

Business & Careers



Inside the new age of rainmaking

Increased competition means everyone has to bring in business

GRANT CAMERON

In the old days, lawyers would get hired at a firm then plug away until they made partner. But today, they're under increasing pressure to bring in business and build an established list of clients.

"Being able to generate clients and revenue is now the most important thing for success in a legal career moving forward," says business development coach Gary Mitchell, author of the new book, *Raindance Two: A Blueprint for Growing Your Practice*, which has been published in separate editions for small and large law firms and is aimed at helping lawyers and firms boost business.

"You can call the shots if you can bring in clients, whether you're at a small firm or you're out on your own or you're at a large firm. When you have the ability to bring in clients you've got more power."

Mitchell of Vancouver, co-founding partner of The Legal A Team, which provides marketing services to small and medium-sized law firms, says the industry has changed because of increased competition and the fact that legal information is more readily available over the Internet.

Whereas 20 years ago firms had one rainmaker, usually a partner, who brought in the business, Mitchell says that task now falls to all lawyers.

As a result, he says, lawyers must come up with ways to stir up interest in themselves and their firms, and generate revenue.

To bring in clients, Mitchell says lawyers at law firms big and small must concentrate on being seen—and heard.

"They need to have a laser-like focus on where they're networking, where they're speaking, where they're writing, making sure that they're in front of their target audience and they're communicating."

At large firms, he says, lawyers should make use of the marketing resources available and tap into the brand recognition of the firm.

Meanwhile, he says, partners at larger firms should provide lawyers with the necessary training and skills to develop business and perhaps create a compensation model that richly rewards them for bringing in work. At one firm he worked with, the managing partner created a compensation model that rewarded lawyers for their billable hours as well as their business development.

At smaller firms, he says, founders are usually more entrepreneurial by nature, so they often aren't afraid to go out and get the work themselves. However, he believes founders could increase business if they encouraged everybody on staff to try to bring in clients.

"These smaller firms would be well advised to engage their law clerks in business development because it's another business stream. It's not just the lawyers. It's basically anyone who has client contact. It's a win-win. Instead of one rainmaker at the top you have your entire team out there."

Steven Benmor, principal lawyer at Benmor Family Law Group, a smaller law firm in Toronto, says competition has increased dramatically, and lawyers at small firms must be accessible and know their target audience if they hope to bring in more clients.

"When I graduated law school in 1992, people didn't

say to me, 'By the way, you're not just a professional, you're also a business.' Now, we recognize that we are in the business of providing professional services in the private marketplace."

Years ago, lawyers used to get business based on their reputation, and then lawyers began speaking at conferences, writing books and marketing themselves, says Benmor. Firms now are getting everybody involved in bringing in business, including junior partners and articling students.

He says lawyers at small firms have to differentiate themselves and make themselves a source of information via postings and blogs on websites, through speaking engagements or being quoted in articles.

Benmor also suggests that lawyers become more client-centric and determine who they want as clients then go after that demographic.

For example, he says, lawyers may bill themselves as experts in family law. But it's a big area and they should figure out if they want to represent couples with no children who divorce or deal with more complicated breakups that might involve couples with four kids, significant assets and a family business or trust.

"Am I going after the 26-year-old that was married for one year and wants to split up or am I going after the business owner who has very complicated financial assets?"

Chris Rusnak, partner at Harper Grey in Vancouver, a firm with more than 50 lawyers, says associates at larger firms should concentrate on building relationships by listening to clients' needs and taking steps to meet them.

Market, Page 21

Business & Careers

Looking through the corporate veil



Vern Krishna
Tax Views

Corporations are, for most purposes, separate entities for legal and tax purposes. Shareholders are not generally personally liable for the corporation's debts, unless they have guaranteed them. Similarly, for tax purposes, a corporation is a taxpayer in its own right and liable for its taxes. These simple but longstanding concepts are the foundation for most corporate tax planning. For example, a Canadian corporation can create multiple subsidiaries in order to take advantage of lower tax rates in different countries and special tax rates that apply to certain forms of income. Ireland, for example, has a corporate tax rate of only 12.5 per cent compared to approximately 25 per cent in Canada. This differential makes it attractive to place intellectual property subsidiaries in Ireland, which also provides access to the European Union.

There are circumstances, however, where the common law and statutes disregard the separate legal existence of corporations to reach through the entity to its individual members or shareholders and consider a parent corporation and its subsidiary to be a single entity. In such circumstances, economic ownership prevails over legal ownership. The difficulty is in predicting when it will happen.

It is not always easy to identify the circumstances in which courts will pierce the corporate veil at common law. The most common reason for ignoring corporate personality is if the entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime. As Lord Denning said in *Littlewoods*: "The doctrine laid down in *Salomon* has to

“

It is not always easy to identify the circumstances in which courts will pierce the corporate veil at common law. The most common reason for ignoring corporate personality is if the entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime.

Vern Krishna
University of Ottawa

be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the courts cannot see. But that is not true. The courts can and often do draw aside the veil. They can, and often do pull off the mask. They look to see what really lies behind. The legislature has shown the way with group accounts and the rest. And the courts should follow suit."

In piercing the corporate mask, courts will look to see who actually controls the business that seeks enterprise immunity. For example, in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* [1996] O.J. No. 1568: "...[T]he courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct. The first element, 'complete control,' requires more than ownership. It must be shown that there is complete domination and that the subsidiary company does not, in fact, function independently...The second element relates

to the nature of the conduct: is there 'conduct akin to fraud that would otherwise unjustly deprive claimants of their rights?'"

Similarly, in *Gregorio v. Intrans-Corp.* [1994] O.J. No. 1063: "Generally, a subsidiary, even a wholly-owned subsidiary, will not be found to be the alter ego of its parent unless the subsidiary is under the complete control of the parent and is nothing more than a conduit used by the parent to avoid liability. The alter ego principle is applied to prevent conduct akin to fraud that would otherwise unjustly deprive claimants of their rights."

These principles apply equally in tax law. There is no separate common law doctrine for piercing the veil in tax cases. The general corporate law applies.

However, merely because a court lifts a corporation's veil for a particular purpose does not imply that one can ignore its separate legal personality for all other purposes. One lifts the veil only for the specific purpose of the litigated issue and not for other purposes. For example, lifting a corporation's veil for tax purposes does not imply that its shareholders become personally liable for its debts. The corporation's separate personality remains intact for other purposes, including that of limiting the liability of its shareholders for non-tax corporate debts.

In addition to common law piercing, legislatures also forge, to borrow Lord Devlin's phrase, sledgehammers capable of cracking open the corporate shell. Legislatures are less reticent about piercing than the courts. A bureaucrat with a sharp pencil will willingly set aside the separate entity concept to extend the reach of corporate taxation. Thus, the *Income Tax Act*, more than any other statute, pierces corporations to tax shareholders in their personal capacity, and often treats affiliated corporations as if they were a single entity.

For example, subject to some exceptions, section 227.1 of the act makes the directors of a corporation jointly and severally personally liable for certain taxes (source deductions on employee payroll, non-resident withholding tax, CPP and EI deductions) if the corporation fails to deduct, withhold, remit or pay them to the Crown as they are due. This rule

applies to *de facto* directors even if they have not been legally appointed as such. However, they are entitled to put forward a "due diligence" defence.

Although directors are not usually liable for unpaid corporate taxes, they may become liable if they receive dividends from the company when it owes taxes. To their surprise, their liability can arise many years later as the result of the minister retroactively reassessing the corporation. This rule applies even if the directors had no intention at the time of defeating the corporation's tax debts, but only became aware of the debt several years later as a consequence of the reassessment.

Similarly, the minister of national revenue has discretionary power to deem two or more corporations to be associated with each other and treat them as a single entity if he or she considers that one of the main reasons for their separate existence is to reduce taxes that would otherwise be payable. The associated corporations are, in effect, treated as one corporation for the purpose of certain tax deductions and credits, such as the small business deduction.

Since tax savings usually lurk in the background of most commercial arrangements, it is important to focus on the underlying business purpose of the particular arrangement or structure. In *Hughes Homes v. Canada* [1997] T.C.J. No. 1003, for example, the subsection did not apply to associate two companies owned by a married couple, where the wife used one company to run a decorating business separate from her husband's construction business company, which he created for the purposes of protecting his assets.

The separate corporate entity concept is the foundation for business, tax, and estate planning. The doctrine generally insulates shareholders from personal liability for corporate debts and allows for the creation of corporate capital. There are limits to the doctrine, however, and lawyers (and others who illegally practice corporate law) should take care not to overstep the bounds of the doctrine, the lines of demarcation of which can be blurred.

Vern Krishna, CM, QC, University of Ottawa Law School and Of Counsel, TaxChambers LLP. Vern.Krishna@TaxChambers.ca

Market: 'Every client is a little different'

Continued from page 20

"Sometimes you're so focused on the work and so focused on getting the job done and getting what senior lawyers at the firm want you to get done that you lose a little bit of focus."

He says lawyers at larger firms can no longer just practise and be content.

"To have your own clients and a strong client base is the best currency to advance your career, to make partner and become a successful partner."

When it comes to ways of attracting more business, firms are running the gamut, he says. Some have turned to social media while others have engaged media consultants to raise their profiles.

Rusnak says Harper Grey offers in-house seminars as well as lunch-and-learns where a lawyer goes to the client's workplace.

"It's about relationships, just listening to your clients and figuring out what they like. You have to keep them happy

and understand what their needs and interests are."

Rusnak notes that some clients prefer to have discussions during a game of golf instead of attending a seminar.

"Certainly, every peg isn't square. Every client is a little different and every client has different things that they want and need and you just have to listen and be cognizant of that."

Rusnak suggests that lawyers at larger firms target practice areas they're interested in, then get to know people in that field.

"You may put yourself in social situations where the opportunity for discussion around work could arise."

But he cautions against being too pushy.

"A social situation isn't really the time to hit somebody up for work. Rather, it's an opportunity to identify an individual who is an opportunity for work and develop a relationship with the person because you like them and then make contact with them at some other point."

INTERESTED IN A CAREER ?

NOW HIRING JUNIOR LAWYERS

with 1-3 years of experience in the regions of
Toronto - Brampton - Mississauga - Sudbury

Interested and qualified applicants please
send your resume in confidence to
liana@diamondlaw.ca

DIAMOND
& DIAMOND

PERSONAL INJURY LAWYERS

diamondlaw.ca NOW SERVING ALL OF ONTARIO

1-800-567-HURT

TRUST THE NAME YOU KNOW