

Attracting, Advising and Serving Small Business Clients and Corporations

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Law and Practice Update

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**ATTRACTING, ADVISING AND SERVING SMALL BUSINESS CLIENTS
AND CORPORATIONS**

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A. INTRODUCTION

Small owner-operated businesses are the backbone of a healthy economy. While most small businesses do not have the budget to afford the same type of legal representation that large corporations do, they still have to deal with many of the same complex legal issues. Additionally, many small businesses are family-owned enterprises which have their own unique challenges.

Most small businesses are not served by corporate legal specialists. More often than not they will retain the services of a general practitioner who in addition to basic business law provides real estate conveyancing services, wills and estates, family law and general litigation.

The timeworn process would be for the lawyer to explain the law and the risks associated with the client's business plans. The lawyer would then explain the legal documents required to achieve the desired result and proceed to prepare them. With respect to legal fees, the standard advice would be that the fee would be difficult to determine as it is influenced by many circumstances including the complexity of the issues involved, the reasonableness of the parties and their lawyers, the problems that might be discovered during the due diligence process and the time required to deal with those issues. At best the lawyer might provide the client with a non-binding estimate of the fees involved based on the lawyer's hourly rate. The client would normally be put in a position where the client would have to retain the lawyer without knowing how much the legal services would cost or how long the lawyer would take to complete the matter. Most clients' experiences are that working with lawyers is inconvenient, slow, overly complicated and too expensive. As legal and business environments have gotten more complex this business model has become untenable.

Business clients have never needed lawyers "more" but have "less" money to deal work with. Business clients do not have an unlimited budget to spend on legal services. They want to control their legal expenses just like any other business cost. Some larger businesses are able to control legal costs by hiring either a part-time in-house lawyer or a full time paralegal to deal with routine matters such as incorporations, corporate maintenance, contract administration, contract drafting and government filings. Others rely on their accountants or other non-lawyers to document and advise them with respect to important business contracts and transactions. Now with the internet

legal information and documents are widely available online for free or at a nominal cost and online legal document providers have followed up on their success in servicing the consumer market for legal documents by providing basic legal documents and services to business clients. Increasingly smaller business clients are retaining lawyers at the end of the transaction to “close” or put the lawyer’s “seal of approval” on a deal that has been put together by non-lawyers or the parties themselves. At this late stage though lawyers can do little to impact the final outcome of the transaction but are exposed to significant liability should something go wrong.

The response of the legal profession has been to adopt an “efficiency based” strategy to lower the cost of legal services while improving law firm profitability.¹ In recent years the focus for small firms has been on using technology to increase efficiency and bring down the cost of legal services. A significant amount of literature, time and money has been spent on topics such as alternative fee arrangements, automated document assembly, paperless offices, virtual law offices, secure client portals and cloud-based document storage and practice management solutions.

The response is due in large part to the belief that the delivery of legal services is being commoditized by online technologies. Beyond consumer legal documents such as wills, standard business agreements are readily available online at a fraction of what it would cost a lawyer to prepare. It is not stopping there. Given the amount of boilerplate and standard documentation that goes into every commercial transaction these days, the next step would be to commoditize entire commercial transactions.² We are starting to see a few online document providers going down that road.³

The challenge is whether lawyers are able to adapt to this changing environment. Some commentators have said it might already be too late.⁴

B. ATTRACTING SMALL BUSINESS CLIENTS

The Firm's Value Proposition

A law firm’s value proposition is simply a statement that explains the benefit the firm provides to its clients and how the firm goes about delivering that value to its clients.

¹ See Richard Susskind, Tomorrow's Lawyers: An Introduction to Your Future 2012.

² Profusek, R.A and Ganske, L. G., “*It's Time To Rethink the Lawyer's Role in Dealmaking*” *Start By Facing Up To The New Realities, The Metropolitan Corporate Counsel*, December 1, 2007

³ See www.shakelaw.com and www.venturedocs.com as early examples of this trend.

⁴ See Richard Susskind, The End of Lawyers? Rethinking the Nature of Legal Services 2010.