The Changing Face of Litigation Support Technology in British Columbia

BY PETER SANFORD

Over the years, the Canadian market has been dominated from coast-to-coast by one litigation support application: Summation iBlaze. We have used this application to sort our documents by lead date, integrate metadata fields, produce and briefcase documents, manage transcripts, track undertakings, link documents and build chronologies. The list of ways we have made this technology work is endless – and in that very process, many paralegals have built their careers on this application.

Firms in British Columbia have built their in-house litigation support capabilities on iBlaze to review growing volumes of documents and for use at discoveries and trial. Lawyers, although less so than paralegals, have also learned to live with its capabilities and limitations. It is fair to say we have stretched iBlaze well beyond its initial inception as a transcript-management tool into the future of eDiscovery management.

Fast-forward to 2016 where the average case size has grown significantly and sources of evidence are changing every day. Managing cases in legacy technology is no longer feasible or desirable. Lawyers have been introduced to more robust review tools such as Relativity on large, complex cases and have been wooed by improvements to the interface that they now spend hours in front of. Combine this new level of familiarity with the lure of analytics and it is clear there is no turning back. Pandora's box has been opened, and firms are struggling to determine how they can get on board with the latest and greatest technology in a cost-effective manner.

As a result, the entire industry in BC is at a crossroads. Firms are seeking next-generation technology that not only accommodates electronic evidence volumes but seeks to manage them – and to automate what we once did using binders and war rooms with unprecedented insight and accuracy.

Sounds great, doesn't it?

However, none of us realized the journey it would take to get there. The reality is that the Canadian market is a pragmatic one. We are less litigious. Case values are less inflammatory than in the U.S. and, arguably, even if they weren't, we would find a more congenial way to go about managing them.

The first step many firms endeavoured to take on this journey was to search for the ultimate end-to-end tool. For some firms this led to a 2-5 year panacea assessment process of all noteworthy tools in the marketplace. This road has been filled with unforeseen barriers like significant infrastructure costs, a shortage of qualified personnel and IT resources to manage these SQL-based applications, the challenge of disbursing costs and the daunting nature of making a long-term commitment in a technology landscape that continues to evolve.

You can probably conclude the results of this exercise if you haven't taken this path yourself: frustration, ambiguity, and a growing openness to outsourcing technology, or at least the larger "outlier" cases to specialists in the managed services arena. At the end of the day, firms are risk-averse and, for many, a flexible commitment to an open toolkit is the most sensible decision with all of the challenges at hand. The counter-trend is for firms focused on a certain practice area or geography to all go with the same software. The CMPA firm cohort were early adopters of this sort and did this with CaseLogistix. Time will tell if the technology sticks.

In 2016, all signs are indicating that firms in BC will endeavour to replace Summation iBlaze with a tool that enables them, first and foremost, to manage the average case. Where to start? When bridging change, it is human nature to hold onto what we know. Case in point, one software company was asked about the iBlaze Tally feature so many times it added a similar functionality into its application. Only then was the market able to entertain demonstrations of new bells and whistles such as:

- Early Case Assessment tools to prioritize data for review

- Automated copying of data to remove the manual and time-consuming processes of the past

- Streamlined workflows and pre-set templates that eliminate the need for repetitive administrative tasks, reduce the chance of error and improve quality control measures on productions

- Analytics and Technology Assisted Review ("TAR")

- The evolution of the traditional iBlaze "Briefcase" into a fully functional, synchronizable database that can be shared with experts and used where mobile capabilities are required.

Once we open up to new workflows and features, what becomes most important is to select a tool that will align with the firm's core needs. For most, this means meeting the needs of the average case. To this end, many firms are looking at desktop applications with a lighter footprint than the full SQL-based web-enabled applications. For the "outlier" cases that would benefit from analytics capabilities (ranging from email threading to near duplication to concept clustering and TAR), firms want to use technology that can directly integrate with in-house investments. Similar to the past, firms will continue to outsource data hosting on larger cases until the time of productions when volumes are typically down to 15% of the original data set and can again be managed in the firm's in-house application.

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At the end of the day, the legal industry in Canada is small and will likely adopt one to two main tools to meet these needs. In BC, all bets are pointing to Ipro and Relativity, perhaps with Ringtail mixed in for its French-language interface for national firms. This is for all of the reasons outlined earlier: The resource pool continues to be limited, especially as litigation support pioneers approach retirement; careers are technology-dependent; and change is risky and expensive. We all want to make a safe bet.

One of the key drivers of adopting next-generation technology is the need to differentiate against other firms, and eventually, to keep up with clients. Compounding the pressure on law firms to fully embrace technology is the steady increase in the number of corporate clients attempting to address the data volume challenge head-on. Some are building out internal capabilities; some are issuing RFPs to their traditional roster of law firms regarding their own internal eDiscovery capabilities.

Pioneering firms are responding to this shift by enhancing their capabilities around the use of technology in their practice. They see the opportunity to drive competitive advantage by delivering efficiency and value to their clients early on in the discovery process. Some are further developing internal capabilities and processes around

eDiscovery, while others are partnering with specialized vendors to address the fluctuating needs of their clients' cases. The net effect is that law firms are taking a more strategic approach to managing evidence.

Despite the trend towards outsourcing technology, Litigation Support departments are becoming increasingly critical in facilitating evidence management across law firms. While their scope and size may vary, this specialized practice support group is not going away. The most successful firms will determine the model that works best for them – ranging from eDiscovery "project managers" that facilitate outsourcing, to baseline in-house capabilities, to a combination of the two.

The other factor that we are just beginning to understand the impact of relates to the complete inversion of the way that lawyers work when it comes to review. The manual, linear process of review is changing, as it is not sustainable from the perspectives of cost and efficiency. As a result, analytics have significantly impacted the roles and workflows of legal teams as the Subject Matter Expert (or SME) can now identify in broad strokes those documents that are potentially relevant and privileged, while setting aside the irrelevant ones that slow down review. The end result is a more meaningful set of data for review and the consistent review of documents across the collection. This new reality is a benefit to firms and clients who wish to reduce the volume of first-level review and elevate their own value proposition in managing growing volumes of data to key case outcomes.

There is an inevitable shift in roles that is occurring as subject matter expertise replaces the assembly line approach of the past. Paralegals and Litigation Support Professionals are at the centre of this transformation, and in many cases are becoming the agents of change. Many paralegals are stepping in as SMEs in an effort to bridge old ways of doing things with the new. Where buy-in doesn't already exist, paralegals are trying to demonstrate to lawyers how the technology can help them get a better handle on their case early on.

For paralegals entering the profession, they will never fully appreciate the power of unpublished keystrokes in making a case in iBlaze work for a legal team. And by the time they retire, the technology may be so automated they won't even need to remember its full functionality. However, what will likely not change is that paralegals will continue to lead law firms into the future, stepping in to play a front-line role where needed – one case at a time.

Peter Sanford is a project management professional with more than seven years of experience on large-scale document and evidence management matters. He is responsible for client management of eDiscovery and litigation support matters including thorough project planning, consulting, and making recommendations of evidence review technologies. Peter is accredited in Ipro and Relativity.