

# Canadian briefings

ACC Association of  
Corporate Counsel

May 2008

a special supplement of ACC Docket

## Offshore Legal Outsourcing—A New Trend in Canada

By Gavin Birer (*gbirer@legalwise.ca*),  
Legalwise Outsourcing Inc.; and  
Cindy Cross (*cindy.cross@travelexamericas.com*),  
Travelex Canada Limited

### Paradigm Shift

Most in-house lawyers will tell you that there is increasing pressure on corporations and their legal departments to seek ways to reduce costs. In-house legal departments (large and small) often operate in a “quiet storm”—

a confluence of various factors that constantly challenge the status quo. These factors are growing demand for legal services, greater volume of work, higher expectations, quicker turnaround times, reduced legal budgets, and reduced headcount. Have you heard the phrase “something’s got to give?”

Legal services have traditionally been provided by lawyers working at law firms or in-house for corporations. The conventional approach to providing legal services has historically been that all legal services would command a premium price, because the expertise required to provide the services could not easily be duplicated.

The legal landscape is changing rapidly due to various factors, including technology, globalization, and commoditization.

Many organizations have successfully participated in outsourcing customer support, technical support, and IT-related work to countries like India. Offshore outsourcing of legal services is beginning to take root in the United States, United Kingdom, and now in Canada. For those lawyers who are unfamiliar with the concept of offshore legal outsourcing, the phrase simply refers to the contracting out of legal work (that was previously done by employees within an organization) to an external third party in a separate country.

In a world that is “flat,” sending legal work to India has become a viable alternative for legal departments in the United States, United Kingdom, and Canada.

### Is It Real?

In 2001, GE Plastics and GE Consumer Finance began outsourcing some of its legal compliance and research work to India. GE is reported to have saved about \$2 million in one year by outsourcing legal work to India. DuPont has been an outspoken advocate of outsourcing a portion of its legal work to India. DuPont is reported to have saved about \$8.8 million in legal fees in 2002 alone. Other corporations such as Cisco Systems and Sun Microsystems estimate that outsourcing of legal work has reduced their legal fees by millions of dollars.<sup>1</sup> According to published research, the value of legal services offshored to India in 2005



## In This Issue

**Offshore Legal Outsourcing—A New Trend in Canada** ..... 1  
By Gavin Birer and Cindy Cross

**International Practice Almanac: Manitoba Canada Professional Regulation** ..... 3  
Prepared by Hinshaw & Culbertson LLP, with assistance by Desjardins Ducharme LLP

**Leveling the Playing Field** ..... 6  
By Carolyn Boyle

**Technology in Canada: An Interview With Jill Schatz** ..... 9  
By Diane Rusignola

### Save the Date

**Future Canadian Briefings deadlines:**

- September 2008—Drafts due 10 June 2008
- October 2008—Drafts due 10 July 2008



# Canadian briefings

was \$61 million; and the projected value of legal services that will be offshored to India in 2010 will increase to \$605 million.<sup>2</sup>

You can draw your own conclusions, but these success stories and the cost savings of millions of dollars unquestionably represent the tip of the iceberg in a trend that is transforming the way many legal departments are providing services.

## What Could You Outsource?

In-house lawyers generally serve as legal and business advisors to the organizations they work for and perform qualitative, skill-intensive legal tasks. By contrast, offshore legal outsourcing vendors perform quantitative, "lower-skilled" legal tasks and serve as a support to in-house legal departments. This support is crucial where the legal department is under-resourced. For these reasons, offshore legal outsourcing vendors will not replace in-house lawyers any time soon. And besides, offshore legal outsourcing providers typically only offer services directly for lawyers.

The nature of the work that a legal department could outsource is varied and includes document review, document drafting, legal research, due diligence, and much more. The main category of work that is increasingly being outsourced offshore with a high degree of success is document review. This type of work could include a review of documents for

litigation purposes (e.g. discovery) or commercial purposes (e.g. creating and maintaining contract databases).

The size of your legal department is not indicative of whether your legal department could benefit from offshore legal outsourcing. Rather, it is the type of work that you do that matters. It is also not important whether you routinely do the type of work that can be outsourced offshore or whether your needs are sporadic.

Are there real-life examples of legal work that is being sent offshore?

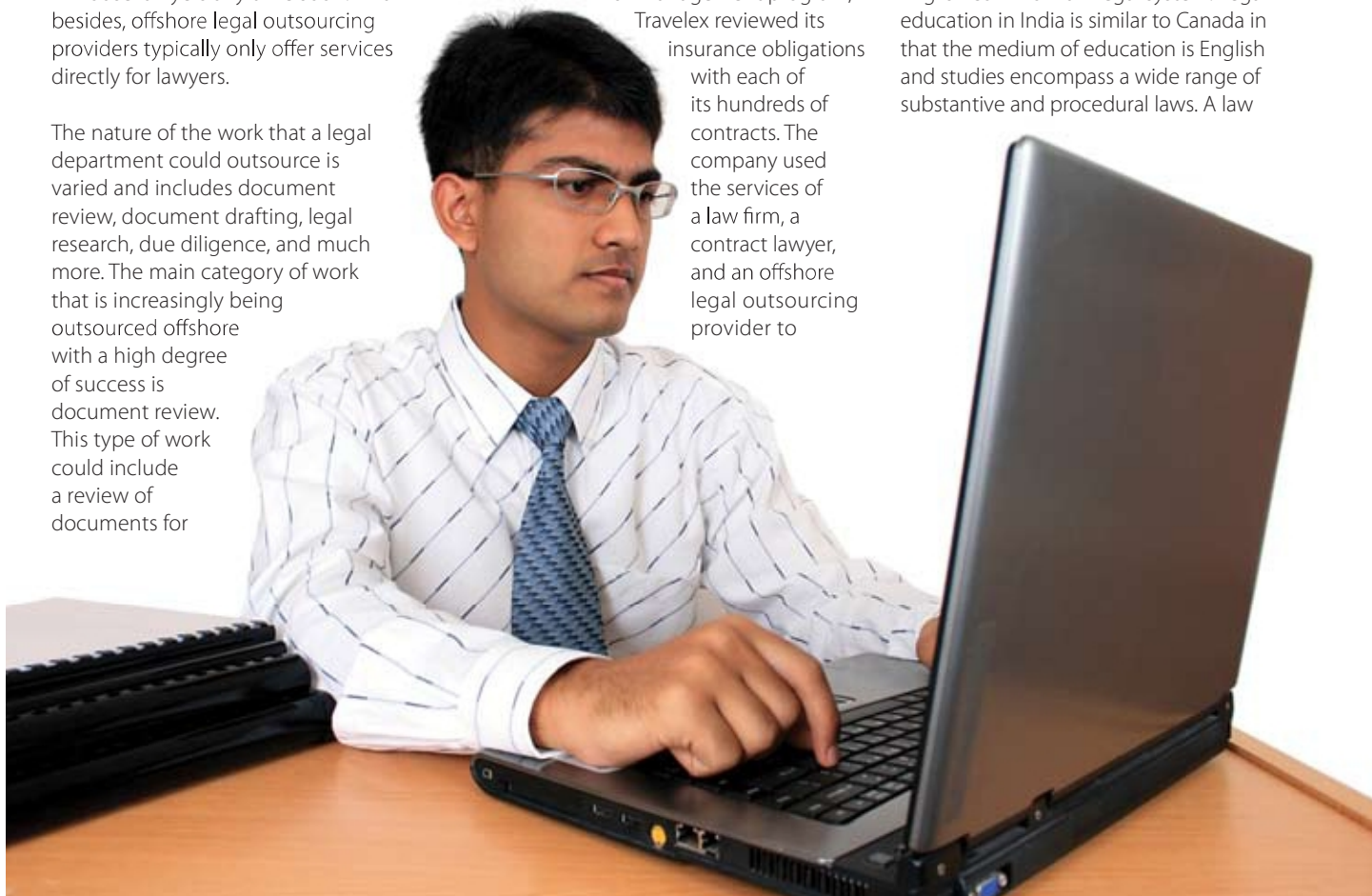
There are many, but a good example that illustrates the point is Travelex. Travelex, the world's largest non-bank foreign exchange provider, recently started using offshore legal outsourcing services. Travelex first tried these services early in 2007. As part of the company's ongoing risk management program,

Travelex reviewed its insurance obligations with each of its hundreds of contracts. The company used the services of a law firm, a contract lawyer, and an offshore legal outsourcing provider to

conduct the contract review. The contract review for Canada and the United States was carried out by Legalwise; the review for Europe and Africa was carried out by an articling student from a major law firm in London, England; and the review for Asia and Australia was carried out by a contract lawyer in Sydney, Australia. The results of the offshore outsourced work were so successful, that when Travelex decided late in 2007 to create a full contract database for all of its contracts globally, Travelex turned to Legalwise exclusively.

## India as an Offshore Destination

India is the leading destination for offshore legal outsourcing. It has the largest pool of English-speaking graduates outside of the United States and is an ideal destination for outsourcing legal work because the Indian legal system is similar to Canada's English common law legal system. Legal education in India is similar to Canada in that the medium of education is English and studies encompass a wide range of substantive and procedural laws. A law



degree (or LLB) can be obtained either through a three-year postgraduate degree in law or a five-year fulltime law degree after graduating from high school. In addition, many lawyers continue their education with a master of laws (LLM) degree and article with a law firm. For these reasons, lawyers in India are well-equipped and competent to handle Canadian legal work. Furthermore, there is a 10.5-hour time difference between India and Canada (EST), which can prove helpful in managing workflow. The differences in time zones between India and Canada means that lawyers in India can perform services while their Canadian clients are asleep.

Lawyers in India earn on average 10 to 20 percent of what their North American counterparts would earn, which translates into significant cost savings. The legal talent pool in India is highly scalable, and by some estimates, there are about one million lawyers in India, with about 70,000 law students graduating each year.

### Benefits of Offshore Legal Outsourcing


Aside from the cost savings, increased turnaround times, and quality of work already mentioned, hiring and retaining quality lawyers is a critical factor in the success of any legal department. Keeping the morale in your legal department high and, where possible, providing your lawyers with interesting work, all go a long way toward the goal of hiring and retaining quality lawyers. There is nothing quite like a spirit-crushing review of thousands of documents to lower morale in your legal department. Using an offshore legal outsourcing provider for “less interesting” repetitive work also goes a long way toward supporting your goal of hiring and retaining quality lawyers in your legal department.

Therefore, the question you should be asking is not whether you should embrace the offshore legal outsourcing trend, but rather how your organization can use offshore legal outsourcing to your advantage.

### Offshore Legal Outsourcing in Canada

Canadian legal departments face many of the same challenges that their United States and United Kingdom counterparts face. Factors such as growing demand for legal services, greater volume of work, higher expectations, quicker turnaround times, reduced legal budgets, and reduced headcount are as prevalent in Canada as they are in the United States or United Kingdom. Offshore outsourcing has become an essential part of most corporations’ corporate strategies—an approach that is critical if organizations are to succeed in today’s highly competitive and global market. For many organizations, outsourcing has strengthened their competitive position.

The beginnings of transformation in the legal services market are evident today. General Electric, DuPont, Cisco Systems, Sun Microsystems, Microsoft, and Traveler are all examples of the growing trend in favour of offshore legal outsourcing. With appropriate oversight, most in-house legal departments (as well as law firms) will likely find that outsourcing certain legal work to India is an effective way of significantly reducing costs and improving turnaround times, while maintaining the quality of the work at the same time.

Is offshore legal outsourcing a new trend, or is it merely an extension of an already successful and entrenched outsourcing trend? In the final analysis, it likely does not matter. One thing is for sure: The legal services market is changing. 

#### NOTES

1. Renee Deger, “Legal-Work Outsourcing Cuts Costs; DuPont’s Pitch to In-house Counsel: Save Millions by Sending Legal Work to Companies Other Than Law Firms,” *New Jersey Law Journal*, November 17, 2003.
2. “Offshoring Legal Services to India,” *Valuenotes* study, 2005.

## International Practice Almanac: Manitoba Canada Professional Regulation

Prepared for ACC by Hinshaw & Culbertson LLP ([www.hinshawlaw.com](http://www.hinshawlaw.com)), with local jurisdiction assistance by Desjardins Ducharme LLP, Montreal, Québec (a Lex Mundi firm)

### Lawyer Regulatory Body: Law Society of Manitoba

219 Kennedy Street  
Winnipeg, Manitoba R3C 1S8  
phone: 204.942.5571  
fax: 204.956.0624  
website: [www.lawsociety.mb.ca](http://www.lawsociety.mb.ca)  
Principal contact: Allan Fineblit, chief executive officer  
204.926.2014; [afineblit@lawsociety.mb.ca](mailto:afineblit@lawsociety.mb.ca)

### Responsibilities and Governance

Purpose is to uphold and protect the public interest in the delivery of legal services with competence, integrity, and independence.<sup>1</sup> In pursuing this purpose, the Law Society of Manitoba must: establish standards for the education, professional responsibility, and competence of persons practicing or seeking the right to practice law in Manitoba; and regulate the practice of law in Manitoba.<sup>2</sup> Regulatory authority is granted by the *Legal Profession Act*.<sup>3</sup>

### Membership and Authorized Practice

As a general rule, in order to practice local law in Manitoba a lawyer must be a member of the Law Society of Manitoba, unless the lawyer wishes to engage only in the temporary practice of law.<sup>4</sup> A lawyer from another jurisdiction in Canada outside of Manitoba is authorized to practice local law temporarily in Manitoba. (See Category 8 of this document.)

### Resident and Nonresident In-house Counsel

(Within this document, “in-house counsel” refers to lawyers who work exclusively for

# Canadian briefings

federal government will first seek public consultation from organizations and various interest groups. There have been calls for more public consultation, but whether that will happen first is in doubt," she notes.

The federal government's industry minister, Jim Prentice, has been tasked with putting stricter laws into place. When it comes to copyright reform, there are very vocal lobbying groups on both sides. Piracy issues are also top of mind when it comes to the movie and music industries, and of course the interested general public has strong views. Even the US government has been applying pressure. With the many competing pressures, regardless of how the legislation turns out, it will surely be the subject of fierce debate.

Schatz's company is also an internet service provider, so for the most part, they do not want to be in a position of policing content. "On the other hand though, there has been talk about ISPs having the authority to lock or filter content, and therefore to levy dollars, so there is also a potential there for revenue," she says. "Whether that will ever materialize though, remains to be seen."

## The Big Picture

Schatz has loved every step of the way in her career—beginning with the old, more traditional economy, all the way through the rapid pace of change of today's technology-driven industries.

"You have to embrace unpredictability when you're working in the IT or telecom world. There's no certainty year to year. You have to be able to meet demands as they shift, and be available 24/7," she notes.

Schatz stresses the importance when starting your legal career of working first with other lawyers in a firm or larger legal department before facing the challenges of going it alone in-house; she also says some experience with corporations and

business in general is valuable when it comes to being able to cope with in-house demands and learning when to push back.

"You have to know when to push back and how far to push back on various issues, but also how to facilitate the business and help it grow in an appropriate way," she says. "Sales and marketing will pressure you to make decisions based on what individual customers want and need leading to a decision that might not be appropriate for the organization from a broader perspective."

And when it comes down to the industry as a whole, she identifies the three biggest ongoing challenges facing in-house lawyers with an IT focus as reliability of services, security of networks, and privacy.

"You have to protect your data and your customer's data, given all of the security threats faced in an increasingly networked world. You have to ensure that you have taken the appropriate steps to ensure all your devices and that all of your hardware, software, and data function reliably, but are also protected from security breaches through appropriate levels of passwords and encryption," Schatz says.

Not to mention the importance of automated and multiple ways of backing up and storing data so you don't suffer serious information losses.

"Also in the event of outages and power failures that impact the technology, no one can function these days. So it's critical for your organization to be up all the time. Given that remote computing is always vulnerable to massive outages, you've got to make sure that you have contingency plans in place," she says.

Parting words of wisdom? Schatz says, "Always seek to ensure your employer is protected. Ensure all of the contractual protections and backups are in place."

*Jill Schatz has worked in the IT and telecommunications industry since 2000. She is currently the general counsel and vice president, law, for Primus Telecommunications Canada Inc., the largest alternative communications carrier in Canada by revenue with over one million residential and business customers.*

*Schatz has obtained a broad range of corporate/commercial and securities in-house legal experience through past positions with OnX Enterprise Solutions Inc., Cybersurf Corp., ICI Canada Inc., and TransCanada PipeLines Limited. She is also active in the corporate counsel community, having served as past president, vice president, treasurer, and member of the board of directors of the Canadian Corporate Counsel Association (CCCA). She currently serves on the executives of the IT and ecommerce section of the Ontario Bar Association, as well as the Toronto Chapter of the CCCA.*

*She can be contacted at [jcschatz@gmail.com](mailto:jcschatz@gmail.com).*



## Canadian Briefings Contacts

**We welcome your comments about Canadian Briefings and are always interested in finding out what topics you would like to see addressed. Please send your comments, ideas, and indication of your interest in writing for Canadian Briefings to Diane Rusignola, assistant editor, ACC Docket, at [rusignola@acc.com](mailto:rusignola@acc.com).**

**If you are interested in sponsoring an issue or multiple issues of Canadian Briefings, contact Kevin Buck, vice president and chief marketing officer, at [buck@acc.com](mailto:buck@acc.com).**