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## Back to basics

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### Feature

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Lawyers who work in big firms receive a lot of administrative support. There are entire departments devoted to handling the very basics of conducting business: hiring and firing, billing, collections, paying rent, ordering supplies, not to mention courier and catering services. With all of the basics covered, each lawyer is free to do what is expected of him or her: bring in clients and earn money. The problem with this big-firm model is that when lawyers want to practise on their own or within a small firm or company, they quickly discover their knowledge of how to run a business is as limited as their experience in ordering paperclips — that is, very little.



There are some things everybody should know about getting a business off the ground and keeping it there. There are balance sheets to read, services to bundle, domain names to purchase, money to collect, leases to negotiate, and retirement to consider. In addition, lawyers have to familiarize themselves with the many law society requirements, especially how to deal with and account for trust funds. So who is responsible for teaching future lawyers basic business and accounting skills? Is it law school, bar school, law firms, no one, or everyone?

Without knowing the fundamentals of running a business, particularly lawyers on their own or in small practices can run into all kinds of serious trouble. They borrow too much money or don't properly account for their clients' money. They don't budget for the inevitable surprises, such as a big client going elsewhere or a leaky roof. Then the tax bill arrives and law society fees have to be paid, along with rent, parking, and car bills. And soon enough, the professional is overwhelmed and may be tempted to accept cases outside of his or her expertise or "borrow" trust money to pay his or her own bills.

Kristin Dangerfield is senior general counsel for the Law Society of Manitoba and has worked as a prosecutor there since 1998. "Law is a stressful business and there are a lot of demands. There are the demands of the law society to meet its requirements, the demands of clients or opposing counsel or the court. Sometimes something has to go and lawyers are not staying on top of things."

Dan Pinnington, director of practicePRO — which “helps lawyers take proactive steps to avoid legal malpractice claims and shows them how to grow a successful and thriving law practice” — says all lawyers should have a basic understanding of practice finances, management issues (managing, marketing, and technology), and know how to handle retainers. They should also know how to deal with clients, particularly in regards to the expectations and collection of fees and other accounting issues that are part of a law practice. “Lawyers who make quick transitions — to a new area of law or into private practice after being in-house, for example — without sufficient preparation have greater exposure to claims.”

William Trudell, a sole practitioner and chairman of the Canadian Council of Criminal Defence Lawyers, has seen a lot of troubled lawyers over the years. A criminal lawyer for the better part of 40 years, Trudell now spends 90 per cent of his time representing lawyers who need help. He says practitioners can get into trouble quickly (clients complaining to the law society) or it can happen over time, where mistakes and debts are compounded and sometimes addictions begin or are triggered by the difficulties. Dangerfield agrees. “When someone is in financial trouble, often it is only one part of the puzzle. They may have marriage or addiction issues or they may have a marginal practice or too many financial commitments. They may not honour their statutory remittances or have problems with taxes, and before they know it, they are behind the eight ball and it is very difficult to bring themselves back.”

The reason most lawyers run into problems, says Trudell, is improper bookkeeping. “I don’t mean stealing money or even borrowing it, simply not accounting for it.” In Dangerfield’s experience, the first sign of trouble for a lawyer, and the subject of the majority of complaints to the Manitoba law society, is his or her failure to respond to the client, either by ignoring phone calls or not providing updates on the status of their cases. “Sometimes lawyers reach a point where they are not engaged in their practice any longer, so they aren’t able to deal with matters in a timely fashion.”

Kenneth Atlas lectures at McGill University and is a partner at Borden Ladner Gervais LLP specializing in lending and bankruptcy and insolvency law. He says lawyers can get into financial trouble by trying to keep up with the Joneses, but not in the way most people would expect. Lawyers get into financial difficulty not by keeping up with competing law firms or their fellow lawyers, but often by trying to maintain the same lifestyle as their clients. “It is less that the lawyers want to keep up with their clients and more ‘this is my peer group. I have to have the same kind of stuff as they do.’ However, often lawyers don’t have the same kind of income as their wealthy entrepreneurial or investment banker clients with money to spend. I have seen that a

lot.”

Both Trudell and Dangerfield say when lawyers do find themselves overwhelmed by their practice, they have enormous difficulty asking for help. In fact, by the time Trudell’s lawyer-clients arrive at his office, they are exhausted, exasperated, and require a lot more than legal advice. “I wish I had shares in Kleenex because when you break down a lawyer’s wall, one that was built up because of shame and all the rest of it, their tears are pretty important and honest.” He sends the vast majority of his lawyer-clients for therapy. “They are emotionally depressed or they see their lives collapsing. In some cases, they have been carrying on for so long without admitting that things are unravelling and they need help. When the collapse happens, the main reaction of most lawyers is relief.” He adds: “In this profession, we are afraid to fail. We have large egos. We are supposed to be problem solvers. And yet not many of us learn how to run a business . . . when we move out into the world, we are not equipped.” That’s a point reiterated by Dangerfield, “Everybody who is called to the bar has to have a basic understanding of accounting rules and how to handle trust funds.”

Since lawyers practise in a wide variety of areas, not only in big firms, who should be responsible for teaching these basic business skills? Daniel Jutras, dean of the Faculty of Law at McGill University, acknowledges that universities have a fundamental role to play in preparing students for life in the business world. “It is frequently expressed that students graduate from law school without a basic understanding of financial information, commercial organizations, legal persons or institutions,” says Jutras. “Most don’t know how decisions are made in large or small organizations. They don’t know how to navigate complex institutions or how to listen to what is being said. If you can’t understand your own financial statements, how can you understand your client’s financial statements? I think it is fair to say that these kinds of things are not currently within the soft conception of most law schools.” Although many law students volunteer at a legal clinic or spend a semester working in the field, real-world experiences are not required to graduate. This means it is possible that students never learn how to competently deal with the public or even how to write a cheque or balance a budget.

Mayo Moran, dean of the University of Toronto’s Faculty of Law, does not believe law school is the best place to teach future lawyers the basics of business. “What you need to know about running a business in a large firm or in a small firm is different than if you work in a public organization or a private organization. Our graduates go everywhere so we offer them many options [in university], but not every student who graduates knows how to run a law practice or a business.” Moran believes because students go on to work in so many different areas of law, it is impossible to teach them one set of business basics. “If you go and work in a large firm, the business plan will be

different than if you are a solo practitioner. I think these things are really important but it seems to me that ongoing legal education or the law society or the profession itself has a critical role to play, rather than the law schools.” Jutras sees more commonality within the legal profession. “People tend to imagine that these kinds of basic skills only relate to a commercial law practice. That is inaccurate. It is absolutely fundamental to understand organizational behaviour if you’re going to work for an NGO or within public service or if you work for any large institution, including a university.”

Interestingly, U of T’s law school will offer a new LLM program this fall that combines business and law, aimed mostly at lawyers who have practised for a few years and want additional business and legal training. However, Moran does not envisage a time when these kinds of business and law courses — or real-life training, such as volunteering at a legal clinic — will be mandatory for law undergraduates.

Trudell says law schools have a role to play. “Before people step out of law school, they need to be taught how to run a business. And let’s not be afraid to call it a business. Criminal justice is a business. We have a court. We have police officers and judges and secretaries and transcripts and buildings. It’s a business.”

However, bankruptcy expert Atlas believes business basics should be taught long before law school. “[These lessons] should absolutely be taught in late elementary school, maybe high school, where students would learn how to manage their money and their life . . . how interest works, how credit cards work. This is not a law course, it is a how-to-live-in-our-society course.”

Jutras agrees with this point. He strongly believes his students must learn the basic skills of human interaction, including how to answer a phone and how to listen to people. “They must learn empathy, how to ask the right questions, how to see the world from [someone else’s] eyes, try to identify their aspirations. . . . These are crucial and fundamental dimensions to training competent, ethical, responsible professionals, and we are responsible for that. We have to start right from the beginning.” Practising lawyers know that much of their work involves personal interaction and there is no practical course on “humans” in law school. “You have to make students realize very early on in their education that this is an aspect of their education that cannot be avoided,” says Jutras. “They need to listen to other people and be responsive to their needs. These things are not found in the Civil Code.”

While Trudell agrees that law schools could do a better job of teaching students the basics, he also believes law societies should play a bigger role. “Lawyers should be told in law school that they need a mentor. They need to know what a balance sheet looks

like. They need to know the reality of earning a living. There's a learning curve and we don't do a good job in this profession of teaching it. I don't think the legal profession does a very good job of treating its lawyers like human beings, with human problems." Part of the reason for this, he says, is because law societies are responsible for regulating and disciplining the profession, not guiding and mentoring lawyers.

Not surprisingly, Dangerfield disagrees on this point. "I am a prosecutor, so I look at the world through a certain lens, but I also recognize the significant amount of work our law society does in helping lawyers maintain competence, continue their professional development, and obtain specialized training. Our auditors are very capable and prepared and willing to assist members when they set up a new practice or at any point in a member's practice." Jutras has a similar point of view. "Local law societies will tell you they are very active in helping those who make the choice to go on their own or work in small groups. They provide them with the tools to do so responsibly and ethically. They provide very effective post-call training."

What role do law firms have to play in teaching the basics? "There are some basic practice-management skills that should be taught to students in the bar admission program," says Dangerfield. In Manitoba, "we provide an overview in terms of what is expected of them. It is a fairly comprehensive lecture. And with this foundation, probably the best place for them to learn some of the skills you're describing would be within the firm environment."

As one would expect, young people who choose work over university learn business and real-life skills much faster than students do. This would be less of a problem for lawyers if someone, somewhere along the way, would assume the responsibility of training them to be solid, knowledgeable business people, instead of future big-firm lawyers.

Says Trudell: "The person who dug the ditch and put the bricks onto the building you work in may be the same age as you are, but they are learning life skills that are postponed — and sometimes never learned — by lawyers."

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