

Business development in the law firms of the future: focus and infrastructure

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Although predictions of the death of law firms might be exaggerated, they nonetheless contain a bitter kernel of truth: the law firm, as we have traditionally known it, is an endangered business species. To flourish, all law firms will need to refocus and redirect their priorities with respect to both the internal structures of the firm and the way in which they approach the market. The client-service orientation of today's successful law firms will thus continue to be a core element of law firms of the future.

Similarly, the emergence of 'Big Law' – that is, the multi-billion dollar global law firms – does not mean the end of smaller firms. With a well-developed sense of strategic alertness, exceptional client service and close attention to sustainable profitability, small and mid-size firms will continue to thrive and compete successfully with, and not necessarily against,¹ the global giants. However, all firms of all sizes might need to reconsider some of their traditional strategic assumptions and tactical priorities.

This chapter examines one such cluster of assumptions and priorities that law firms must reconsider today in order to improve their chances of survival: business development. Successful business development in the future will require clarity in at least three areas:

- an understanding of the fundamental nature of a law firm's practice and its desired client base;
- the selection of marketing or business development tactics that will address the unique needs of the firm; and
- for some law firms, a new infrastructure to support the retention of their best clients.

1. The future is already here

Any consideration of an issue as dynamic and multi-dimensional as the future of the legal profession inherently raises risks. Even the best-informed and logical predictions of today can be far off the mark 10 years from now.

1 A central premise of this chapter is that, in the future, law firms must remain open to the possibilities of collaboration with other firms, even direct competitors, to improve the conditions in the legal market by delivering legal services and products more cost-effectively and with higher levels of client satisfaction. These efforts will include, most notably, collective action to use an improved legal services environment to build confidence by foreign investors in the stability of their national economies. In other words, you should market your jurisdiction to develop new business for your law firm.

To a great extent, the future is already here. The globalisation of business and, with it, the beginnings of at least a broad-based internationalisation of the legal services industry, have already been instructive. Barring major economic dislocations or social upheavals worldwide, recent experiences and observations suggest some general pathways into the future. We can expect, therefore, that the law firms of the future will face:

- even more intense competition for high-value legal work;
- increased price sensitivity in practice areas that traditionally have been relatively price insensitive;
- the continuing consolidation of law firms;
- ‘global vision’ – that is better alertness to, and understanding of, political, economic and regulatory developments, especially in emerging and recently emerged legal markets;
- a shift in emphasis away from traditional marketing efforts to create general visibility to more highly personalised client services and ongoing relationships to improve client retention;
- ever-rising client expectations for availability, speed and economy in the delivery of legal services and products that traditionally have been viewed by lawyers as being customised or high value;
- an increased importance in being able to articulate compelling competitive advantages in terms that are relevant and important to the best clients, even as it becomes more intellectually challenging to do so;
- a dramatic expansion of, and increased demand for, legal services and products to include added-value elements that most law firms today consider to be outside the scope of their business;
- a shift from an obsession with short-term profits to a farther-focused investment mentality in order for the firm’s fee earners to remain competitive and profitable;
- greater investment in, and reliance on, outside expertise to support better decision making and implementation in a constantly changing business environment; and
- the emergence of new non-traditional forms of legal service providers into prominent, if not dominant, positions in markets previously occupied only by traditional law firms.

1.1 Finding a way through the fog

This emerging evolution of the legal services industry has created a difficult paradox, which law firm leaders – especially those of traditionally structured firms – must resolve now. A ‘wait and see’ deferral of understanding and action will be fatal.

The first part of the paradox is that, as noted above, the big trends in business will continue to affect directly the way that law firms market themselves, develop and maintain client relationships, and generate new business from existing clients. The Internet long ago revolutionised the way that customers communicate and obtain information that previously commanded a high fee, if it were available at all in the public domain. It also has created a ‘do it yourself’ approach to problems that

previously were the exclusive province of highly trained, expensive, professional service providers. As we saw in the period 1995–2010, law firms eventually went along with these trends, sometimes amid storms of scepticism from partners, creating websites and beginning to experiment with social media.

One of the results of this awareness of the trends in the business world has been a temptation simply to cut and paste what works in other industry sectors, assuming that it also will work well for law firms. Some lawyers and law firms invested substantial amounts of time and staff resources in maintaining Facebook pages, Twitter accounts and other social media, only to discover that their efforts produced no significant benefits. At the same time, other law firms have had reasonable success with these same tools.

It is easy to overreact, however. The new technology and communications media available to law firms are merely tools, not panaceas. As this chapter points out later, even the most powerful, imaginative and attractive technology is useless when the organisation lacks the basic infrastructure – systems, processes, commitment and resources – to support it. A firm's systems and processes drive and determine how the technology operates, not the reverse. For example, some law firms mistakenly assume that licensing and installing a sophisticated customer relations management system can serve, in effect, as their marketing and business development programmes. They forget that you cannot automate what is not there.

The second part of the paradox is that, notwithstanding the embrace by the business world of new modes of communication and more powerful technological tools, sophisticated consumers of legal services continue to make their engagement decisions in ways that differ significantly from their practice in other commercial transactions.

As one general counsel of a major multinational enterprise commented, "I love social media, but we don't buy legal services that way. And we probably never will."

The challenge for law firms, both now and into the future, will be to resolve this paradox by reconciling changing client expectations for communications and service delivery with the basic values that sophisticated clients continue to use to guide their decisions about which law firms to entrust with their most important legal matters. Finding the right path through this foggy landscape will be even more difficult as technological change in the business world continues to accelerate, and the response, as always, will be to stay one step ahead of the client, anticipating needs and pointing out risks even before the client is fully aware of them.

As we try to reconcile this dilemma, a few conceptual definitions can be reliable lighthouses to guide us past the indistinct shapes that emerge as we look into the future.

1.2 What kind of law firm are you?

Each law firm must develop and internally agree on a clear understanding of the fundamental nature of the services that are the core of its business and the clients that it wants in its client base. These decisions then guide each firm in the selection of the right blend of marketing and business development for its unique set of strategic objectives and business needs.

Although there are many exceptions and hybrids, most law firms worldwide are mainly influenced by one of two centres of gravity, which generally describe their most profitable services and client sectors: commercial law and retail law.² These differences will become more important in the future, in which – as a result of natural market processes in many parts of the world – the differences between commercial law firms and retail law firms will evolve into two distinct sectors in the legal services industry.

Commercial law firms generally offer sophisticated corporate and commercial services to corporations, government agencies and high net-worth individuals. Most large law firms and many mid-size firms today can be characterised as commercial law firms. They handle large, complex transactions and cases. Competition for these ‘best’ clients is intense; and client retention is essential to a commercial firm’s market position and long-term financial success.

Retail law firms tend to be smaller practices, including most solo practices. They usually focus on a limited number of legal services and products delivered primarily to individual clients and small businesses. Examples include small firms specialising in personal injury, employee rights, criminal defence, estate planning, family law and personal taxation. Some mid-size retail law firms might include several of these practice areas. Their clients tend to be infrequent users of their services, most of them engaging the firm only once.

The determination of whether a firm is oriented primarily to commercial law or to retail law does not depend on size. Most large firms offer some services that might be considered to be retail law, and smaller law firms – particularly industry-sector specialists or boutique firms offering highly sophisticated services – compete very successfully for commercial law engagements. The important point, however, is that each firm should clearly understand which centre of gravity has the greater influence on its most profitable lines of business.

This determination is relatively easy for many large firms and most small firms. It can be challenging, however, for the one variety of traditional law firms that truly is threatened with extinction: the mid-size local firm that attempts to offer full service. Unless the mid-sized full service firm clarifies its priorities for service offerings and desired clients, it risks being picked apart competitively by large firms that can offer the same or better commercial law services at a competitive price and by smaller firms that can offer retail services more cost-effectively with equally good results.

1.3 Marketing or business development?

One of the central themes of this chapter is the need for clarity about the distinction between marketing and business development in law firms. Some law firms

2 Some observers might identify a third centre of gravity – namely, the organisation that delivers ‘commodity’ legal services and products, such as insured defence litigation, trademark registration and administration, or residential real estate conveyancing. Further analysis, however, usually results in such commodity firms gravitating more toward commercial law firms, for purposes of marketing and business development strategies, because of the importance of attracting and retaining large clients with repeated, high-volume business.

incorrectly use the two terms almost interchangeably, thereby thickening the fog that surrounds their determination of priorities and resource allocations.

As used in this chapter, 'marketing' refers to the process of establishing and promoting the visibility of a law firm in its selected markets. It is directed at the first two steps of the sales process for professional services: attracting attention and gaining interest.³ 'Business development' consists of activities aimed at the retention of profitable or potentially profitable clients and the sale of additional legal services and products to those clients. This is an important distinction, because many law firms today waste vast amounts of money, partner time and management attention on marketing, while overlooking the much higher return-on-investment in business development.

2. Which strategy is better?

Most of this chapter explores basic strategic decisions that law firms should make now in order to be better prepared to respond to the challenges of the future. A clear understanding of the strategic foundations of a firm – what kind of firm it is and where it wants to go – will make the selection of the right bundle of marketing and business development tactics significantly easier and much more reliable.

As the markets for legal services and products continue to mature, every law firm will need to understand how to allocate resources between marketing and business development. A wrong decision, or no decision at all, will result in a wasted investment of a firm's resources, which, coupled with poor results, could plunge a firm into a death spiral.

The decision should be driven by a clear understanding of where a law firm is placed between the two centres of gravity: commercial law and retail law. For some firms, one strategy – marketing or business development – will clearly be the better choice. Other firms will need to strike the right balance, adopting tactics that address the unique characteristics of the firm's services and products, and the nature of its client base.

At the risk of oversimplifying complex strategic considerations, which will continue to vary substantially among different law firms, successful commercial law firms of the future will focus primarily on business development – keeping the good clients and getting more work from them – with very little effort being required in the area of basic marketing. Retail law firms, by contrast, will gain only marginal value in business development strategies and will concentrate instead on marketing and sales.

This is an extract from the chapter 'Business development in the law firms of the future: focus and infrastructure' by Norman K Clark in Business Development: A Practical Handbook for Lawyers, published by Globe Law and Business.

3 The five steps in the sales process for professional services are:

- attract attention;
- build interest;
- establish rapport;
- answer objections; and
- close the deal.