

Technology on Trial: Project Managing the Litigation - A Solicitor's Perspective

by Elizabeth Broderick

Introduction

In many ways, conducting large scale litigation is like running any other large project. There are resource, time and cost constraints which must be well managed to achieve the project objectives.

In recent times, the amount and complexity of information involved in litigation has increased dramatically. The limitations of document control, full text and imaging systems in the actual management of the litigation must be acknowledged. None of these systems will allow the lawyer to manage completely the conduct of the proceedings. Databases do not allow lawyers to spot bottle-necks or allocate scarce resources. They do not alert us to the need for additional resources and to expiring time deadlines, or provide cost estimates.

Traditionally, project management techniques have been confined to certain industries such as the engineering, construction and software development industries where there are numerous resources to be managed over a long period. More recently the techniques are being applied by law firms to assist in the practice of law, particularly in litigation for the management of the litigation team and the day to day monitoring of the progress of the proceedings. It is here that project management techniques become indispensable, as highlighted in the case study set out in this paper.

Before I set out the facts of the hypothetical case, I list two important definitions which are vital to an understanding of project management.

What is a Project?

A project can be thought of as a human activity with a defined starting point, defined objectives with which to identify completion, and a defined completion point. A large project such as the conduct of complex commercial litigation will most likely be a combination of many related sub-projects each with their own starting and completion points and their own objectives. These sub-projects will form part of the overall project plan.

What is Project Management?

Project management is the art of directing and co-ordinating human and material resources throughout the life of a project by using modern project management techniques to achieve predetermined objectives of scope, cost, time, quality and participant satisfaction.

This includes:

- (a) scope management, which is the definition of the project's objectives together with the activities involved in their achievement and the resources consumed;
- (b) quality management, or establishing and maintaining certain standards of quality during the life of the project;

(c) time management, in that the activities must be carefully planned and timely executed; and

(d) cost management.

Major Project Management Applications

Project managers deal with educated forecasting and develop working methods often from propositions not met before. They anticipate and preempt problems generated by those methods.

In looking at the question - Why project manage? - it is useful to examine why project management has been used in some of the major projects of recent times.

Project management techniques were used in projects such as the Hubble space project. The organisers of that project found that they were losing track of the various groups working on the project with the result that the project was losing focus and going off course. It was decided that a central co-ordination of all the groups could solve this problem - and hence the application of project management techniques. In the Hubble project it was also important to allocate efficiently the available resources across different sub-projects. By using project management the team could share common deliverables, resources, information and technology between the sub-projects.

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Unfortunately for the Hubble space project, the use of project management techniques does not necessarily guarantee success.

Our Hypothetical Project

Throughout this article I will be making reference to our hypothetical proceedings involving an action by the Receivers and Managers of Far Off Shore Pty Ltd against its directors.

The parties to the proceedings are the plaintiff who is our client, Russell Upsumcash (appointed Receiver and Manager of Far Off Shore Pty Ltd) and the defendant directors, Iva Fortune & ors. The action is against the directors for breaches of their directors' duties relating to financial losses in the vicinity of \$100 million incurred by the company.

Pleadings have been filed.

To discuss the management of every task involved in this litigation would require considerably more space than is available. To achieve a working knowledge of the techniques I will briefly examine the overall project plan for this matter and then focus in detail on one sub-project. In this paper I do not discuss the barristers role in the litigation.

Stages of Project Management

Project management follows three stages:

Stage 1: Define Objectives - as set by the project initiator;

Stage 2: Planning - always look forward, only remaining work can be managed;

Stage 3: Execution - involves good decision making.

Throughout these stages we will deal with the basic project management functions of scope management, quality management, time management and cost management.

Understanding the Project Management Process

The Objectives

The objectives for the project are usually set by the project initiator and then clarified and documented by the project manager.

In our litigation this means the client (in our case Russell Upsumcash) is the project initiator and his instructions come through the partner responsible for the litigation, the project leader. A senior lawyer with technology and project management skills has been appointed project manager. At our firm it is usual for one of the lawyers in the Legal Technology Group to become the project manager and to be part of the legal (project) team.

In most litigation the overall project objective is 'to obtain the best possible result for the client within the court imposed time frame and within the cost parameters as laid down by the client'. Of course in litigation both the timetable and cost parameters are adopted following

discussion by the project leader (partner in charge) and the project initiator (client).

In our hypothetical action by the Receivers and Managers of Far Off Shore Pty Ltd there are a number of sub-projects involved in the proceedings. Let us focus on the inspection of the defendants' documents.

One objective of this sub-project might be 'to identify in the documents provided by the defendants, those documents which can be relied upon to establish the causes of action pleaded (liability documents) and those likely to be relied upon to prove damages (damages documents)'. Other objectives might be 'to record on a litigation support system relevant information in respect of each of the liability and damages documents' and 'to record on a litigation support system relevant information (if any) with respect to all other discovery documents'.

Objectives relating to quality management include 'to ensure that the inspection procedures are consistently applied by all members of the inspection team', while the objectives relating to time and cost management might be 'to facilitate completion of the inspection of the discovery documents within one month at a cost of no more than X dollars'.

These objectives are agreed at the very beginning of the project and then the project (litigation) moves into the second phase - planning.

Planning the Running of the Litigation

The planning is usually performed by the project leader and the project manager. In our hypothetical case the planning would be performed by the project leader (partner in-

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structed by Russell Upsumcash) and the project manager (legal technology lawyer) with input from the project initiator (client). The project manager's first task is to document the objectives, to discuss with the project leader the timetable, the tasks that need to be executed to achieve the objectives, the available resources and the cost range.

Following this initial meeting the project manager will prepare a number of 'what-if' scenarios, making assumptions about the speed with which each of the tasks can be executed and assessing the likely cost of each task. In our hypothetical sub-project the project manager makes these assumptions based on a number of factors:

- (a) personal experience;
- (b) results of trial runs (e.g. examine a sample of documents and calculate the time taken to perform each task); and
- (c) information gained from questioning other lawyers about their experience.

Finally the project manager prepares a number of recommendations about how to proceed. Each recommendation is based on the results of the what-if scenarios and is supported by various graphs and charts.

A second meeting is held between the project leader and project manager. At this meeting the project manager reveals that to perform all

the tasks within one month, assuming execution rates based on the most likely 'what-if' scenario will require the following people resources:

X members of staff to number documents (paginator);

Y members of staff for photocopying, physical storage, stationery (controllers);

Z number of solicitors to inspect the documents (inspectors);

XX number of data entry staff to enter information into the computerised litigation system (data entry operators);

YY number of computer operators to verify the computer information (data verifiers); and

ZZ number of senior solicitors to provide quality control (reviewers).

In computer resources the project requires X computers and X copies of software. Also required are Z chairs and desks, 100 sqm of floor space, etc.

In stationery resources the project requires 400 arch lever binders, 40 reams of computer paper, 40 boxes of coloured spots, etc.

The likely costs of the project are also discussed at this stage together with a discussion of a number of operational parameters including:

- (a) identification of the key team members;
- (b) organisational structure;
- (c) reporting procedures; and
- (d) standards and/or performance levels that the project is working towards.

Following this second meeting the project manager plans in detail the execution of the project. This includes determining all the tasks to

be executed; the time scales and schedules of the tasks; identification of the resources required to fulfil the tasks (in our case people, hardware, software, stationery, furniture etc) and their source; and a detailed costing for each task.

The project manager will then produce Gantt Charts for the total sub-project and for each member of the legal (project) team. These charts show graphically the tasks involved, the time each task will take, and the order in which the tasks will be carried out.

However the limitations of the chart must be realised. The chart will not assist in identifying which the tasks which are critical to getting the project completed on time and it cannot show the effect on the project of any change in the relationship between two or more tasks.

In our example we will use Gantt charts to show not only the project plan but also the degree of completion of the various tasks. This chart is prepared using project management software or in some cases spreadsheet and graphics software.

The second chart that can be used is the Critical Path Analysis. This complements the Gantt Chart to give a complete view of all the tasks to be done to complete the project. The critical path is created by linking each task to show their dependence on each other. The major benefit of this analysis is that it helps to identify the essential tasks for completion of the project on time and in determining slack time involved in the completion of each task. Once these have been identified, planning alternate courses of action becomes easier to manage. This chart is prepared using project management software.

"The project manager must be authorised to monitor the activities of team members"

The project manager will also prepare a package of briefing material for each member of the team. This will include:

- (a) a document setting out the project objectives;
- (b) the project plan for the total sub-project;
- (c) the project plan for that individual team member;
- (d) a diagram of the organisational and reporting structure;
- (e) a list of team members with their details and their role in the project documented;
- (f) a glossary of terms for the project; and
- (g) any ancillary documents that the individual will have to submit to the project manager for the purpose of monitoring.

The briefing papers are made available to team members prior to the first project team meeting so that at that meeting the information can be discussed in detail and any queries raised.

Execution of the Plan

Executing the plan involves monitoring the progress of the project, comparing the progress with the plan, reporting regularly to the project leader, and where necessary

re-planning. The reports to the project leader consist of formal written reports on a regular predetermined basis and ad hoc reporting.

(a) Monitoring Progress

Monitoring shouldn't interfere with the progress of the project. Too many meetings and individual interviews only slow the progress and undermine the motivation and confidence of the team.

A good balance of team meetings and individual contact should give the project manager and the whole team a clear idea of the project's progress. Monitoring must be done systematically, however we find that each project whether it be the conduct of litigation or projects in other areas of legal practice, requires a different approach in terms of monitoring procedures and frequency.

The project manager should attempt to monitor the project by making their own investigations (i.e. spot checks of how many documents have been reviewed, how many entered, how many verified etc). The advantage of this monitoring is that it can be done without disturbing team members.

The data is collected on a regular basis over the life of the project, say every second day. It is then fed into the project management software or spreadsheet software and charts showing the degree of completion of the project are generated. In this way the project manager and project leader know every two days whether the project is running on time and within budget.

(b) Comparison with the Project Plan

The parameters of specification, cost and time will alter in priority throughout the life of the project. It is important to plan and re-plan when necessary but the project plan is the ultimate document and is to be followed to fullest extent possible.

When the project deviates to any major extent from the plan the project manager together with the project leader should develop what-if scenarios to clarify the options and then present them to the project initiator for approval. The project manager should always be mindful of the impact the changes will have on the project objectives.

Lessons from Project Management of Litigation

Leadership

The project manager must be authorised to monitor the activities of team members. For this reason the project manager should be a reasonably senior lawyer who carries the authority of the project leader. The project manager must earn this authority by knowing what to expect and what to request from the team. The demands placed on team members must be realistic.

It is important to ensure that all team members understand:

- levels of authority in the project;
- the individual roles of different team members; and
- their responsibilities.

Communication

The project manager must ensure that:

"The project manager must earn this authority by knowing what to expect and what to request from the team"

- all relevant information is available to members of the team;
- every communication is understood; and
- the most effective method of communication is used for each type of information.

The project manager must act as:

- a common link for all members of team;
- together with the project leader, an interface between the project and the project initiator; and
- a representative of the project to the rest of the firm including the administrative services division.

The project manager must:

- set up communication channels and procedures for the project;
- ensure that the communication is clear and understandable; and
- obtain feedback on communication.

Motivation

To motivate the team the project manager must:

- ensure that the targets are realistic and are updated to show progress; and
- involve members of the team in decision-making.

To motivate the individual lawyers in the team the project manager must:

- set personal targets

To do both of these the project manager must recognise and reward publicly their contributions to the project.

Negotiate

The project manager is required to negotiate with:

- the team members;
- other groups within the firm (e.g. word processing, stationery, ad-

ministrative services, technology); and

- together with the project leader, the client.

Conclusion

Project management techniques can be used effectively in a number of different areas of legal practice. Indeed any area of legal practice where the need to adhere to deadlines is paramount and the sharing of resources across several projects is cost effective is a candidate for project management. This includes privatisation, due diligence, preparation of submissions which involve a variety of personnel and of course litigation.

In the last six months there has been a steady increase in the number of requests from both lawyers and clients for our project management services. This is a fast growing and interesting area, an area where the expertise of litigation support managers can be invaluable. £n

This article is part of a presentation made at the 1993 ALSM conference on 8 September 1993.

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The Editors wish to thank everyone who supported and assisted the Journal during 1993. We hope everyone had a wonderful festive season and wish all readers a happy and successful 1994.

