



How law firms can use
**creative thinking to drive
a successful practice**

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As a lawyer, you might not think of your work as “creative.”

True, on your off time, you might pursue creative endeavours such as writing, cooking, painting, or practicing a musical instrument. But the practise of law requires a rigorously analytic mindset that relies on precise, predictable processes and precedents. From a professional standpoint, you probably relegate “creativity” to realms like advertising and product design.

But take a closer look at what you do, and you’ll see that you’re often called upon to come up with solutions that aren’t necessarily found in case law and legal textbooks. During a difficult negotiation you’re handling for a business client, say, or in researching a legal problem that seems to have no obvious precedents, you may have suddenly come upon the solution while reading a book on a different topic, or while mulling over the matter during a long walk.

In fact, the practise of law often requires a judicious application of creative thinking. As law professors Janet Weinstein and Linda H. Morton wrote in a 2003 paper for the California Western School of Law’s *Clinical Law Review*, “The ability to engage in creative thinking is essential to problem solving. Problem solving is the essence of what lawyers do.” Not all legal problems can be solved by following a formula. By tapping into your innate creativity, you can solve problems that might seem intractable. You can also be more productive by making use of new technologies. These are solutions that don’t need to originate from higher-ups in the firm. You can create them yourself.

Creative thinking is essential for maintaining the success of your practice. As you well know, the profession is changing in innumerable ways, and in order to profitably change with it, it can help to think in new ways, beyond the tried and not-always-true processes of legal practice and process. By doing so, you can build a competitive advantage over firms less willing and able to make needed changes.

This paper will look at what creative thinking is, and how lawyers can use it to enrich their practice. It will look at what the legal profession can learn from businesses and their approaches to creative problem-solving. And it will provide firms ways to help their lawyers tap into their inner creativity—strategies that encourage lawyers to become open to new approaches, new technologies, and new solutions.





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What is “creative thinking”?

It makes sense that the term “creative thinking” engenders many definitions. Our preference is this description from the late psychologist Barry F. Anderson: “The generation of ideas (a) that are unusual or original, and (b) that satisfy some standard of value.”

You’ve undoubtedly heard the phrase “think outside the box.” It has become something of a cliché, but it does point to an essential truth: Creative thinking involves stepping outside of accustomed patterns and ingrained ways of doing things that are almost automatic. For lawyers, that means looking beyond processes, billable hours, case law, and workload.

Outside the box doesn’t mean off-the-wall. Creativity isn’t necessarily “wild.” A more useful way to think of it is “the art of what’s possible.” In other words, creative thinking is practical as well as aspirational. It creates something—a painting, a product, a solution to a knotty problem. It engenders a result. It adds value. It gets you to a new and better place.

This kind of thinking won’t turn your world, much less your practice, upside down. The goal isn’t always “revolution.” Sometimes it’s simply a series of improvements. But those improvements can add up to a big impact. What might start off “small” might grow into methods and strategies that alter your processes and practice in beneficial (if sometimes unanticipated) ways. It often results in new ways to work with clients, new services you can provide them, and the incorporation of new technologies that make your work more productive as well as more beneficial to your colleagues and clients.

The notion that lawyers can and should apply creative thinking to their work isn’t new. There have been many articles on the subject. Many are rather abstract and philosophical. Others can seem a bit generalised, arguing that lawyers need to be more “creative” without going into much detail about what that creativity entails in terms of legal practice.

To get a deeper sense of creative thinking in action, let’s examine how the business world has put the idea to work. A law practice is a business. A distinctive one, to be sure. But law firms share enough commonalities with business organisations to learn how they’ve incorporated creative thinking into their operations.



Examples of creative thinking from the business world

Helping business leaders develop and make use of their innate creativity is one of the drivers behind the work that Toby Nord, a former innovation executive and consultant, engages in at the University of Minnesota's Carlson School of Management. In his years teaching entrepreneurship and innovation at the Carlson School, Nord and the graduate student teams he oversees have worked with all sizes and types of businesses, from early-stage start-ups to major corporations, that are looking for new revenue streams or new avenues of growth in fast-changing markets.

Nord uses the terms "innovation" and "creativity" interchangeably in business contexts. "Innovation is critical to customers or end users, because it creates real value by solving new problems and responding to unarticulated needs," he says. "Most organisations operate in competitive markets where there is no shortage of customer choice. They know if they are to survive or thrive that they need to grow and differentiate."

Many organisations, Nord adds, aren't sure how to go about this. What creative thinking requires from businesses, he says, are "multiple voices, perspectives, and thinking styles. Large, entrenched organisations usually are really knowledgeable about their expertise but aren't filled with people that have different functional expertise, different experiences, or different thinking styles." Creative thinking requires some tolerance for risk-taking and resulting failure, which is a natural byproduct of the creative problem-solving and innovation processes. But risk and failure are antithetical to most established organisations and industries.

"Creative thinking requires an investment in time, people, and money," Nord says. "It doesn't just happen by thinking hard or thinking differently." In other words, developing a creative mindset within a company requires establishing habits and strategies that encourage such thinking to flourish.

To get businesses to think differently, Nord cites as examples such formal strategic activities as multi-week creative problem-solving gatherings, usually directed by outside consultants using methodologies with names like lean entrepreneurship and agile/scrum development. This approach, he adds, "basically allows you to outsource the process and management of the process while using your human capital and internal know-how."

Co-founder and CEO Kristin Pardue of Minneapolis-based Rêve Consulting often advises her clients to instill operational creative thinking by "developing individuals or groups within the company to identify where innovation and change are needed, then have them drive and manage those changes."

Pardue's agency works mainly with services organisations that need to innovate in order to meet the ever-changing needs of their clients, customers, or members while balancing their own business strategy. "Much of our work centers around helping organisations create their customer experience strategies and help them bring new experiences, services, and capabilities to life," she says.



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One of the methods that Pardue and her team frequently use in their work is called “design thinking,” an approach to creativity rooted in the practices of designers of products and processes. Tim Brown, chairman of San Francisco-based design firm IDEO, describes design thinking as “a human-centered approach to innovation that draws from the designer’s toolkit to integrate the needs of people, the possibilities of technology, and the requirements for business success.”

One way to translate that term into the realm of a legal practice is by thinking about the types of products you use every day, and not just in your law practice. What makes the music system in your car easy to use? When you shop online, what are the attributes that make getting a book or garment a simple matter? It’s what can be a user-first design.

By focusing more on people than on processes, organisations can redesign the ways they interact with clients or customers to make those interactions more useful and user-friendly. This approach can also help improve support services that clients may not directly see. For example, consider the hiring process at many businesses (including some law firms). Pardue describes it as “a human-to-human platform interaction that often is broken.” It’s time-consuming and nerve-wracking for both parties—and too often, the hire doesn’t work out.

So, organisations should look for ways to make HR more effective. Rather than following a “rote” hiring process that too often relies on standard tests and questions, they should ask how candidates and new employees think and feel about the hiring process as they go (or went) through it. What kinds of questions and approaches might give both sides a better sense of each other? Job applicants might not seem like “end users,” but they are potential colleagues. And while clients and customers don’t directly experience the fruits of these efforts, they bring advantages for a company or firm, as well as for the people it hires.

In other words, design thinking requires looking at business processes as not being writ in stone. As Pardue puts it, “Organisations should look to see where their culture, structure, policies, and reward systems need to promote standardization and where they can loosen up in order to develop new approaches to problems, challenges, and stagnation.”

Now, using the specific example below, let’s turn to how a law firm might incorporate these open-minded approaches.



How McCarthy Tétrault thinks creatively — and benefits from it

McCarthy Tétrault, a national Canadian firm with global offices, has about 700 lawyers and 1,600 total employees. Though a large firm, it offers lessons that smaller firms can learn from.

In the last two years, McCarthy has added to its traditional practices by extending its offerings in new and innovative ways. One example is its Cyber/ Data Group, which advises clients across industry sectors on data protection and cybersecurity, helping them unlock the value of the data they possess.

Four years ago, the firm hired lawyer Kathleen Hogan as its director of education and knowledge integration. (She was recently promoted to senior director, knowledge, and data insights.) In her work, she focuses largely on knowledge management and innovation. This includes introducing new legal technologies — platforms, processes, and tools that allow lawyers to practise more efficiently.

Under Hogan, McCarthy has incorporated design thinking to improve the way it delivers services to clients. Design thinking identifies pain points that clients might have when working on legal issues. The firm then “redesigns” those processes to help alleviate those points of friction. This redesign may involve incorporating new technologies that make it easy for clients to communicate with McCarthy lawyers, or their own in-house counsel. These technologies have included digital platforms that make sharing documents and other information between lawyers and their clients easier. One such technology that McCarthy itself has recently added is Thomson Reuters® HighQ, a platform offering easier sharing and visualisation of complex legal issues and data, among other capabilities.





A collaborative approach, whether internal or external, can help open new possibilities within your own thinking — and help you understand there are other, better ways to conduct your work.

Using new technology also requires lawyers to, in a very real sense, think differently. That requires them to be open to new ways of working after having established their own patterns and techniques, often for years. Technology change inflicts a number of internal pain points for a firm’s lawyers and staff. Hogan cites these examples, which will sound familiar to many firms:

- + “When I’m handling a massive amount of work, how do I prioritise between the value of the contract, which is pushing for a client signature, and other deliverables?”
- + “My colleagues aren’t saving documents, templates, and other files in places where I can find them. How can I know what’s current?”
- + “There’s too much new tech coming at me — so much that I can’t learn it all.”

These types of issues can make lawyers resist learning a new platform — even if they know, in the long run, it will make their work more productive (and, in most cases, less painful).

Like many large and even some midsize firms, McCarthy’s innovation team works with its lawyers and support staff to collaborate on creative problem-solving. This team also encourages them to incorporate new technologies into their work. But as many firms with such teams can tell you, it’s not easy to get lawyers on board with these objectives. Often, their resistance comes down to time — how can I get my billable work done when I have to spend time learning or doing something new?

Start with technology. One approach McCarthy takes is what Hogan calls “technology champions.” These are people within the firm who can help others learn and adjust to that technology. They aren’t IT people, per se, but typically legal staff or even other lawyers who’ve become familiar with the new platform and discovered it made them more productive and efficient. These champions are known, go-to, “tech-forward” people others can contact for help and guidance. At McCarthy, even many senior partners — often those with the longest learning curve — have come to trust champions to figure out how to incorporate new technology into their files.

Hogan notes that design thinking and crafting creative legal solutions also should involve interaction with clients. In fact, she believes it’s crucial. This points to another aspect of creative thinking for lawyers: It’s more likely to flourish in collaboration, either with colleagues or with clients, or both.

The advice Hogan offers to lawyers and law firms about collaboration is this: Get away from the office and really get to know a client’s business at a deeper level. What are the client’s processes? How is its business changing? What are its customers’ needs, and how are they changing? Then “design” your points of interaction so that you are providing valuable services they can easily access, even when you’re not available.

A collaborative approach, whether internal or external, can help open new possibilities within your own thinking — and help you understand there are other, better ways to conduct your work. And that awakening, in turn, helps inspire your own creative thinking.

How your firm can incorporate creative thinking into its work

You can look at creative thinking, then, as either client-focused or firm-focused. By considering your clients' needs, you can create new processes to better meet them. What's more, many clients value a firm open to innovative approaches that can benefit them.

Creative thinking also can be put to work within the firm — between lawyers, and between lawyers and staff. Some examples of internal collaborative approaches that engender creative thinking include:

- + Conducting brainstorming sessions to address specific problems and issues.
- + Establishing an innovation team, which could include a firm's IT person or department rep.
- + Incorporating (in a way that works for your firm) the practice of highly innovative companies such as Google and 3M, which allot employees a percentage of time to develop their own projects or ideas. This might be particularly appropriate for larger firms or those that work with companies that put a premium on innovation.
- + Tapping outside consultants, resources, and tools that can help guide a firm's members to think creatively about legal and business management problems.

In short, it's absolutely true: Lawyers can be creative. In fact, by exercising that creativity, they can be prepared to change and flourish in a profession where more and more clients need creative thinking from their legal counsel. Creative thinking can enrich your practice in numerous ways, adding value to the services you provide and opening your mind to the discovery of new ways to serve.