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Waterfall, Agile or hybrid?

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1. Introduction

'Legal project management' (LPM) is an umbrella term for a variety of different project management methodologies and corresponding methods under each methodology that may come into play. Considering the different underlying objectives, value sets and techniques of each methodology and method, legal practitioners are confronted with the following three questions for each new matter:

- How do I determine which methodology and method offers the greatest benefit to managing my legal matter at hand?
- Are there any organisational prerequisites for the chosen methodology and method?
- Can I blend different methodologies and methods and if so, which elements of them?

This chapter aims to guide the legal project practitioner in the decision-making process in respect of the above questions by pointing to example situations and approaches. However, it is ultimately the practitioner's experience from past matter management, given the uniqueness of each legal matter, that will point him or her to the best possible approach.

2. Characteristics of Waterfall and Agile methodologies

Although many readers may be well versed in the distinctions between Waterfall and Agile as the two basic, most popular methodologies, it is worth briefly outlining the basic characteristics of each in order to better understand their advantages and disadvantages in legal matter management.¹

Waterfall, widely regarded as the traditional approach to project management, is based on clear end-goals, for example, a certain state of the matter or set of deliverables, and corresponding schedules. It is characterised by

1 Both methodologies and methods are comprehensively discussed in Ignaz Fuesgen, "Matter management in law firms – the emergence and impact of legal project management", p171ff, in Christoph H Vaagt (ed), *Law Firm Strategies for the 21st Century*, Globe Law and Business, 2019.

a sequential series of steps, one after the other. Progress of the matter is seen as flowing steadily from the top to the bottom (as in a waterfall). A key element is the strict adherence to a phased approach of define–plan–deliver–close, linking a defined scope to a project plan and corresponding deliverables.

Agile is based on an iterative and incremental delivery approach – that is, the legal practitioner aims to do the following:

- adapt to change by splitting up the delivery process into short delivery sequences which can be aligned with changing requirements ('sprints');
- deliver early and often by conducting frequent near-time inspections and reviews of workable outputs, the value to the client and the actual delivery process itself;² and
- promote collaboration and interaction to foster transparency amongst all stakeholders.

The two main Agile methods are Scrum and Kanban. While Scrum focuses on getting more work done faster, Kanban is primarily concerned with process improvements that ultimately optimise the flow of work. In both methods, experimentation and observation, summarised as 'empirical process control', supersede initial and detailed upfront planning.³

In general terms, Agile methodologies go beyond a working method and emphasise a mindset that prioritises the What over the How of a process. Jim Hassett and Ed Burke made this important observation:

To date, Agile has had its greatest impact on LPM as a general mindset rather than as a specific collection of well-defined techniques.⁴

3. Finding the right methodology

Finding the most appropriate methodology and identifying a method aligned with that methodology may appear an unsurmountable hurdle to many legal practitioners. The selection process requires a comprehensive understanding of each methodology's set of core values, principles and practices as well as concrete techniques and tools that potentially come with it.

Each methodology is rooted in a unique management philosophy. If it is not fully embraced or is impossible to implement from an organisational development perspective, the matter delivery process may face additional risks. There are therefore organisational prerequisites to fully leveraging each method,

2 For more on Agile in LPM, see Michael Milnes, "Agile Project Management for Lawyers: Beyond the Hype", *Thomson Reuters*, 20 March 2019. Available at <https://insight.thomsonreuters.com.au/posts/agile-project-management-for-lawyers>; and Amritha Thiyagarajan, "How Agile project management can revolutionise the legal industry", *LEGALVISION* online article, 14 August 2019. Available at: <https://legalvision.com.au/legal-agile-project-management/>.

3 SCRUMstudy, "Empirical Process Control". Available at: www.scrumstudy.com/whyscrum/scrum-empirical-process-control.

4 Jim Hassett and Ed Burke, "Why the Agile Approach Is So Important to Law Firms", *Of Counsel*, vol 36, no 10, October 2017, p7. Available at: www.jacksonlewis.com/sites/default/files/docs/OC_1017.pdf.

involving leadership behaviour and team management as well as planning, client and stakeholder management, fees and in-flight changes.

3.1 Planning: scoping and scheduling

Scoping a matter – that is, defining what the matter encompasses (content and timelines), what the objectives of the matter look like (definition of ‘success’) and what assumptions and constraints exist – constitutes the starting point of effective LPM. Together with scheduling, scoping makes up a large portion of the planning effort required by Waterfall methodologies. Upfront planning is regarded as essential in Waterfall, and non-negotiable for the successful delivery of subsequent phases that build on it, and it requires continuous monitoring and adjustments.

However, many law firms find it difficult to comply with those Waterfall requirements, in particular when legal matters include:

- high levels of complexity;
- short lead times; or
- short overall duration.

(a) *High degree of complexity, potentially linked to uncertainty*

Covering a broad terrain or being forced to make assumptions in the event of an uncertain scope at the beginning, followed by numerous adjustments in later phases, will undoubtedly drive up the number of hours spent on the upfront planning process. The corresponding (opportunity) costs incurred before or during a matter management life cycle may not only create an extra burden for tight client budgets, but also be at risk of not being fully visible to clients, and thus not being reimbursed.

Furthermore, larger matters often require lawyers to address scoping and scheduling during the pitching phase, for example in the context of a response to a request for proposal (RFP). Who would be willing to take on these opportunity costs with potentially no guaranteed return?

On the other hand, running a matter under Waterfall principles without proper scoping and scheduling will inevitably generate ‘LPM debt’, which is the accumulation of additional and unnecessary work and rework that is caused by a lack of application of project management principles at each stage of the matter life cycle.⁵

(b) *Short lead time before commencement of the delivery*

Many instructions reach law firms at the eleventh hour due to rapid developments in the client’s sphere, such as in M&A transactions in the private

5 *Law360*, “Getting Out Of Legal Project Management Debt”. Available at: www.law360.com/articles/1158534/getting-out-of-legal-project-management-debt.

equity space. In many of those situations, a team needs to be assembled literally overnight that will hit the ground running the following morning. There is simply no time – or client appetite – to engage in comprehensive and robust planning activities as prescribed and recommended by Waterfall.

(c) **Short overall duration of the matter**

A number of practice areas are characterised by a high number of short-term, *ad hoc* assignments; in regulatory practices, for example, drafting a legal opinion may take less time than going through the entire planning cycle of a Waterfall approach. Drafting a project plan may not be feasible or cost-effective given the overall matter duration.

Should any of these three circumstances apply, it may be more appropriate to use an Agile method, leveraging a ‘backlog’ pool and capturing and compiling all to-dos (tasks and requirements) as they materialise. On a continuous basis, the legal practitioner should prioritise the work, allocate tasks to team members and focus all energies on actual delivery rather than intensive planning.

(In section 4, we discuss a hybrid approach: combining an overall project plan with a backlog structure.)

3.2 Clients and stakeholders

Would the work benefit from additional client input and if so, how much input?

Rob Van der Meulen gives the following example:⁶

A contract template intended for use in multiple different jurisdictions requires input from stakeholders across different regions to ensure it covers all their needs. The development team should provide a few initial clauses to several business partners to seek immediate feedback on whether the terms are understandable or likely to result in pushback from another party. The members of the development team working on other sections of the template can then take this end-user feedback into account during their own drafting.

Agile methods presume a high degree of client involvement by way of the various reviews and interactions triggered continuously during and after each iteration, for example by continuous review of the backlog, prescribed sprint reviews and retrospectives. In general, Agile brings about complex and frequent communication due to the diverse audiences and channels represented by team members, project sponsor and stakeholders. While this approach is beneficial for any matter, not just the example above, it potentially presents challenges for

6 Rob Van der Meulen, “4 Questions to Ask Before Using Agile Methodology in Legal”, Gartner online article, 21 February 2019. Available at: www.gartner.com/smarterwithgartner/4-questions-to-ask-before-using-agile-methodology-in-legal/.

some clients who simply may not have the time or interest for this degree of participation.

Another aspect to consider in choosing the right methodology is stakeholder management. Project plans based on Waterfall expect a thorough analysis and strategy related to stakeholder interests, their impact on the matter, and the means of communication to be deployed for each identified stakeholder group. Corporate reorganisation and other multi-stakeholder matters require the alignment of many different groups to mitigate risks attached to successful delivery of the matter. As John Grant has said, “Once [these stakeholder plans are] put in motion, they may become a very rigorous framework to avoid continuous debates towards the entire approach.”⁷ Finding the right balance between too much and not enough client and stakeholder communication may be a starting point for blending Agile and Waterfall elements as outlined in section 4.

3.3 Responsiveness to new requirements during the matter life cycle

Complexity, tempo and changing requirements are often highlighted as main indicators for selecting Agile over Waterfall.⁸ John Dalton and Karen Duggan state that in the absence of having all information available at the beginning, “trying to build an end-to-end plan is often futile [...] Agile promotes the identification of near-term deliverables and getting started just as soon as you know enough to begin.”⁹

Especially matters that are characterised by their rather reactive nature and driven by external factors – counterparty actions in takeover defence situations, high-profile litigation cases with publicity aspects such as dawn raids – demonstrate a need to keep abreast of developments in near-real time. Hence, leveraging the Agile mindset expressed as “Responding to change over following a plan” appears to be appropriate.¹⁰ In practical terms, this translates to daily, timeboxed team updates allowing responses to emerging matters as they arise without comprehensive planning mechanisms pre or post the updates. During the first days of the COVID-19 pandemic, many corporate legal departments leveraged such a strategy to cope with the myriad of enquiries by email, phone and letter.

7 For an extended discussion of the topic, see: John E Grant, “Legal Project Management: You’re Doing it Wrong”, Agile Attorney Network, online article, 7 July 2014. Available at: www.agileattorney.com/blog/legal-project-management-you-re-doing-it-wrong. In the article Grant quotes from Jason Fried and David Heinemeier Hansson, *Rework*, Vermillion, 2010, in which the authors state that ‘planning’ is just another word for ‘guessing’.

8 Compare Kim Craig and Jenny Lee, “Agile: A Nontraditional Approach to Legal Project Management”, p2, article in ILTA, *Business and Financial Management: Wrangling the Wild Ride*, white paper, December 2013. Available at www.seyfarth.com/images/content/6/9/v1/6965/ILTA122013.pdf.

9 John Dalton and Karen Duggan, “Lean and agile: How LPM can transform client services”, in Edward Bowes (ed), *The Lawyer’s Guide to Legal Project Management*, Ark Group, 2017, p88.

10 Kent Beck *et al*, “Manifesto for Agile Software Development”. Available at <https://agilemanifesto.org/>.

In section 4, the combination of daily stand-ups with Kanban task boards is discussed as a meaningful and effective meeting format in a hybrid approach.

3.4 Fees

Agile methods determine time and budgets before identifying the necessary detailed and prioritised requirements in the context of the end vision, that is, a certain overall outcome of the matter. This approach works well for matters with longer durations and a predominantly undefined scope, such as the rollout of an in-house compliance programme, a large multi-jurisdictional litigation matter and so forth. In those situations, the driver for costs is the matter schedule, not the actual matter scope. Dividing the matter into smaller iterations with, for example, varying draft phases of an agreement or different levels of jurisdiction, allows clients (ie, in-house counsel or business users) to pay for the progress made towards the end vision.

However, Michael Milnes cautions as to the risk of budget overruns in Agile: *Clients can get concerned that an Agile project will be expensive, because it risks being too open-ended. Expect the possibility of different views about who bears the risk of going over budget.*¹¹

In essence, the idea of completely aligning oneself with client requirements may quickly collide with tight budgets and cost-effective quick fixes, where compromises may be needed and constitute a better solution.

In contrast, Waterfall aims for the full deliverable at the end. Therefore, clients will find themselves in a kind of hostage situation, according to Marc Layton:

*If costs increase and stakeholders don't pay more for the product, they will not get any finished requirements. The incomplete product becomes a kidnapped hostage; pay more or get nothing.*¹²

3.5 Practice culture, leadership behaviour and team management

By contrast with previous sections, the following discussion deviates from selection of methodology or method based on a matter assessment, to selection based on team assessment. Ambreen Ali notes that “implementing project management principles within a legal practice is an exercise in change management – and as with any industry, change inevitably presents

11 Michael Milnes, “Agile Project Management for Lawyers: Beyond the Hype”, *Thomson Reuters*, 20 March 2019. Available at <https://insight.thomsonreuters.com.au/posts/agile-project-management-for-lawyers>.

12 Marc C Layton, “What’s Different about Agile Cost Management?”, *dummies.com*, online article. Available at: www.dummies.com/careers/project-management/whats-different-agile-cost-management/.

13 Ambreen Ali, “Legal Aid: Big Law Firms Are Turning To Project Managers In Response To New Competitive Threats”, *PM Network*, 2018, 32(1), pp12–13. Available at: www.pmi.org/learning/library/law-firms-project-managers-competitive-threats-11020.

14 Peter Dombkins, “Legal Project Management and the Challenges of Transformation”, *Legal Business World*, 2 April 2019. Available at: www.legalbusinessworld.com/post/2019/04/02/legal-project-management-and-the-challenges-of-transformation.

challenges”.¹³ While many LPM experts, such as Peter Dombkins,¹⁴ Jim Hassett,¹⁵ Susan Lambreth¹⁶ and Aileen Leventon recognise the need for change and the necessity for effective implementation of change management, a team’s prevalent practice culture, reflected in leadership behaviour and team management, remains the white elephant in the room in today’s VUCA environment.¹⁷ Leadership behaviour and team management manifest in practical terms as follows:

- the degree of control and supervision exerted on the matter delivery team; and
- the autonomy granted to individual matter team members.

Both Agile and Waterfall postulate new leadership skill sets and behaviours from legal practitioners, some of which are discussed by Eric Sigurdson in broad terms as “leadership skills and enabling mindsets that influence and encourage a more agile, innovative, adaptive, empowered, collaborative and engaged workplace and corporate culture”.¹⁸

Agile methods promote cultural and organisational transformation over traditional hierarchical approaches to a greater degree than does Waterfall. Scrum, for example, advocates five values:

- commitment;
- courage;
- focus;
- openness; and
- respect.

‘Courage’ in this context means that “teams must feel safe enough to say no [...] Agile teams must be brave enough to question the status quo when it hampers their ability to succeed.”¹⁹ The concept of ‘self-organising teams’ challenges many beliefs in traditional partner-led law firms. Further, ‘openness’ emphasises that “teams consistently seek out new ideas and opportunities to learn”.²⁰ Many corporate legal structures may not be able to offer this flexibility and freedom.

Which methodology and its inherent requirements for a specific practice culture and leadership behaviour are best suited to a specific legal team?

15 Quoted in Peter Dombkins, “Legal Project Management and the Challenges of Transformation”, *ibid.*

16 *Ibid.*

17 The acronym VUCA – ‘volatility’, ‘uncertainty’, ‘complexity’ and ‘ambiguity’ – describes the conditions prevailing and draws on the leadership theories of Warren Bennis and Burt Nanus.

18 Eric Sigurdson, “The Science of Leadership: the Legal Industry and an Integrated Approach to Modern Organizational Leadership”, *Sigurdson Post*, 28 February 2019. Available at: www.sigurdsonpost.com/2019/02/28/the-science-of-leadership-and-the-legal-industry-an-integrated-approach-to-modern-organizational-leadership-theories-competencies-and-styles-for-legal-leaders-on-the-front-line/#_ftn201.

19 ScrumAlliance, “Scrum Values”. Available at: www.scrumalliance.org/about-scrum/values.

20 *Ibid.*

Guidance is provided, *inter alia*, by the ORGANIC agility leadership framework which comprises six major categories of leadership behaviours and corresponding attitudes:

- directing;
- demanding;
- conducting;
- envisioning;
- coaching; or
- catalysing.²¹

The categories subsume a range of actual actions and can be mapped to leadership archetypes for further exploration.²²

According to Andrea Tomasini, “These behaviors exist simultaneously in various [seven] dimensions, from the perspective of the leader, to the perspective of the team, to ideas of how work gets done and what constitutes success.”²³ The leader’s image is the combination of leader’s perspective and group perspectives to create a new, combined image. Comparing the leader’s and the followers’ perspectives is all about promises and perceptions in the context of the ubiquitous practice culture. Their coherence determines the effectiveness of a demonstrated leadership behaviour leading to effective team management.

If law firms and in-house teams introduce Agile methods for day-to-day matters they also opt, perhaps unconsciously, for a potentially new leadership behaviour, such as coaching. Embracing it forms part of the successful implementation of the methodology.

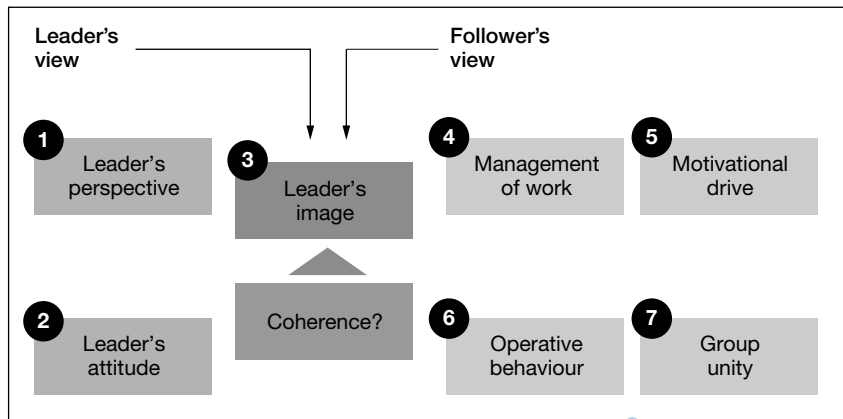
Applying the leadership framework (Figure 1) to coaching, the consequences for the organisation of a law firm or legal department may be transformative. First of all, *Leader’s perspective* (Leader’s view) is all about helping individuals develop and become better assets to the team, while continuously challenging and supporting the team itself to become more effective. The team needs to accept the leader as a coach. He or she must aim to earn their trust and respect, as much as they must earn his or hers. *Leader’s attitude* is about challenging people to do work without the leader’s help, ultimately creating more autonomy and purpose for everyone. *Management of work* (Follower’s view) is mostly self-directed within the team. *Operative behaviour* is characterised by trust and maturity, resulting in a high level of autonomy both within the team and as a team within the organisation. Being a proud member of the team is an essential element – *Motivational drive* (Follower’s view). *Group unity* means

21 See the ORGANIC agility website: www.organic-agility.com/organic-leadership/.

22 See: Andrea Tomasini, “Archetypes for change: Leadership coaching in complex times”, *Coaching Magazin*, 2020. Available at: www.coaching-magazin.de/fuehrung/archetypes-for-change.

23 *Ibid.*

Figure 1. Dimensions of leadership behaviour



Source: smartvokat (based on the ORGANIC agility framework).²⁴

everyone is aware of the individual and collective potential capability and able to master the team's work agenda. Ultimately, the leader performs the role as a servant to the team (*Leader's image*).

3.6 Methodology quick assessment

All indicative elements relevant to a comparison between Waterfall and Agile are summarised in Table 1, on the next page.

Following a thorough assessment of the nature, objectives and context of each matter, each matter team is tasked to select a 'dominant' methodology and corresponding method as a foundation, potentially complemented by elements of other methods, or a hybrid approach (on which more below). Sufficient experience on the part of the legal practitioner in the various methods is key to this selection.

This is an extract from the chapter 'Waterfall, Agile or hybrid?' by Ignaz Fuesgen in Next Stage Legal Project Management: Future-proof Your Matter Management, published by Globe Law and Business.

24 Figure 1 is adapted from material in the ORGANIC agility webinar, "A decision making approach for resilience", November 2020. Available at: www.slideshare.net/giusdesimone/webinar-a-decision-making-approach-for-resilience?next_slideshow=1.