, circumspect and secretive closes lawyers in on themselves ([Ostrow](#), 2000). Lack of trust is inhibitive in law firms.

Since knowledge can be used to take action and to enforce spheres of influence, passing on one's knowledge to colleagues might grant them some of these potentials. Those who do not own this knowledge are deprived of the capacity to act or to influence. In this sense someone who passes on knowledge to a colleague loses the exclusiveness of his or her influence which might have implied some job security and respect. People tend to feel that by sharing what they know they lose ownership of, and control over, their knowledge. Experts with rare knowledge have the highest reputation and monopolising promotes knowledge hoarding instead of knowledge transfer. This is a common phenomena in many companies ([Reimus](#), 1997). Especially in situations where job security is low, knowledge as a power becomes vital for the individual and knowledge might be seen as a kind of insurance against losing the job ([Davenport](#), 1998). In a special industry such as law firms, the lawyers are competing directly with each other through their special knowledge, gifts and talents. It is a part of the individual culture of the high performing employees that they enter voluntarily into the competition because they like to compete and to excel each other on principle [[Quinn et al](#), 1996]. In these firms often competition and corresponding incentives and rewards urge to build a unique expertise in a certain area and to prove that expertise to clients, not to share it with colleagues.

Because lawyers want to be seen as "experts", they are highly sensitive to criticism, even if well meant and constructive. Revealing one's knowledge to have it inspected, assessed and maybe criticized by one's colleagues causes embarrassment. This attitude goes hand in hand with the 'not-invented-here' attitude, whereby novel methods and case management tactics, marketing ploys and information gathering opportunities are often by-passed, because the firm in question has managed to be successful so far without having to change. A second symptom this attitude encourages is the disdain shown younger and less experienced lawyers when they come up with good ideas. 'Not invented by me' is the logical continuation of 'not invented here.' As the junior staff is totally at the mercy of the managing partner or the principal of the firm, they avoid conflict. Such conflict avoidance also inhibits knowledge transfer, especially if the transfer consists of some innovative ideas or new thoughts. Since firms penalize mistakes, it is difficult to see how experimentation can be fostered. When there is no room to trial new things and ideas and learn from them, that also precludes room for innovation.

Many Managing Partners and Principles function on the basis of the "if it ain't broken, don't fix it" attitude. They are not comfortable with change and risk taking. New, innovative ideas don't get legitimated in such an environment. There is a perceived lack of open, honest and

supportive dialogue among the staff, not to mention the staff and the 'supportive functionalities' – a lack considered to be one of Knowledge Management 'deadliest sins' ([Fahey and Prusak, 1998](#)). As result of this negative feedback, it follows that there is very little in terms of motivation in a law firm to share knowledge. Lawyers think 'what's in it for me?' considering that the benefits will not be generally earned by the provider of knowledge but by those who benefited from it.

In addition, law firms are both hierarchical and bureaucratic, with formal procedures, regulations and dependence on precedent forming the backbone of all legal process. Cross-functional communication, cooperation and knowledge sharing does not blossom well in such atmosphere. The hierarchy and bureaucracy are often reflected in the floor plan of the firm, with each legal staff member occupying a separate room, the 'support functionalities' being placed into a totally different part of the office – mostly the library, archives and administration section. Such physical barriers increase the distance between co-workers and inhibits ad hoc, face-to-face conversations – one of the most important means of knowledge creation and transfer ([Disterer, 2001](#)).

Time constraints and the notion of "billable time" also add a barrier to knowledge generation and transfer. A legal firm's staff is extremely concerned with accounting in an explicit form for time spent on work (activity logs, time sheets, etc.) – any activity that does not generate billing in the near future is not considered worthwhile. It is rather difficult to convince otherwise already overworked lawyers to spend additional time sharing and codifying what they have learnt, while trying to make them engage in such an activity within their billable time is almost impossible.

4.2. Technological Barriers

There are two trends in defining Knowledge Management. One is IT based, and defines Knowledge Management in terms of software applications and networking hardware. The second is people-based, and defines Knowledge Management in terms of organizational behaviour and management theories. The IT trend is so much ahead of the people trend that there are simply no theories good enough to support the functionality of Knowledge Management software and its application across organisations. Among those who see knowledge management as a technology issue is just about everyone who makes software. These days it seems as if every maker of software or computer technology is striving to reposition themselves as a knowledge-management vendor. This is done most often by force-fitting the term "knowledge management" into already existing materials.

The dominant notion among Information Systems professionals is placing stress on accuracy of data/information but not on its effective application for generation of knowledge and learning. There is a perceived need, therefore, to pay more attention to educational and learning processes involved in the creation of knowledge and its use.

The capacity of technology to play a role in collaborative working (for the purpose of knowledge sharing) is often exaggerated or assumed, with little behavioural analysis of those involved. The process of developing knowledge (learning) and then attempting to represent it electronically for sharing and integrating into others' learning activities, is grossly simplified. With the capability of technology, there is even more potential of poor application or misuse of data. In practice, many people commonly confuse 'data management', 'content management' and even 'information management' with Knowledge Management. Such attitude often ignores the knowledge creation process (learning) as well as the power dimensions and boundaries reflected in meaning and structures. Knowledge is a social construct. Codified knowledge becomes a pedagogic artefact, and as such is useful only if used within the same

domain in which it was created. Technology very seldom is able to codify knowledge in a way that will make it more widely useful.

Although such tacit knowledge as represented by tips, tricks of trade and FAQs are definitely of great value to a firm, and is relatively amenable to codification into explicit knowledge through technology, there is more to Knowledge Management than that. Often, there is no system in place to ensure that what has been captured is an accurate reflection of what the 'owners' mean, that it is appropriate for the audience that will use it and that users will interpret it correctly. Tacit knowledge is a very 'fuzzy' construct. Knowledge Management should develop ways of fostering reflection and critical thinking skills as well as maintaining an open and honest debate which will lead to appraisals. Technology is, so far, unable to provide a solution to lack of trust.

Staff in legal firms does not work in a social vacuum: they are constrained by organisational structures, regulations, values and perceptions. When a new technology is introduced into a law firm, it requires breaking out of these old modes of practice - meaning that a debate on the strength and weaknesses of proposed change should ensue. Considering how resistant lawyers are to change in general, this constitutes one of the major barriers to successful use of technology in managing knowledge within a law firm. Notions of power and control are very seldom questioned, but complacent attitudes to them are impediments to creativity and innovation.

An additional problem with technology is the amount of expectations placed in it. A law firm invested in an intranet and groupware with the strong believe that it will make their procedural functions less time consuming. The applications were underused due to a number of reasons: staff had no time to train, the training that was provided by the vendor was ineffective, staff found as result that doing things "old way" was less time consuming and draining than attempts at using technology. The firm's management did not take into consideration the fact that when implementing new work habits there would be a reduction in billable time as lawyers spent time learning their way around the Intranet. They expected to have an immediate reduction in costs. Groupware was seldom used (mostly for announcing meetings, and then by administrative staff), because the culture of "committing to writing" which makes one responsible for one's written words. Lawyers could say things to each other, but writing them down in a medium which could navigate the whole firm was frightening. The management was also 'promised' by the vendor savings on stationary expenditure (forms and letters were digitised, thus leading to reduction in paper use). What the vendor (and the firm's management) did not think very well through was that the courts in Australia do not accept electronic signatures, because they still don't have a way of verifying them. This meant that forms and letters still had to be printed and signed in blue ink before lodging them with the courts.

4.3. Inherent Practice-generated Barriers

There are a few of barriers that are at this point in time inherent in Knowledge Management as a management trend. Although Knowledge Management has been around for quite some time, and related literature abounds, very little of this material is aimed specifically at legal firms. There is an issue with what constitutes 'knowledge' and what 'knowledge' should be 'managed' - different law firms perceive things differently. Since lawyers are 'terminology oriented' (there is even an Acts Interpretation Act in Australian law, in case the terminology in any particular act defies legal interpretation), the lack of a common definition of what constitutes data, information, knowledge and the whole notion of Knowledge Management ([Kawalek and Jayaratna](#), 2000) does not make the matter easier for a Knowledge Management consultant or Information Manager within a law firm.

5. Barriers In Action – A Case Study

As can be evidenced from the subject literature and personal experience in the field, 'soft' barriers are by far the most insidious ones to a successful Knowledge Management initiative. This is because "...traditionally, organizations have rewarded their professionals and employees based on their individual performance and know-how." ([Alavi and Leidner](#), 1999). A number of surveys shows that "culture" is considered the largest impediment to Knowledge Management. [McDermott and O'Dell](#) (2001) declare that no matter how strong the commitment to a Knowledge Management initiative within a corporation, the corporate culture is always stronger than the commitment. In opposition to everybody's else views, these two writers from APQC propose that instead of making culture fit the initiative, things should be done the other way around. As interesting as this sounds, one would have to have some optimal level of cultural commitment before any knowledge sharing and utilisation can occur.

[DeLong and Fahey](#) (2000) indicate that a number of barriers in Knowledge Management are the result of misconstrued notions about knowledge and culture. Failure to understand that there are different types of knowledge (human, social and structured – tacit and explicit) as well as understanding the difference between information, data and knowledge, lead to failures in managing the construct. The concept of culture is also often used loosely without any real attempt at a practical definition. Culture is intangible and illusive, and there can be more than one culture in the same firm (subcultures), depending on the level and context. Culture is reflected in values which are often difficult to articulate and very difficult to change. From values, people derive norms and practices. These are easier to observe, identify and understand. They are also more amenable to change.

Culture can be said to be linked to knowledge in the following ways:

- It shapes assumptions about which knowledge is important
- It mediates relationships between different levels of knowledge
- It creates the context for social interaction
- It shapes creation and adoption of new knowledge

Organisational culture does not exist in a vacuum. Law firms in Germany will have a different firm culture from those in Russia. Firm culture is shaped by the social culture in which the firm resides. There are also the different 'cultures' of the individual employees. Australia is a very multicultural country, and despite all the lip-service paid to "multiculturalism", differences based on ethnic, religious and political backgrounds are very obvious in the workplace.

The following case study highlights how culture (in this case many cultures) affects knowledge management.

Sealand and Assoc. (not the real name) is a small law firm based in Melbourne and specialising in immigration law. At the time of the project, the firm consisted of two managing partners (husband and wife team), two solicitors and three migration agents, one of whom was stationed in Malaysia. There were three administrative support officers, one of whom was also responsible for the accounts department. Marketing department consisted of three part-time permanent staff and a number of casual staff mainly doing telemarketing. One member of the marketing staff was an IT professional, responsible for creating the company's client database (at least in theory). Sealand have spent 25,000 AUD upgrading their systems – unfortunately they did not plan the process nor research the market. Thinking they have been saving money, they obtained hardware far below the necessary performance, and were duped into buying software and operating systems that did not fit the hardware. The practice was growing well, with each case manager dealing with a minimum of 200 cases on a permanent basis. This meant that the available information systems were not performing adequately.

Sealand decided that they could no longer continue running the business the traditional way, and they advertised for an ISM. The person who applied for the position and was offered the job was a qualified and experienced para-legal with a degree in computing, with experience in community legal organizations the size of Sealand. However, the IS manager was from a different background, both culturally and ethnically. His recommendations, although accepted and implemented at the start of his six months stint at Sealand, ended sadly.

The recommendations included networking the company (everyone had a stand alone computer), implementing backups, changing operating systems to one version of Windows, digitising forms and applications, purchasing legal software that allows online searchability of the Act and Regulations, and creating a professional client-management database. Training was provided to the existing staff. The ROI on the project was immense, with each case officer now able to deal with a minimum 100 more cases. In terms of dollars, that meant a theoretical increase of income per annum of 3,150,000 AUD. The IS manager also recommended a website that would allow clients to access the status of their cases online globally, further saving time and money on international phone calls. An electronic newsletter was already being sent to all the clients on the database, raising serious issues of spamming and privacy. The IS Manager envisioned that the website would allow for prospective clients to sign up, thus minimising complaints but also gathering invaluable data for marketing. The website also had a self-assessment form, which filtered those among the prospective clients who did not meet criteria before a face to face consultation with the firm's staff.

The firm obtained access to the Internet through broadband cable, with each case officer being able to correspond with his/her clients without having to block everyone's else path to the fax machine. In terms of efficiency and logistics, in savings on courier mail, telephone and fax calls, this system made a huge difference.

The managing partners approved of the plan. Work started on the project in July 2001. By December 2001, 85% of the project was finished, delivering what it promised. The firm closed for Christmas. When it reopened again in January, the IS manager was horrified to find out that every single aspect of his project has been physically destroyed by the Managing Partner. The IS manager was told that until his contract expired in late February, he was to maintain the PCs for the now disconnected and disjointed firm, and that his contract will not be renewed.

What exactly went wrong? It is our opinion that the IS Manager, having come from a background of open consultation, free legal advice and continual sharing of knowledge, totally failed to see that his project, although empowering the firm in terms of competitive advantage and business processes, was disempowering the Managing Partner. A close look at the firm will explain why this seems so.

The Managing Partner is a Malaysian Chinese who migrated to Australia about ten years ago as a skilled migrant. His parents were deported from China after Mao's revolution, and found refuge in Malaysia after having lost all their property. Malaysian government is not particularly fond of its Chinese population – they have no right to citizenship and are generally treated with great discrimination. The Managing Partner grew up listening to his parents' stories and was brought up on a strong need not only for success (which he saw in terms of money) but also of having control over his destiny. Having migrated to Australia, he was faced with the subtle but powerful anti-Asian sentiment among white Australians. This led to two things: firstly, he embedded himself even more in his own community (there were only three non-Chinese staff in the whole of Sealand), and second he developed a strong paranoid perception of the "Anglos" wanting to ruin him. Since English was his second language, he also had problems communicating with his non-Chinese staff. When the ISM project gave all his staff access to information, making them as

powerful as him in terms of knowledge, he envisioned his staff running away with his clients and becoming his competition. He thus made the decision to dismantle the network and the collaborative software and return to his comfort zone.

Here it was not so much the firm's culture, as the culture of the Managing Partner that made knowledge sharing impossible. It speaks volume of how desperate people are for jobs in Australia, since only two staff members left the firm after the event: one non-Chinese solicitor and the IS Manager. The rest complained under their breath, stated that the Managing Partner was insane, but carried on working.

6. Enabling Knowledge Management

Today, knowledge-sharing is widely-held to be inherently necessary to the health of most enterprises. Research shows that a "willingness to share" is positively related to profitability and productivity and negatively related to labor cost ([Jarvenpaa & Staples, 2000](#)). Knowledge-sharing is positively linked to growth and innovation, bottom line savings, increased customer satisfaction, increased shareholder value and learning. A knowledge-sharing culture is one where people share openly, there is a willingness to teach and mentor others, where ideas can be freely challenged and where knowledge gained from other sources is used. Knowledge-sharing can occur through many different media: conversations, meetings, processes, best practices, data bases, and questioning. Ideally, knowledge-sharing should be a corporate value which defines how work gets done and how everyone thinks. In short, a culture of knowledge-sharing goes deeper than superficial individual behaviors and captures the hearts and minds of the people in an organization.

The industrial age culture is characterized by most of our organizations are steeped as being strongly antagonistic to knowledge-sharing. In this type of culture, knowledge is considered to be power, so information hoarding is the norm. Management operates on a need-to-know basis and actively promotes a culture of secrecy. The "not-invented-here" syndrome is rife and rewards are based on individual contributions. The challenge for today's managers is therefore to evolve from such a culture to one which actively encourages and facilitates knowledge-sharing and discourages industrial age thinking and behaviors.

A "knowledge-sharing culture" is believed to be inherently good because of the growing importance of intellectual capital to organizations and the need for effective knowledge management practices ([Gupta & Govindarajan, 2000](#)). In modern organizations, increasing interdependencies between jobs and the information explosion resulting from interconnectivity and rapid change, mean that many people have pieces of solutions and no one knows it all ([Stauffer, 1999](#)). Therefore, cultures which inhibit knowledge-sharing are widely-held to be significant barriers to creating and leveraging knowledge assets. Instilling a knowledge-sharing culture is thus a necessary prerequisite for companies which believe that it is a significant way to differentiate themselves.

6.1. Trust Creation

Trust creation is the first, and most important, enabler of knowledge in law firms. This includes vertical interactions and horizontal interactions. In firms where the culture is never to challenge upwards, where sensitive topics are not discussed and management gives the impression of inapproachability, knowledge is not shared. Such perceptions must be dealt with from top down, with management genuinely interacting with staff and engaging in dialogues. A firm where staff feels that management is not concerned with them and is not paying serious attention to them, are not developing this 'trust'. [Von Krogh \(1998\)](#) calls this attitude of concern "care". Management needs to show that it has an interest in different viewpoints and experiences of the staff as well as practice lenience in judgement. Staff needs to have access to

help, mentoring, and be encouraged to voice opinions. The far most difficult aspect of “trust-building” in legal firms is changing the culture of penalising mistakes and discouraging constructive conflict of opinion.

6.2. Incentives

When Robert Buckman implemented his knowledge sharing network in 1996 at Buckman Labs, he made sure as early as at the launch of it, that his staff will not only be rewarded for sharing their knowledge, but also penalised for not doing it ([Rifkin](#), 1996). Some writers, however, seem to disagree about the value of incentives – critics being no where as loud as in Australia. The reason for the aloofness of Australian businesses to provide incentives for knowledge sharing can be explained by the “cut-the-tall-poppy” syndrome described in section 7. To be paid for being smarter and more knowledgeable than the rest seems outrageous to regular Australians.

[Denning](#) (2000) warns that establishing incentives for individual knowledge sharing can create expectations of rewards for behaviour that should be part of the business conducting norm. Denning is building his results on two older studies by [Edwards](#) (1986) and [Powell](#) (1998). [Wright](#) (2001) and [Disterer](#) (2001) disagree, and maintain that a reward and recognition system can stimulate sharing, this despite mentioning that empirical studies have shown quite different results. [Milne](#) (2001) suggests that investing in incentives for knowledge sharing without investing in organizational learning and research will in itself not bring the results expected. Milne also stresses the difference between rewards (financial incentives) and recognition (non-financial awards). [Cameron and Pierce](#) (1997) study based on an extensive analysis shows that concluded that praise is a strong motivator for people and that tangible rewards generate more interest in work. A paper by the psychologists [Eisenberg and Armeli](#) (1997) further augmented the Cameron-Pierce analysis by showing how rewarding creative thinking in one area leads to increased creativity in other areas.

The fact is that if a law firm decided to start implementing any form of incentives to encourage knowledge transfer and utilisation within the firm, this could not be achieved without a major change in attitude of the management towards the junior lawyers. Both recognition and rewards are dependant on the Managing Partner(s) recognising the achievements of their subordinates. Another issue to be addressed here is the fact that knowledge is managed in teams, and law firms are highly individualistic cultures. It is often the complaint one hears that team-based rewards and recognition mean in practice that some members of the team had a “free ride” at the expense of others.

Before any incentives program is implemented, management must form a very clear opinion of what behaviour they are rewarding. Generalisations and vague definitions are of no use here, as they will further confuse the issue. One cannot reward what one cannot measure, so a metrics framework for evaluation must be in place before incentives are implemented. All those involved must be aware of what the framework is, so that no unrealistic expectations are created, and no disappointments ensue.

6.3. Leading by Example

For a Knowledge Management initiative in a law firm to succeed, it has to have to total commitment of its managing partner. This is in itself hard to attain as Managing Partners’ mentality, attitudes and perceptions are often the main barrier to Knowledge Management. But it is hoped that future generations of Managing Partners will be more aware of environmental changes and that pressures from the outside world will finally force any law firm willing to remain profitable into accepting some form of Knowledge Management whether willingly or

otherwise. This in itself will not happen for many more years to come. An estimate based on when Australian Universities started fully implementing technology into teaching law and such indicative events as the creation of AUSTLII and ScalePlus, coupled with the average time it takes a newly graduated lawyer to become a partner in a firm indicates that it may be anywhere between 15 to 20 years before N-Gen lawyers have power enough to make Knowledge Management decisions. Whether Knowledge Management will survive until then as a management tool, or whether management will change to a point where a more powerful tool is needed, is futurology.

The management should also espouse change as related to the implementation of new ways of doing business. In Australia, the onus for change in the area of legislation is coming from the government, not from within the practice itself. It is thus "forced" onto the lawyer population. Such "forced" initiatives included, over the past 5 years, implementation of electronic filing of cases at Family Court, acceptance of electronic mail as "formal documentation" when used for correspondence, the creation of AUSTLII databases to give access to free legal research, the application of push technology at Scale Plus (Attorney General's website), and wide-spread use of electronic law journals. These are good signs. They are not, however, very effective at changing the IT-resistant culture within law firms, since they are optional and complementary to the already existing work practices.

6.4. Continual Education

Learning is an essential aspect of knowledge generation and utilisation. That is one of the main reasons why Business Reengineering is an antidote of Knowledge Management. When companies reengineered, they laid off large numbers of they staff, mostly those who were nearing their retirement age. These were the staff members who had most experience and most business-related tacit knowledge. Without a proper medium of disseminating their expertise, this intellectual asset became lost to the business once they left the employ of the company. They were not given the chance to pass their knowledge on, through mentoring and teaching the new staff.

It is the opinion of the writer that mentoring in law firms should be a continuous and two-way aspect of Knowledge Management. It may seem obvious why mentoring by senior staff is seen as beneficial. However, mentoring can also be done by the junior staff, with the senior staff as recipients. Junior staff often have new and innovative ideas, because their generation has been more exposed to technology and the information age paradigms. They see opportunities where senior staff perceive only hassles. Two-way mentoring would benefit the building of trust and sharing of expertise, while also dismantling power structures.

However, for mentoring to occur, staff must be given a bit of slack – time off to learn and to teach. Among the firms that the writer has consulted with, very few offer their staff time (let alone pay for) learning. Since lawyers in Australia are required by law to pass a given time annually on Continual Professional Development if they want to remain registered with the Bar Associations, law firms have no choice but to allow their staff to go and participate in these seminars. They do not, however, pay their staff for the courses, which can be very expensive. The lawyers also do not get recompensated for the time taken off to do the CPD.

7. Future Paradigms for Success

The writer of this report believes strongly that although all attempts should be made to change existing cultures in law firms, this is only half of what could and should be done to ensure that the new culture stays in place.

Knowledge Management is not hard science. It is a behavioural process that needs considerable creativity and ability to design and think outside of the box. Current education systems do not foster these skills – they teach numeracy and literacy, but not operability. They teach judgement, discrimination and recognition of facts, but not design. Having an excellent road map and knowing how to use it allows us to get from A to Z rapidly and with ease. But even the best of maps will not build a single new road.

Knowledge Management, if we were to use a pun on words, is a “New Age” trend. We need new ways of thinking (or maybe some old ones which we have suppressed and forgotten) to deal with the new economy, new information-based world, inter-connected and shrunk to the size of a laptop LCD screen. Our traditional education has failed to provide us with visionaries who will design values for the new technologies, not just new technologies that are totally unsuited to our obsolete values. The weakness of our judgement-based system is that it was not designed for change. What is needed is intuition, reflection and creativity.

Lawyers are trained to be uncreative. That is a sad fact. If lawyers became creative, according to [De Bono](#) (1999), the whole criminal law system would crash. A creative lawyer can find any interpretation for existing evidence, thus creating “reasonable doubt”. No conviction could ever be obtained in such circumstances. The world would revert to a chaotic state. Law schools teach law the same way it was taught since the Renaissance – by looking to the past. This obsession with the past, with precedent and reference, suppresses something that is equally important; namely, the concern with the future.

But lawyers are now told that unless they change and become creative, they will stop being competitive in our new e-business world. This is a bit of a paradox, as lawyers are also expected to fit the legal norms of their times. It is therefore a logical conclusion that if law firms have to change the ways they do business, the legislation that regulates the lawyers and the business must also change. This would result in a major social shift. Are Australians prepared for one?

In Australian psychology all thinking is regarded as “problem-solving”, where the term becomes akin to “purposeful thinking”. In this definition, reflection is not purposeful thinking, nor even merits the description “thinking”. The result is to leave out all areas of constructive thinking, creative thinking and design thinking. And yet knowledge generation is about reflection and design. This kind of thinking paradigm enforces the belief that if something is not wrong, and does not need fixing, there is no need to think about it.

Another sad aspect of our current education is the fact that it does not encourage collaboration. It encourages debate, competition and individualism. Although these values are not bad in themselves, they do not promote knowledge sharing. Children grow up remembering being penalised for helping class mates with their work – they are expected as adults to help their mates by sharing what they know.

Schools also encourage negativity. Teachers point out what is “wrong”, often emotionally scarring children by having their colleagues to point out the mistakes. Pupils asked to criticise their colleagues do so with glee that grows with them. This is not something new or limited to Australia. In ancient Greece it was considered clever to be maliciously witty. The same applied to the Arab civilisation, when biting criticism in the cloak of poetry was highly rewarded by the Khalifs. Verbal attacks are as aggressive as physical attacks, and their effects far more lasting.

Creativity is discouraged, as students are expected to give standard answers. Answers are often “wrong” simply because they are just different. Examinations set standards of success and failure, leaving no space for difference of opinion. And there are no classes teaching the importance of “social capital”, of effective communication and networking. Very few schools teach students

research skills and analysis. Our schools penalise mistakes, instead of using them as “learning experiences”.

Another sad aspect of Australian education is the “cut-the-tall-poppy” syndrome. Although schools encourage competition in sports and performance, there is an almost inbred abhorrence in Australia of “shinning” – which may be translated into abhorrence of anyone so good at what they do that they stand out from the crowd. The attitude, explained by Australians as their commitment to egalitarianism, actually reflects their slack attitude to achievement and general intellectual apathy.

The mentality that has been embedded in our children continues to be carried by them as adults. Whence, then, will our future knowledge leaders come? Obviously from the same stock as the current ones. And that, in itself, is inhibitive of progress.

Changing corporate culture in law firms is a short-term, immediate action. It is tactical. The strategic side of this is to change the current education system so that it reflects our need for future generations of knowledge workers, not competing, domineering and aggressively individualistic individuals. The future generation, the N-Gen, are already here. A USA organization, Alliance for Converging Technologies, as part of their research of barriers to knowledge sharing, took their findings to high schools. Responses of the 14 to 15 year olds were indicative of a different mentality: “Knowledge sharing? Isn’t that what the Web is all about? If you can fall in love with someone you have never met, surely you can share knowledge.” ([Tapscott](#), 2000)

8. References

- Alavi, M. and Leidner, D. (1999) “Knowledge Management Systems: Emerging Views and Practices from the Field”. In J.F. Nunamaker and R. H. Sprague (eds) **Proceedings of the 32nd Hawaii International Conference on Systems Sciences**. IEEE, Los Alamos.
- Bellinger, G. (1998) Knowledge Management: An Indirect Definition. [Online]. Available WWW: <http://www.outsights.com/systems/kmaid/kmaid.htm>
- Cameron, J. and Pierce, W. (1997) “Rewards, Interest and Performance: an evaluation of experimental findings” In **American Compensation Association Journal**, 6(4):
- Davenport, T, et al. (1998) “Successful Knowledge Management Projects”. In **Sloan Management Review**, 39(4):43-57
- De Bono, E. (1999). *New Thinking for the New Millennium*. London: Viking.
- De Long, D. and Fahey, L. (2000) “Diagnosing Cultural Barriers to Knowledge Management”. In **Academy of Management Executive**, 14(4): 113 - 127
- Delphi Group. (2001). **Content and Knowledge Management in Practice**. Boston (MA): The Delphi Group
- Denning, S. (2001) “Incentives for Knowledge Management” [Online] Available WWW: http://www.stevedenning.com/incentives_knowledge_management.html
- Denning, S. (2000) **The Springboard: How Storytelling Ignites Action in Knowledge-Era Organizations**. Boston, London: Butterworth Heinemann.
- Disterer, G. (2001) “Individual and Social Barriers to Knowledge Transfer”. In J.F. Nunamaker and R. H. Sprague (eds) **Proceedings of the 34th Hawaii International Conference on Systems Sciences**. IEEE, Los Alamos.

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Edwards, D. L. and Mahling, D. E. (1997). **Toward Knowledge Management Systems in the Legal Domain**, *Proceedings of Group 97*, Association for Computing Machinery, ACM, pp. 158-166.

Edwards, W. (1986) *Deming Out of the Crisis: Quality, Productivity and Competitive Position*. NY: Cambridge University Press

Eisenberg, R. and Armeli, S. (1997) "Can Silent Reward Increase Creative Performance Without Reducing Intrinsic Creative Interest?" In **Journal of Personality and Social Psychology**, 72(3): 652 - 653

Ewyk, O. (2000) Knowledge Management 10 Point Checklist. [Online]. Available WWW: http://www.hci.com.au/hcisite2/articles/KM_checklist.htm

Fahey, L. and Prusak, L. (1998) "The Eleven Deadliest Sins of Knowledge Management". In **California Management Review**, 40(3): 256-276

Goffee, R. and G. Jones. (1996). "What holds the modern company together?", In **Harvard Business Review**, November-December:133-148.

Gupta, A. and V. Govindarajan. (2000) "Knowledge management's social dimension: lessons from Nucor Steel", **Sloan Management Review**, 42(1):71-80.

Harris, K., Dresner H. (1999) **Business Intelligence Meets Knowledge Management**. Gartner Group RAS Research Note: Decision Framework

IDT Inc. (1999) Manitoba Knowledge Management Assessment Initiative Report. [Online]. Available WWW: <http://www.qnet.mb.ca/kmreport.pdf>

Jarvenpaa, S. and Staples, D. (2000) "The use of collaborative electronic media for information sharing: an exploratory study of determinants", In **Journal of Strategic Information Systems** (9), pp. 129-154.

Kawalek J. and Jayaratna, N. (2000) "Consulting in "Knowledge Management" using the NIMSAD framework : a proposal". Proceedings of 10th Annual Business Information Technology BIT 2000 Conference, November 2000: Manchester, UK.

Knowledge Management Forum. (1996). What is Knowledge Management? [Online]. Available WWW: http://www.km-forum.org/what_is.htm

Laudon, K. C. and Laudon, J. P. (1998). *Management Information Systems - New Approaches to Organization & Technology*, USA: Prentice Hall.

Liverani, M. R. (2001) "Changing a culture brings lawyer Business Woman of the Year Award" In *Law Society Journal*, 39(10):14

McDermont, R. and O'Dell, C. (2001) "Overcoming cultural barriers to sharing knowledge" In **Journal of Knowledge Management**, 5(1): 76-85

Malhotra, Y. (1999). What is Really Knowledge Management? [Online]. Available WWW: <http://www.brint.com/advisor/a092099.htm>

Malhotra, Y. (2001) Knowledge Management for the New World of Business. [Online]. Available WWW: <http://www.brint.com/km/whatis.htm>

Milne, P. (2001) "Rewards, recognition and knowledge sharing: seeking a causal link". In **Australian Academic and Research Libraries**, 32(4): 321-332

Nahapiet, J and S Ghoshal (1998). "Social capital, intellectual capital, and the organizational advantage", *Academy of Management Review*, vol. 23 (2), pp. 242-266.

Nissen, M. et al (2000). "Integrated Analysis and Design of Knowledge Systems and Processes". In **Information Resources Management Journal**, 13(1): 24-43

Berner_RR1_KM

Ostrow, E. (2000) "Be Self-Sufficient and Strong: Who's Rule Is That Anyway?" In **Beyond the Billable Hour** Newsletter, issue 7.

Platt, N. (1997) Knowledge Management: Can It Exist in a Law Office? [Online] Available WWW: <http://www.llrx.com/features/km.htm>

Powell, J.(1998) "How Incentives Undermine Performance". In **Journal for Quality and Participation**, 21(2): 6-13

Quinn, J. et al (1996) "Managing Professional Intellect". In **Harvard Business Review**, 74(2): 71-80

Reimus, B. (1997) Knowledge Sharing Within Management Consulting Firms. [Online] Available WWW: <http://www.kennedyinfo.com/mc/gware.html>

Rifkin, G. (1996) "Buckman Lab is Nothing but Net". In *Fast Company*, June/July, p. 127 (also available online at <http://www.fastcompany.com/online/03/buckman.html>)

Sells, B. (1994). "The Soul of the Law: Understanding Lawyers and the Law." Element.

Skyrme, D. (1999). From Measurement Myopia to Knowledge Leadership. [Online]. Available WWW: <http://www.skyrme.com/ppt/access/sld001.htm>

Stauffer, D. (1999) "Why people hoard knowledge", **Across the Board**, 36(8).

Sveiby, K. (2001) What is Knowledge Management? [Online]. Available WWW: <http://www.sveiby.com.au/KnowledgeManagement.html>

Tapscott, D. (2000) Minds Over Matter. In **Business2.0**, March Issue. [Online] Available WWW:

Terrett, A (1998). "Knowledge Management and the Law Firm", In **Journal of Knowledge Management**, 2 (1): 67-76.

Von Krogh, G. (1998) "Care in Knowledge Creation" In **California Management Review**, 40(3): 133-153

Weinberger, D. (1999) Knowledge management and project collaboration: Generating and harvesting knowledge with Instinctive eRoom. [Online]. Available WWW: http://e2.instinctive.com/whitepapers/KM_wp_v3.pdf

Weisbord, E. (1997) Today's Law Firm: Is it time for strategic planning yet? In **Lubin Letter**, June 1997. Lubin School of Business, Pace University, NY. [Online]. Available WWW: <http://www.pace.edu/lubin/letter/spring97/lawfirm.html>

Wright, P. (2001) "Do Incentives Promote Knowledge Sharing?" [Online] Available WWW: www.kmreview.com/knowledge/articles/04.html