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The Legal Checklist Manifesto

HOW TO BUILD QUESTIONNAIRES THAT EFFECTIVELY COORDINATE LAWYER & CLIENT COMMUNICATION

Most lawyers want to win, all the time. Improving processes can increase the odds.

"Process" refers to the steps that are necessary to complete a task. Process isn't inherently good – it can be standardised or improvised – but processes that are well-designed can drive efficiency and help the people using them produce better work.

Counter Tax Lawyers, for example, obsesses over workflows because they help the firm work better. "Workflows" are essentially process maps, flowcharts that set out the various steps that have to happen in any process. Counter has built workflows for all the most common types of processes that the firm handles, and those workflows, not a manager, are what run the firm's daily business.

In an ever-growing mission to automate and optimise, the firm also built a series of client questionnaires capable of adapting to the specifics of a client's case. The questionnaires allow clients to respond to only the questions that matter. The questionnaires were intended to implement a rigorous process on the client end equivalent to what the firm gained from implementing workflows. The theory was that increasing the consistency and standards of client communication increases predictability of files, which prevents unpleasant surprises and ultimately helps clients – and lawyers – win cases.

What Is the Checklist Manifesto?

The questionnaires were Counter's way of adapting the idea of checklists to standardise client communications.

Checklists are not new. They have transformed professional fields from medicine to aviation. Atul Gawande's bestselling book *The Checklist Manifesto: How to Get Things Right* details how he came to use checklists in his surgical work, leading to a 36 percent reduction in complications, and it sets out guidelines for using checklists effectively to reduce error and improve efficiency. Among other advice, he reminds readers to keep checklists short, use simple language, and only include the steps that absolutely must not be missed.

Gawande also describes three different levels of task complexity: simple, complicated, and complex. Simple tasks are ones that are easily repeatable and do not require much instruction, such as baking a cake from a mix. Complicated tasks include sending a rocket to the moon, where numerous specialists are required to work together, but the process remains largely the same every time. Complex tasks introduce a high degree of variability that makes generalisation difficult, if not impossible. Raising a child is the example Gawande gives, where experience gained from raising one child is not necessarily applicable to raising the next one; he also dedicates the remainder of the book to exploring other types of complexity and how checklists can help to manage it.

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The Legal Checklist Manifesto picks up from where Gawande leaves off by introducing the idea of checklists into the legal context. While lawyers are not often dealing with matters of life and death, as surgeons are, leaving a law practice to chance is nonetheless risky – and that behaviour is uncharacteristic of a profession that prides itself on evaluating and managing risk. Lawyers stand to benefit greatly from increasing process thinking; clients stand to benefit even more.

Checklists are an easy step in that direction. The following are three reasons to try it.

More Certainty, Less Anxiety

When Counter built its workflows, one of the immediate benefits was realizing that the lead lawyer on a file would never need to wake up in the middle of the night and wonder if an important document had been filed with the court – the task was in the workflow, which meant that somebody would do it without that lawyer needing to ask for it to be done. The realisation lowered stress levels and helped lawyers focus their minds on other things.

Questionnaires can serve a similar purpose. With challenging cases, it can be easy to get all the information related to the most complex questions but forget to ask clients for their Social Insurance Numbers, for example. Having a reliable process, especially an automated one, protects from human error and prevents lawyers from having to go back to clients again and again for information that could have been gathered at once. Keeping the questionnaires responsive also makes sure that clients won't pay to answer questions that aren't relevant to their cases – because nobody should have to pay to say, "Not applicable."

More Efficiency, Less Error

Imagine hiring someone new and having to teach them almost nothing before watching them do the job competently. Counter's workflows allow anyone, even a brand-new hire, to do things the firm way with very little hands-on training. It can be humbling to watch an articling student do exactly what a lawyer would do, simply because the instructions are clear, but it's also a powerful extension of the value that students and other supporting players can bring to every firm, regardless of whether workflows are in place. Students can build the foundations of a case that will allow lawyers to use their greater experience to refine and strategise. When all of the steps have been laid out in a workflow and students know both what they need to do and what the lawyer will do with the resulting work, they can identify more quickly and accurately what the lawyer will need. The result is a more efficient process – and better articling students who grow into better lawyers.

Questionnaires can work in the same way. With a questionnaire, anybody can interview a client, which takes the responsibility out of lawyers' hands and allows them to spend more time on other cases or on the parts of the case that only they can build. The process removes the need for explicitly stated instructions, which can be one of the challenges of delegating legal work. Taking time to explain what questions to ask someone else can seem less efficient overall, but if everyone in the firm already knows the questions to ask, it becomes easier to take that step towards handing off work to people who are perfectly qualified to complete it. Clients, too, benefit from lower billing rates, with no loss of work quality.

More Freedom, Less Boredom

When lawyers can trust that their processes will be efficient and accurate, they can use their time to figure out how to win cases – strategising, planning, analysing evidence. Too many lawyers think that their jobs are somehow special when, in reality, they're often doing the same work as any mid-level manager in a corporation, making sure their employees are doing what they should be, when they should be doing it. That kind of work is not why most people choose to go to law school, and a career as a lawyer can be more fulfilling when the routine aspects of managing a case are part of someone else's routine.

Drafting questions for clients from scratch every time is not a good use of a lawyer's time. Even when lawyers need to be directly engaging with clients, rather than handing off the task to someone else, lawyers can still save time in their preparation stages by using a standardised list that takes out the guesswork and allows lawyers to simply walk into client meetings with complete confidence that they will ask the right questions. Every lawyer will have ideas about how to spend newly freed-up time, but for Counter's lawyers, extra time almost always goes into deeper analysis. That's what really wins cases, after all.

How to Build an Effective Questionnaire

Not all checklists are created equal. Counter's first attempt at creating questionnaires didn't work. Clients found them overwhelming, especially when they needed to fill them out at the very beginning of our process. Counter also built its workflows twice, and both the questionnaires and the workflows suffered from the same problem: they were too granular, which made using them time-consuming and frustrating. Gawande makes the same point – a good checklist needs to include all crucial points without being overly specific.

While designing questionnaires and workflows that work within the context of a specific firm will require some soul-searching and planning – what works for one firm might not work for another – some commonalities can make the task of building and implementing effective questionnaires more approachable:

1. Prioritise the client's time by only asking the most important questions.

2. Write questionnaires in plain language.

3. Talk to prospective clients before asking them to complete a questionnaire to make sure they know what they will need to do.

4. Learn from responses to questionnaires; over time, patterns might show up that will show where processes can be improved, both within the questionnaires themselves and within larger workflows.

5. Only use questionnaires if they are useful to clients. Some firms might require more of a personal touch.

6. Always ask every question on the list.

7. Follow up and ask more questions that are not on the list but appear relevant based on the responses from the client. Questionnaires are not a complete substitute for the judgement of an experienced lawyer.

Identifying the questions most often asked of clients will generate an initial list. Other questions that are always important to building a successful case should also appear on the list. Ensuring that every client answers those questions will ensure that every case is built on the strongest possible foundations.

Next, refine the list into a framework for client communications. Keeping point 7 in mind means remembering that questionnaires are only starting points. Instead of including every conceivable question, include only the questions that must absolutely have answers, always, and once the client has answered those questions, use the responses to identify the best points on which to focus later discussions with the client. At their simplest, questionnaires can be a way of simply narrowing the field of inquiry.

Above all, keep in mind that questionnaires are a tool, no different fundamentally from a pen and paper: different people will use the tool in different ways, and some of those ways might be better than others. Having 1000s of questions and a dynamic system did not make Counter's questionnaires work any better. It's a perfect example of how technology is not the answer – technology can't replace smart and experienced people. All it can do is make them more effective.

Building checklists and workflows are, of course, a time investment, but it's one that is worth trying. Counter no longer worries about missing information and deadlines, and with stronger processes in place, the firm is better able to delegate work that lawyers don't need to be doing, which saves clients money and frees up time for the lawyer on a file to do more creative and fulfilling work building legal strategy. While Counter has yet to perfect a questionnaire system, iterating on a failed model is always part of the checklist process:

1. Make a checklist.

2. Use & test the checklist.

3. Improve the checklist.

4. Repeat.

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