

LAWYERS ALERT

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Driving Revenue THROUGH RAINMAKERS FIRST

Gerry Riskin, B.Com., LL.B., P.Admin

Even as we continue to emerge, slowly, from the worldwide economic crisis, times remain difficult and uncertain for law firms of all sizes. Profits in many areas are down and layoffs of staff, associates, and in rare cases even partners, continue. Some firms are still panicking and ready to give up hope. But this article is not about doom and gloom. This article is about having the marketplace refer to your firm as one of the few that flourished while others suffered. This article is about driving significant revenue increases for your firm, despite these uncertain times.

The few, the proud, the rainmakers

Every single person in your firm is important to its success, provided that each one understands his or her role and performs accordingly. But for present purposes, your quest for revenue will require special efforts from only a small portion of your firm. You need to get peak performance from your rainmakers – both those who are recognized and established, and those who are up-and-coming. Your job is to do everything possible to maximize the effectiveness of these lawyers – by constructing a special program to do just that.

However, this program is not going to be open to every one of your rainmakers, only a few. How will those few be selected? They need to apply.

You heard me: nobody gets into the special program without applying to the most senior leaders in the firm. The application must spell out why the applicant believes she or he is an excellent investment worthy of admittance to the program. This will exclude the worst egotists and disruptive forces, the ones who can't bear to acknowledge that they could improve, and the ones who would participate against their will. You will end up with only the most dedicated people, willing to improve, perform, and prove that the firm invested well.

The good news is that the best always want to get better, provided you protect their self-esteem in the process.

Training rainmakers in excellence

There is a time and a place for basic client relations skills training for your rank-and-file lawyers. Ideally, this should be conducted regularly and effectively. But when the building is on fire, you stop dusting the stairwells and grab a hose. Your rainmakers, both established and emerging, must hone their advanced skills in order to protect the firm's crown-jewel clients and attract the very best prospective clients. They also need ongoing mentoring and support.

This training and support is critical. Your recognized rainmakers have acquired respect through a history of achievement, but it does not necessarily follow that they are performing at their peak. The good news is that the best always want to get better, provided you protect their self-esteem in the process; if you can enhance their performance without embarrassment, they will respond. As for your up-and-comers, they will drool at the prospect of getting meaningful rainmaking assistance.

Lists and their obstacles

Once you have selected those few lawyers who will drive your firm's increased revenue, they need to begin with a single task: making lists. They are to draw up four lists: 1) their clients; 2) their referral sources; 3) the prospective clients they ought to be targeting; and 4) significant members of their network who do not fall into the other three categories.

Be warned, however; in my experience, fewer than 5% of lawyers can show you any kind of list at all, and most of those are just collections of names. It is the rare rainmaker, usually a top performer, who can pull up a file and show you complete client data sets.

You need to encourage them to make partial lists, on the understanding that perfection is not necessary here. What is important is starting the process that will form the foundation for ongoing focused efforts.

Prioritizing: Identify the essentials

Most people believe that prioritizing a list means segmenting it into “most important,” “less important” and “not important at all” – oftentimes, the “A,” “B” and “C” groups. I suggest that rainmakers instead ask themselves this question: “Is this a person who, if I allowed the relationship to languish without contact for a lengthy period, the result would be potential harm to the future of my practice?” Or, more colloquially, “Who would I be an absolute idiot to lose contact with?” These people are your A’s, and they matter. Once the lists are created and related to action plans, the number of A’s inform us as to the frequency of contact and perhaps the best means of contact.

At the opposite end of the spectrum are the people and tasks that belong on your rainmakers’ “stop doing” list. Rainmakers must look at their activities with a global perspective and then decide on an ongoing basis what no longer deserves to be on the list. Stopping the less important activities makes time for the more important ones that can really pay off.

Get those rainmakers out there!

All lawyers with rainmaking capabilities know they ought to be out and about with clients and prospective clients. They ought to be meeting with potential referral sources as often as possible, increasing their “share-of-wallet” from existing clients, and target-marketing their most important prospective clients. Even the best rainmakers, when reminded, will agree without hesitation that they spend too much time at their desks and too little time in these endeavours. They rationalize their rainmaking inactivity by emphasizing the excellent service they provide to their *existing* clients.

The secret here is to build systems that create opportunities in which those rainmakers feel comfortable involving themselves. Some firms, for instance, hire staff specifically to assist rainmakers in scheduling their meetings with those most important clients. Facilitating the process for the rainmakers keeps them moving in the right direction.

It’s all about action

How is it possible to move from theory to accomplishment? The secret to success lies not in the strategy itself, or even in the ideas expressed in this article. The key lies in the degree to which individuals take action. It’s your responsibility to guarantee that result, by creating a process that keeps shining the light squarely upon your rainmakers and measuring their actions.

The key to getting your people to accept this scrutiny is to assure them that, on those occasions when there is little or no progress, they will not be punished, but rather assisted. Competing obligations will be examined to see where they can be reduced. Parts of the rainmaking effort might be delegated in whole or in part, or even changed altogether into more productive tasks that require less time.

The payoffs

The obvious prize for this effort is substantially greater revenue for your law firm. The less obvious prizes include building your rainmakers’ confidence and infusing them with winners’ attitudes that will become contagious throughout the firm.

While your competitors are still holding meetings about why the world is delivering such hardship to the industry, I suggest you get busy and start generating some serious revenue. The key is to convert something that is uncomfortable for most lawyers into something very comfortable – turn a liability into a strength. Identify your champions and help them win. The rewards, even in a difficult economy, could be stunning. Some people respond to crises with paralysis. I suggest you respond with action. §

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Don't Miss THE BIG PICTURE

Jay M. Jaffe

In previous issues of *Lawyers Alert*, Jaffe PR has emphasized the PR benefits and improvements available to the legal industry in the movement from Web 1.0 to Web 2.0. It's time now to understand that Web 2.0 is more than merely an upgrade of Web 1.0; rather, it is an evolutionary step toward a major change to the practice of law – and the end of the bricks-and-mortar world of law firms as we know them today. The fact is that law firms spend the bulk of their fixed overhead in two areas: office space and personnel. One of these expenses, office space, can be dramatically reduced today; and personnel costs, especially on the support side, can be reduced today and dramatically reduced in just one more generation.

It wasn't but seven years ago that the COO of America's then fastest-growing and one of its largest law firms complained to me: "I keep spending more and more money on technology, but I don't see any corresponding savings in traditional expenses, such as office leases and personnel." He went on to complain further that, despite his firm's growing technology expenses, the partner/ secretary ratio was almost unchanged, and the cost of its real estate commitments continued to soar.

This conversation transpired after a huge technology boom took place in the legal profession following the introduction of Web 1.0. So where were the savings based on technology at that time, and why is Web 2.0 going to succeed today and tomorrow in lowering fixed overhead and increasing productivity, collaboration and profitability?

The answer is relatively simple and isn't all about Web 2.0, although Web 2.0 certainly moves the ball down the playing field. The two factors that are moving the pace of change faster than almost anyone can perceive are:

1. The generational changes occurring today have more and more lawyers willing to accept the place of technology in the legal environment, embracing and appreciating the changes instead of merely accepting or tolerating them.
2. The more user-friendly interfaces and uses of Web 2.0 allow the technology to be more readily accepted into the legal environment that abhors change, rejects risk and generally looks at the world through the precedence-based rearview mirror.

Changes from Web 2.0

As a result, there are several changes that are likely to take place with the advent and spreading usage of Web 2.0:

- The legal work environment is going to become more

virtual. Why? Because it can, and because it makes economic sense to move to a virtual environment with the resultant savings in both real estate and personnel expenses. But it also allows for more and better collaboration of teams of lawyers without the bounds of physical walls and geographic borders.

- Web 2.0 allows for "real" mergers to take place based on the growing needs of clients, not because it makes good geographic and real estate sense. Smart law firms will be much more flexible than they are today and will be able to expand and contract based strictly on client demand and workflow. The days of law firms staying together because of guaranteed signatures on leases will, eventually, cease to exist — and profitability and productivity should rise dramatically.

- The virtual work environment will also improve the quality of life factor in the legal profession and will be a great gender equalizer. The technology for all of this exists in the Web 2.0 world today. The only things holding up the transition are the existing attitudes

Web 2.0 will serve as the catalyst that will make it all happen.

about what a law firm "should" look like, and people who can't enter this new world because they can't type and gain speedy access to the Internet. It surely isn't all going to

happen tomorrow, but don't underestimate the speed at which it will happen.

- Administrative jobs in law firms won't disappear, but they will be different, and, I think, better. Yes, many of the personal perks of partnership will disappear, but lawyers will be looking at their support staff in a different light as they become part of the fee-earning and marketing team and are no longer seen only as an ongoing and fixed expense. In fact, the ratios shouldn't matter anymore, as long as the support staff is part of the team that delivers value to both internal and external firm clients and increases economic leverage for the attorneys.
- In-house counsel will receive greater value from the law firms that "get it," and will be able to communicate and collaborate on a level unknown in the legal profession of the past. The real bricks-and-mortar that now separate inside from outside counsel will disappear, as will the attitudinal walls that get in the way of the real collaborative environment that in-house lawyers are now demanding. Web 2.0 will serve in the role of the lubricant that greases the skids to make it all happen.

Lower expenses

As the authors of the recent Legal Tech Newsletter article

rightly pointed out: “Fortunately, the legal profession need make no great investment in infrastructure in order to enjoy the fruits of Web 2.0.” Indeed, the infrastructure mostly exists today, and if it doesn’t already, the good news is that it doesn’t cost all that much and the prices are going down every day. The only expenses involved in moving to the 2.0 environment include education or training and a much more targeted effort to “mine” and disseminate the tremendous amount of available content that each law firm generates on a daily basis and that generally lies fallow in the firm’s file servers.

Not a single firm that I have ever worked with has even begun, either practically or creatively, to get its collective hands around the issue of internally generated content management. Right now, law firms are about at the same place they were shortly after the invention of the Mosaic Browser and the creation of Web 1.0, as we have known it.

Jump on the bandwagon or get rolled over

Based on precedence, one could agree that law firms are currently at the beginning of the process and, although already familiar with the power of Web 1.0, are reluctant to move too quickly to get onto the Web 2.0 bandwagon or the steamroller, as I believe that it is.

I would hope that more firms will be bold and jump quickly to join the Web 2.0 world, rather than moving too slowly as they did when transitioning from typewriters to word-processing equipment to computers. They will see that Web 2.0 is real and relevant today, and will immediately begin to look for ways to incorporate the 2.0 platform into all job processes and functions that exist at the firm, including the legal process, client services, human resources, finance, marketing, etc.

Web 2.0 and its tools, like social networks, are not just for children anymore. Yes, Facebook and MySpace are wildly successful social networks, but similar applications in the legal profession, such as Legal On Ramp and Martindale-Hubbell Connected, will also be wildly successful in either their current or some future form. Podcasts are here, blogs are not going away and terms such as Twitter and wiki are being used by lawyers and in businesses all over the world. If Web 2.0 is a fad, I’m certainly going to be faddish. §

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Tech Central: **TWITTERING JURORS**

For several years, we at *Lawyers Alert* have been touting the benefits of “tech” and social media for lawyers and law firms. Jaffe PR has written often of the need for lawyers to embrace social media like blogs, Twitter, LinkedIn, even Facebook. Contributor Gerry Riskin is an avid blogger himself. Few in the know will dispute the value such activities can add to the legal industry.

But there are limits to the merits of these activities. Courts now are starting to grapple with these limits as they deal with the growing prevalence of jurors texting, e-mailing, “tweeting,” blogging and otherwise using the Internet and tech tools to research and communicate improperly while involved in trials.

From the U.K., to the U.S., to Canada and beyond, jurors have been dismissed and/or chastised for going online to research criminal law principles, texting each other during closing arguments to discuss the merits of the case, “friending” each other on Facebook during trials, and even “tweeting” play-by-play updates on the progress of trials. Some such instances have resulted in costly mistrials and appeals.

In response, many jurisdictions are adopting so-called “Twitter Instructions” to judges, and specific jury instructions emphasizing the need to avoid using these tools. Many courthouses now have specific policies banning phones, pagers, PDAs and other electronic devices not only from the courtroom, but now from the jury room as well.

These bans and policies may help while jurors are within the court buildings, but judges continue to struggle with how to dissuade jurors from using these tools and devices at home. In the past, the concern was with television and newspaper coverage. Now, Google, Wikipedia and other online tools have become so commonplace they are almost second-nature to many jurors. Is it so different? Or is it simply the same problem with a different face? We’ll continue to monitor these developments for further discussion in *Lawyers Alert*.

Harmonized Sales Tax FOR LAWYERS

Guy A. Desmarais, B.Com., LL.B., TEP

The Ontario government announced in its March 26, 2009 Budget that it will adopt a single sales tax system effective July 1, 2010. This new system will combine the 5% Federal Goods and Services Tax (GST) and the 8% Ontario Retail Sales Tax (PST) to create a 13% Harmonized Sales Tax (HST). The HST will be administered by the Canada Revenue Agency and will substantially follow the GST regime, with a few key differences.

This article discusses the new HST regime specifically from an Ontario perspective, though the concepts and principles have general application to the other HST provinces: Nova Scotia, New Brunswick, and Newfoundland and Labrador. British Columbia has also announced a new HST regime, also effective July 1, 2010.

The HST uses a value-added tax structure that will allow most businesses to claim input tax credits (ITCs) on the 13% HST paid. This is in contrast to the PST, which applies to many purchases made by a business and is not refunded, leaving the PST embedded in the price of the finished goods and services as a sunk cost to the business. The HST aims to take away that "hidden tax" and lower administrative costs incurred by businesses.

Lawyers are among those who stand to benefit, in part, from this tax harmonization. Currently, lawyers are charged the 5% GST and 8% PST (the 8% being non-recoverable) on such expenses as capital expenditures like photocopiers, telecommunications and office supplies. However, they are only permitted ITCs for the GST portion. But as of July 1, lawyers will be able to claim the full 13% HST as an ITC. On the revenue side, however, lawyers will now be required to charge an additional 8% when providing taxable services. Unlike the current regime, the Provincial governments will now pay the HST. GST-exempt services, such as legal aid, will continue to be fully exempt under the HST rules.

Some law practices will qualify for a maximum one-time transitional credit of up to \$1,000 if taxable sales are less than \$500,000 in the first full quarter commencing July 1, 2010. Large businesses with sales in excess of \$10 million (for an associated group) will face a temporary restriction on the provincial portion of the ITC for the first 8 years for certain expenditures.

Transitional rules

The HST will apply to taxable services performed after June 30, 2010. For transactions that straddle the July 1, 2010 implementation date, the following transitional rules will apply.

- If consideration is due or paid on or after May 1, 2010 and before July 2010 then HST would apply to the extent that the consideration is for goods or services that are delivered, performed, or for which ownership is transferred after June 2010.
- HST is not applicable to any part of a service performed before July 1, 2010, or if all or substantially all of the service is performed before July 1, 2010.
- For businesses that purchase goods or services that will not be used exclusively in the course of their business, or for businesses that offer exempt services, there will be a requirement to self-assess, if consideration is due or paid after October 14, 2009 and before May 2010 and the goods or services are not provided until after June 2010.

Real property transactions

Special rules will apply to the sale of new homes. These rules are quite detailed and in some cases may depend on the percentage of completion of the home at June 30, 2010. Lawyers in the real estate sector are advised to familiarize themselves with these rules and advise their clients accordingly. The transition rules can be summarized as follows:

- If possession and ownership is transferred after June 30, 2010, and the new home contract was signed before June 18, 2009, the transaction is "grandparented" and not subject to the new HST rules. Builders may be required to pay a transitional adjustment tax, based on percentage of completion at June 30, 2010, to remove the benefit of ITCs recovered on these jobs.
- If the contract was signed after June 18, 2009 but before June 30, 2010, the sale will be subject to HST and the buyer may qualify for a PST transitional rebate, based on percentage of completion at June 30, 2010. This rebate may be assigned to the builder.
- For sales subject to the HST, the Ontario New Housing Rebate will refund 75% of the provincial portion of the HST up to a maximum of \$24,000. This credit is available regardless of the purchase price for the home and can be claimed by the purchaser or assigned back to the builder. There is also an Ontario New Rental Housing Rebate.
- Clear disclosure and contract terms are necessary. If the transaction is subject to HST and clear disclosure is not made, the stated price will be deemed to include the provincial portion of the HST.

Key Transitional Dates

October 14th, 2009

Certain businesses may need to self assess the Ontario portion of HST on amounts paid or payable before May 2010 for goods and services provided on or after the implementation date of July 1st, 2010.

May 1st, 2010

HST will apply to amounts paid or payable on or after this date for goods or services that will be provided on or after the implementation date.

July 1st, 2010
IMPLEMENTATION
DATE

Mandatory electronic filing

Electronic filing will be mandatory as of July 1, 2010 for residential builders who are reporting transitional tax adjustment amounts and transitional rebate amounts and for all businesses that generate more than \$1.5 million in annual sales. §

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“P’s” lawyers should consider in transitioning towards the HST:

Prepare

- Assign a dedicated staff member or a committee to learn about the HST, the transitional rules, the place of supply rules, and the new mandatory electronic filing requirements.
- Prepare an estimate of decreased costs to assist in proper budgeting and to determine cash flow (i.e. extra 8% receivables).
- Determine how the extra 8% tax on your services will affect business.

Paper

- Contracts, invoices, receipts, expense reports, pre-printed price lists, etc, will need to be updated to show HST.
- Review employee taxable allowances and benefits to ensure the HST is charged and the ITCs are claimed properly.

Procedure

- Review accounting systems to ensure HST compliance.
- Registers, computer software and websites will require updates to include HST.
- Determine the level of training required for management and staff.

Pricing

- Consider the effect the HST will have on pricing of your services.
- Consider the effect on timing of work in the current year.

Procurement Policy

- Consider leasing rather than buying for large purchases before July 1, 2010, or delay large purchases until after July 1, 2010.

Lawyers Alert is designed to highlight and summarize areas of interest to the legal profession in Canada. The contents herein are for the general interest of the reader. They are not intended, and should not be relied upon, as legal or professional advice.

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