

Asian Briefings: What Design Thinking Looks Like In-house

Law Department Management





Earlier this year, the Hatch legal team for Australia-Asia, together with their collaborator, LOD (formerly Lexvoco), were recognised as a 2019 ACC Value Champ for their legal innovation project described by the judges as “... a visually pleasing selfservice solution [which] is replicable [by] ... law departments of any size.” The team embraced design thinking to build their global legal knowledge-sharing platform, mapping corporate and legal resources to the same engagement lifecycle used by Hatch’s 9,000 employees to implement projects. You can read about the project in [Using Design Thinking to Innovate Legal Practice](#). The success of the project (with over 46,000 site visits from nearly 2,500 unique viewers since launch) has solidified the team’s confidence in the application of design thinking in their legal practice. This article shares some further insights into what design thinking looks like in practice.

Design thinking recap

[Design thinking](#) is a methodology for creative problem solving. [IDEO](#), the renowned Silicon Valley design firm widely accepted as bringing design thinking to the mainstream, further defines it as “... a human-centred 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”. A quick Google search reveals that the design thinking toolkit is extensive. At Hatch, we take the approach to “... try to absorb what is useful, discard what is useless, and add what is essentially your own.” [IDEO](#) teaches a six-step design thinking framework, which, at Hatch, we apply to discrete projects like our legal knowledge-sharing platform. It is an iterative process allowing improvements to be made continuously. Each step is also instructive on its own, and I set out some tangible examples of how they guide us.

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Frame a question

Hatch is a global engineering consulting firm working predominantly in the metals, energy, and infrastructure sectors. When working on projects, it is not unusual for Hatch to co-create the scope and schedule with our clients. This is aligned with Hatch's corporate manifesto to create positive change by partnering with clients to develop better ideas. However, this collaborative relationship does not always flow through when we are negotiating the contract. Often, our respective lawyers and commercial managers negotiate in isolation, and we end up in a "take-it or leave-it" situation, divorced from the requirements of the project and the scope. Rather than facilitate project success, the contract becomes a document to be put away in a drawer and forgotten about until something goes wrong.

To avoid this scenario, the Hatch legal team resists negotiating in a vacuum where possible. We encourage our project teams to engage in the negotiations — with their counterparts — so that we may jointly consider the question, "How might we (HMW) better align the interests of both owner and consultant to achieve project success?" Framing contract formation in this context elevates the negotiations above adversarial position-holding and allows for opportunities to align the interests of all project participants. Indeed, the misalignment of participants' interests has been identified as the key cause of project underperformance. A recent McKinsey study has reported that unlocking the value in sub-optimal terms and conditions could equate to US\$2.5 trillion in value for Fortune Global 500 companies.

Gather inspiration

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The core aim of design thinking is to meet people's needs. A way to identify needs is to look for patterns of behaviour and to observe without judgement. This is a design thinking exercise to foster empathy; and it takes practice. For example, our legal team regularly receives emails with a request to review an attached agreement with little or no context. It is all too easy to lament being an overpaid reading service and to judge the conscientiousness (or otherwise) of our colleagues. However, design thinking reminds us to be empathetic and to consider that internal colleagues may be stretched, under fee-earning pressures or just uncomfortable with contracts and fearful of doing the wrong thing. Viewed from this perspective, we believe we are on the right track to meet our colleagues' needs by making contracts less confronting and more understandable. We are prioritising the simplification of legal templates and dedicating time and resources to internal training.

Another pattern to look for is the taking of shortcuts or workarounds. If colleagues regularly take shortcuts to bypass approval processes or delegations, it is telling us that the process is mismatched to business needs. If we respond by being a roadblock or turning a blind eye, we are entrenching the status quo, and neither is satisfactory. Instead, design thinking encourages us to call out the mismatch and, where possible, pave the shortcut (not obstruct it).

Generate ideas

Design thinking inherently embraces diversity. The likelihood of coming up with innovative user-centred solutions is greatly enhanced when a diverse group (be it by gender, discipline, skills, or experience) considers the problem. In our team, we recognise the value of non-legal skills and

respect our colleagues with expertise in other disciplines, such as communications and corporate services. We encourage the building of relationships with our internal colleagues (in business, project delivery, IT, HR, and other shared services) so that we are knowledgeable about developments and can take advantage of opportunities to embed “legal” into the “business.” This way, compliance with corporate legal objectives can happen by default, rather than require additional effort.

One way to inject a youthful perspective into our thinking is to participate in the company’s vacation student program. The program has always been open to engineering students, and it did not occur to us, until a couple of years ago, that a law student (with no legal firm experience) could contribute in a corporate environment. The experience has been so mutually positive that our team now participates in the program annually. We welcome being able to provide a learning opportunity for the student, at the same time as developing our mentoring skills. We reap the benefit of the student’s enthusiastic contributions and the connections the student makes to other vacation students. It has become another avenue to break down silos and keep us engaged in the business.

Making ideas tangible

As a shared services department, we see our role as enabling and empowering our internal [Hatch](#) colleagues to provide “... practical solutions that are safe, innovative and sustainable” to our clients. To be effective, we focus on how we are communicating to encourage buy-in. Is a document really required? Will it achieve the purpose? For example, does a certification that an agreement has been reached after parties have been given an opportunity to negotiate really avoid an unconscionability claim? We think our role in that instance is to encourage the parties to actually negotiate, use the process to cultivate the relationship, and address any issues upfront.

If writing is required, we consider how we communicate and take the time to make the information more visually appealing and user-friendly. In 2016, our communications and legal services coordinator (non-lawyer) interviewed colleagues across a variety of disciplines (engineering, legal, finance, and HR) to identify reading preferences (screen versus print) and obstacles to their ability to engage with communications in the workplace. Her research paper was part of her external studies, and we leveraged the findings to make improvements in the way our team worked. Design thinking has reinforced the importance of considering the effect on our audience, and we now consciously make information more accessible by:

- the use of non-text visuals where appropriate, such as diagrams, tables, and timelines (even in legal advice and letters);
- the use of colour—for example, the consistent use of red for deletions and blue for insertions;
- the renaming of hyperlinks in emails to make the text more concise;
- the establishment of a knowledge-sharing system across the organisation (our global legal information platform on SharePoint); and
- the adoption of technologies that leverage platforms already familiar to the user (prioritising Microsoft 365 offerings for legal tech solutions).

Test to learn

Contracts play a role in the perception of how easy an organisation is to work with, and Hatch is no exception. In the last decade, and especially during the mining downturn, it was not uncommon to receive feedback that Hatch had lost a job because we were “difficult to deal with.” Our internal

colleagues would then look pointedly at us and say it was because of our position on terms and conditions. Our response has invariably been that the contract presented was one-sided and allocated risks that were disproportionate to the reward. Whilst the problem of adversarial contracting is real (and increasingly being recognised), design thinking has caused us to reflect and consider our own reactive approach to negotiations.

We are now redesigning our standard templates and negotiations process with a proactive approach in mind. We want to better reflect the sense of collaboration and trust that our technical teams have built because the contracting process should enhance the relationship, not damage it. “Proactive contracting” means to stop drafting documents for lawyers and instead, draft them for the users — our colleagues — to facilitate successful delivery of services and projects. We are encouraging teams to focus on scope, and to describe their obligations more specifically, including reporting requirements. Our insurers have recently told us that the main risk driver for claims in our industry is miscommunication (30 percent). This is consistent with other data which report that 40 percent of projects are impacted by claims arising from poor communications, unclear responsibilities, and failure to update business requirements.

Share the story

We are extremely grateful that the 2019 ACC Value Champions award has provided opportunities to share our story with colleagues within Hatch and in the broader industry. As an in-house legal team, we are uniquely placed to shape how we deliver legal services in this ever-changing and increasingly complex environment. Design thinking offers a replicable, structured framework to align the impact we want with our intention. Importantly, it is a mindset that steers our interaction with people to be a more positive one, and ultimately enhances our enjoyment at work.

For more information about the ACC Value Champion award, visit acc.com/services-initiatives/value-challenge

References

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