



Business Development

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A Practical Handbook for Lawyers
Second Edition

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on behalf of the International Bar Association



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Marketing or business development? Critical decisions for law firms of the future

Norman K Clark
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The law firm, as we have traditionally known it, is an endangered business species. Although predictions of the imminent death of law firms might be exaggerated, they nonetheless contain a bitter kernel of truth. The paradigms that define what a legal service is and how it should be delivered have shifted profoundly in recent years and continue to do so.

Traditional strengths are no longer the reliable bulwark that they once were. The basic client-service orientation of successful law firms today, which has served them so well in the past, continues to be a core element of their success. However, even the most successful, most passionately client-committed firms are now being challenged by alternative legal service providers, many of which have already demonstrated their ability to meet the needs of their clients better and usually at much lower cost.

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 can continue to thrive and compete successfully with, and not necessarily against,¹ the global giants. However, all firms of all sizes should reconsider some of their traditional strategic assumptions and tactical priorities, testing them against new emerging forces in the legal markets in which they compete. To continue to be successful over the next 10 to 20 years, law firms will need to be prepared to refocus and redirect their priorities, sometimes quickly, with respect to both the internal structures of the firm and the way in which they approach and serve their clients.

1 A central premise of this chapter is that 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.

This chapter examines one such cluster of assumptions and priorities that law firms must reconsider today in order to improve their chances of still being here in the future: 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 strengths of the firm; and
- For some law firms, a radically 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 apparently most rational predictions of today could be far off the mark 10 years from now.

To a great extent, the future is already here. The term 'legal services industry' is now applied to professional activity that we previously described as 'the legal profession'. Like business in general, the legal services industry has continued to become globalised, with even small, single-office law firms trying to develop their international visibility to attract foreign clients. Barring catastrophic economic dislocations or social upheavals worldwide, recent experiences and observations suggest some general pathways into the future. The entrances to those paths are already clearly marked by the recent experiences and current challenges facing law firms today, which include:

- 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 and growth of legal service providers into law firms with thousands of lawyers and globe-straddling structures such as co-branded associations and *Vereins*;²
- '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;

2 A *Verein* is legal structure for a business organisation consisting of several independent offices, each of which has limited liability *vis-à-vis* the others. This structure is frequently used by multinational professional firms so they can operate globally under one brand while maintaining separate profit pools in each country in which they operate and insulating themselves from financial and regulatory liability arising outside the jurisdiction. Large multinational law firms began to adopt the *Verein* structure, or something similar to it, in the mid-2000s.

- 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 traditionally assumed 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 the leaders 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 continue to have direct impacts on the way that law firms market themselves, develop and maintain client relationships, and develop 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 has also 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 of 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 are significantly different 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 becomes even more difficult as technological change in the business world continues to accelerate, and the desired response by the law firm 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 we now see as we look into the foggy future of the legal services industry generally, and of traditional law firms in particular.

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 in the world are most influenced by one of two centres of gravity, which generally describe their most profitable services and client sectors: commercial law and retail law.³ These differences are already important factors in the financial performance and marketing success of law firms, and they will become even

more important in the future. 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, as has already happened to a large extent in mature legal markets such as the United States and the United Kingdom.

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, residential conveyancing, 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 or twice.

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 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 firm 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.

3 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 towards the 'commercial' end of the spectrum for purposes of marketing and business development strategies, because of the importance of attracting and retaining large clients with repeated, high-volume work.

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 incorrectly use the two terms interchangeably, thereby adding to 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.⁴ '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. Should a firm concentrate primarily – but not exclusively – on improving visibility to attract new clients? Or, should it focus its efforts and resources primarily on winning more engagements from its best current clients? 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, even while everyone in the firm is working furiously on the wrong set of tactics.

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 a complex bundle of strategic considerations, which will continue to vary substantially among different law firms, successful commercial law firms of the future will focus primarily on business

4 The five steps in the sales process for professional services are: (i) attract attention; (ii) build interest; (iii) establish rapport; (iv) answer objections; and (v) close the deal.

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 at best only marginal value in business development strategies, because of the relatively low percentage of clients who need their services more than once or twice. They should focus instead on marketing and sales to bring in as many new clients as possible.

2.1 Client retention in increasingly competitive commercial law markets

Business development will continue to be more important than marketing for most commercial practices, because one of their biggest challenges will be to retain, and to expand, the scope of profitable services that they deliver to their best clients. This does not mean that a commercial firm should not continue to seek new clients, but getting more work from current clients, especially in new practice areas, should be the priority.

(a) *The frustrating limits of a marketing-oriented strategy*

In mature legal markets, such as already exist in most developed jurisdictions, a relatively large number of service providers are competing for a relatively smaller number of high-value clients. In these highly competitive environments, the opportunity to win new clients is limited by three factors.

The first limiting factor is that the number of desirable clients with profitable commercial law work is unlikely to increase significantly in many of the most dynamic industry sectors. Any growth in the population of new entrants into the client population will be offset to a great extent by corporate mergers.

The second factor is the growth of in-house law departments and the ‘in-sourcing’ of commercial legal work that used to be referred to outside law firms. This trend is almost certain to continue, as corporate boards and shareholders continue to demand, sometimes unrealistically, reductions in corporate legal spending. In some countries, the largest legal service organisations are in-house law departments of corporations that used to rely primarily on outside lawyers and law firms. Competitive outsourcing of legal services, which became so popular in the 1990s and early 2000s,⁵ has been an incomplete solution, usually effective as a cost-saving tactic only with respect to matters, such as routine litigation, in which the fees charged by outside firms are significantly lower than the fully loaded operating cost of having in-house lawyers do the work. A growing number of law firms report that they suspect that many of the requests for proposals that they receive are intended only as reality checks on the fees

5 For a brief discussion of one of the classic examples of the convergence of outside corporate legal services in the 1990s, see Bardnell, Gregory, “The DuPont Convergence Program: How One Outside Service Provider Benefits”, *The Metropolitan Corporate Counsel*, June 1996, p53, reprinted at www.dupontlegalmodel.com/the-dupont-convergence-program-how-one-outside-service-provider-benefits/.

currently charged by a firm that the company already engages, rather than as a sincere search for a new service provider.⁶

The third factor, ironically, is client satisfaction. Clients are generally satisfied with their law firms, notwithstanding their frequent grouching about high fees. Strategic business development surveys and confidential interviews conducted by Walker Clark LLC since 2002 confirm that clients generally have a very high level of overall satisfaction with their current providers of legal services.⁷ The respondents have also clearly indicated, by a wide margin, that the most important factor in the decision to engage or retain a firm is the “prior relationship with the firm”.⁸ Despite a possible trend towards decreased loyalty by some clients, these two factors – high levels of satisfaction and client loyalty – mean that it is frustratingly difficult for most commercial law firms to win new clients, absent significant dissatisfaction with the services provided by a competitor.

(b) *Rethinking marketing tactics for commercial law firms*

This does not mean that a commercial law practice can ignore marketing. In the future, as today, it will remain important to establish visibility in the market, especially in industry sectors that are the most profitable and offer the greatest growth potential. However, the relatively secondary importance and limited return on investment for most traditional marketing activities suggest some major changes in marketing assumptions and tactics, which might be uncomfortable for some law firm partners and their marketing advisers. The following, for example.

- Mass advertising, such as at airports and in business magazines, will probably produce almost no return on investment, even in terms of new clients.
- As electronic information becomes even more available at little or no cost, ‘pay to publish’ articles in business and legal industry publications will have little, if any, impact on selection decisions by sophisticated clients. Most law firms will consider them to be a waste of a partner’s time and the firm’s money.
- The return on investment in attending international legal conferences and other networking opportunities to attract new clients will continue to decrease, compared to using those events to develop more business from existing or recent clients.

6 Walker Clark LLC has been unable to validate the accuracy of this perception except by anecdotal evidence presented by law firm partners. Nonetheless, it is a perception that exists and appears to have increased in frequency since 2010.

7 Since 2002 Walker Clark LLC has administered a strategic business development survey to more than 7,000 clients of commercial law firms. Approximately 65% of the respondents have reported that they are “very satisfied” overall with the services that they receive from their law firm; and a total of 97% state that they are either “very satisfied” or “satisfied”. These numbers appear to be gradually increasing.

8 At the end of 2013 Walker Clark dropped “prior relationship with the firm” from the strategic business development survey because that factor had, in every survey since 2002, been ranked by a disproportionately large margin as the most important factor in the decision to select or continue to engage a law firm. The survey results had clearly demonstrated the point.

- Social media will have almost no value in attracting new clients, although they will become more important tools for demonstrating competitive advantages – especially responsive communications and availability – to existing clients.
- Seminars and similar events to demonstrate the firm’s expertise will not produce a reasonable return in terms of new clients or improved visibility for the firm; but they will continue to be important in client retention and the development of new high-value commercial legal work from existing clients.
- Rankings in a major legal directory will continue to be important channels for communicating the firm’s expertise to the commercial legal market, but only to the extent that the rankings demonstrate significant, differentiating advantages over competitors, and only if the directory has an unquestionable reputation for integrity and transparency in the rankings process. Unfortunately, many law firm submissions and some rankings directories fall short of these basic criteria for credibility.⁹
- ‘Law Firm of the Year’ awards presented by legal publications will have almost no value in improving a firm’s visibility, because these awards will continue to go to law firms that are already well known. Although deservedly gratifying to a law firm’s partners, these awards will not add much value to the firm’s visibility or market reputation among clients that it wants to attract.

Each of these shifts in focus and resources might require a firm to make dramatic changes in its assumptions and priorities, but none of them is an absolute either-or decision. In each case, the challenge is for the leaders of each law firm to strike the most productive balance.

None of the traditional law firm marketing activities necessarily will be totally irrelevant or worthless to commercial law firms in the future. However, as is already the case, they will not produce the best return on investment – especially of partner time – and will not be high-priority activities. To the extent that successful commercial law firms of the future will engage in traditional marketing activities, they will be precisely tailored to specific prospective clients and industry sectors – in other words, personalised marketing.

(c) *The shift from marketing tactics to client retention and business development*

Instead of investing time and resources in traditional marketing activities, many of which already have only limited value for most commercial law firms, the

⁹ Rankings for individual lawyers already might have less weight among potential clients than rankings for the firm, because there is little genuinely differentiating information in the published editorial comments about individual lawyers.

better strategy for commercial law firms is to focus on building client loyalty and engaging new profitable work from existing clients. Instead of working hard to try to attract new clients, the most successful firms of the next 10 years will focus their efforts on cementing their relationships with their clients.

This shift will be difficult for many commercial law firms. This will require people, not high-tech glossy marketing tools. The firms that will make this transition from the visibility-oriented marketing of legal services to precisely targeted business development will have three characteristics not frequently observed in most law firms today:

- cultural and intellectual diversity to relate better to an increasingly diverse global client base;
- well-developed business skills and emotional intelligence to focus legal knowledge on better understanding and meeting the expectations of clients; and
- a shift in focus and responsibility for business development from marketing staff to the lawyers, especially partners.

In short, not only must the law firms change, but so must individual lawyers.

The first step, of course, is to identify those clients that offer the best long-term return on investment, the clients that a firm wants to retain indefinitely while continuing to expand the scope of profitable legal services that it delivers to them. There are two simple and, if supported with adequate financial data, reliable ways to identify these 'keepers'.

What does your client pyramid look like? First, consider the extent to which a client contributes to your firm's total fee revenue. There is an 80/20 rule of law firm economics that describes how the structure of a commercial law firm's client base affects its financial performance, overall profitability and business development potential. In most law firms approximately 80% of the fee revenue is produced by only approximately 20% of the clients.¹⁰ When the clients are sorted from largest to smallest, as measured by each one's fee revenue,

10 This principle was first presented by Jay Curry in *The Customer Marketing Method* (Simon & Schuster, 2000). While Curry's research was conducted primarily among businesses other than professional services firms, it also included law firms. Curry observed that: "[w]hile these companies have been wildly different in terms of size and types of businesses, their customer pyramids reflect remarkably similar patterns of customer behavior. And the ways in which all these companies interact with their customers also are remarkably similar." Client-base analyses that Walker Clark LLC has performed for its law firm clients since 2002 likewise demonstrate great similarities among law firms and validate the general 80/20 rule. There appears to be no correlation between the 80/20 rule and the size or geographic location of the firm. The phenomenon can be observed in firms of all sizes and in all legal markets. However, retail law firms and firms with high-volume commodity practices tend to have less concentration of fee revenues from a relatively small number of clients. For those firms with ratios of between 70/30 and 65/35 (ie, 70% of the fee revenue produced by 30% of the clients, or 65% of the revenue produced by 35% of the clients) frequently appear.

sometimes in the shape of a pyramid, several distinct tiers of client productivity emerge.

The top tier and second tier clients in a typical commercial law firm usually total less than 20% of the total number of clients, but together they produce approximately 80% of the fee revenue. These clients are the ones that also produce a disproportionately large share of the firm's profits. They are clients that most commercial law firms want to keep. They are also the clients that most commercial law firms need to keep in order to sustain and improve their profitability and market position. Although there might be opportunities to obtain more work from the top clients, many of them have already given to the firm all of the profitable legal work that they have available.

With future significant growth unlikely, the major direction of business development among these clients should be: (i) retaining the clients; and (ii) through consistent high-quality services, developing these usually highly satisfied clients into a secondary marketing force for the firm, as they refer the firm to potential clients with similar possibilities for highly profitable legal work.

Identifying the top clients does not end the analysis, however. An examination of the fee performance history of the clients in the middle tiers, usually the second quartile of the client base, often suggests a small number of clients with good growth potential. The primary goal of business development efforts among these clients should be to obtain more profitable legal work through vigorous cross-selling of the firm's full range of services.

Current profitability and long-term growth potential: A second reliable way for a commercial law firm to identify its best opportunities for business development is to evaluate the relative current profitability and growth potential of each major client sector or industry sector that the firm currently serves. This analysis consists of two basic questions: first, which client sectors have the relatively highest levels of current profitability? The issue is actual profitability for the law firm now, not how profitable the client sector could be in the future or how profitable it might be for other law firms. Second, what is the relative growth potential of each client sector? In other words, to what extent could your firm substantially improve its market share of the commercial legal services and products that you offer to that client sector?

As with the client pyramid, this analysis will usually highlight two types of highly desirable client.

- High profitability and low growth potential: these are sometimes called 'cash cows' and are frequently among a commercial law firm's largest clients. Although relatively profitable, there is little opportunity to develop a larger market share in these client sectors. As with the top clients in the client pyramid analysis, these clients are the targets for

intense client retention efforts through close and frequent communications, strong client relations and thoroughly outstanding service – completely meeting or exceeding the client's needs and expectations the first and every time.

- High profitability and high growth potential: clients in these sectors usually respond positively to an 'added value' approach to legal services, coupled with demonstrated abilities to integrate multidisciplinary legal teams to provide a broad range of high-value services for each client.

As the expectations of sophisticated commercial law clients continue to expand, added-value tactics will include:

- the anticipation of client needs for legal services before the client requests them;
- a broad range of ancillary and other services and products traditionally characterised as 'non-legal';
- a practical, in-depth understanding of each client's business objectives; and
- close, frequent communications between lawyers and clients.

This level of client care will not only make the switching costs to another firm unacceptably high, but it will also present a compelling case for converging as much high-value work on the firm as it is able to handle competently.

In other words, treat each client as if it were the firm's only client, and you might possibly become the client's only law firm.

2.2 Keeping retail law firms competitive

The same trend towards consolidation, through mergers, strategic alliances and affiliations with specialised networks, that will restructure much of the legal services industry over the next 15 years, will also be felt in the retail legal services markets. Retail law firms are becoming larger and more geographically dispersed in order to capitalise on broader visibility and name recognition, as well as to take advantage of assumed economies of scale made possible through more robust knowledge management systems and the introduction of advanced legal technology.

Because of the inherent nature of retail legal services – predominantly relatively uncomplicated one-time cases and transactions for individuals and small businesses – retail law firms should not expect a high return from ongoing client relations and client retention tactics. Although client pyramids and the analysis of a firm's client sectors by reference to relative profitability and growth potential, as described above, can be useful exercises that might help to identify special opportunities, they will not be major foundations of a retail law firm's strategy. Repeat engagements, although welcome, will continue to be relatively

rare, which will sharply limit the potential return on investment from business development strategies that will be so important to commercial legal services providers. The primary benefit of the relatively low levels of investment in client relations will be indirect marketing – that is, developing satisfied recent clients into referral sources, thereby improving and sustaining the visibility of the firm.

Where permitted by local bar regulations, marketing by successful retail law firms of the future will focus primarily on visibility and name recognition. The most effective marketing strategies of retail law firms will also articulate a limited number of demonstrable competitive advantages that deliver clear, relevant benefits to retail clients.

The very same communications media that currently produce only very limited benefits for commercial law firms are already becoming more important as marketing tactics for the retail firms. Most of the sophisticated consumers of legal services that go to commercial law firms will still be unlikely to be influenced by a posting on social media. However, individuals and small businesses, many of which do not have established, trusted relationships with partners in major commercial law firms, will rely even more heavily on social media to identify and at least preliminarily screen law firms that they want to consider for retail legal services and products.

The same need to provide basic information about retail legal services and providers will continue to support advertising through a variety of media ranging from commercials on television, to ads in telephone directories, to displaying a firm's name, logo and a 'drink responsibly' message on plastic beer cups sold at sporting events. These tactics are, and will continue to be, relatively worthless efforts by commercial law firms; but they will continue to be vitally important in marketing a retail law firm in the hyper-competitive environments in which most of them will operate in the future.

3. Building a marketing and business development infrastructure for the future

Clients today want performance, not slogans, from their legal services providers. The marketing message is already becoming much less important than the demonstrated ability of a law firm to deliver on those promises. Clients in both the commercial and retail subsectors of the legal services market will continue to be even more knowledgeable than they are now about the growing range of options that are available to them, and they will be even more perceptive at spotting empty promises.

Delivery, not catchy tag lines and beautiful brochures, will be what matters. A failure to deliver high quality and added value consistently will be the great sword that will cut away unsuccessful providers of legal services, regardless of whether they focus on marketing, business development or both.

We cannot predict with certainty all of the tools, techniques and tactics that will be available, nor how quickly they will become a part of everyday operations, both in the business world and in the legal profession. However, all law firms of the future, whether traditional survivors or cutting-edge alternative business structures, will need common infrastructure elements to ensure the best results at a reasonable investment of time and money, both of which will be even scarcer resources in most firms than they are today.

These five essential elements are:

- market intelligence;
- constant communication with the client;
- universal participation in marketing and business development;
- investment in skills development; and
- quality assurance.

To be sure, these are not the only aspects of an infrastructure to support business development, but they will be among the most important ones in most law firms in the future. A weakness in any of these five areas could undermine the smartest strategies and the most earnest efforts of an otherwise well-managed law firm.

3.1 Market intelligence

The role and functions of marketing departments are changing in law firms. Traditionally, marketing staff worked on the dissemination of information about the firm into the market. This role will continue in the future, especially in retail law firms; however, the law firm marketing departments will evolve into market intelligence departments, collecting information and analysing trends in the market, as well as in the client sectors that are the focal points of the firm's marketing and business development strategies.

This will be a critical component of the business development structure in commercial law firms. The dominant communication flow from law firm marketing departments will reverse. Instead of broadcasting information out into the market, the marketing staff will communicate it to the leaders and lawyers in client sector and industry sector practice teams.

Such market intelligence produces two substantial competitive advantages. First, it gives the firm's lawyers the information that they need to communicate more relevantly with clients and prospective clients. Nothing demonstrates a thorough understanding of a client's business more persuasively than being able to discuss its future challenges and opportunities fluently and in depth.

Second, the communication of market intelligence to a client, pointing out imminent opportunities and risks that the client might not have spotted yet, is an outstanding example of delivering added value. It differentiates the lawyer who is also a trusted business adviser from an ordinary legal technician.

In the future, as client expectations for legal services and products expand even further, market intelligence will be the fuel that powers successful business development. It will demonstrate that the law firm offers more than slogans.

3.2 Constant communication with the client

“I want to feel like my lawyer is always by my side, no matter when or where.” This comment by a general counsel in the telecommunications industry summarises the importance of communication as a basic component of a successful business development strategy. It applies not only to the availability and responsiveness of the lawyer who works directly with the client, but also to the entire support structure of the firm: non-lawyer fee earners, administrative staff and technological capabilities. All of these people should be walking alongside the client.

Clients today expect constant availability from their lawyers. Clients frequently say that it is one of the most important indicators of quality in the legal services that they receive. Most clients consider availability to be a decisive factor; they will not engage a law firm that fails to deliver it.¹¹ Availability is going to be even more important¹² as communications technology becomes even faster, cheaper and accessible anywhere on earth (or while flying above it).

Frequent communication with clients is the best way to demonstrate that a law firm understands client needs and expectations and, even more importantly, how those needs and expectations may be changing. By communicating often and in depth with clients, lawyers can detect the early signs of a client satisfaction problem before it erupts into a client retention crisis. Thus, constant communication with the client can also support quality assurance, another basic element of a successful marketing or business development strategy.

Responsiveness can also differentiate any law firm from its competitors, provided that the firm can consistently demonstrate this service quality.

3.3 Universal commitment

In successful law firms of the future, every lawyer – not just one or two rainmakers – will have a well-defined, accountable role in marketing and business development. The legal markets will be too competitive to permit most law firms the luxury of lawyers who do not contribute directly to attracting new clients or to retaining and expanding the relationship with existing ones.

11 In surveys administered by Walker Clark LLC for its law firm clients since 2002, “availability” – defined as “a partner is available to advise me when I need one” – has consistently ranked as one of the top five of 20 standard quality indicators, although its specific ranking in individual surveys has varied within the top five.

12 Since 2002 Walker Clark LLC has observed the average score for “availability” steadily move up among the top five quality indicators, from third place to second place, along with “responsiveness”, “committed to my success”, “understands my business” and “practical advice”.

The cult of the rainmaker, which is an anachronistic business development model left over from the early 20th century, will die out in all but the most traditional law firms. Even in the firms that cling to the rituals of the cult, the rainmaker will be largely irrelevant to the firm's survival.

Market forces will force reliance on rainmakers to become obsolete. All but the largest law firms will discover that the 'finder-minder-grinder' myth¹³ that was so popular in the late 20th century is a costly waste of human capital and prevents a law firm from achieving its full potential. In the successful law firm of the future each partner, with enhanced market intelligence, will perform all three roles. Everyone in the firm, lawyer and non-lawyer alike, will understand how he contributes to advancing the reputation of the firm, both in the market and in its client base.

3.4 Investment in skills development

There is a direct, substantial return on a law firm's investment in the development of professional and business skills in its lawyers and staff.¹⁴ Effectiveness in marketing and business development is the product of well-defined skills and behaviours, which anyone can learn. Instead of searching for rainmakers and ignoring everyone else, successful law firms of the future will focus on building these skills across the firm.

Some of these are basic sales and client relations skills. Additional skills involve areas of emotional intelligence, such as empathy.¹⁵ Every skill and behaviour that produces good business development results can be measured and improved.

Because of their different personalities, backgrounds and experience, some people feel more comfortable with some marketing and business development activities than others. The goal should be to create consistent basic marketing and business development skills at two levels: (i) individually among all partners and senior lawyers in the firm; and (ii) team support for client relationships, especially when individual strengths can be applied to different aspects of business development. This will produce much better, more

13 This model asserts that some law firm partners are natural producers of new clients and new business (the finders), some are good at client relations (the minders), and others are good only at producing large volumes of high-quality legal work (the grinders). Law firms that followed this model would usually rely almost entirely on the finders to develop business for the firm and would therefore see no need to invest in marketing and business development skills for other lawyers.

14 Analyses that Walker Clark LLC has conducted for its law firm clients, especially in the commercial law sector, have shown a direct correlation between the amount of a firm's investment in professional and business skills development and measurements including average revenue per lawyer, median value of new client origination and percentage of formal proposals resulting in engagements. Lawyers in firms that invest significantly in professional and business skills development also anecdotally report higher levels of morale and job satisfaction, and a greater level of long-term commitment to a career in the firm.

15 There is a high correlation between emotional intelligence and success in business development. Skills of emotional intelligence include, for example, transparency, self-confidence, influencing others, listening, self-awareness, flexibility, developing others, managing conflict, being a change agent, optimism, and inspiring others.

sustainable results than continuing to rely on a very small number of lawyers to bring in most of the high-value legal work. It also creates a ready structure to support the cross-selling of new products and services to current clients, something which many law firms lack today.

3.5 Quality assurance

Quality assurance systems and procedures constitute the most reliable way to ensure that a law firm can deliver on its claims and promises. There are several strong advantages that quality assurance delivers to marketing and business development strategies.

- Quality is defined by the client, in terms of specific needs and expectations. A quality assurance system includes frequent feedback from clients about their needs and expectations, as well as how completely the firm is meeting them. The fact that a law firm invests in quality assurance and asks clients about their perceptions of the firm's quality can, by itself, create a positive impression of the firm. The existence of a quality assurance system can also make clients more tolerant of occasional lapses by the law firm, because they know that the firm has a system in place to identify the causes of substandard work and to reduce the probability of future mistakes.
- Unlike quality control measures, such as proofreading,¹⁶ which correct mistakes only after they are discovered, quality assurance is a systematic method to identify and quantify the causes of errors, so that they can be prevented in the future.
- The existence of a serious, functioning quality assurance system – something more than a slogan on the website – can by itself create a differentiating competitive advantage for both commercial and retail law firms.

Notwithstanding the fundamental importance of each of these five elements, very few small and mid-size firms have ever invested the time and resources to conduct even a cursory evaluation of them; and in some firms some of these elements do not appear to exist at all. Moreover, successful quality assurance requires fundamental cultural changes that are uncomfortable for most traditional law firms. For example, the leaders of a firm with a serious, functioning quality assurance system dislike mistakes as much as anyone; but they also welcome them as information that suggests opportunities for improvements that add directly to the firm's bottom line.

¹⁶ This is not intended to suggest that proofreading is not an important procedure in law firms. However, even the most attentive proofreading is itself subject to errors and inconsistencies. Therefore, a law firm should not rely on proofreading or any other after-the-fact inspections of work product as its only quality assurance measures.

By contrast, the traditional habits, in most law firms, of covering up mistakes, shifting blame and not learning from the experience will drag down business development efforts in the more demanding legal markets of the future. A firm that relies on after-the-fact fixes, unbillable rework, damage control and witch hunts – all of which will become increasingly unprofitable in a more price-sensitive environment – will never produce any significant and sustainable improvements in client service and satisfaction.

4. Navigating in a fast-moving blurry world

As Thomas Friedman said, the world is, indeed, getting flat,¹⁷ as traditional assumptions and boundaries that used to protect the legal profession have been trampled by the conversion to a legal services industry that began at the end of the 20th century. It is also getting blurry as forces and trends emerge and move so quickly that many of us have difficulty even seeing them, much less comprehending their full impact on our professional lives as lawyers.

It is also a world that has been turned somewhat upside down for some lawyers. Even with respect to relatively simple retail legal services, the client, not the lawyer, now drives the relationship: effectively setting the price, demanding more value for money and expecting levels of personal attention unknown outside, perhaps, the medical profession.

Although we can identify some trends that could affect law firm strategy and tactics, their force and direction is hard to forecast in the complex, fast-moving environment in which all law firms, commercial and retail alike, will be asked to deliver legal services and products, in new ways, faster, less expensively, and with added-value components that only 20 years ago were almost never imagined as part of a law firm's line of business.

Because we cannot always be sure, or even bravely confident, about how innovations will continue to change the legal services industry, we need to be sure, more than ever before, that our basic strategic decisions and directions are solid ones, based on facts, not aspirations, but flexible enough to enable us to respond quickly and appropriately to change. In the blurry future world of law firm marketing and business development, the firm that cannot or will not anticipate and respond effectively to changes in client expectations and new competitive realities will find it increasingly hard to survive.

17 Friedman, Thomas L, *The World is Flat: A Brief History of the Twenty-First Century* (Farrar, Straus and Giroux, 2007).

Business Development

A Practical Handbook for Lawyers, Second Edition

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In an increasingly competitive landscape and with challenges from disrupters, the Big 4 and technology, business development has a pivotal role in law firms' strategic success and their ability to stand out from the crowd.

This second edition, edited by Stephen Revell from Freshfields Bruckhaus Deringer, revisits the theory, tools and skills needed to implement effective business development in law firms today. Content covers the practical elements – such as what the perfect pitch looks like – as well as the strategic elements, including the variety of structures and approaches to business development at law firms of all sizes.

New chapters focus on technology and digital presence, as well as key client relationship management and the importance of emotional intelligence in successful business development and client retention. Client interviews remain an important feature, and we hear from 12 general counsel on what successful business development looks like to them. Learning from these interviews is reason alone to read this book.

Business Development: A Practical Handbook for Lawyers is a one-stop shop on business development for law firms, marketing teams and lawyers in private practice. It will also be of interest to in-house lawyers, academics and professional services providers.

