

The creation of LAO LAW at Legal Aid Ontario (LAO) was my most important accomplishment as a lawyer. It is a centralized legal research support service for Ontario lawyers (attorneys) in private practice, to use for their Legal Aid cases. In Ontario, instead of LAO having its own staff of lawyers to provide the legal services for people who cannot afford lawyers (a public defender system), lawyers who have their own law firms, provide the legal services for which they bill LAO. That is called a “judicare” system as distinguished from a public defender method or producing legal aid services.

Lawyers who do their own legal research cannot do it as cost-efficiently as can a centralized legal research unit wherein every cost-factor of production is highly specialized, those factors being, the staff of research lawyers, the materials used, and the principles of database management. But lawyers are not used to using outside support services such as a centralized, highly specialized, high volume production, legal research support service. They still work by way of a “cottage industry” method of production wherein the producer of the finished product relies only upon its own internal resources.

“Cottage industry” methods mean the manufacturer of the finished product uses no external support services to create any part of such finished products. Without the use of external “parts suppliers,” it is not possible to create the large economies-of-scale that affordability of one’s product for all income levels of society requires. A true support service is highly specialized in regard to every factor of production, and produces every one of its “parts” at very high volumes to sell to the makers of the finished product such as the manufacturers of automobiles. If automobiles were still made as originally produced by way of a cottage industry method, they too, like legal services, would be too expensive for middle- and lower-income people to buy. But automobile manufacturers have always been under the pressure of the truly competitive commercial market, but lawyers have not. No pressure means no innovation. And so, law societies and the method by which lawyers produce legal services have not changed.

The “parts industry,” which acts as a support service for all automobile manufactures, is made up of what are called “special parts companies.” Each makes relatively few kinds of such parts and therefore has few cost-factors of production. But it makes each part at very high volume—100,000 of this kind of part, and 300,000 of another, to be sold to different car manufacturers. That enables the huge revenue earned from high production volumes to be applied to those few cost-factors of production. Therefore, a special parts company can take great advantage of what is called, “the fixed costs factor,” meaning that in the manufacturing of almost everything, services as well as hard goods, not all the costs of production vary in proportion with the volume produced.

For example, the lease or rent costs of a factory building don’t vary in proportion with the volume produced, nor do the maintenance costs of building. And many of the utilities costs also don’t vary proportionately with volume produced, *e.g.*, the factory is probably going to keep the lights on 24/7 regardless the volume of finished product. Many of the cost-factors of production remain much the same regardless the volume produced. Thus, the greater the volume produced, the lower the portion of total costs does each unit produced have to pay for. So, “bigger is better,” *i.e.*, the greater the volume of production, the greater can the parts supplier spread its relatively fixed costs over ever-greater volumes of production. As a result, “nothing is as effective in lowering costs as scaling-up the volume of production.” That is what is meant by increasing economies-of-scale. “Scale” means increasing the volume of production. As Henry Ford, the inventor of the assembly line for making automobiles, said, “if you want to sell your product at a lower price, make more of them.” That is why manufacturers want greater market-share because that enables greater volumes of production to produce greater profits, *i.e.*, that portion of one’s price that is profit (the profit margin) increases with greater volumes of production. Or, the manufacturer can lower its price so as to be more competitive but still make its required level of profit. So it is that producers want to expand as quickly as possible from being local producers to be national producers, and then international producers of goods and services.

The benefit of the resulting economies-of-scale are passed on to the manufacturer of the finished product by way of the lower prices paid to the special parts company for those parts, than the main manufacturer could obtain by making all parts of its product itself. It could not make a sufficient volume of each of the thousands of separate parts in its automobiles so as to produce the sufficiently large economies-of-scale that affordability for all income levels of society requires. But because providing legal services is a very labour-intensive kind of production, there are very few cost-factors that don't vary with the volume produced.

An example of a cost-factor that does not vary with the volume of legal services produced is the law firm's law library costs. If a law firm has 50 lawyers, it doesn't buy 50 copies of each law book for its law library. Its law library costs remain much the same year after year. And so, the greater the volume of legal services produced, the smaller the share of total law library costs does each legal service have to pay for. But, it is well established that, "there are no significant economies-of-scale in the practice of law" because: (1) there are too few such cost-factors that don't vary with the volume of production; and, (2) no law firm has sufficient volume of production to afford the necessary high degree of specialization of every factor of production, particularly so its staff of lawyers.

And the cost of legal services is constantly increasing because each service takes more time to produce if it is to be kept at the same high-quality level. That increased time is caused by there being an ever-increasing number of things to be taken account of, such as: (1) the constantly rapidly increasing volume of laws in each area of law practice; (2) the increasing complexity of laws; (3) the speed with which laws change which requires constant research and study time; (4) more and more laws that are dependent upon technology that has to be sufficiently understood to provide good advice in relationship to such laws; and, (5) the increasing volume of records that all businesses have due to the transition from pre-electronic paper records and paper records management systems to electronic records and electronic records management systems. Pre-electronically, records required separate

actions to create the records that recorded each event. Now, the electronic transaction itself creates the records that record it plus those that analyze it for decisions to be made as a consequence of the transaction. The convenience and the greater use of the information recorded in electronic records has exploded the volume of records that everyone has. And so, legal proceedings and legal services involve many more records and legal rules regulating how they are to be used than existed in the pre-electronic paper-based records world. That in itself has caused legal proceedings and legal services to take more time and therefore to cost more money. Time has to be paid-for.

But because the method by which lawyers produce legal services has no ability to improve its cost-efficiency with greater volumes of production, as does a support services method of production, the increased time needed to produce legal services without lowering their quality, must result in an increased price for those legal services. Therefore, the cause of the unaffordable legal services problem is not “fee-gouging” by lawyers, but rather due to the great obsolescence of the way in which legal services are produced.

Law reflects the way in which a population lives. As our lives become more complex and ever-more dependant upon electronic systems and devices, the greater must be the size and complexity of the legal infrastructure of laws and regulations by which to control the use of all of that additional technology and complexity. For example, the transition from mass transportation based upon horses to automobiles has more than doubled the volume of laws, courts, judges, government departments, police forces, and insurance companies necessary to regulate and control automobile transportation instead of horse carriages and wagons. Automobile manufacturers as well as lawyers must cope with that reality. But the support services method of producing automobiles provided by its “parts industry,” enables the manufacturers to continue producing their products affordably for all income levels of society as the needs of society change.

But lawyers' cottage industry method of production does not have that same capacity. And so, that majority of society that are its middle- and lower-income people cannot afford legal services from lawyers except for very routine, simple, paper-work types of legal services, such as, a simple buying or selling of a house or condominium apartment wherein there are no special legal problems, or a simple divorce where all issues such as custody and access to children and division of family assets are easily settled, or incorporating a small company, or drafting a simple will.

What is needed are true support services that have high volumes of production but few cost-factors of production, so that the large revenues obtained make affordable a high degree of specialization for every cost-factor. That creates a very high level of competence, which enables a high-quality product to be safely produced at high speed and at high volume. This provides great convenience by minimizing production and response times, along with low error rates because of the high degree of specialization. And, "convenience sells." That is why support services methods are used in the production of almost everything, services as well as goods.

Also, production should avoid treating every product or service as requiring "tailor made" work to suit each particular client. Parts of lawyers' work can be done by standardized, systematized, and packaged products so as to lower costs. Support services can specialize in doing that at very high volumes of production so as create the large economies-of-scale that the affordability of products and flexibility as to what is to be produced require. But in law school we are trained in the habit of analyzing every fact-pattern as requiring special care and treatment.

But I knew none of this when LAO hired me 1979 to lower the cost of legal research that LAO was paying-out on lawyers' accounts for legal research hours claimed. I was a specialized criminal lawyer, not an economist or business executive skilled in the economics of different

methods of producing goods and services. I think I was hired because by far the greatest quantity of legal services provided by LAO is for criminal law legal services for people facing criminal charges to be dealt with in criminal courts. Family law services are a distant second. But the problems to be dealt with were not legal problems but rather the right choice of production methods and how to successfully put them into operation in the context of a legal aid organization based upon a judicare method of providing such services. I had no experience or training with which to do that.

I went to work at LAO, beginning on Tuesday, July 3, 1979, not because I wanted to, but rather because I had to, to solve a family problem. I had taken my family to Vancouver on the Pacific coast of British Columbia as a result of an invitation to work as a criminal lawyer there. My family had lived there during my teenaged, high school (secondary school) years in the 1950's. My wife of that time, was agreeable with my doing so for a couple of years to obtain some career variety in a different jurisdiction. However, she became very homesick for Toronto after only four months. She, along with our two young children went back to Toronto early in January 1979. That left me desperately looking for any paying job that would get me back to Toronto. At that time there was no internet or email, or anything electronic that was in common use. So, it was difficult to know what jobs might be available 2,800 miles to the east. However, I was still an Ontario lawyer, receiving Law Society of Ontario publications. In them, I just happened by chance to see an advertisement for a Director of Legal Research at LAO in Toronto. That's all the information it provided. That didn't matter to me. Regardless what was involved, it might get me back to Toronto so I could see my kids every evening. When I won the job in April, 1979, my wife went house-hunting. After finishing up the cases I was doing (arguing appeals for the prosecution before the British Columbia Court of Appeal), and teaching courses at both of Vancouver's universities, then, beginning at 5 p.m. on Friday, June 29, 1979, from the Crown prosecutor's office in downtown Vancouver, I drove across Canada to arrive back in Toronto on Monday, July 2, 1979; July 1st being Canada Day and a Sunday (the equivalent of July 4th, Independence Day in the U.S.), therefore Monday was a

holiday. I went to work at LAO on Tuesday, July 3, 1979.

When in a position of management of a project for which one has no training, or experience, or example to follow or read about because such a service has never existed before, the only way to learn how to do it, is to do it, *i.e.*, learn the hard way; errors being the price of learning. So, I hired a couple of people as clerical staff and two young lawyers as the beginning of a research staff. I then sent out 200 letters to lawyers who did legal aid cases, inviting them to use a legal research service that did not yet exist. Because the tariff of fees paid to lawyers was poor because LAO itself is poorly funded by the Ontario and federal governments, only about 12 % of the lawyers in Ontario were willing to do legal aid cases. That still meant several thousands of lawyers that I wanted to entice to use the service. The more of them there were, the greater would be the cost-saving my research unit could produce for LAO. Quickly, the Research Facility, as it was then called, and now LAO LAW, had to pay for itself, and go beyond that to saving LAO money by reducing what was being paid-out for legal research hours being billed to LAO.

That was important because I knew that the Law Society of Ontario (LSO), which had been given the management of LAO by the Ontario government, did not want the creation of such a research unit. LSO had a great conflict of interest as the manager of LAO, which should have prevented it from being given the management of LAO. A few months after I started, that was explained to me by one of the lawyer-members of LSO's Legal Aid Committee, which was the hands-on, day-to-day manager of LAO. What LSO feared the most was a government-sponsored program of socialized law, mainly because of the great success of Canada's socialized medical services program—its most popular of social services, as it still is now. LSO knew that LAO would be used as the essential foundation for any such program for fully government-paid legal services. And adding a successful legal research unit would improve LAO's ability to successfully serve as that essential foundation. I was hired and the Research Facility created merely to create the appearance of an adequate response to the

government's complaint as to excessive amounts being paid out to lawyers for legal research hours billed. Such excessive payments could best be detected by the lawyers managing LAO and stopped. Government complaints should not have been necessary.

And so it was that I was very much between "a rock and a hard place." The "rock" was that I had an employer who did not want me to succeed. The "hard place" was that I didn't know how to proceed to succeed. "Succeed" meant not only saving LAO money as well as paying for my legal research unit, but also making the research service popular with lawyers. The more that lawyers used it, the greater the cost-saving. Perhaps that would prevent LSO's Legal Aid Committee from cancelling the project as not being able to serve its purpose. But there was no rule requiring lawyers to use the service. I had to make them want to use it because it helped them make money as well as serve their clients better. That I expected to be difficult because: (1) lawyers had no experience using such an external service that was not within their control; (2) LAO was disliked because of its poorly-paying tariff of fees; (3) the slowness of its payments-out to lawyers, which was due to its always being short-staffed, but which nonetheless would make an assertion that it could produce something as important as legal research pathetic and laughable; and, (4) lawyers knew that excessive billing to LAO for research hours allegedly used for legal research purposes was difficult to police and control. To thwart that, the Research Facility had to develop a reputation for good quality work and be convenient to use including very good response time.

I knew that speed of response to requests for legal research work along with high quality work required specialization to a high degree. Therefore, I specialized the research staff by having each researcher work in only one major area of law for which LAO provided legal services: criminal law; family law; civil litigation, *etc.* Secondly, I specialized the research materials we used far beyond what could be purchased from law book companies, and more up-to-date in regard to incorporating the latest decisions from the higher courts, and statutory amendments, into our materials.

In 1979, I had been the editor of a series of law reports for about ten years. That required reading hundreds of decisions (judgments) from the courts to select those that were important enough to justify the expense of publication in a paper-based publication. I would also write the “headnote” summaries that were published with each decision, and the index strings that appeared at the top of each headnote summary. Unlike electronic storage and publication, space in large-volume paper publications is expensive. Therefore, only a relatively small number of decisions were published, which required a large volume of reading to make such a selection. As a result, I became familiar with what I called “high volume issues,” *i.e.*, issues of fact and law that occurred much more frequently than others; for example, “drunkenness as a defence” in criminal law, and, “the best interests of the child” in family law.

So, I decided that instead of my staff researching such issues over and over again for each lawyer’s request for legal research, I would have them write “standard memos” that would summarize the state of the law in regard to each such high-volume issue. I assigned groups of such memos to various researchers in accordance with their areas of specialization. They were to be kept up-to-date to the present day. If an important decision was released today by a provincial Court of Appeal (the highest court in each province), or by the Supreme Court of Canada, I wanted it ploughed into the relevant standard memo(s) by tomorrow. Over time “drunkenness as a defence” would become 2-3-and 4 standard memos, *i.e.*, drunkenness as a defence in different contexts, and for different legal issues and strategies. After a few years, we had 400 standard memos in criminal law alone. Now, a lawyer doing a legal aid case can go online to LAO LAW to download free, any one or more of a 1,000 criminal law standards memos. They are all entitled and indexed to facilitate quick and easy selection. And we had comparable volumes in the other areas of law for which LAO provided legal services. As a result of such close attention to currency of publication, the materials that we made available to lawyers who serviced legal aid clients were more useful than what could be purchased from any law book company. That served well to popularize the use of the legal

opinions that we could write for those lawyers, which in turn, increased the cost-saving that I could generate for LAO, *i.e.*, convenience serving the survival of the research unit and my job and those of my staff as well.

To compose a legal opinion in response to a request from a lawyer, first, the submitted fact-pattern that gave rise to the lawyer's client's legal problems was analyzed to determine the legal issues involved. The researcher then made the necessary selection of standard memos and wrote an individualized legal opinion dealing precisely with the fact-pattern and its legal issues, and referring to the enclosed standard memos. Often, copies of particularly important court decisions were included. That whole package of materials is what was sent to each lawyer that requested legal research. Email and the internet did not yet exist. So, deliveries were made by courier or ordinary mail, depending upon the request of the lawyer servicing the client. We worked to a rule whereby a request submitted today could be fulfilled by tomorrow, unless the legal issues within the fact pattern were multiple and particularly complex. And on most days my researchers could each produce two legal opinions a day.

Each legal opinion was indexed in detail for re-use. At the end of each index string was the name of the file and a 6-digit date to indicate how old the legal opinion was. Such detailed indexing is necessary because the law is constantly changing and being added-to by new statutes and regulations issued by legislatures and governments, and new decisions by the courts that interpret and apply those statutes and regulations, along with previous court decisions for each fact-pattern dealt with by the courts. Along with analytical law books, law journals, and conference materials, there is always a mountain of ever-changing legal literature to keep current with in each major area of the law. To live in an ever-changing society requires the production of an ever-changing mountain of analytical legal literature if our constitutionally required "rule of law" is to prevail in fact, and not just in law, *e.g.*, is the [Canadian Charter of Rights and Freedoms](#) merely "a paper tiger" or a real tiger in the courts? That depends upon the quality of the advocacy put forward in the courts, which in-turn

depends upon the quality of lawyer and his/her preparation that is doing the advocating.

Therefore, I knew that a service that could produce legal opinions that would make unnecessary lawyers' doing their own legal research by having to cope with such large and constantly changing volumes of legal literature, would be very popular. But to cause lawyers to want to give up doing and billing LAO for their own legal research hours, it would have to be a very accurate, reliable, well written, and a convenient-to-use product and service. That is to say, it had to help lawyers make money as well as serve their clients better. To do that it had to earn a high reputation for reliability, accuracy, and good response time. I wanted our work to be of high reputation so that lawyers would feel confident that they did not have to spot-check it for accuracy and comprehensiveness. Spot-checking would reduce the cost-efficiency of using it, and could result in greater time being billed to LAO. For the same reason it had to be well written and thus easy to understand and apply.

Also, each legal opinion was going to be re-used by us again ourselves to create new legal opinions. Therefore, the same factors of accuracy, ease-of-use, and convenience, were important to my staff's cost-efficiency as well as that of the lawyers using our work. That is an essential factor of the effectiveness of the third major cost-factor of our production method: the principles of database management. The first principle is, capture all finished work-product for purposes of re-use. To be able to use (copy-paste) whole sections and pages of previously written material without having to check it for accuracy, comprehensive treatment of all legal issues involved, and quality of writing, greatly increases the cost-efficiency of each researcher, and the economies-of-scale produced by the whole staff.

Law firms are not organized to maximize the re-use of previously created texts because each text is considered to be part of a client's file, all of which must be kept confidential. And, all the lawyers in a law firm are not operating from the same database of stored materials. And thirdly, no law firm has a sufficient volume of production to be able to produce much in the

way of economies-of-scale to justify an attempt to capture all of the finished work-product from all lawyers into a single database. And fourthly, lawyers have no experience writing precise index strings for the texts that they create, which, in spite of all of the electronic database search and “find” features available, is still necessary for the quickest and most accurate accessing of materials in a high-volume legal research support service. Detailed indexing of all finished work-product is the second major principle of database management.

And “pruning” the database of superseded legal opinions is the third major principle of database management—database management being the third major cost-factor of production in such a centralized legal research support service. Because such a service relies heavily on re-use of previously created work-product to maximize its cost-efficiency, it will quickly develop a database of repetitive and overlapping texts. As a matter of abundant caution all such relevant texts accessed will have to be read in case one of them has something useful that the others don’t contain. But all of that reading of repetitive texts will greatly lower the research unit’s cost-efficiency. Therefore, I imposed the practice of “pruning” so as to keep the database of legal opinions for re-use “lean,” meaning reducing such repetition to a minimum. When a researcher finished creating a new legal opinion, he/she was at a “high point of knowledge” as to all of the issues and contents of the texts used and created. That makes easy deciding which of the legal opinions used could be “retired” because the new opinion rendered them no longer needed, *i.e.*, it contained all that those superseded texts contained that was re-usable. But the “retiring” did not require the deleting of those texts. “Retiring” was done simply by deleting the index strings for such superseded texts, which therefore always remained available if a more thorough search for relevant material were needed.

All of these procedures arising from the second and third major cost-factors of production are not possible in a traditional law firm, such as the cost-factors requiring the creation of internal materials such as standard memos that are essential to the creation of all new, low

cost and conveniently used work-product to be made available at a minimum of response time. And very few law firms would have sufficient volume of production to afford to have several groups of lawyers doing nothing but legal research, and each group doing it in only one major area of law. Just as in the manufacturing of automobiles, the production methods used and economic factors depended upon by the “special parts companies” that collectively are the “parts industry,” are very different than those of the manufacturers of the finished products themselves. That is always so in a “support services” method of production. A true support service has a much higher degree of specialization and volume of production of its products than does any manufacturer of the finished product, such as the manufacturer of automobiles and law offices serving clients.

In almost all law offices, to reduce costs, the bulk of their legal research work is given to the least qualified people, *i.e.*, the law students, the paralegal workers, or the least experienced lawyers. That is a strategy of “cutting costs by cutting competence.” In contrast, the strategy of the support services method of production is to cut costs by increasing competence. Also, the cost-saving is much greater because production is dependent upon highly qualified people instead of inexperienced people. And all other factors of production are not specialized and systematized to the same high and refined degree in a traditional law office.

By the ninth year of development, my staff of research lawyers was producing legal opinions at the rate of 5,000 per year. That meant 5,000 clients served by those lawyers who used the LAO LAW centralized legal research service. No law firm produces 5,000 legal services a year, let alone 5,000 of any one kind of legal service. And if there had been an even greater volume of production, I could have further specialized my staff. For example, I could have divided up the criminal law research staff into those specialized in homicide offences, sexual offences, motor vehicle offences, property offences, the principles of criminal intent, and sentencing, *etc.*

That is why all of the manufacturing of goods and services, for at least 120 years, has been transitioning from cottage industry methods of production to support services methods. And so, in the ninth year of development I realized that I had unwittingly “reinvented the wheel.” But it is a new “wheel” in the production of legal services. If the legal profession put itself through a similar transition in production methods, the present “unaffordable legal services problem caused by unaffordable lawyers” would not exist. However, the economics of different methods of producing goods and services is not part of lawyers’ legal education and necessary experience.

And there are other kinds of lawyers’ work that could be produced by centralized support services, and law offices could be arranged in an infrastructure as being mutually-interdependent support services for one another. That is the way doctors’ offices operate—in an infrastructure of mutually-interdependent doctors, technicians, and hospital services to produce all treatments and remedies.

It is ironic that this very important innovation in the production of legal services happened in the poorest resourced institution in the whole of the legal profession—a very poorly funded legal aid organization, as are all such legal aid organizations for low-income and very poor people. Why didn’t it happen in the richest of the legal profession’s institutions, such as a large corporate-commercial law firm of international dimensions. The answer is pressure. Where there is no pressure, there is no innovation. Significant innovation requires one accept the possibility of unanticipated negative consequences. Therefore, the life of the true innovator in regard to the production of expensive volumes of goods or services is the uncomfortable one of living with the substantial risk and fear of very expensive failure. Therefore, such risks and discomfort can be avoided if one is not forced to innovate. And so it is that history states, “organizations do not change until the fear of the consequences of not changing is greater than the fear of the consequences of changing.” The law society as manager of LAO was in fear of LAO being changed to provide some form of socialized law.

But I was in fear of it not changing such that my job had no purpose. And so, I made LAO LAW a popular service and a cost-saver for LAO.

LAO LAW is now 40 years old. But due to several cuts in LAO's funding, it is a smaller operation now, and therefore more dependent for its purpose upon its internet-available standard memos than for its legal opinions. However, LSO is no longer its manager. As a result, its survival is no longer at risk, nor must it exist under the same high degree of pressure to survive. In contrast, I had to endure all of the same pressures one encounters in a commercial enterprise attempting to establish a new product in an intensely competitive commercial market, but in fact operating in the capricious world of politically-controlled government funding wherein success does not guarantee survival, and a manager cannot easily reward more productive staff members with higher salaries.

There is much more complexity to it all than what I've described above, particularly so dealing with "the people problems" of management. Such a production system requires close, detailed, and hour-by-hour quality-control management to ensure production of the necessary volumes, quality, and convenience. But this text is now a sufficient introduction to the technology of centralized legal research without going into that area of complexity.

— Ken Chasse, J.D., LL.M., member, Law Society of Ontario, and of the Law Society of British Columbia.

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