



Guide to Outsourcing Legal Work in Ontario

By Shelby Austin*

Legal outsourcing, also known as Legal Process Outsourcing, refers to the practice of a law firm or corporation engaging legal support services from an outside law firm or legal support services company.

The discussion surrounding legal outsourcing has become increasingly relevant in today's financial climate. The economic downturn coupled with increasing legal costs has fostered an environment in which businesses and law firms have begun outsourcing those functions that can be performed efficiently and effectively by external service providers.

Outsourcing is Not New to Canada

Outsourcing is not a particularly new phenomenon in the Canadian market, except perhaps in name. It is not unusual, for example, to engage a subject-matter specialist, or to retain local counsel to attend at a Court appearance in another jurisdiction. While contract lawyers have also traditionally been used to deal with overflow on a discrete basis, the practice of hiring large teams of contract lawyers to assist with special projects is more recent. Traditional law firms are simply not equipped (and clients are unwilling to pay) to have articling students and associates review staggering volumes of electronic data that have now become common in corporate and commercial litigation and competition matters.

As this trend shows no sign of abating and is likely to become a reality for many in the profession, it is important for law firms to understand how to approach the issue for their clients. Relatively little has been written on outsourcing in the Canadian context. In contrast, several of the Bar Associations in the United States have provided valuable, if limited, insight into the framework surrounding legal outsourcing. As such, this paper will draw from both experiences to try and provide a framework for approaching legal outsourcing.

The Different Models in Canada

In the Canadian legal context, two primary models have emerged for outsourcing:

- (a) Offshore models which employ foreign trained lawyers and generally operate in countries with lower billing rates and wages; and
- (b) Domestic models that typically use lawyers on a contract basis that are qualified and located in the jurisdiction.

It is also worth noting that there are several further permutations in each of these two categories that warrant further scrutiny.

Steps to Successfully Outsourcing Legal Work

The decision to outsource legal work is an important one and should be made with great care. The following is a brief outline of the steps that should be taken to ensure that your experience is a positive one.

Determine Whether or Not Your Case Is Appropriate to Outsource

The first step in the process is to determine whether or not there is a need to outsource legal work. The decision to outsource will depend on many different factors, including:

- The size of the case;
- How quickly the tasks need to be completed;
- The complexity of the work;
- The cost involved;
- The sensitivity of the matter;
- The sophistication of the client; and
- The availability of resources.

For example, if the case is a large one, involving tens or even hundreds of thousands of documents, it will often be more efficient to outsource the initial document review. The sooner you can decide what work will be done internally and what will be outsourced, the better. It is a good idea to review your files regularly to assess whether you will need to outsource any work.

Choose Whether to Use an Offshore or Domestic Vendor

During this step you must decide what your priorities are when it comes to choosing a vendor. There is no question that using an offshore provider is cheaper, but that should not always be the end of the analysis. Consider whether or not the following factors are important to you:

- In-person communication rather than merely via email or phone;
- Work by licensed Canadian lawyers who understand the minutiae of the appropriate rules and legal landscape;
- Data staying within the border of Canada;
- Conversely, the possibility of information being seized, notwithstanding claims of client confidentiality; and
- How much time you have to supervise the mandate.

What Else Matters When Choosing an Outsourcing Vendor

When outsourcing legal work, you may want to consider the following additional factors, which extend beyond the questions of jurisdiction, including:

- Whether the team will work together at a single site or whether each lawyer works from home;
- The level of experience of the vendor;
- Who will be assigned to work on your file;
- The type and level of insurance carried by the vendor; and
- The quality control process employed by the vendor.

Essentially, be inquisitive and ask whatever questions come to mind. It may also be important to conduct a site visit and to obtain references, in order to test the representations given by the vendor.

Obtaining Client Consent and Contractual Matters

In either the domestic or the offshore model, it is critical to obtain the ultimate client's consent before engaging the services of an outsourcing firm. In addition, it is important to consider the following additional matters in retaining a legal outsourcing vendor:

- The scope and timing of the project including any agreed upon milestones;
- Assurances regarding privilege, confidentiality and conflicts of interest;
- The fee structure;
- The standard of care to be provided;
- The method for resolution of any disputes; and
- Any indemnification arrangements.

In addition, when outsourcing offshore a lawyer may want to consider whether or not the outsourcing contract will be enforceable in Canada. Even with a binding arbitration clause it may be difficult to enforce a contract where the company is offshore. In the same vein, collecting damages from an offshore company may be trickier and more expensive.

Create a plan to with Your Vendor

It is never a good idea to simply assign a vendor a task and then hope for the best. When outsourcing work, the vendor should be treated as an extension of your own legal team. This means ensuring that both parties work out a plan which will govern the work to be done including specific instructions on how the assigned work should be performed. Frequent communication with the vendor will help ensure that outsourced work progresses smoothly and that the end result is a positive one.

At the end of a project, it is important that you take the time to evaluate your experience with the outsourcing vendor. Review both the quality of the work and the level of service received. If you agreed to pay an hourly rate, compare the final bill to the amount that you were originally quoted.

Conclusion

There can be little doubt that in today's competitive market that legal outsourcing is here to stay. Lawyers must become familiar with the outsourcing process and its possible pitfalls in order to provide effective legal solutions to their clients. Knowing exactly what your needs and expectations are can help you choose the outsourcing vendor that is right for you. Furthermore, establishing a strong relationship with your preferred service provider will ensure that you always have reliable resources when you need them.

**Shelby Austin is the founder of ATD Legal Services PC, a Toronto law firm that assists other law firms in managing large due diligence and document review projects.*