

**LEGAL SERVICES FIRM BRANDING:
ANALYSIS OF A MARKETING STRATEGY IN THE CANADIAN MARKETPLACE**

by

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BBA, Simon Fraser University, 1993

PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
Master of Business Administration

in the Faculty

of

Business Administration

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SIMON FRASER UNIVERSITY
August 2003

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LEGAL SERVICES FIRM BRANDING: ANALYSIS OF A MARKETING STRATEGY IN THE CANADIAN MARKETPLACE

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ABSTRACT

The purpose of this analysis is to explore the legal services industry in Canada in order to determine its future competitive landscape. Coupled within this examination is an in-depth analysis of the various marketing tactics and strategies that are currently available for law firms to achieve differentiation of their respective service offerings. More specifically, the paper will focus on the role of branding within the legal services environment, ultimately determining the viability and value of applying a comprehensive branding strategy to an individual law firm. The analysis will conclude with practical insights and recommendations into how Canadian law firms should be marketed and positioned moving forward within the context of the existing and future legal services industry.

DEDICATION

This project is dedicated to my son Parker, for whom I sacrificed far too much time over the past two years in order to complete both the EMBA course work and this project. His patience, understanding and acceptance of my limited time with and for him, certainly belied his age. While I cannot make up the time I missed with him, I certainly appreciated much more greatly the time that I did manage to spend with him and I look greatly forward to making him more of a priority in my life moving forward. Throughout the program, he served to both motivate and inspire me and his wit and humour provided on many occasions, a welcomed interruption to my studies and this project.

ACKNOWLEDGMENTS

Firstly, I would like to acknowledge the support of my wife Cari over the past two years. She has remained steadfastly dedicated to my completion of both the degree and this project and as such should be considered an integral component of my success in the EMBA program.

I would like also acknowledge the support of my cohort team , '*Ask the 8-Ball*'. Michel Benoit, Steve Ciccone & Chuck We all played a significant role in my enjoyment of the program and their insights and camaraderie certainly made the experience that much more enjoyable

I would also like to acknowledge the support of my employer Bull, Housser & Tupper for its support of this project. The insights of the respective legal and administration teams all contributed to the completion of this project and for this I am eternally grateful.

Lastly, I would like to acknowledge the work of Burkey Belser of Greenfield/Belser and Mark Greene of the Brand Research Company. As pioneers in the field of legal marketing and branding, their publications and insights served as great resources for this project.

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1 INTRODUCTION TO THE LEGAL SERVICES INDUSTRY IN CANADA

The objective of this paper is to explore and ultimately determine the viability of applying a strategic branding program to a legal services provider practicing in the Canadian marketplace. In order to complete an effective analysis of the branding strategy, it is imperative to first explore the industry itself, determining the structure, the pressures and trends occurring now and potentially in the future, the role and behaviours of the buyers of legal services and ultimately the theoretical underpinning behind differentiation, positioning and branding theory. From there, the goal is apply the branding strategy principles to a typical legal services provider in order to determine the potential for success of such an initiative.

“Consolidation” is the single best word to describe the recent activity in the Canadian legal services industry. Through the early 1990’s and into the new millennia, Canada’s legal services market has been characterized by a series of mergers, break-ups, office relocations and lateral hirings, ample evidence that the industry is redefining itself in search of a configuration that will produce a more profitable bottom line. To illustrate this trend, in the fall of 2001, Gowling Lafleur Henderson, merged with Smith Lyons to create Canada’s second largest firm. The Smith Lyons union marked Gowlings’ fifth merger in two years (Nicholson, 2002). While this flurry of activity would normally suggest future market and economic uncertainty, in reality, most Canadian law firms are reasonably comfortable with the medium to long-term prospects. This is due primarily to the fact that within their own domestic market, while there has been a flurry of competitive activities, Canadian legal service firms are reasonably insulated from the threat of competition from international firms. While some US and other international firms do have satellite offices in some Canadian cities, they are not currently perceived to pose a serious threat to the domestic firms.

Most Canadian law firms are either riding out the recent economic downturn or are continuing to perform well above the market averages. While their US counterparts have faced

pronouncements of large-scale lay-offs, opportunistic Canadian firms are capitalizing on the surplus of talented associates with solid US client contacts. Despite the fact that the volume of transactions has slowed, for the most part, most Canadian law firms claim to be busy. In the short term, the legal business sectors that have shown the most potential of late include elder care issues, debt market financings, , private equity work and insolvency and restructuring, the latter a result of the recent technology market crash. The September 11th factor does not appear to have had any long-term negative impacts on the market, rather if anything, it seems to have shaken up those firms who were suffering from a partially self-imposed deal-making paralysis. (Nicholson, 2002)

Canadian law firms are however, not resting easy irrespective of a modestly robust environment and seeming lack of external competition. The expectation is that there will continue to be substantial consolidation of firms within the domestic market. As well, the continued shift of head office activity to the US should be correctly interpreted as a signal of the potential for a declining legal economy, which will undoubtedly cause a shift in some firms' strategic plans. While some firms are actively seeking to establish a truly national presence, others are seeking entrenchment in the US market, while still others remain comfortable with their independent, regional or niche practice focus. A strategic focus on the US legal market would appear to possess considerable lustre, since trade between the two countries is currently in excess of \$475 billion and expected to continue to grow. (Nicholson, 2002)

While on a macro level, merger-mania continues to dominate the industry newswires, Canadian law firms are also undergoing micro (internal) transformations in search of a more effective business model. For the most part, legal services firms have been traditionally slower to change and adapt to shifting market conditions than the rest of the corporate world and are only now realizing that they must discover new methods of managing their business' in order to compete more effectively. Much of this evolution is client-driven, whereby firms are developing

new niches and services to match client expectations. As the clients' business models evolve, they (the clients) are demanding that their legal services evolve with them. As a result, firms have only recently begun to explore and exhibit more entrepreneurial behaviours, including the development of multidisciplinary practices that encompass professional business services that extend into accounting, public relations, government relations and other forms of business counselling. These strategic alliances with non-legal firms are also becoming more prevalent as firms begin to market themselves as professional, multi-disciplinary problem-solvers rather than simply just providers of legal services.

Firms are also making considerable investments in personal computing and communication technology in an effort to make themselves and their firms that much more effective and efficient. Technological advances such as voice recognition software that allows lawyers to dictate and edit legal briefs and other correspondence on the fly are becoming more the norm than the exception. The use of enhanced electronic communications devices and vehicles including firm intranets and client extranets, knowledge management initiatives and customer relationship management (CRM) systems is also on the rise. Moving forward, it's becoming increasingly evident that the 'traditional' legal services model is being replaced with one that resembles a more traditional model of business, which is client focused and marketing driven. Given this transition, over the medium to long term the expectation should be that even the firms of the 1990's might eventually be relegated as a footnote in legal services history.

In applying analysis to the Canadian legal services industry, the objective is to both quantify and qualify those factors and driving forces that shape among other things, its physical structure, economic outcomes, corporate governance and business strategies. In order to accomplish this analysis, the competitive dynamics of the industry have been explored using Michael Porter's "Five Forces" Model. (Thompson & Strickland, 2001, pp. 80-93) In addition, the competitive positioning of the industry competitors is also surveyed, noting such

characteristics as the industry size, the geographic scope and the physical industry structure. Lastly, the strategic focus of the market leaders will also be explored and determined given the expectation that these leading firms will ultimately have the greatest impact on the industry as a whole and have the greatest influence on any future structural or strategic changes.

1.1 Industry Definition

The Canadian legal services industry provides professional legal advice, services and representation to a wide variety of both commercial and non-commercial clients. In its purest definition, and for the purposes of this paper, the industry includes lawyers, judges, notaries, paralegals, support staff and others who supply special legal-related service offerings to the buyers of legal services. These buyers include individuals, corporate and governmental clients, as well as the various levels of courts and legal systems. As such, defining the legal services industry in Canada, given the range of practice areas, firm types and other permutations and segmentations of providers renders it a somewhat arduous task. Therefore, as a result, the scope of this paper is both generally and deliberately limited to full-service law firms and lawyers that offer comprehensive legal services within the corporate law practice in the Canadian marketplace. To be considered full-service, these firms are expected to possess both depth and breadth of practice areas coupled with a lawyer complement in excess of fifty lawyers. Note that the terms 'lawyer', 'provider', 'legal service provider', 'law firm' and 'legal services firm' are used in the same context and assumed to convey the identical offering. This is done simply to avoid redundancies and to enhance readability.

1.2 Industry Structure

As noted, the scope of this paper is generally and deliberately limited to full-service law firms and lawyers that offer comprehensive legal services within the corporate law practice in the Canadian marketplace. Hence this definition will be used to guide the analysis of the industry structure. Despite the fact that individual providers and firms of 10 or less lawyers are the

dominant practice model in Canada, they (the small firms) are not considered to operate in the same competitive space as the full-service firms and therefore, their individual strategies or competitive market responses generally do affect the strategies of the full-service firms. In addition, introducing the small firms and individual providers into the competitive mix introduces issues of scale and scope, which create almost diametrically opposing analyses. That said, the scope and scale issues that arise in the analysis of the industry competitive forces certainly add a measure of relativity that is worthy of recognition. Therefore, based on the above qualifications, and in general, the Canadian legal services industry is comprised of a multitude of firms as classified by the following categories:

1.2.1 International Firms

International firms exist as multinational legal services firms that have established physical offices to serve either single or multiple markets within the context of a single country. International firms are generally formed in pursuit of the opportunities created by the globalization of the financial markets especially in the areas of mergers and acquisitions and in capital-market transactions. In order to ensure jurisdictional compliance and integrated service for their respective clients, international firms seek to establish a presence (physical office space and staff) within the financial centres of the major developed countries. Within the Canadian marketplace, there currently exist only a handful of international firms including among others, Baker & McKenzie and Sorsey & Whitney. These firms maintain satellite offices in Toronto in order to maintain the requisite close connections to the Canadian financial markets.

To illustrate the relative importance of the international markets to the mergers and acquisitions practices of the Canadian legal services industry, in the first three quarters of 2002, 315 of the 661 announced transactions involved international or US-based firms. The 1994 NAFTA agreement has also given rise to a major inter-dependency on the US market. Exports to the US now comprise 84% of Canada's international trade, while imports from the US constitute

77% of all imports into the country. Lastly, every Canadian province with the exception of two in Atlantic Canada, do more extensive trade with the US than with the rest of Canada. Moving forward, firms must be clearly cognizant of both the opportunities and threats that correspond with that level of reliance on a single international economy. (Lexpert, 2003, pp.14-15)

1.2.2 Full Service National Firms

The major legal services markets in Canada include Montreal, Toronto, Ottawa, Calgary and Vancouver. As such, to be accredited as a truly 'national' firm, a firm must have a physical presence in each of the major markets. In all, there exist only seven firms that fit this designation. This list includes McCarthy Tétrault, Gowling Lafleur Henderson, Borden Ladner Gervais, Fraser Milner Casgrain, Blake Cassels & Graydon, Stikeman Elliott, and Heenan Blaikie. In total, in the seven national firms employ approximately 2895 lawyers, comprising roughly 3.5% of the total contingency of Canadian lawyers. These national firms are generally the result of the mergers between firms and large-scale acquisitions of talent that have taken place over the past five years. (Lexpert, 2003, pp.40 -41) (Industry Canada, 2002)

1.2.3 Full-Service Regional Firms

Regional firms are defined as those firms with a single office or a concentration of offices within a defined geographical area. Within the Canadian marketplace, the geographical regions are generally accepted as the West (BC, Alberta, Saskatchewan, Winnipeg), Upper Canada (Ontario), Lower Canada (Quebec), the Maritimes (Prince Edward Island, Nova Scotia, New Brunswick, Newfoundland) and the North (the Yukon, the Northwest Territories and Nunavut). Note again, that to achieve the 'full service' designation, a firm must provide legal services comprising a broad base of specialized practice areas and in excess of fifty lawyers. Within each major regional market in Canada, there exists anywhere between two and ten full-service firms. Population base and proximity to corporate or governmental offices generally play a significant role in regional firm concentration. As noted, over the past few years the tier-one

firms (firms generally recognized as being among the industry's elite) within the regional markets have become merger targets for the national firms seeking to broaden their coverage through an efficient entrée (brownfield strategy) into a respective market.

1.2.4 Specialized Niche Firms

Niche firms are those that restrict their practice area focuses to a single area of legal expertise. This expertise can be in litigation, patent or trademark law, healthcare law or virtually any area of practice whereby the firm can profitably serve the market. Most niche firms contain anywhere from 3 to 50 lawyers. For example, in the Vancouver market, Thorsteinssons, a legal services firm containing approximately 40 lawyers is generally recognized as the dominant niche firm within the tax law practice area.

1.2.5 Sole Practitioners

As noted, lawyers acting as sole practitioners make up the majority of Canadian legal service providers. In 2002, there were approximately 11,700 legal services providers practicing as sole practitioners. This represents approximately 14% of the total lawyers registered in Canada. (Industry Canada, 2002)

In all, the Canadian legal services industry is not only undergoing a fundamental shift in terms of individual firm and overall industry structure, but is also facing a variety of economic and practice pressures that are forcing it to respond in a relatively short timeframe. In order to better comprehend the magnitude of the industry shifts and pressures it becomes imperative to have a clear understanding of the industry economic characteristics. These are detailed in the following chapter.

2 INDUSTRY ECONOMIC CHARACTERISTICS

Accurately quantifying the economic characteristics of the Canadian legal services industry has proven to be a relatively challenging task. Firstly, law firms and individual providers are for the most part structured as private partnerships. This leaves economic data virtually unavailable for public scrutiny rendering it impossible to make meaningful firm-to-firm or region-to-region comparisons. Secondly, the fact that there is not a national, overarching entity responsible for all lawyers and all legal services firms in Canada only serves to add to the challenge. In short, the multi-jurisdictional nature of the industry leaves it somewhat fragmented nationally, with each province haphazardly (at times) measuring and reporting on their respective internal legal services industries.

2.1 Industry Size

Noting the quantification challenges posed earlier, there exists only one entity with a reasonably accurate reporting system upon which to determine some basic trends, this entity being the Federation of Law Societies of Canada (FLSC). The laws, rules and regulations of the respective provincial Law Society of which every lawyer is a member, govern the legal profession in Canada. The FLSC exists as the umbrella organizing body for the 14 law societies in Canada, one for each of the 10 provinces and one for each of the 3 territories. The province of Quebec has 2 law societies, thereby respecting the French civil law tradition that governs the province. One society governs the notarial profession and the other governs the lawyers. Each law society is established by statute of the legislative assembly of its province or territory. (FLSC, 2003) Annually, the FLSC tracks its national membership as reported by each of the independent provincial counterparts. Thus, in an attempt to quantify the industry in order to develop reasonably accurate trending information, the FLSC data was collated and as a key indicator, membership increases and/or decreases in the Society was used as the quantifiable measuring “stick”.

Using this data, as is detailed by membership enrolment in *Figure 1*, it is clearly evident that the legal services industry in Canada has enjoyed steady growth in the sixteen years between 1985 and 2001. Over this time period, aggregate enrolment in the respective provincial Law Societies has almost doubled, rising from 44040 registered lawyers in 1985 to 82740 in 2001. This steady rise in Society membership nationally indicates that both demand for legal services and the corresponding supply of practitioners has been held in check over the past two decades.

Figure 1: Law Society Membership 1985 - 2001



(Figure created by author. Data source: FLSC, 2003)

2.2 Industry Geographic Scope

Toronto is generally accepted as the financial capital of Canada. Coupling this fact with the presence of the majority of corporate head offices in or near the city and the Federal Government offices located further north in Ottawa, it also should be accepted as a given that the majority of legal services work would originate out of the province of Ontario. As Calgary boasts the second greatest collection of corporate head offices and exists as the energy capital of Canada, the presence of large national legal services firms in the Alberta market should also come as no surprise. Thus, in determining the geographic scope of the firms within specific markets, two factors naturally come into play, their proximity to primary corporate or government offices and the sheer population size of the region or province.

While the industry has enjoyed significant growth over the past two decades, it is interesting to note both the origins and the disbursement of that growth. Again using FLSC data as illustrated in *Table 1*, in 1985, clearly Ontario and Quebec possessed the majority of the legal services providers in Canada, together comprising 65% of the aggregate total. As noted earlier, this market dominance is due simply to corporate head office and Federal Government proximity and market population.

Table 1 Law Society Registrations – Aggregate Rankings by Province 1985

Ranking	Province	# of Lawyers - 1985	% of Total
1	Ontario	15627	0.35
2	Quebec	13131	0.30
3	BC	5623	0.13
4	Alberta	4153	0.09
5	Manitoba	1428	0.03
6	Saskatchewan	1272	0.03
7	Nova Scotia	1212	0.03
8	New Brunswick	1026	0.02
9	Newfoundland	346	0.01
10	Prince Edward Island	122	0.00
11	NW Territories	59	0.00
12	Yukon	41	0.00
	TOTALS	44040	1.00

Table created by author. Data source: Federation of Law Society Website, 2003

In examining the trends over the time period 1985- 2001 in *Table 2 (below)*, there has been minimal change in the overall rankings. In 2001, Ontario and Quebec still dominated the market, with 65% of total registered legal service providers, however Ontario made some gains in share likely at the expense of Quebec, which actually lost market share. The Manitoba market also lost market share while strong gains were realized in Alberta, the Yukon and the Northwest Territories. The Alberta increase is likely attributable to the continued relocations of corporate head offices to Calgary, while the Yukon and Northwest Territories growth is likely attributable to the growth of mining and petroleum exploration activity within the region.

Table 2 Law Society Registrations - Aggregate Rankings by Province 2001

	Province	# Lawyers 1985	% of Total	# Lawyers 2001	% of Total	% Increase
1	Ontario	15627	0.35	31479	0.38	101.44
2	Quebec	13131	0.30	22358	0.27	70.27
3	BC	5623	0.13	10353	0.13	84.12
4	Alberta	4153	0.09	8849	0.11	113.07
5	Nova Scotia	1272	0.03	2349	0.03	84.67
6	Saskatchewan	1212	0.03	2172	0.03	79.21
7	Manitoba	1428	0.03	2010	0.02	40.76
8	New Brunswick	1026	0.02	1490	0.02	45.22
9	Newfoundland	346	0.01	767	0.01	121.68
10	NW Territories	59	0.00	431	0.01	630.51
11	Yukon	41	0.00	245	0.00	497.56
12	PEI	122	0.00	237	0.00	94.26
	TOTALS	44040	1.00	81740	1.00	87.87

Table created by author. Data source: Federation of Law Society Website

As *Table 3* (next page) illustrates, the two largest relative gains in numbers of legal service providers occurred in the both the Northwest Territories and the Yukon. As noted, the gains that these two territories experienced are due most likely to the aforementioned increase in mining and exploration activities in the regions. While all other markets also showed positive growth, Manitoba and New Brunswick gained the least relative to their provincial counterparts. Note that Manitoba's growth at 40.76% was less than one-half the growth of the median province PEI, at 94.26% and even less than one-half the industry average growth rate of 87.87%.

Table 3 Law Society Rankings– Aggregate Percentage Gains 1985 - 2001

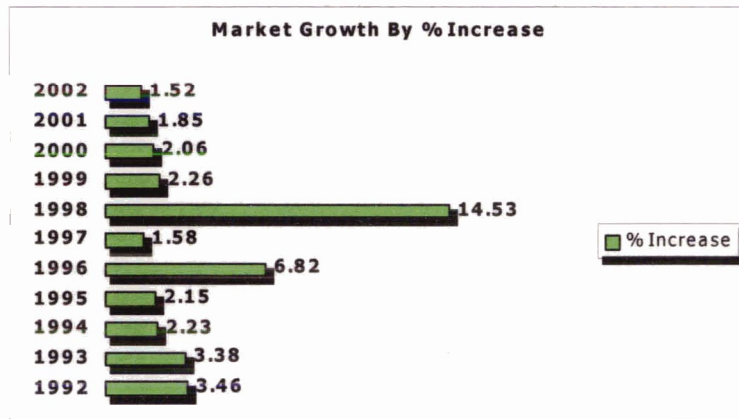
	Province	# Lawyers 1985	# Lawyers 2001	% of Total	% Increase
1	NW Territories	59	431	0.01	630.51
2	Yukon	41	245	0.00	497.56
3	Newfoundland	346	767	0.01	121.68
4	Alberta	4153	8849	0.11	113.07
5	Ontario	15627	31479	0.38	101.44
6	PEI	122	237	0.00	94.26
7	Nova Scotia	1272	2349	0.03	84.67
8	British Columbia	5623	10353	0.13	84.12
9	Saskatchewan	1212	2172	0.03	79.21
10	Quebec	13131	22358	0.27	70.27
11	New Brunswick	1026	1490	0.02	45.22
12	Manitoba	1428	2010	0.02	40.76
	TOTALS	44040	82740	1.00	87.87

Table created by author. Data source: Federation of Law Society Website

2.3 Market Growth Rate & Position on Growth Cycle

Over the past decade, the legal services industry has grown by approximately 45% as evidenced by the increase in the number of providers in the marketplace. This growth is represented graphically in *Figure 2* and *Figure 3*, below which illustrate market growth by aggregate percentage and by the total number of lawyers practicing within the marketplace

Figure 2: Legal Services Market Growth 1992 – 2002



(Figure created by author. Data source FLSC, 2003)

Figure 3: Legal Service Market Growth 1993 – 2002



(Figure created by author. Data source FLSC, 2003)

In 1992, there were 58,019 registered providers whose ranks swelled to over 84,000 providers in 2002. Over this time period, year over year growth of the profession has remained constant, with two dramatic, single year increases in 1996 and 1998. These increases of 6.82% and 14.53% respectively should be considered anomalies, both of which were left unexplained in telephone conversations by the author and FLSC staff. Despite these two anomalies however, and with respect to its position within the growth cycle, the legal services industry should be considered to be in the mature phase.

2.4 Number of Buyers and Relative Sizes

The number of buyers of legal services within the Canadian marketplace is virtually impossible to ascertain. This is due primarily to the inherent demand-driven nature of the industry, coupled with the level of privacy with which the individual firms and providers conduct their businesses. Put simply, as private partnerships, public insights into client bases and/or the financial performance of both providers and the industry as a whole is impossible to secure. As well, the potential market for individual buyers of legal services within the Canadian market could conceivably include every man, woman and child. Within the corporate market, while the total potential number of buyers is likely smaller, their respective range of sizes and service

needs is extremely diverse. The largest buyers of legal services in the Canadian marketplace include all varieties of corporate entities as well as the federal and provincial governments, who remain extremely active in the procurement of legal services. Currently, there is no straightforward methodology for determining the existing number of legal services buyers or their respective sizes.

2.5 Distribution Channels Used to Attract Buyers

For the most part, the legal services profession utilizes all of the traditional marketing channels to attract and retain new clients. In general, buyers of legal services are legion and can include private individuals, corporate entities and counsel, all levels of government and even other law firms. Buyers are motivated by a number of factors as evidenced by a 2002 Lex Mundi survey which determined that expertise, quality of work, provider reputation, and local market knowledge all played a significant role in their individual selection process. (Lex Mundi, 2003) Other factors include the firm's location, billing practices, and prior experience with the buyer. (Belser, 2000, pp.11)

In 1977, the U.S. Supreme Court ruled in *Bates v. State Bar of Arizona* that the First Amendment allowed lawyers to advertise their services. Canada adopted similar relaxed legislation as a result of the 1982 *Jabour vs Law Society of BC* injunction filed by Donald Jabour a Vancouver appellant lawyer who sought to advertise his services in a Vancouver newspaper, but was over-ruled by the Supreme Court of Canada. (Law Society of BC, 2003) Four years after *Jabour*, (1986), the Law Society of BC revised its Conduct Handbook, relaxing the existing restrictions with more liberal rulings. Looking back after more than a quarter century however, the impact of *Bates v. Arizona* has until recently been both limited and controversial. All told, lawyer advertising has often been a lightning rod for criticism within the legal profession as the more conservative providers were concerned it was undignified for professionals to "hawk" their services.

Today, much of the public's impression of law firm advertising arises from television commercials and yellow pages display ads extolling a limited number of practice areas, such as family law, personal injury, criminal law, workers compensation, immigration law, and the like. Because mass-media advertising, by definition, reaches a broad audience, many areas of the law – from special education law to water rights – are not well-suited for mainstream advertising, particularly those with narrow or highly specific constituent bases. Thus, many firms and indeed entire practice areas have, until recently, been largely unaffected by either the *Bates* or *Jabour* decisions. In short, the ability to advertise has not dramatically altered the marketing efforts of the 'legacy' firms. When the Internet exploded into the popular landscape in the mid-1990s, there was a tremendous concern that the problems and limitations of mainstream advertising would manifest themselves in the new online world as well. To date, this concern has also gone unrealized.

The reality is that among corporate counsel, 80% of buyers seek and rely upon word-of-mouth referrals, while others utilize legal directories, read newspaper or periodical advertisements, search the Internet and refer to articles or seminar materials written by individual lawyers as means of finding the appropriate lawyer or firm. In terms of best practices, individual lawyers ranked informational seminars as the single most effective tactic for cross-selling their services and gaining new clients. (Belser, 2000, pp. 12) In all, while providers and their firms have access to a wide variety of communications channels and while these channels are gaining in terms of importance, the basic reality is that given the inherent specificity of the service offering, these channels are rendered relatively ineffective in terms of a distribution channel to reach buyers. At the end of the day, the most effective tools are those that couple tangible value with personal contact, including the aforementioned seminars, public relations efforts, newsletters, sales training and special events. (Belser, 2000, pp.11)

2.6 Pace of Technological Change

Over the past decade the legal services industry has been both greatly affected by, and deeply embraced the pace of technological change both within and external to firms' operating environments. This pace of change has greatly affected the way services are delivered to clients and the types of services that are offered as is illustrated by the following analysis.

2.6.1 Impact on the Delivery of Services

In general, the practice of law is becoming much more reliant on technology as a tool to assist in the provision of more effective and efficient legal services. For example, internal communications between intra-firm providers, externally between providers and clients and intra-industry between providers and other actors (i.e. courts, other providers) have all undergone significant transformations in order to create greater efficiencies. The Internet currently serves as an incremental communications channel, marketing tool, and a medium that has changed the space, distance and operating environment of the entire profession. Ultimately, enhanced communications devices and options serve to allow lawyers to set up "virtual" offices whereby they can download and edit case files, manage client affairs and maintain contact with the physical firm office from an infinite number of locations.

"Virtual" law firms such as the Granat Group (www.granat.com), and Cite the Law (www.citethelaw.com) offering basic legal services were among the early adopters of Internet technologies and continue to be viewed as a potential competitive threat to traditional "bricks & mortar" firms. Lastly, case research, often acting as the bane of most lawyers' existence, is reduced to almost routine status through the use of shared databases and expert systems and internal knowledge management (KM) staff. Overall, the legal profession has adapted quickly to, and effectively matched, the pace of technological change, allowing lawyers to deliver legal services to both their clients and colleagues through far more efficient means. While the use of these technologies often creates tremendous efficiencies for the firm and individual providers,

they also create a downward pressure on revenues as clients are not ignorant of the cost savings that these technologies afford. As such, firms and providers can expect to face increased levels of scrutiny on their billing practices for routine matters.

2.6.2 Impact on Services Offered

The pace of technological change has also affected the rendering of legal services, creating both new service opportunities and services offerings. As noted, the Internet allows providers the opportunity to offer either limited or complementary services to new or existing clients. As well, technology adoption and proliferation will give rise to new types of legal claims and new areas in which law is important. Issues such as privacy, use of data, intellectual property rights, e-commerce and inter/intra-national contract law are just some of the new areas of law that will require legal expertise in order to be managed effectively. Firms and lawyers that are able to capitalize on the pace of technological change and adapt their respective practices in order to meet the legal demands of such changes will be the ones that continue to remain profitable. Over the long term, it is easy to imagine that the monopoly on legal knowledge that providers currently hold will be subject to intense pressure from internet-based technologies and software manufacturers, especially in the areas of routine document preparation. As noted, legal software that allows consumers to prepare taxes, wills and other basic documentation has proliferated in the marketplace for the better part of the past decade. As such, the continued evolution of the Internet can be only seen as continuing to erode and commoditize this type of service offering.

2.7 Level of Service Differentiation

As noted, the rise of the Internet has served to further commoditize the service offerings of the legal profession. This reality, coupled with the jurisdictional specificity of the Canadian legal system and the fiduciary duties of providers, has left both providers and firms with a relatively homogenized product offering in some practice areas and minimized their abilities to

differentiate their respective service offerings. This situation is not unlike that of most professional services industries and organizations. For the most part, legal services providers lack service differentiation not simply due to a lack of poor communication efforts or tactics, but rather as a result of a lack of a business differentiation. Firms within the industry exhibit virtually identical business and operating models, strategies and even mission statements.

There are however, many opportunities for both individuals and firms to develop creative and innovative legal solutions to complex problems as the practice of law for the most part, is a dynamic entity. Moreover, there also remains significant opportunities for both firms and providers to differentiate their respective service offerings by carefully selecting and rigorously defending a specific market position that their competitors cannot easily match. These positions can be encapsulated through a promise of a relative expertise in a specific practice area, a specific geographical advantage (i.e. physical location or multiple locations) and even a technological superiority. For the most part however, the general conservatism of the industry when coupled with the standardized service offering, leaves most firms unable to differentiate themselves from the rest of the industry and their direct competitors. The added challenge is that savvy clients have themselves experienced too many business fads and templates and understand that they do not provide any true competitive advantage. For a select few innovative firms however, there does exist the opportunity to establish a truly differentiated, market leadership position, that over time will continue to serve as a sustainable competitive advantage. These points are covered in greater detail later in the second half of this document

2.8 Ability to Achieve Economies of Scale

In order to determine the ability of providers to achieve economies of scale, it is critical to determine the major cost drivers of a typical firm. Using data collected in the 2002 BDO Dunwoody survey for the Vancouver Area Legal Administrators (VALA), as illustrated in the following Figure,

Figure 4: Average Law Firm Expenses 2002

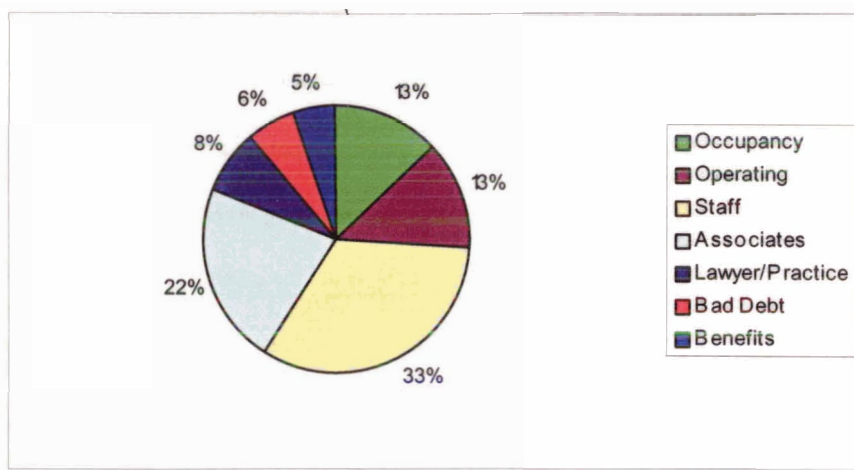


Figure created by author: Source BDO Dunwoody, 2002

clearly there are some opportunities that provide the potential for scale economies. The percentages as detailed, depict the expense category as a percentage of average firm revenue. Clearly the three most significant cost drivers are staffing, occupancy and operational expenses, accounting for better than 52% of firm expenses. (BDO Dunwoody, 2002) Given that these costs are for the most part, directly proportional to the number of lawyers employed by the firm, it is difficult to achieve any economies of significance through more efficient management.

That said, the BDO Dunwoody study did indicate that larger firms (i.e. firms with greater than 40 lawyers) were able to achieve economies of scale with respect to operating costs, noting that for larger firms, this expense totalled on average 9.9% of revenue while for the smaller firms, this expense totalled 7.7%. In addition, national firms would likely be able to achieve some minor scale advantages over their regional counterparts when buying mass-market media and communications vehicles. For example, it would likely be both cost-prohibitive and resource-inefficient for a regional firm to place an advertisement in a national publication, while a national firm could spread this expense over a number of offices and benefit firm-wide from the exposure.

While not noted in the survey, common sense would likely dictate that larger firms face a diseconomy of scale with respect to technology or IT purchases. As the pace of technology has increased exponentially over the past decade, larger firms are put at a disadvantage in that they face costs to upgrade large servers and mainframe computers that the smaller firms simply are not required to undertake. In all, while there are some economic advantages to size, for the most part, it is relatively difficult for a firm to capitalize on scale economies within the Canadian legal services industry.

Lastly, one scale effect that cannot be readily identified through cost-driver analysis is the ability of larger firms to hire and support additional niche or specialty lawyers. Due primarily to the larger volume of transactions of the larger firms, the productivity of specialized lawyers would be much higher than those engaged by smaller firms, resulting in an increased ability of the larger firm to attract even more specialty lawyers, in turn offering their clients a greater range of legal service offerings. In the end, while costs would not be reduced, the firm itself would be in a much more advantageous position in terms of legal service offerings and differentiation. This virtuous circle of success is discussed further in the next chapter.

In all, the economic characteristics and challenges of the Canadian legal services industry are not all that dissimilar to other professional services industries operating within the same marketplace. In order to fully grasp the intricacies of the market however, it becomes critical to understand the competitive dynamics of the firms operating within the industry. This is covered in greater detail in the following chapter.

3 LEGAL SERVICE INDUSTRY COMPETITIVE DYNAMICS

3.1 Legal Service Providers and their Characteristics

The Canadian legal services industry is comprised of a few large firms, a number of mid-sized law offices and numerous small and individual practices. In 1999, there was only one firm in Canada with more than 500 legal service providers while at the close of 2001, as evidenced in *Table 4* below, there were six. (Lexpert, 2002, pp. 40-41) In 2001, the ten largest law firms employed 3,957 lawyers while one year later, in 2002 this number has grown to 4,656, a gain of almost 700 individual providers. The individual providers contained within the top 20 firms represented in *Table 4*, approximately 8.3%, still only represent a fraction of the total 81,200 providers in Canada holding Law Society memberships. (Industry Canada, 2002, pp.1)

The reality is, that within the Canadian marketplace, most legal service providers operate as sole practitioners or in firms of ten providers or less. This is further evidenced by the fact that of the 81,200 lawyers noted earlier, only 36,800 of them work for one of the 16,800 registered law firms in Canada. (Industry Canada, 2001, pp.1) In examining *Table 4* further, the statistic that further illustrates the industry size disparity is the fact that the number one firm, McCarthy Tetrault, is more than twice the size of the 10th largest firm and more than four times larger than the 20th largest firm.

Table 4: Top 20 Legal Service Provider Firms in Canada 2002

Rank	Firm Name	# Lawyers*	Rank	Firm Name	# Lawyers*
1	McCarthy Tetrault	810	11	Miller Thomson	302
2	Gowling Lafleur	669	12	Bennett Jones	251
3	Borden Ladner Gervais	656	13	Torys	240
4	Fraser Milner Casgrain	550	14	Davies Ward Phillips	223
5	Fasken Martineau	540	15	Stewart McKelvey	193
6	Blake Cassels Graydon	503	16	Macleod Dixon	184
7	Osler Hoskin Harcourt	402	17	Lang Michener	183
8	Stikeman Elliott	387	18	Davis & Company	182
9	Ogilvy Renault	385	19	Goodmans	175
10	Heenan Blaikie	313	20	Cassels Brock Blackwell	167

Table created by author. Data source: Lexpert, 2003. * Note: does not include affiliated lawyers in international offices

In summary, despite tremendous consolidation efforts over the past few years, the legal services industry in Canada remains highly fragmented. This fragmentation, coupled with the basic reality that legal firms for the most part, defer to the legal systems of the specific countries in which they are located, clearly illustrates the degree to which Canadian firms are insulated from the threat of international competition. Moreover, regional disparities in legislation and the ability of most providers to practice in only one provincial jurisdiction leaves firms seeking growth by size, basically only two options: growth through mergers with other regional firms or establishment of a new office and growth through lateral hires or internal development.

Moving forward, the expectation is that the firms that are presently dominating the Canadian marketplace will continue to do so, maintaining in essence, a market status quo. This is due primarily to two factors; one, that the largest firms have the greatest depth of talent and two, that reputational strength of the firm which plays a significant role in the procurement of new clients and business. The firms that possess the greatest reputational strength have the advantage in recruiting not only the best new law school talent, but also in soliciting the greatest talent from competing legal firms. As a result, not only do the top-tier firms get stronger, the second-tier firms grow weaker as their internal talent pools shrink and their ability to attract young legal talent diminishes. Thus, as firms struggle to find a internal structure that make profitable sense, those lacking in size or a defensible practice niche will likely continue to fall further back of the market leaders.

3.2 Competitive Strategies of Market Leaders

3.2.1 National Presence

In determining the strategic direction of the market leaders in Canada, and using the existing geographic shifts in both talent and offices as a defacto industry benchmark, both increased size and national presence would appear to be the predominant competitive strategies of the legal services market leaders in Canada. The expectation is that once the top ten firms

have firmly entrenched themselves within all the major legal markets in Canada, that “wars” for talent within the regional markets will escalate as each firm attempts to dominate the respective market through the acquisition of top talent. In examining *Table 5* below, only three of the top ten firms; Faskens, Oslers and Ogilvy’s currently do not have a truly national presence. (*Note: national presence is defined as having offices in markets from Montreal to Vancouver and including Toronto, Ottawa, and Calgary*) The insignificance of the Winnipeg legal services market is also made glaringly obvious by the lack of any national or even top 20 firm presence.

Table 5: Top 20 Canadian Firms - Market Positions

Rk	Firm Name	Tot. # Prvdrs	TO.	Ott	Mon	Van	Cal	Edm	Win	Hal
1	McCarthy Tetrault	810	350	17	177	105	102			
2	Gowling Lafleur	669	278	151	61	31	102			
3	Borden Ladner	656	273	55	102	131	95			
4	Fraser Milner	550	199	22	92	49	111	77		
5	Fasken Martineau	540	225		150	137				
6	Blake Cassels	503	336	16	20	60	71			
7	Osler Hoskin	402	298	37	44		23			
8	Stikeman Elliott	387	168	21	142	25	31			
9	Ogilvy Renault	385	120	30	179	15				
10	Heenan Blaikie	313	99	7	123	27	19			
11	Miller Thomson	302	120			60	32	42		
12	Bennett Jones	251	43				184	24		
13	Torys	246	246							
14	Davies Ward Phillips	223	140		83					
15	Stewart McKelvey	193								81
16	Macleod Dixon	184	38				146			
17	Lang Michener	183	98	35		50				
18	Davis & Company	182	16		3	125				
19	Goodmans	175	168			7				
20	Cassels Brock	167	167							
	TOTALS	7321	3382	391	1176	822	916	143	0	81

Table created by author. Data source: Lexpert, 2003. * Note: does not include affiliated lawyers in international offices

Therefore, the expectation should be that these firms with remaining regional vacancies would be the most likely to either establish offices in these markets or to seek a suitable merger partner with which to counterbalance their competitors. In terms of practice focus, the expectation should be for a continued focus on the generation of work from corporate head

offices or government bodies, coupled with the development of new practice areas that will both mirror and serve the evolving needs of the population demographic and the technology industry sectors.

3.2.2 *Regional Specialization*

Within each major regional market there exist large, full-service legal services firms that have built strong, profitable practices and have to-date, resisted the merger trend of the past decade. Instead, they have chosen to remain independent and focus on a specific geographical region.

Table 6: Top Independent Canadian Law Firms

Region	Firm	# of Lawyers
Quebec	Lavery, de Billy	148
Ottawa	Nelligan, O'Brien & Payne	46
Toronto	Torys	246
Manitoba	Aikins McAuley Thorvaldson	93
Saskatchewan	McDougall Gauley	62
Alberta	Parlees McLaws	112
Vancouver	Bull, Housser & Tupper	92
Atlantic Canada	Stewart McKelvey	193
	TOTAL	992

Table created by Author – Data Source: Lexpert 2003 Canadian Legal Directory

Note that in *Table 9* above, regional leaders, Torys, Stewart McKelvey, Lavery de Billy, and Parlees have built sufficient mass to match up rather comfortably against the national firms, occupying the 11th, 16th 22nd and 29th respectively on the list of the thirty largest law firms in Canada. (Lexpert, 2003, pp. 40-41)

3.2.3 *Niche Practice Areas*

Focusing a practice of law on a specific practice area is a common competitive strategy of smaller, “boutique” firms seeking profitability. Collectivizing a small number of specialized providers in a discipline such as patent & trademark, healthcare, real estate or other branch of specialty law, simplifies communication of the services offering, and allows the firm to focus its business development resources against a specific clientele. As independents, boutique firms

also have the advantage and ability to secure files from regional or national firms that require their specialized offerings yet they do not risk compromising their independent status nor risk threatening the larger firm in terms of client ‘poaching’.

3.3 Basis of Competition

Legal service providers, either individually or collectivized into some form of a firm, traditionally compete on a limited number of fronts. In general, these fronts are a direct reflection of the methods by which providers seek to grow their respective practices achieving either increases in mass or profitability or both. This growth is accomplished by generating incremental business from existing clients, business from new clients, and through the acquisition of talent (new individual providers) either through lateral hires or through internal talent development. Lastly, providers compete for profile in the marketplaces in which they have established practices.

Profile can often be a function of how successfully the providers have performed within the legal system, in addition to how well they have competed on the other two fronts. Profile is more often a direct result of how effectively the firm’s marketing and communications efforts are managed and as a result, exists as the only one of the three factors that can be ‘controlled’ both explicitly and implicitly by the firm. Of note, price alone rarely surfaces as a competitive strategy or differentiator. This is likely due to the fact that price (identified as an hourly billing rate) is in itself generally a direct function of experience, and as such is left basically unspoken. In the end, the challenge in both quantifying and qualifying the basis of competition is that it often varies in intensity depending on the size of the firm and the firm’s respective business strategies. Nonetheless, these strategies are explored in further detail in the following sections.

3.3.1 Incremental Business

Not unlike any other professional services firms, the primary focus of most law firms and providers is to build their respective practices through incremental business from existing clients

or through procurement of entirely new clients. Obviously, profitable clients are in greatest demand, so the objective of providers is to retain their existing profitable clients and attract new ones. While “poaching” of another provider’s clients is rarely done overtly, the reality of the profession is that in the course of everyday business, providers, through their business development, marketing, advertising and communication channels are continuously targeting other firms’ clients. Where one firm manages only a singular piece of a client’s business, the goal where possible, is to attain all of the clients’ business, displacing the incumbent firm. In addition, the emerging trend towards ‘Requests for Proposals’ (RFP’s) has given firms the opportunity to pitch new clients in a direct manner that does not contravene the unwritten code of ethical provider conduct. In all, the competition for clients is paramount within the industry and with the growing sophistication of marketing and communications efforts, can only be expected to increase in intensity.

3.3.2 Talent

As noted, firms with the most talented lawyers both in terms of practice area expertise and in terms of ability to generate new business, traditionally perpetuate a virtuous cycle. By securing the best legal talent available either through internal development of associates or through lateral hires, firms put themselves in a position to attract more clients, increase their billing rates and thus increase profitability. As a result, they attract even more legal talent. Talented potential lateral hires often command tremendous premiums in the marketplace as they often bring with them incremental revenue, incremental clients or both.

Providers also expend significant resources on recruitment of the top legal talent from Canadian law schools since as associates they (the talent) will often serve to generate significant profits for the partners. The ‘up or out’ culture that remains prevalent within most law firms ensures that only those individual providers with a continuous record of success and profitability

will remain with the firm, eventually achieving partnership status. As such, tremendous competition for new legal talent in the Canadian marketplace exists between rival firms.

3.3.3 Profile

The competition for firm and individual provider profile in the Canadian marketplace has escalated dramatically over the past decade. This escalation comes as a result of a number of factors including the recent consolidations of firms, the increased liberalizations with respect to marketing and advertising of services and individual providers and the increase in the number of options for generating such profile. Suppliers of periodicals and journals to the Canadian legal services industry have embraced this more competitive provider mentality, by offering new periodicals, directories and firm rankings which have become much more prevalent within the market. For example Lexpert, a periodical publication published monthly out of Toronto, has for the past seven years also produced a “*Canadian Legal Directory*” and a guide to the “*500 Leading Lawyers in Canada*”. The guide, while statistically invalid, has become widely accepted as a defacto source of objective provider ranking and capabilities and as such, both individual providers and firms eagerly seek prominent positioning within the guide.

The greater level of sophistication and commitment to profile raising is easily evidenced by the increase in marketing professionals entering into the industry. Ultimately, as Canadian providers continue to embrace the marketing discipline and explore new opportunities for profile raising through public relations, direct marketing, advertising and other promotional-related efforts, the expectation should be that the battle for profile will continue to escalate in both the short and long-term.

As noted earlier, of the three competitive fronts, profile is the only one that is completely manageable by the firm or individual provider. Both clients and legal talent can come and go based on their own volition, despite the individual firm’s efforts to attract and retain them. Since firms control the resource inputs to profile (marketing/public relations/advertising) and because

profile is directly related to both client and legal talent acquisition, it should make for common business sense for them (the firms) to manage this front more effectively. A comprehensive, coordinated and differentiated profile-raising effort should be a core focus of every legal services provider seeking to compete in the industry marketplace. Given the interdependency of the three bases of competition, effectively managing a firm's profile will undoubtedly go a long way in ensuring that both new clients and new legal talent continue to flow into the firm.

3.4 Industry Forces

Since its inception in 1980, Porter's Five Forces Model of competition remains the strategic standard for analyzing a specific industry. (Thompson, 2001, pp. 80-93) In short, what the model persuasively demonstrates is that the state of competition with a particular industry exists as a composite of five competitive forces. These include; the rivalry amongst competing sellers, the potential entry of new competitors, the threat of substitute products, the bargaining power of industry suppliers and the bargaining power of the buyers of the industry product or service offerings. Not surprisingly, applying the model to the Canadian legal services industry yields some significant insights.

Note however, that applying the Porter analysis to the legal services industry is not without its unique set of challenges. The primary challenge is the issue of scope and scale. Any of the individual five forces identified by Porter may exert tremendous pressure on the success potential of a small firm or individual practitioner, while at the same time, a large firm may be effectively insulated from the identical pressure. For example, with respect to the threat of new entrants into the legal services market, the opportunity for an individual provider to establish his/her own personal practice, while technically a new entrant into the industry, is not a cause for concern to the full-services law firms.

With respect to the bargaining power of the buyers of legal services, large institutional buyers (i.e. a large private or public corporation) can possess tremendous bargaining power when

they are tendering a large scale, long-term services contract, whereas an individual buyer is generally forced to accept prevailing market rates. Therefore, the Porter analysis as follows, will continue to focus on the pressures and forces that are acting on the legal services industry identified at the outset of the document. For recall, the industry includes full-service firms offering a deep range of practice areas and possessing a lawyer complement in excess of fifty lawyers.

3.5 Reasons for Industry Rivalry

In the purest definition, law firms exist as nothing more than a collection of individual providers supplying legal expertise. As such, among the large, full-service firm category, those firms that possess the greatest number of providers and offer the greatest range of expertise enjoy a competitive advantage over their rivals. Among niche firms, those that have continued to build and focus their individual providers expertise on a single practice area are often able to displace sheer size as a competitive advantage with specialized practice area knowledge and thus capitalize on the efficiencies that this strategy offers.

As noted, while firms traditionally compete for clients, for talent and for profile, the reason they compete at the level of intensity that they do is as a result of a number of factors including; recent consolidations within the industry, the industry profitability potential, the relocations and proximities of corporate head offices, and the high industry exit barriers that the rivals face. Taken together the assessment of the existing industry rivalry amongst competing firms should be considered **medium to high**. The rationale behind this assessment is as follows.

3.5.1 Industry Consolidation

The consolidation or 'merger-mania of the Canadian legal services industry has resulted in a competitive landscape that includes a few, very large national or semi-national firms, coupled with a significant number of large regional firms. In all, the consolidation of many smaller firms into larger, comprehensive legal service units serves to increase the level of rivalry

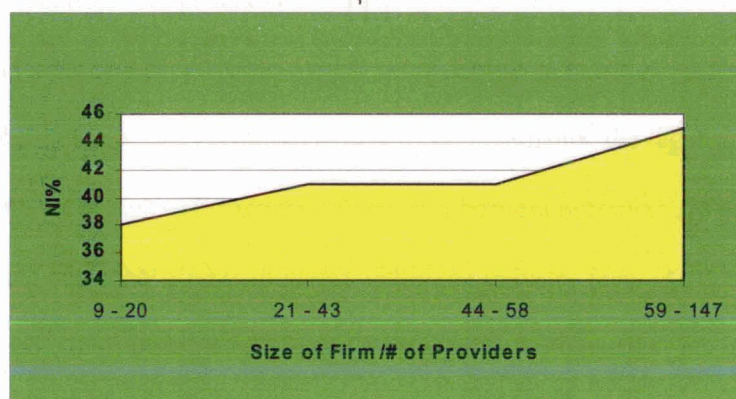
as the market begins to exhibit some characteristics of an oligopoly. Clearly the firms that are in the strongest position in the Canadian market are those with both a national presence coupled with internal size (depth) and breath of practice areas.

By effectively managing their resources (talent and clients) and adapting to changes in the external environment, in the long-term, these firms will remain in the best position to continue to compete for both market share and growth. Firms lacking both the requisite client base, profile and profitability that accompany a national presence will likely face the loss of their top talent to the larger, more entrenched firms. In addition, non-aligned firms will face an even greater need to establish themselves within their respective niche be it geographically or practice area-focused in order to remain competitive. Consolidation, in order to enhance one's market position often at the expense of one's rivals, is a classic competitive tactic in a high rivalry market.

3.5.2 Profitability

As noted repeatedly through this document, a primary challenge in analysing the Canadian legal services industry is the simple fact that for the most part, law firms exist as private partnerships and do not typically reveal profitability levels. That said, while quantifying the profitability levels of a private practice is challenging, developing an industry wide model of analysis is even that much more challenging. By revisiting the 2002 VALA data referenced earlier in *Figure 5 (next page)*, one could quickly ascertain that the industry does generate very satisfactory levels of net income as measured as a percentage of fee revenue. Granted, that the caveat to this analysis is that it is ultimately based on the Vancouver legal services industry market and while it can be used to illustrate the point, it should *not* be construed as representative of the industry as a whole.

Figure 5: Legal Service Firm Net Income as a % of Fee Revenue



(Graph created by author. Data source: BDO Dunwoody, 2002)

Note in *Figure 5* above that as firm size increases, net income percentage also increases, which adds further credence to the ‘bigger is better’ mentality of the industry. A general rule of thumb in assessing reasons for rivalry in a particular industry is the presence of or potential for above average profits. Lastly, the profit-seeking motivation (rivalry) of firms competing in the industry is also further exacerbated by a slowing market demand for legal services, identified earlier as a reality within the Canadian marketplace.

3.5.3 Head Office Relocations

The shifting of corporate head offices to other legal jurisdictions will have the aggregate effect of an increase in supply of services, coupled with an aggregate decrease in demand in specific markets, while in other markets the reverse is true. For example, Alberta (Calgary) has been fortunate to attract a large number of corporate head offices to the province as a result of a favourable tax climate and the proximity to raw energy resources. The result has been an increase in both demand for services and providers willing to offer their services. In markets that have experienced reductions in their numbers of corporate head offices (i.e. Vancouver), the result has been supplier over-capacity coupled with negative market growth. It is in these markets that competition and rivalry can be expected to increase in intensity.

3.5.4 Exit Barriers/Switching Costs

High exit barriers are generally regarded as an indicator of a high rivalry environment. With long-term leases on office space, significant investments in office infrastructure and technological architecture, and investments in staff complements, the legal services industry in Canada faces relatively high exit barriers. These exit barriers pressures are partially mitigated by the high switching costs that clients (buyers) within the industry face. As the relationships between firms and clients eventually become partnerships, both parties generally have a vested interest in maintaining the relationship in order to avoid the learning curve effects that occur with a switch to a new provider. Note that herein lays the prevailing issue of scale and scope. At the client level, the costs to a large corporation to switch to a new firm would be considerable, whereas an individual's (i.e. non-corporate or small corporate) costs are minimal. As such, switching costs are directly proportional to firm and client size.

3.6 Potential for New Entrants

The threat of new entrants into the legal services industry generally will be driven by two key factors: the barriers to entry and the anticipated reaction of the incumbent firms. Exploring these two factors and coupling them with the following analysis, one would determine that within the Canadian legal services marketplace, the potential for new entrants is **low**. To summarize, potential entrants into the Canadian legal services industry face several significant barriers to entry into the marketplace including jurisdictional specificity of the regions and markets, the level of qualifications and talent of the individual practitioners, and the profile and reputation of the firm and access to talent. These are discussed further as follows:

3.6.1 Jurisdictional Specificity

For the most part, each province in Canada creates and maintains a specialized, individualized legal system. Each province is a legal jurisdiction unto its own and the legislation specific to that legal jurisdiction. Individual providers are 'called to the bar' in the province

where they have elected to practice law and while the respective law societies have introduced new protocols allowing greater mobility between the provinces, the providers are still only able to legally practice and serve clients within the confines of the single jurisdiction. This barrier effectively eliminates the opportunity for a firm to enter into a market, set up a ‘greenfield’ office and effectively compete with the market incumbents.

In the Canadian domestic market however, especially within regional markets, there exists the potential for new entrants as firms seeking a truly national presence continue to balance their geographical and market portfolios through mergers with, or acquisitions of, incumbent firms. The domestic legal services market must also consider the potential of new entrants from non-legal-business entities with accounting and consulting firms staffing their practices with providers that allow them to offer clients a full complement of business services, including legal ones. These two strategies allow entrants the ability to partially sidestep the jurisdictional specificity issue.

This jurisdictional specificity factor also ensures that Canadian law firms are reasonably insulated from competition from international competitors. As such, while some international and US legal service firms have established a physical presence in Canadian markets through acquisitions and consolidations, these have had only minimal impact on the market dynamics. This situation is not expected to change dramatically over the medium to long-term given the slow migration of corporate head offices to the US. In all, the jurisdictional specificity of the Canadian legal systems acts as a significant deterrent for potential competitors seeking entry into the marketplace.

3.6.2 Level of Qualifications

A typical lawyer requires four years of undergraduate schooling, two years of law school coupled with an additional year of articling before he or she begins to show signs of productivity and profitability. In the traditional legal services firm model, the new lawyer will spend 5 – 10

years as an associate building their respective practice and expertise before he or she begins to achieve relatively high levels of recognition and profile. As such, while it takes a long time to build an individual lawyer's practice and profile, it takes even longer to assemble a team of lawyers within a single practice area that give it the depth and breadth necessary to be able to compete against the incumbent market firms. Thus, the level of qualifications required to practice law exists as an effective deterrent to potential entrants.

3.6.3 Firm Reputation and Profile

Existing, high profile firms within the industry are considered 'legacy' firms, these reputations earned as a direct result of their respective longevity in the marketplace. The most successful legal services firms in the industry can trace their roots back through many generations of lawyers. Reflecting the traditional conservatism of the industry, a firm's reputation and profile cannot be built overnight – it takes many years of stability and success to build a firm and a firm brand and as such, this serves as a very effective deterrent to new entrants. Ultimately, increasing its commitment to strategic marketing is the most effective method of enhancing and/or maintaining a firm's respective profile.

3.6.4 Capital Requirements

As an intellectual-capital-based provider of a professional service, law firms do not require the substantial capital investments that manufacturing industries require at start up. In general, all that is required at start up is office space, staffing, and office equipment including furniture and technical hardware and software all of which can be leased relatively reasonably. However, if a new entrant were to try to compete directly at the same level as the market incumbents, it would need substantial financial backing to be able secure the talent necessary to generate the requisite market credibility needed to attract new clients. Moreover, it also would need to invest significant capital and human resources into marketing and brand-building

activities in order to overcome the longevity factor and experience effects that the incumbents possess.

3.6.5 Access to Talent

For the most part, individual legal services providers tend to be quite loyal to their respective firms. This is due primarily to the traditional partnership structures that exist at the majority of firms, coupled with the rigorous selection processes employed by both providers and firms during the recruitment period. As a result, lateral movement during the early stages of an individual providers' career is not usually in their best interests as it inhibits their partnership potential. Once partnership has been attained, and as an individual provider's profile and reputation have grown, their lateral movement potential increases dramatically. Thus, the individual provider can and will seek alternate opportunities but only after he or she has established themselves as a credible performer. In addition, and in general, individual providers at both the junior and senior levels leave to secure more long term, lucrative opportunities.

Therefore, based on the above talent recruitment model, a firm entering into the Canadian marketplace would be hard-pressed to secure the requisite level of talent at both the junior and the senior provider level of talent to compete against the incumbent full service firms. Within the domestic market, senior specialized providers do on occasion, part company with their firms in order to establish their own private or niche practices. Rather than competing head-to-head with their former firm, they (the senior providers) will focus on one aspect of law and build their new firm around that specialized aspect. For example, Harris & Company, a Vancouver firm of 28 lawyers, was formed as a result from a split from the full-service firm Campney and Murphy in 1992. Harris & Company's focus is primarily on labour law, reflecting the specialized knowledge of the founding senior practitioners. Clients will also on occasion, follow the departing senior providers, but only to the extent that their legal needs are continued to be met by the new firm and/or providers.

3.7 Threat of Substitute Products

In order to ascertain the potential threat of substitute products within the Canadian legal services industry it is necessary to determine what the actual ‘product’ is that firms and providers produce. As discussed, and as it relates to our industry definition determined earlier, legal services providers offer their clients an intellectual expertise that is built up over time and is bundled together with a reputation and profile of a firm, and coupled with the depth and breadth of multiple practice areas. For the most part, this product also includes face-to-face contact and/or dynamic interaction with a client. Ultimately, this product is offered for sale to the client in the form of a billable hour. Note that the product of the industry-defined incumbent firm differs greatly from that of a sole practitioner in that they (sole practitioners) often lack the depth and breadth of experience, coupled with other incremental benefits that the larger firms are able to offer to their clients.

As they are from international competitors, Canadian law firms are also reasonably insulated from the threat of substitute legal services products. This is due primarily to the entry barriers to the industry identified earlier, coupled with existing federal and provincial legislation and the level of scrutiny applied to the profession. In general, only qualified legal services providers are permitted to offer legal opinions before a Canadian court. While the aforementioned ‘virtual’ law firms may offer certain by-products and/or outputs of legal intellect (i.e. wills, real estate documents) these cannot be accurately construed as true substitutes. Therefore, existing legislation coupled with jurisdictional specificity would render the threat of substitute products with the Canadian legal services industry as **low**.

3.8 Bargaining Power of Suppliers

The primary suppliers to the legal services industry exist as the individual lawyers who eventually become collectivized into some form of a legal services firm. Suppliers originate from three principal sources; lateral hires, internal growth and from law schools. They all exist

as varying degrees of legal talent. As an individual lawyer's practice develops over time accordingly, his or her experience, profile, client base and potential for personal and firm revenue growth increases. In theory, with this experience comes efficiency. A lawyer charging \$3X per hour is likely able to solve a complex problem in one hour while it may take a \$2X per hour lawyer two hours to resolve the same problem. Note that only after an individual lawyer has been able to increase his or her respective level of experience, profile and expertise do his or her billing rates increase and only then can they begin to exert significant bargaining power.

Generally, and somewhat ironically, the more qualified, experienced and more expensive providers are often in greatest demand as they generate the greatest level of revenue for the rival firm. This would help explain the intense level of competition for talent and lateral hires within the Canadian market. Associates on the other hand, are generally salaried service providers who are required by their firms to invest tremendous amounts of time and energy before capitalizing on their talent and sharing in the fruits of their labour. Firms in general, generate tremendous revenues and profits through the efforts of their associates.

The third level of supply of talent to the industry is that of the student nearing completion of law school. Talented students represent the future of the firm and as such, the industry invests considerable resources in their recruitment and development. Nurtured and developed effectively, talented students become talented associates who in turn, become talented partners, generating significant revenue for themselves and their respective firm.

Lastly, there are infrastructure suppliers to the legal industry including those that supply the items that are used in the production of legal services. These include suppliers of office furniture, computer hardware and software, telecommunications systems, paper products and the like. These suppliers generally exist as either wholesalers or retailers and are rarely in a position of power. In fact, applying the aforementioned industry definition to this type of supplier would leave them in a relatively weak position given the buying power that accompanies the volume of

purchases that the firms of this size make. This axiom generally holds true within any industry – the larger the business, the larger their respective buying power and thus the less pressure the suppliers can exert.

In summary, at the individual supplier level, their (the suppliers of talent) bargaining power is directly related to their expertise, profile and revenue-generating potential. Based on this analysis, it is virtually impossible to generalize the bargaining power of suppliers to the legal services industry in Canada. It is notable however that at the individual legal services provider level, the costs to switch from one firm to another can at times actually be negative - those providers with an established performance record and profile, coupled with strong connections to new clients, are usually able to switch firms quite easily and more often than not, secure a more lucrative opportunity.

3.9 Bargaining Power of Buyers

As determined earlier, trying to determine the ultimate market potential of legal services buyers is pretty much an exercise in futility. Ultimately, every man, woman and child and every form of business enterprise has the potential to require the legal services of a provider at some point in their respective life. In ascertaining the bargaining power of the legal services buyer, such issues as buyer's switching costs, the scope and scale of the buy, discretion of the buy and how well informed the buyers are about the competitive environment all play a significant role in determining the balance of power. These factors are explored in greater detail as follows.

3.9.1 Legal Services Buyers

The behaviour of a professional services buyer differs greatly from that of a buyer of a packaged consumer good. Put simply, professional services themselves including those within the legal environment are notoriously difficult to both qualify and quantify. For the most part, buyers of legal services are buying a specific legal area of expertise, and as they cannot easily judge the quality or the value of the service offering deliverable, their bargaining power is

considerably limited. They either simply accept or reject what is offered to them. Furthermore, buyers are rarely in a position to compare prices of services simply because firms do not make their pricing structures readily available. While buyers could conceivably contact each firm and request billing rates, the rates in themselves have no meaning as there will always be an element of quality and experience attached to them (the rates), that cannot be objectively measured.

Note that while RFP's are becoming much more commonplace amongst large-scale, project-based work, there are minimal opportunities to compare lawyers and firms on an identical 'apples to apples' basis. As such, most proposals are likely evaluated based on the specificity of the particular project, leaving the buyers forced to choose the firm that they believe best meets their overall needs. Regardless of the scope or scale of the engagement, it remains extremely difficult for any buyer of a legal service to qualify or quantify their respective purchase.

3.9.2 Scope and Scale of Engagement

In exploring the nature of the engagement, the issue of scope and scale comes most glaringly into play. At one end of the scale, an individual buyer of a one-time legal service (for example a simple, one-time labour resolution issue) is left in a relatively weak bargaining position. For the most part, and regardless of how carefully an individual has chosen his or her lawyer, he or she generally pays a standard quoted billing rate. Individuals cannot, for the most part, dictate the terms of the engagement. If the same individual was involved in a potentially long and drawn out class action suit, he or she would be in a much stronger bargaining position and likely able to dictate or negotiate some concessions around the billing rate. In short, the nature of the assignment dictates the relative bargaining power of the individual purchaser of legal services.

Within the corporate arena, the same factors come into direct play. The buyers that are seeking one-off services generally pay full market rates, while those that are engaging the resources of many or all of an individual firm's practice areas for the long-term can command

significant bargaining power. Therefore, as with the individual buyer, in trying to determine the bargaining power of a corporate buyer, the critical first step is to ascertain the scope and scale of the engagement as it will have a tremendous impact on each of the factors.

3.9.3 *Switching Costs*

Buyer switching costs within the legal services industry are also greatly affected by the scope and scale issue primarily on the corporate side. If a corporate buyer has maintained a long term relationship with a particular provider and/or firm, and were to switch to another firm, the costs to switch could be significant, especially in the short term. This is due primarily to the learning curve effects and the sizable change-over costs that will be incurred by the buyer as the new provider/firm learns to work efficiently and effectively with the buyer.

Individual buyers who lack the requisite engagement time with a particular provider can easily switch to another provider and incur only minimal costs. In some areas of law, such as tax and estate planning however, individuals may incur significant changeover costs if they switch providers, but again these are strictly a function of the degree of engagement.

3.9.4 *Purchase Discretion*

In general, buyers of legal services are rarely in a position whereby they can postpone a purchase decision. Most legal matters have an element of time-sensitivity that leaves buyers scrambling to secure counsel. There are specific areas of law, especially in the corporate arena where some prior planning can take place, (i.e. real estate project financings) but in the end the legal process remains very dynamic. As most legal matters, once engaged, possess a timeline of their own, providers are generally expected to be available for consultation throughout the engagement, rendering the buyer in a relatively weak bargaining position. In all, as the preceding analysis has illustrated, the bargaining power of buyers for legal services should be considered **low to medium** with the scope or scale of the engagement serving as the ultimate arbiter of power.

In examining the industry competitive dynamics, clearly there exist some fundamental challenges that both individual providers and firms face within the Canadian legal services industry. Moving forward, the expectation should be for a continued focus on industry consolidation coupled with the intensifying inter-firm battles for clients, legal talent and profile. The prevalent forces within the industry can also expect to increase in intensity. However, in determining the ultimate future potential for the industry, one would need to further explore the trends that are currently underway within the industry that may greatly affect these dynamics. These are detailed in the following chapter.

4 GENERAL INDUSTRY DYNAMICS & TRENDS

So far this document has introduced the reader to the Canadian legal services industry, exploring the economic characteristics and the competitive dynamics. However, in order to gain an overall appreciation and ultimately gauge the attractiveness of the legal services industry, it is imperative that one not only examines the existing industry state, but also tries to project the pressures that service providers will likely face in the future. The potential impact of these pressures will ultimately determine the long-term viability of the incumbent firms and also serve to encourage or discourage potential entrants from entering the market. In attempting to ascertain the future driving forces within the Canadian legal industry, it becomes critical to explore existing trending data from a macro perspective. As has already been ascertained, the Canadian legal industry, to a greater extent than almost any other industry, is currently undergoing a reasonably radical restructuring that over the long run, may leave it and the resultant firms virtually unrecognizable from their existing state. Consolidation of the fragmented industry while slowing, is expected to continue as remaining non-national firms determine the footprint and partners that best suit their respective business strategies. The pressures, market dynamics and trends that will likely drive this industry restructuring are detailed in the following sections.

4.1 Demographic Changes

As the general population ages, elder care will likely become a distinct area of practice for most law firms focusing on such areas as estate planning, pensions, reverse mortgages and the like. In addition, as the aging population becomes positively augmented by immigration policies, sensitivity to cultural diversity will undoubtedly play a role in internal firm policies and business strategies. As aboriginal issues and changing traditional family structures become more prominent before the courts, there will likely also be a need for incremental legal services to address their respective needs.

Demographic shifts are also changing the face of the legal profession. The Ontario Bar Association, which calls approximately 1000 new layers annually, has noted that its membership base is increasing its relative percentage of women, visible minorities, aboriginals and francophones. While not a statistically valid representation of the Canadian industry as a whole, this changing face is clearly illustrated in starting clarity in the following chart detailing enrollment in the Ontario Bar over just the past four years.

Table 7: Ontario Bar Association 1999 - 2002 Enrolment

Year	Total Called	Female	% of Total	Male	% of Total
1999	1039	489	47%	550	53%
2000	1074	537	50%	537	50%
2001	1047	539	51%	508	49%
2002	2381	1246	52%	1135	48%

(Table created by author. Date source OBA website, 2003. Note: 2002 statistics reflect the fact that two calls were held that year)

This rise in women and other minorities entering the profession in increasing proportions is likely a trend that is mirrored in other regions of the country and one that is expected to continue. (Law Society of Upper Canada, 2003). Firms must understand the impact that these demographic shifts will have on both the nature of their respective practice areas as well as on their staffing policies. Corresponding shifts in individual firm policies will likely include such things as workplace equity initiatives, flexible work arrangements and specific harassment/discrimination policies.

4.2 Canadian Economic Impacts

While some firms and their respective practice areas (intellectual property, energy, securities, corporate governance among others) continue to thrive, conversely there exists three distinct types of economic problems that virtually all firms face. These include cyclical market issues, over-expansion into new practices, and blind growth without regard to any deliberate strategy. These are examined in greater detail as follows.

4.2.1 Cyclical Market Issues

Cyclical market issues include those issues that from time to time affect both the domestic and external capital markets of the Canadian marketplace. Inflationary or deflationary pressures experienced either domestically or abroad by a major trading partner (for example, the US) can greatly determine the internal prospects for overall economic health and business growth, both of which tend to drive the demand for legal services. A general measure of the relative health of the Canadian economic prospects is the rate of currency exchange between the Canadian and the US dollar. The dollar's recent rise from 64 cents to 74 cents (over the past 6 weeks, at the time writing) against the US dollar, while an economic boon to some industries, has the potential to spell catastrophe to others. For the most part, law firms are not immune to cyclical market issues, rather their respective fortunes and performances measures tend to mirror the averages of those of the major corporations within the economy.

4.2.2 Over-Expansion into New Practices

Law firms partly as a result of their conservatism, traditionally have not have applied the analytical rigour to their business strategies and expansionary plans that their corporate brethren have. Instead, firm 'strategic' direction is often guided by an individual lawyer or a small group of senior lawyers who are appointed to the task or a committee. While they are often brilliant lawyers, they lack the requisite strategic business planning and analytical skills to make high quality business decisions. The results of *not* applying this same level of rigour can be catastrophic as the recent demise of the San Francisco firm, Brobeck illustrates. Brobeck, a 76-year old firm, for the most part 'bet the farm' on the burgeoning local high technology industry in the late 1990's. In January of 2003, the firm, which at one time during the halcyon days of the technology boom employed over 900 lawyers, closed its doors and dissolved the firm into bankruptcy. While the Brobeck example represents an extreme example, law firms in general are not immune to chasing the latest business "fashion" without first applying a due diligence model

of analysis. Moving forward, especially as rivals' competitive actions create renewed profitability pressures, firms will need to ensure that their respective investments into new practices warrant the investment over both the short and long term. (Marshall, 2003)

4.2.3 *Blind Growth*

Overall, as noted, the recent economic downturn did not have a tremendously great impact on Canadian legal services firms. However, long-term, economic pressures will eventually begin to erode firm profit margins and those firms that remain mired in tradition will undoubtedly suffer the greatest. Thus, a commitment to growth through size alone without regard to such issues as overall quality of practice and service, internal synergies between practice areas, or even to a long-term overall firm strategy can be pretty much assumed to be doomed to failure. Ultimately, firms need to recognize the realities of the issues that a blind commitment to growth offer and be able to develop a proactive practice and firm plan to manage their growth over the long-term.

In all, strategic organizational contradictions are pervasive within the legal services industry. In general, this is evidenced by systems and processes that conflict with the overall firm strategy, a lack in synergy between client segments and practice areas and a lack of strong leadership either at the firm or practice area. The leadership issue is only recently being somewhat mitigated through the hiring of senior administrators and managing partners with strong corporate business rather than strong legal backgrounds. Of note, McCarthy Tetrault, (the largest legal services firm in Canada), recently rationalized its entire national leadership structure in order to develop a partnership model that cedes authority to an executive board. In the end, the new McCarthy partnership model more closely mirrors that of a traditional corporation, than a legal services firm. The new structure includes a board of directors, a CEO, a COO and a four-member senior management team. This new structure resulted in the appointment of the first non-lawyer as a senior manager in a Canadian legal services firm. It is likely that further senior

legal management appointments also will come from the ranks of the corporate world rather than from within the internal legal partnership. (Leishman, June 2002, pp.66-81)

4.3 Differentiated Forms of Competition

As noted earlier in Chapter 2, the level of service differentiation is clearly an issue within the legal services market. Currently there exists waning demand and increasingly stronger supply-side competitive forces which are partially fuelling the increasing consolidation amongst law firms, leading to both increased geographic competition and an increased concentration of national law firm offices within regional markets. Ultimately, the nature of this type of competition should lead to further firm segmentation by practice areas/clients types as firms seek to differentiate both their firms and service offerings. Also in response, the role of marketing within law firms will likely become of greater significance as firms begin to explore and exploit new communication channels in an attempt to differentiate and position their respective service offerings through the development of targeted, tactical communication strategies.

In addition, legal services firms are facing more competition from multidisciplinary practices including major accounting and consulting firms. In order to try to compete, many legal services firms will need to explore the recruitment of other disciplinary professionals to more effectively broaden their service offerings. Lastly, internet-based competition and other efficiency enhancing technologies are also beginning to be recognized as a potential threat to the routine types of legal work performed by virtually all law firms. Internet-based “virtual” law firms have remained at the forefront of the technology evolution offering basic legal advice and ‘boilerplate’ legal agreements for such services as wills, business incorporation documents, real estate forms and the like. As technology continues to evolve, the expectation should be for increased pressures on the pricing models applied to the routine-type legal work that often forms a significant part of a firm’s general revenues.

4.4 Growth and Structural Changes

As noted, law firm mergers in Canada are thriving, driven both by lateral growth strategies and regional opportunities. As such, many firms are being forced into mergers due to an over-dependency on a geographic region, a single client or group of clients, a narrow industry focus, and/or an equal over-dependency on a particular lawyer or practice area. These factors are often coupled with an inability to develop a larger platform in which to effectively service existing clients. The requisite resources are most easily secured through a merger with another firm rather than through internal development. The challenge for most firms is that for the most part, they are operating as groupings of sole practitioners based on a single practice area. In order to develop the team-based model of legal services that clients are demanding, internal restructuring to generate better connectivity between individuals, practice areas and even regional offices is becoming paramount.

4.5 Technological Advances

As detailed more deeply in Chapter 2, the adoption and implementation of new technologies with legal services firms in Canada is becoming both essential and commonplace. As the legal system including the courts, clients, and firms strive for greater efficiencies, the use of technological tools in areas of communications, research, data storage and retrieval will become increasingly important. In addition, new technologies will also give rise to new types of legal claims, generating new laws and practices around such issues as privacy, e-commerce, patent protection, routine documentation and other regulatory issues. Intranets and extranets already exist as critical components of most firms, assisting in everything from internal and external communications, to marketing, and accounting.

As well, as noted, the reality of the “virtual” legal services firm offering limited services is already prevalent and growing. Thus individuals and firms alike will need to ensure they remain ahead of the technological curve if they hope to compete on an even playing field.

Lastly, the growth of the Internet has further increased the globalization of financial markets, stimulating a need for multi-jurisdictional talent and multiple geographic bases. With United Kingdom legal services firms quickly becoming dominant from a global perspective, Canadian firms will need to create strategies to deal with potential mergers or face encroachment within their domestic markets especially within their financial services practice areas. In the end, technology will continue to have an increasingly profound impact on the way legal services are both offered and delivered.

4.6 Changing Client Needs

For the most part, clients are seeking core practice area strengths and full-scale service delivery - all the while demanding a more efficient pricing model. As noted, buyers of legal services are no longer simply seeking legal services. Rather they are seeking legal solutions to their respective business problems. Thus, clients, especially those of full-service corporate firms look to their legal service provider as an integral business partner rather than simply a single service provider. This major shift has sparked an increase in legal service firm alliances with non-law partners including accounting, management consultancy and public relations agencies. New models of legal service often include a single “client partner” leading teams and individuals who share critical client knowledge. As clients’ needs change over time, the successful firms will be those that evolve with them.

4.7 Prepaid Legal Services

Industry advancements and enhancements such as pre-paid legal services are also becoming more routine allowing lawyers to provide services at affordable rates to members of the public who otherwise would have likely gone without representation. Prepaid legal services exist as defacto legal insurance that may or may not be used by a client during any part of the prepaid time period. In the US, the prepaid legal service industry is worth in excess of \$800 million annually and continues to experience year over year growth. (CBA, 2003) In Canada,

entrepreneurial firms and insurance companies have entered into this market space with limited success, but in general, buyers of legal services for the most part remain largely unfamiliar with the concept. That models for success in growth exist in other parts of the world, should lead to an expectation of similar trends in Canada.

4.8 Alternative Billing Arrangements

While the competitive landscape in the business community has continued to evolve over time to include ancillary services, law firms for the most part have clung to their traditional roots. While in recent years firms have begun to embrace the marketing discipline with greater vigour, overall, they have maintained a stringent focus on practicing law. A tenet of the practice of law over the past century has been to charge respective clients for services rendered via an hourly billing rate. As noted, the increasing usage of efficiency-enhancing technologies has exerted and will continue to exert downward pressures on this type of traditional billing arrangement. The potential for developing and incorporating routine processes into the rendering and delivery of legal services in such areas as trademark and patent filings, real estate transactions, tax and estate planning among others will likely see firms and providers incorporating far more flat-fee (piecemeal) billing arrangements and fewer opportunities for hourly billing. The efficiencies that the new technologies offer while somewhat bad for firm administrators are not all bad news for providers. In general, while they may force firms to rethink their billing methodologies, individual providers are far happier developing creative legal solutions for their clients than formatting routine documents for them. Manageable alternatives will likely include more readily articulated engagement letters that define with great precision the services to be rendered and the precise basis for billing. (Macauley, 2001, pp. 87-97)

4.9 Alternate Hiring Arrangements

The shift in demographics coupled with the increase in women and other minorities and cultures entering the legal profession will most certainly have an impact on the existing hiring

arrangements in which legal services firms have traditionally engaged. As such, firms will face mounting pressures to accommodate those lawyers who want to work fewer or more flexible hours without imparting a feeling or threat of compromising their respective careers. While the issue has only recently begun to make headlines on legal newswires, the expectation is that as the demographics within the profession evolve, firms will need to effectively and proactively manage their legal complement to ensure that they (the lawyers) remain content within the environment and to ensure that the firms retain an acceptable level of productivity and profitability. Lastly, the expectation moving forward should be away from the more prevalent “up or out” system whereby both associates and partners who fail to continue to increase their personal and firm’s revenues are asked to leave the firm.

4.10 Enhanced Marketing Orientation

The United States *Bates Act* of 1977 gave the legal services industry unprecedented autonomy in the discipline of marketing and advertising. As such, the past twenty-five years has witnessed firms embrace marketing strategies and concepts, while others still cling to the traditional conservatism of the past. The Canadian legal services industry has mirrored the activities of their US counterparts, albeit at a much more slower pace. As further consolidation shifts the industry towards a more oligopolistic structure, the expectation should be that effective marketing will play an even larger role in individual firm’s strategies as the need for differentiating a seemingly homogenous service becomes more critical. Comprehensive branding and positioning strategies will likely become far more prevalent both within the first and second tier firms as each attempts to reach, carve out and secure both their client bases and target markets.

4.11 Differentiated Competitive Positioning

Assuming effective management, market leaders in the Canadian legal services industry are expected to continue to perform well over the long term. As noted earlier, the large,

established 'legacy' firms perpetuate a seemingly virtuous cycle of success. They will continue to procure the best new legal talent from law school ranks and are often in the best position to attract talent from lesser firms by offering greater long-term compensation packages and rewards. In essence, over the long run, the strong will likely get stronger at the expense of the second tier firms, further exacerbating the gulf between them. In order to remain both competitive and profitable, the second tier firms will need to focus their efforts on developing targeted, defensible niches and establishing value propositions that the larger firms cannot. In short, they need to create a differentiated position.

Given the need for jurisdictional specificity that Canadian firms address, there is not a tremendous risk or uncertainty that the industry as a whole will cease to exist. There are however, certain realities and pressures that firms will need to respond to in order to remain profitable. These include physical changes in law firm management structures, threats from other non-traditional corporate professional services entities making inroads into the marketplace and the realities of the efficiencies that new technologies will bring to the industry. Those firms that are able to best recognize and adapt their business models to turn these threats into opportunities will be the ones that remain successful over the long run.

As some of the trends detailed over the preceding chapter are currently in their infancy, their ultimate impact on the industry is difficult to gauge. Nevertheless, the expectation is that these trends coupled with the industry economic characteristics and competitive dynamics will result in a legal services industry that will look, function and be managed in a profoundly different manner than the industry of today. Ultimately, the factors identified in this and the previous three chapters will be used to as a platform to determine the overall attractiveness of the industry. This comprises the subject and content of the following chapter.

5 INDUSTRY ATTRACTIVENESS

In review of the analyses contained in the preceding chapters, it is difficult to absolutely ascertain the attractiveness of entry into the legal services industry in Canada. In short, as with much of the previous analysis, it comes down to the issue of scale. At the individual services provider level, (and using industry statistics detailed earlier) it would appear to be relatively simple for a qualified individual provider to enter into and compete in the legal services market. As such, at this level, entry into the industry would appear quite compelling.

At the industry level however, certainly as a new entrant, success is most likely to be predicated upon the specificity of the entry strategy. Those firms that are able to search out and grow a small, profitable niche or buy into an existing, successful firm will likely be the ones that prosper over the long run. Those firms seeking to compete directly with the national firms will have a difficult time competing head-to-head with the industry incumbents as they lack the collective resources in terms of talent, profile and clients necessary to compete. As such, they (the entrants) will be at a distinct disadvantage when it comes down to being able to successfully solicit and procure the lucrative engagements that are the 'bread and butter' of the industry incumbents. Therefore, to compete directly with the industry incumbents, a new entrant would require two critical items; 1) access to tremendous capital resources in order to secure the talent required either through lateral hirings or through the purchase of an existing provider firm and 2) a significant amount of time and additional resources in order to build the requisite firm profile.

The challenges of entry into the industry notwithstanding, given the competitive dynamics and the trends facing the industry, the task of evaluating the attractiveness of the industry still remains. Given the virtual impossibility of entering into and immediately competing with the industry incumbents, rather than gauging the attractiveness based on potential entry, the level of attractiveness will instead be determined by exploring the core factors that have the greatest impact on a provider firm's profitability. These are as detailed.

5.1 Industry Growth Potential

Using the Canadian Federation of Law Society's membership growth rate trends as a predictor of future growth one can confidently project that the legal services industry will continue to experience steady growth over the medium to long term. While the delivery mechanisms, the content and the focus of legal services, may evolve over time, it is not unreasonable to expect that the industry's growth will continue to mirror the economic conditions and trends occurring within the domestic Canadian market. Using the Royal Bank's Spring 2003 Economic Outlook which predicts an overall economic growth rate of 3.4%, (Royal Bank, 2003) and coupling this rate with the mirroring effect of the legal services industry to major economic trends, one can safely assume that overall industry growth will continue to follow the FLSC trending line.

5.2 Profitability - Competitive Forces

The expectation for legal services firms moving forward should be for increased pressures on profitability. As the industry evolves technologically and efficiencies are created in terms of time spent on routine legal tasks, the client expectations will inevitably turn towards a reduction in fees. This reduction could be manifested through either a reduction in hourly billing rates or a shift towards task or assignment-based remuneration agreements or a combination of both.

During this industry evolution, those firms with firmly established market positions will be in the best position to insulate themselves from profitability issues given their proliferation and depth of talent. In short, the top firms will be able to continue to bill the top rates. The second and third tier firms however, will likely face greater threats to their individual profitability, as they will be unable to justify their rates based on their pool of talent. Thus, these firms will need to develop even greater operating efficiencies in order to remain profitable. In addition, the need for effective marketing and differentiation tactics should also increase as the

lesser firms seek to create unique value propositions that transcend hourly billing rates. Lastly, another factor to consider that may eventually affect firm and industry profitability would be both the shifting demographic faces of the providers and the trend towards part-time and flexible work agreements, which have a collective depressant effect on both firm revenues and profits.

5.3 Key Industry Success Factors

As ascertained earlier in this paper, legal services providers compete on three key fronts; for clients, talent and profile. These fronts form the basis for industry competition and are inter-related with each one another to the extent that each individual factor has the potential to affect the other two. In the end, the firms that are able to most successfully compete on these fronts will undoubtedly continue to exist as the market leaders. However, there also exist three core industry success factors that are also worth noting separately. These key success factors are each indirectly connected to the three competitive fronts and include the ability to differentiate a firm's respective product offering, depth and breadth of talent (coupled with geographic scope) and the ability to react and successfully adapt to dynamic market conditions. Mastering these three success factors will be critical for firms moving forward as evolution of the business of law continues. These success factors are explored more in-depth as follows;

5.3.1 Differentiation

The ability or inability to differentiate a provider's service offerings has surfaced in many of the preceding chapters. For the most part, within the established Canadian corporate legal services industry there are a number of "givens" in terms of firm attributes. Virtually every firm in the industry continues to claim that they possess great firm longevity and stability and provide quality work and great service at reasonable rates. This, they (the providers) do in great regularity, further commoditizing the output of the profession. This is further exacerbated by the standardized qualifications required for call to the respective jurisdictional bars, which renders the initial service offerings of new associates in a sense, almost generic.

As has been ascertained, on an individual basis, as providers build their respective practice and increase their profile, they in turn, raise the profile of their practice area and that of the firm they work for. Only then can they begin to bill the high hourly rates, which generate the high levels of revenue and profitability that the industry firms demand. Therefore, because differentiation of individual firms exists as a significant challenge, it can often become a function of the level of talent that the firm has managed to acquire and nurture and the depth of the same talent. Depth of talent however, is a poor differentiator for any professional services firms for as we determined earlier, a key challenge for the buyer is being able to objectively and relatively quantify and qualify it. Thus, if on the surface, firms are all providing a virtually identical service and buyers are for the most part unable to rate-shop, the onus then falls on the firms themselves to develop effective marketing and communications plans and programs that allow them to create a tangible point of differentiation between themselves and their rivals that their respective target markets will find both compelling and that provides them with added value.

5.3.2 Depth and Breadth of Firm

The 'wars' for talent within the Canadian legal services industry are particularly intense. At the risk of belabouring the point, the firms with the greatest depth and breadth of talent are able to continue to evoke a perpetual circle of success. While these talent wars have continued to evolve over the past few decades, as noted, it has been only recently that the evolution has move from regional arenas to national fronts. Thus, the expectation over the short and medium term should be that as the semi-national firms seek to complete their national agendas that the chasm between the tier-one and tier-two firms will grow even further. As a result, those firms without a national presence and without a defensible regional niche will commence a seemingly inescapable journey towards escalating profit pressures. In the end, the firms that are able to finish near the top of the talent wars and successfully establish offices in all the key markets will

be the ones that can claim the greatest depth and breadth of talent. As such, the key success factor is not only acquiring the talent, but also the seemingly requisite, full-market penetration.

5.3.3 Management Effectiveness

A firm's ability to adapt to dynamic business environments is also achieving greater recognition as a key factor in a firm's continued success. Again, the practice of law is very rapidly overcoming its traditional, conservative past and morphing into a 'business' of law. McCarthy Tetrault, the first firm to establish a truly national presence 13 years ago is at the forefront of this evolution. Developing synergies between the regional practice areas of a semi/national firm presents one of the greatest challenges to firm executive or managing committees. McCarthy's with its unique corporate-style management structure has implemented a three-factor program that includes dedicated practice area leaders accountable to and supported by, a four-member senior management team, significant investments by the firm in various knowledge management systems and lastly, consensus among the partners of a willingness to be managed. (Leischman, 2002) This commitment to 'loosening the reins' to ultimately achieve more effective management, continues to set McCarthy's apart from the vast majority of industry rivals and will undoubtedly allow it to respond much more effectively to both threats and opportunities in the marketplace.

As growth through mergers appears to be a continuing trend in the industry, one of the greatest challenges will be to merge the cultures, the operating systems and business philosophies of the various firms and focus the new larger firm in one strategic direction. This, coupled with designing a equitable profit pool that fits the new structure is not a task for those without access to high quality management tools and talent. Therefore, at the end of the day, securing the best talent, winning the best clients, building a high profile and differentiating a firm's services is still not enough. Without effective management, the firm will likely never reach its full potential.

5.4 Implications of Industry Analysis

While it is impossible to accurately predict the future of the Canadian legal services industry, it is possible to observe the trends that exist today or that are beginning to emerge both at a macro (legal services industry) and micro (provider/firm) level. As discussed in the previous chapter, while some of these trends have already had a dramatic effect on both the industry and the profession, others are only beginning to emerge and as such, their potential impact is too tough to assess. Some may comprise significant threats or opportunities, and others non-existent. Still others, such as the rapid rate of technological advancement, clearly have the potential to completely redefine certain aspects of the industry. For leading firms, small and large alike, the challenge is to remain at the forefront of these trends and changes, in order to either pro-act or react to them in such a manner as to either anticipate, or more importantly, take advantage of them.

The following summary implications takes into consideration these trends, the industry economic conditions and the competitive dynamics that have been discussed and analyzed over the previous pages and that are clearly evident within a global context, the Canadian economy and the legal services industry itself. Over the medium to long term, these implications will cause the market leaders to continually refine their strategic focus in order to maintain their respective market positions. Ultimately it is these implications that will guide the strategic application of the branding process as outlined in the latter chapters of this document.

5.4.1 Heightened Industry Rivalry

There are a number of factors that will increase the intensity of the rivalry with the Canadian legal services industry. As a direct result of the continued consolidation in the market coupled with the slowing market, there will undoubtedly be an escalation of the war for talent, for clients and for profile. When the proverbial 'dust' settles the resulting landscape will feature market-leading firms that all possess a national presence, will have extensive depth and breadth

of practice areas and individual providers and face high industry exit costs. Lastly, they will each boast an impressive list of clients of which they continue to seek innovative ways to retain and attract. Ultimately, the market leaders, while currently highly profitable, will continue to face profit pressures and will continue to find it difficult to develop and maintain a sustainable competitive advantage over their rivals given the homogeneity of the service offering. The greatest challenge that the market leaders will face in this arena of heightened rivalry is the ability to effectively differentiate their service offerings from those of their direct competitors. This differentiation will not be limited solely to a communications strategy rather it will be the result of a fundamental shift in the manner and methodologies in which the firm conducts its business.

5.4.2 Escalating Efficiency Gains

The agreement that the technological evolution will continue to dramatically reshape the legal services industry is without reproach. The impact on both the delivery of services and the types of services offered, while yet to be determined, can expect to continue to afford more effective internal and external communications, and increased efficiencies across all business functions. As a result, clients will continue to demand concessions on fees, creating even greater pressures on firm profitability. Moreover, firms will need to continue to develop incremental methods of using technology as a vehicle for adding value to their respective service offerings such that fees (pricing) are partially insulated from the decision-making process and not a primary focus.

5.4.3 Businesses vs. Practices

As the rivalry between the firms intensifies and the end product becomes more homogenized, firms will begin to recognize that they as providers of legal services lack the requisite training and strategic insights needed to effectively compete in the new marketplace. As such, the trend towards non-lawyers entering into the industry as firm leaders and managers

will simply reinforce the continued notion of 'businesses' rather than 'practices'. The result will be law firms with a decidedly more corporate structure featuring a leadership style and discipline that embraces cutting-edge business development and management tools 'borrowed' from the corporate ranks. The end result will see firms with a decidedly greater orientation towards human resources management and marketing, using these disciplines as tools for creating differentiated market positions, workplaces and value statements.

In all, these impacts that these broad implications will cause are already being witnessed within the Canadian legal services industry and the repercussions already being felt. As evidence, Campney & Murphy a seventy-five year old Vancouver law firm, at one time boasting a lawyer complement of 85 practitioners will cease to exist as of August 31st, 2003 - ultimately a direct result of the aforementioned implications. The expectation is that more firms will follow the path of Campney and Murphy.

Several common threads have surfaced throughout the previous five chapters that should leave most readers considering potential solutions to the problems facing the industry. The most glaring of these common threads would likely be the need for legal services providers to develop differentiated business, marketing and communications strategies in order to stand apart from their key competitors. This issue has surfaced in many forms throughout this document as its impact touches on the core of every firm's respective business model.

The next chapter begins a process of analysis, which will ultimately lead to the determination and exploration of one potential solution that should serve legal services providers well as they plot their respective strategic directions. The solution is rooted in the marketing discipline and is a process commonly referred to as 'branding' and is one that directly addresses the differentiation issue. This analysis commences with an introduction to legal marketing as detailed in the following chapter.

6 LEGAL SERVICES MARKETING

The second part of this document contains an overview of the application of a strategic marketing initiative to firms with the Canadian legal industry. This initiative, commonly referred to as ‘branding’, which involves the development and application of brand-building activities to an individual legal services firm. While certainly not a new concept within the corporate world, branding exists as a relatively new concept to the legal industry. As such, it currently has both advocates and detractors whose views on its effectiveness and value continue to generate countless discussions within the legal marketing community.

As such, the second part of this document analyzes both sides of the debate starting with an overview of the legal services marketing industry, noting the dissimilarities between it and more conventional consumer product marketing. From there, the paper explores the legal marketing industry, ultimately determining what motivates buyers within the industry to purchase from a specific provider, how individual firms currently differentiate their service offerings and the differentiation strategies that are currently available. The documents then shifts directly to an in-depth analysis of branding – determining what it is, its relevance and importance, the business case behind it, the measurement thereof, and its use and effectiveness as part of a firm’s differentiation strategy. This second part concludes with an analysis of brand strategy development within a legal services firm environment, detailing both the rationale for or against such an initiative and the potential benefits and limitations that legal marketers should be made aware of prior to embarking down the branding path.

6.1 Branding Analysis Rationale

The rationale for analyzing branding within the context of the Canadian legal services industry comes as a direct result of industry economic characteristics, the competitive dynamics and the trends facing the industry and lastly the implications for the future of the industry. As has been determined, the Canadian legal services industry is undergoing a transformation over

many fronts due to pressures from such factors as technological advancements, firm and market consolidations, threats from both international, domestic, traditional and non-traditional competitors, and dramatic shifts in firm management structures. Concurrently, as consolidation continues to both level the playing field and homogenize the end product offering, the result is an industry led by national firms with breadth and depth of practice areas, and a wealth of talented professionals all competing for profile through the use of like media and like market positions. In short, the competitive intensity within the industry has increased, while the end product has become altogether generic. Thus, the primary challenge for firms moving forward will be to create both a point of disparity from their rivals and to ultimately differentiate their respective service offerings in such a manner that their clients understand and accept that what they have to offer is different from the competition and that this difference provides incremental value to them as a client. This point of disparity is a 'brand'.

Providers and firms alike are accepting the reality that the practice of law is no longer 'business as usual', and that in order to compete, they (the providers) must bring additional resources to the table. These include strategies and tools 'borrowed' from the corporate world including those of the consumer packaged goods industry such as scientific human resources management, strategic planning and business development, client relationship management and marketing. While each of the 'strategies and tools' mentioned are likely content-sufficient and worthy of their own respective chapter, this document is deliberately focused only on marketing and as noted, more specifically, branding.

6.2 Introduction to Legal Services Marketing

Overall, acceptance of, and adherence to, a marketing orientation has become a reality in virtually all the major legal services providers in Canada. Following the lead of US firms, Canadian firms are augmenting their staff complements with both marketers, and marketing departments alike, drawing and culling marketing professionals from both their internal ranks as

well as from non-legal external sources. To illustrate this dedication to the discipline, in 1999 Greenfield/Belser, a Washington DC-based advertising agency, polled 1000 of the largest legal services firms in the US as a corollary to a similar 1991 survey. They found that in 1991 only 56% of legal services firms had anyone devoted in a full-time capacity to marketing, while in 1999, 93% of firms had full-time marketing staff, some with over 20 full-time employees. (Belser, 2000, pp. 2) While the results certainly cannot be expected to be mirrored by the Canadian marketplace in terms of penetration, the expectation is that there has been and will continue to be continued growth and dedication by legal services firms to the marketing discipline.

Branding within the legal services industry is a relatively new phenomenon. Not only is there rarely consensus as to what branding means, there still exists polarization as whether or not legal services providers should even try to brand their firms and service offerings. In order to accurately gauge the potential for success of a legal services branding strategy or initiative, it becomes immediately critical to understand the fundamental differences between legal services marketing and that of consumer packaged goods marketing. As such, this will form the basis for the analysis moving forward in the following section.

6.3 Key Issues/Challenges

Legal marketing falls under the umbrella of professional services marketing. While there certainly are fundamental differences within and between the marketing of professions such as accounting, law and medicine for example, there are also common threads that bind the disciplines throughout. These commonalities are what traditionally differentiate the marketing strategies of services from products and underscore the need to approach the discipline in a somewhat different manner in order to appeal to and attract the industry buyers. Understanding both the differences and the challenges attached to the legal services marketing discipline is a critical first step in developing effective strategies and initiatives including that of branding.

As noted, legal services and consumer products are fundamentally different ‘dynamics’ and as such, the buyers of each do not behave the same way and do not respond to the same marketing strategies or tactics. The key challenge of marketing legal services is their inherent intangibility – they cannot be tasted, seen, felt, heard smelled or even compared one to another before they are purchased. Thus, purchasers (and marketers) often seek to ‘tangibilize’ (make tangible) the intangible features of the services they are buying in order to reduce uncertainty or to provide evidence of the quality of the service offered. With legal services, there is rarely a transfer of ownership of anything, and more often than not, the service provided is produced and consumed simultaneously.

The traditional marketing model primarily rationalizes and develops strategies based on the four ‘P’s’ of marketing; product, price, place (distribution) and promotion. Given the broad base of understanding afforded this traditional form of rationalization and in order to bring clarity to the disparities between the two dynamics, it will serve as the model for analyzing the disparities between them. As well, through this analysis, the notion of in/tangibility will be developed in greater detail.

6.3.1 Product

The focus of product marketing is on a tangible item that exhibits physical attributes and features and can relatively easily be compared to another product occupying the identical competitive space. Using the soft drink industry analogy, the industry end product ultimately exists as a flavoured beverage housed in a sealed container. Consumers of soft drinks can compare two competing products based on the variety of tangible attributes including taste, ingredients, container shape and colour among others. Rather than focusing on the actual product features however, marketers strive to develop marketing strategies based on the benefits that the product offers to consumers. Since prior to purchase, consumers have the ability to compare both the features and benefits of products at the point-of-purchase, they can make

relatively well-informed decisions. For the most part, consumer products tend to also exhibit a form of consistency in that a particular brand and flavour of soft drink generally remains constant over time. Products, by their very nature, are developed and marketed in order to for consumers to consume them either immediately or at a later date.

Alternatively, legal services are experienced, not consumed. The 'product' of a legal services firm exists primarily as the output of an individual's (or collection of individuals) collective intellect and experience, usually bundled and sold as a form of an hourly rate or fee. As they have no tangible qualities, legal services cannot be readily compared from one service to another prior to purchase. As such, while sellers and marketers of legal services can define the service output, make claims as to quality and otherwise try to quantify and qualify the output, as with all professional services purchases, there exists an inherent element or risk due to the unique experience factor.

While some service organizations, including those in the fast food industry have attempted to turn the service component of their business into a defacto product through standardization and consistency, the reality is that every service is delivered in a unique fashion to each and every purchaser. This due simply to the fact that with each service delivery, there exists a human interaction, which is inherently variable. Each customer interaction becomes a mini-play whereby each actor has diverse roles and scripts and ad-libbing is to be expected. Note as well, that when judging the quality of the output, there is not always one standard, as no one defines quality in the same way. Therefore, the implication for marketers of legal services is that in order to ensure that their respective customers or clients are being satisfied with the services they are receiving, they need to adapt their offering slightly to address the particular needs of a unique client. Thus, while the output of legal services firms should certainly confirm to a particular level of routinization, it also needs to contain an element of flexibility in order to ensure a 'fit' between the provider and the customer. That said, with respect to services

marketing, in order to allow buyer to make better, more informed purchase decisions, the challenge for marketers is to try to make the intangible part of the service offering as tangible as possible, ultimately turning a service into a product.

6.3.2 Price

In the tangible products market, price generally follows traditional economic laws of supply and demand. Marketers understand that within a *ceteris paribus* environment, by lowering their respective price, they will generally increase the volume of sales of their product. Conversely, raising prices will have the opposite effect. Price in the product market tends to reflect features such as quality, newness, uniqueness, and customization. Therefore, for marketers, developing a pricing strategy for a new or existing product is reasonably straightforward process, especially given that the majority of products have some form of a benchmark against which to compare their respective features and benefits. Consumers are also able to make purchase decisions based on pricing information generally widely available in the marketplace.

Pricing of legal services is generally based on some form of a time continuum. This is due to the fact that they (the prices) exist for the most part, as the collective output of an individual's intellect and experience bundled together and converted into an hourly billing rate. While there does exist some adherence of legal services pricing to traditional economic demand theory, there are also many exceptions including some with diametrically opposing results. For example, the demand for the services of a top legal services provider does not decline with an increase in individual billing rates, as in some cases, the fee charged (the price) can actually serve as a benchmark of quality of service and experience. Therefore, with price serving as an indicator of quality, demand can actually rise with an increase in fees charged. As noted earlier in this document, with legal and other professional services, a high price denotes experience and incremental experience should result in greater efficiencies. Therefore, a provider charging \$3X

per hour may be able to deliver effective service in one-half the time of a \$2X per hour provider, thus actually saving the client money in the end. Thus an increase in price does not necessarily lead to a decline in demand. Conversely, a decline in price may result in a decline in overall demand of a particular service, as it, (the price decline) may be interpreted by the market as a signal of inferior service delivery.

Certain legal services can also be much more readily commoditized and as such, are subject to downward pricing pressures. Taxation, immigration, patent and trademark law are a few of the areas of legal practice that continue to face pricing pressures from specialized firms and increasingly from internet-based legal service providers as they (the services) are more readily standardized. In general, the more routine a legal service offering is, the greater the price pressure it faces. Conversely, a highly complex legal problem faces almost non-existent price pressure.

Pricing in legal services often behaves 'normally' with respect to volume purchases. Often in the case of product sales, buyers that are purchasing large volumes of certain products can command tremendous bargaining power and thus demand a lower price. The same relationship holds true for professional services as large institutional buyers (large corporations, government agencies) can negotiate reductions in rates due to the volume of the services purchased. Sellers of professional services are in a much stronger relative position than are sellers of products in terms of flexibility of pricing given their inherently low marginal cost of production. Lastly, pricing comparisons of professional services is often not a simple task, as there does not often exist a single collective whereby prices are made publicly available. Thus, rate shopping can often be an arduous process. Rates do however, tend to follow market ranges. This is evidenced by the existence of 'Toronto' rates (the highest in the country) vs 'Vancouver' and/or 'Halifax' rates which tend to be considerably lower. This would suggest that the

individual market plays a role in determining acceptable ranges of pricing that individual providers and firms must fall within in order to effectively compete.

The reality is that traditional professional services pricing models (interpreted as an hourly billing rate) actually run counterintuitive to the way consumers actually make the majority of their purchase decisions. This notion is reinforced by Ron Baker, a California-based consultant dedicated to teaching value pricing to service professionals. As quoted Baker states:

“If you go to a grocery store and pull an item off the shelf that has no price, chances are you’re perturbed. But law firms do this to their clients every day. We expect them (buyers of legal services) to suspend the laws of economics, consumer psychology, and price psychology, and hand over a blank cheque. We all spend our money on certain things every day, so we know what is expected when we buy something. The laws of economics and consumer psychology apply as much to law firms as to grocery stores, car rentals and the like.”
(LOMA, 2003, pp. 1-12)

In applying this analysis, the implication for sellers of professional services including legal is that consumers of services do not simply seek to purchase time from their providers. Rather, they seek the results that the individual provider or firm delivers. In addition, as purchasers of professional services exist as the ultimate arbiter of value, service providers must ascertain what value means to their clients/consumers. Focusing on a billable hour ignores the clients’ basic need for value delivery. The reality for professional services providers is that of the four variables (P’s), price is one most largely ignored as providers and firms develop their marketing mix. Therefore, the bottom line moving forward, is that as consumers of professional services become better able to compare and quantify their purchases, those firms with client-focused pricing (billing) programs will likely be in a much stronger position to retain their existing clients and attract new, and incremental ones.

6.3.3 Place/Distribution

The concept of place in marketing refers to the various activities that both manufacturers and service providers undertake to ensure that their respective offerings are available to their target markets and customers. The *place* designation is often coupled with the *distribution* concept in that the firm's/organization's distribution channels play a significant role in ensuring an adequate supply of end product. With respect to product marketing, the variety of place and distribution options is seemingly endless, in that any combination of producer/middleman/wholesaler/retailer possibilities could potentially exist. Thus, in the product-marketing arena, the place variable plays a very significant role as part of the overall marketing mix.

Part of the challenge in defining appropriate place options is not only understanding how and where consumers purchase the products, but also how the various distribution channels function, how the various components interact with each other and how ultimately they make their respective purchasing and distribution decisions. At the end of the day, a manufacturer who fails to dedicate the appropriate resources to determining the best place strategy, does so at their own peril. Ultimately, the best product at the best price, combined with the best promotional program will undoubtedly fail if the target consumers cannot effectively and efficiently locate it.

With respect to professional services marketing, place decisions are not dissimilar from product marketing however, the options available are much more limited. In general providers of professional services seek to locate themselves and their respective service outlets (places) in geographic regions that best serve their clients. Using accounting, legal and consulting services as an example, these 'places' usually exist as a physical entity such as an office or suite of offices. As ascertained, the intangibility of services produces unique marketing challenges, not the least of which is the impact on place. Given that buyers are generally seeking to reduce purchase anxiety, they will often use a place (the physical surroundings) as partial

validation of the quality of the provider. The place of professional services often includes the physical office space including reception areas, boardrooms and individual provider's offices, the staff, the office equipment, communications and collateral materials and any form of signage or company logo. To the buyers of professional services, these all represent tangible components of the service offering that assist them in their decision-making process.

Professional service providers are continually seeking new distribution methods for disseminating their respective service offerings. As technological advancements continue to flourish, video conferencing, use of the Internet-based tools including streaming communications, extranets, web-based seminars among others are all currently being explored as potentially effective and efficient vehicles for distribution and dissemination of professional expertise. Thus, the overall implications for providers is that while the existing place options are currently much more straightforward, the potential for dramatic changes in distribution options certainly exists. In the interim, and in addition, providers must continue to pay particular attention to their physical place attributes. As clients seek to validate their purchases through an examination of a provider's place, they are keen to pick up subtle clues that expose certain truths about the respective provider. Therefore, as a provider's product, price, and promotional efforts all have the potential to become effectively undermined by a client's personal experience with the provider's place, the provider must take steps to ensure that the place component of their marketing mix complements the others.

6.3.4 Promotion

The promotional component of a product's marketing mix can include a virtually infinite list of attention-generating strategies and tactics designed to communicate a specific message to its target markets. These options can include everything from television, print and radio advertising, to point-of-sale promotion, to public relations, to sponsorships, to direct and online marketing among many others. Within this 'product' market space there does exist legislation

designed primarily to protect consumers from dubious claims and potentially injurious products. While no less important than the other three of the marketing mix dynamics, the promotional component would seem to possess the greatest numbers of options and as such is usually the most variable dynamic, often subject to change in terms of budget, strategy or tactics, depending on the product's respective performance in the current market place.

Within the professional services market, there also exist a tremendous number of promotional options afforded providers. While the provider's promotional options are generally subject to similar consumer protection legislation, they (the providers) are also subject to a second level of scrutiny and regulation, usually a discipline's governing body, that guides the professional and ethical issues that surround a provider's promotional efforts. For the most part, professional services firms have been slow to embrace a marketing orientation. As ascertained earlier, within the legal profession, it was not until resolution of the 1977 *Bates vs. Arizona Decision* that law firms were permitted to advertise their services in the US. Canada followed suit later in 1982. Despite, these relatively new found freedoms, within the professional services communities there still remains hesitancy to actively promote a firm's or individual provider's services as to do so is often seen as to denigrate the profession. This however, is changing rapidly, and will continue to change in increasing intensity in the Canadian marketplace as the competitive environment continues to morph into an industry structure not dissimilar from that of an oligopoly.

The implication for marketers of professional services is that to ensure continued success, they will need to continue to embrace the marketing strategies and tactics of the corporate world. Even within the professional services environment there exist success stories and examples worth noting and emulating. Accenture, (formerly Anderson Consulting) a global business-consulting services provider, in their split from Arthur Anderson Consulting, supplemented their annual \$75 million dollar marketing and communications budget with an

additional \$100 million in order to re-brand and reposition the new, independent company. (Wall Street Journal, 2000) This 1999 re-branding effort came after investing in excess of \$7 billion over the better part of decade building the Andersen brand. Accenture, while not needing to answer to professional regulatory bodies such as accounting and legal industries do, embraced a truly integrated marketing program that included advertising, direct mail, sponsorships, and public relations in order to ensure that their key messages effectively reached their target markets. In all, the Accenture example serves as an example for all professional services firms (including legal) of what can be accomplished in a very short time with a well conceived and well executed integrated marketing program. In all, while there are certainly marketing issues that professional services marketers cannot simply overcome as readily as can marketers of tangible products, there still exist a tremendous amount of proven strategies and tactics that providers can and should be capitalizing on. Within the Canadian marketplace those legal services providers that recognize and pro-act to the changing market conditions and develop marketing strategies to address them will be the ones that remain at the forefront of the industry.

6.4 Current State of Legal Services Marketing

As noted, relative to most other manufacturing and consumer product-based industries, the legal industry remains in a state of marketing infancy. The US-based *Bates* decision in 1977 and the Canadian *Jabour* decision of 1982, collectively served as watershed events in legal history, paving the way for the introduction of marketing into the profession. As the implications of these two decisions have been touched on at various points within this document, there exists no additional value in regurgitating them. Put simply, these two decisions opened the respective doors for providers and firms to develop platforms in which to attract new clients and retain existing ones. Note again, that while the majority of legal marketing industry research is completed in the US market, this fact does not serve to discredit the research, nor the results. In general, Canadian legal services marketing efforts have mirrored those of their US counterparts,

albeit with a lag period about 3 –5 years, a trend that is reflected through a number of marketing disciplines.

Early legal service industry marketing efforts could best be described as conservative, to say the least and were more promotional than strategic in nature. In the established legacy firms, advertising legal services was viewed as undignified to the profession and despite having the authority to do so, many firms resisted capitalizing on the opportunities. That said, the *Bates* and *Jabour* decisions did serve to greatly motivate one particular type of legal expertise and provider, that being the personal injury (and other forms of major dispute) litigation specialist. Early garish advertising and efforts by this particular group, led to the colloquialism of ‘ambulance chaser’, a term still widely used with much derision within the profession. In general, initial marketing efforts, post *Bates/Jabour*, primarily comprised face-to-face activities including public and private seminars, corporate hospitality and other forms of entertainment and promotion. For the most part, provider firm logos and letterhead remained basic black, advertising consisted of tombstone ads touting new hires and partnership promotions, and collateral materials such as brochures were virtually non-existent. Firm marketing efforts were managed by administrative staff, usually at the direction of a senior partner who served as the firm’s marketing leader. In short, prior to the 1990’s early marketing efforts were both unsophisticated and non-strategic in nature.

Through the 1990’s and into the new millennium legal marketing has rapidly matured, with firms and providers becoming far more sophisticated and their efforts far more strategic. The 1999 Greenfield/Belser study in following up on a similar one completed in 1991, found that over an eight-year period that the number of firms with in-house marketing staff complements had doubled, marketing budgets had increased sevenfold and nearly three times as many legal providers were engaging in advertising. (Belser, 2000, pp. 1) Over the past decade law firm marketing budgets have remained relatively stagnant averaging 3% – 5% of firm revenues, which

contrasts with other professional services firms allocations of 7 – 10 %. (Greene, 2001) The implication here is that as industry rivalry intensifies, law firms will need to re-assess their marketing budget process if their goal is to put themselves in a position to compete in the marketplace. Rather than simply increasing or decreasing the dollar amounts allocated to marketing based on firm revenues, providers will need to determine more efficient and effective methods of allocating the dollars.

There has been considerable interest in the process of branding within the legal profession over the past five years. Without elaborating greatly about the process within this chapter, interest in branding has been fuelled both by the efforts of a number of legal services firms, highlighted by their aggressive and expensive branding programs and by the spectacular market failures of a couple of firms who had undertaken significant branding campaigns. Of the two firms; *Brobeck* and *Skjerven*, both formerly located in California, it is *Brobeck* that remains the talk of the industry simply due to the scale of its collapse. While the scale of the *Brobeck* collapse was and remains tremendous, the critical item to note is that the collapse was not a poorly executed branding effort that doomed the firm to failure. Rather, there were significant contributing financial factors and poor management decision-making that ultimately sunk the *Brobeck* ship. The demise of these two firms has however, certainly raised questions as to the validity and viability of branding as strategic initiative within the legal marketing and management communities. The expectation should be that interest in the subject would remain high especially as the market rivalry escalates.

6.5 Future Trends

The legal marketing profession is unofficially guided by the Legal Marketing Association (LMA), which exists as a resource for firms and marketing professionals within the industry. The LMA was founded in 1985 and currently boasts a membership in excess of 2000 legal marketing professionals from 43 US states and 11 countries, including Canada. That the

LMA has grown by almost 70% over the past two years with membership increasing from 1200 to over 2000 legal services marketers indicates that the industry as a whole is increasing its respective level of sophistication. (Monteiro, 2003)

A 2001 survey of US firm's legal marketing budgets by the LMA gives compelling insights into both the current and future state of legal marketing. The research showed that currently, the marketing budget line items with the largest allocations include (in order): departmental salaries, client meals/entertainment, event tickets, advertising, charitable and event sponsorship, and collateral materials production. While these items generally comprise requisite components of any law firm marketing budget, that they are ranked as high as they are, should be certainly a cause for concern. As has been reiterated throughout this document, in order for firms to succeed given the evolving industry conditions, there is a tremendous need to increase the level and depth of strategy into the marketing function of virtually all legal services firms. As such, the expectation should be that the future of legal services marketing will include strategic, client-focused initiatives that deliver not only bottom line results, but that also result in far closer relationships with core clients. Such items as general market research, client satisfaction surveys, targeted, customized client procurement proposals, and marketing training will serve as tactics to assist in realizing these goals. Despite the initial mixed market reaction to the process, in order to differentiate the service offerings of one firm from another, positioning and branding initiatives must also have a significant role in the future plans and marketing budgets of firms moving forward.

This proselytization is reinforced by a 2003 research study conducted by Chambers and Partners, a United Kingdom recruitment consultancy. Similar to the US/Canada marketing lag period identified earlier, it is also generally accepted that the UK exists at the forefront of the majority of new strategic marketing trends. As such, the realities and insights that Chambers has detailed can be expected to evolve with the US and Canadian markets over the next three to five

years. Chambers determined that while salaries for legal marketing professionals have not increased substantially over 2001, most firms will be increasing their respective marketing staff complements over the next year on average by 20%. Forty percent of the firms surveyed plan to grow their firm's client base through business development and marketing initiatives including 30% of firms concentrating on customer relationship management and intranet development, 20% through increased client care and 10% through research and analysis. As Chamber's consultant Amanda Johnston stated "Although salaries have not increased a great deal for marketers...there is no doubt that firms are realizing the importance of investing in their marketing departments." (MacCallum, 2003. pp.3)

Lastly, as competition for new clients, legal talent and profile continues to intensify, the uses of technology to enhance marketing efforts will undoubtedly also intensify. The rise of the global law firms coupled with the continued consolidation of domestic law firms across geographic regions will incite the further development of client teams for core clients and industries as firms try to determine more effective methods of differentiating both through unique client service offerings and through strategic positioning and branding efforts. Another trend resulting from the intensifying competition for clients and borrowed from the corporate world that is actively being rationalized is the term 'business development' now used in the same context as 'sales'. Many US-based and a handful of Canadian providers are engaging the services of experienced sales professionals to help guide the new client procurement efforts. While accounting and other professional consultancies have been employing sales professionals for the better part of a decade, this represents a new, rather aggressive direction for legal services providers. Moving forward, providers will need to recognize and appreciate the separation between the marketing and sales functions and between staff complements and manage accordingly in order to gain the maximum benefits. In all, as has been a central theme throughout

this document, all indications point towards a dynamic new business development and marketing model for legal services providers over the next decade and beyond.

While providers of legal services have clearly embraced the marketing strategies and tactics of a more aggressive corporate environment, a key challenge is in the quantification of the relative impact of their efforts on the buyers of legal services. In order to determine if a particular marketing strategy or tactic (including branding) can be effective, is critical to understand how the end buyer of legal services behaves and responds to marketing overtures. As such, the information and analysis contained in the following chapter, deals primarily with the buyers of legal services. This analysis and the implications contained within, will in turn, be used to not only generate insights into the overall legal marketing platform but also to determine the validity and relevance of a legal services firm branding strategy.

7 BUYER BEHAVIOUR – HOW LEGAL SERVICES ARE BOUGHT

7.1 Introduction to Buyer Behaviour

The challenge of determining how both individual and institutional buyers select their legal services provider is one of perennial interest to those in the industry. Given that we have ascertained that rivalry within the marketplace is only going to intensify, the expectation should be that interest in the subject would also continue to intensify. While there will undoubtedly exist some overlap between individual and institutional buyers in terms of behaviours, inevitably, buyer behaviour will diverge depending on the nature of the engagement and, as already been discussed, the scope and scale issues occurring within the industry will inevitably have the potential to deliver diametrically opposing results. Lastly, the core goal of this chapter is to be able to ‘paint a picture’ of the typical legal services buyer in order to determine the viability of a branding strategy. If, at the end of the day, firm brand, profile or reputation has no effect on the decision-making process of the buyer, clearly branding is an inefficient allocation of marketing resources. If the reverse is true, then a green light should be extended to legal marketers towards brand-building activities.

As was established at the outset of this paper, and at the risk of invoking redundancy, the industry focus of this paper is on large, full-service legal services firms, with a provider complement in excess of fifty lawyers. While the buyer of the services of this type of firm will include both individuals and institutions, the clients that these firms primarily compete for, are the large, institutional clients such as banks, airlines, multinational corporations and the like. Thus, it will be these types of clients that will carry the classification of the ‘buyer’ of legal services for the purposes of analysis moving forward.

The basis for this analysis will be the results of an Altman Weil Inc. (a leading consultant to the legal industry) research study of corporate counsel buying behaviours. The June 2002 study involved 4770 corporate counsels located throughout the world and was

commissioned on behalf of Lex Mundi, a global association of independent legal services firms. What the survey found was that the most important factors in hiring outside counsel are *expertise* in a particular practice area, a perception of *high quality work*, the *reputation* of an individual provider, *fee structure*, *local market knowledge*, and (for international matters) *languages spoken*. (Altman Weil, 2003) As these insights were gathered from the global legal community, the expectation should be that they are also reflective of Canadian legal services buyers. In all, according to the survey, institutional buyers of legal services stated that they intend to continue to scrutinize their legal services procurements with a greater vigilance and following a trend that has been highlighted throughout this document, will continue to consolidate the number of firms that they will engage, even further increasing the competitive nature of the industry environment.

7.2 The Discovery Process

There exist two key components within the legal buying process, discovery and selection. The factors that affect these components are in both cases sometimes identical but their relative importance changes depending on the buyer's position within the buying cycle. Note that while legal services marketing activities focus primarily on the discovery process, inevitably they do not serve to *sell* the provider's services. In fact, this reality should be applied across the board against all industries. Marketing efforts should be developed in such a way as to accomplish two goals - to differentiate one firm from another and to reinforce to existing clients that they have made the correct buying decision. Marketing efforts should in effect, serve to pre-condition the selection process and reduce post purchase dissonance.

In generating a short list of potential legal services providers, buyers 'discover' their candidates through a variety of means. Using the Altman Weil research identified earlier, direct referrals, requests-for-proposals/credentials (beauty contests), individual provider writings and seminars, and hard and soft directories all scored high in terms of discovery tools. (Altman Weil, 2003) These results mirror similar research commissioned by Greenfield/Belser in 1999, which

determined that 80% of institutional buyers seek referral information from sources they trust. (Belser, 2000, pp. 11) The Belser study also determined that legal directories, advertisements, provider web-sites, and seminar-based and other collateral materials also played a significant role in the discovery process. Worth noting is that within the discovery phase, the evaluation process is much more of an intellectual, objective one than in the selection process. The key factors that differentiate firms during the discovery phase include expertise, cost (often converted into some form of a value derivative), individual provider reputation and innovation. Other lesser factors include provider knowledge of the buyer's industry, billing practices and client orientation. (Belser, 2000, pp. 11) Again, these are all evaluated and scored usually using some form of an objective metric.

Of considerable note is the notion of inertia in the discovery process in that not all buyers of legal services within this category are active buyers. In general, it is understood that one of the greatest forces in legal services procurement *is* inertia, which in effect, leaves buyers doing what they have always done. In agreement with this theory is Dr. Mark Greene, a leading research consultant to the legal industry who states:

“This is consistent with the way most legal services are given out to law firms. The firms that you have been using are the firms that you will use when the next matter crosses your desk” (Smith, 2001, pp. 4)

Some inertia is justified given the nature of the relationship between most buyers and their legal providers. The buyers have learned the strengths and weaknesses of their providers and the effective ones will have invested tremendous resources in training their providers. As noted in the Section 4.5, the larger the client, the greater the switching costs. The provider will often serve as a business partner to the client and as such will have a deep understanding of both its industry and more importantly, the client's own business, creating efficiencies and flattening

the learning curve in a manner such that other competing providers are essentially excluded from competing for any incremental business that may arise. Therefore, at the end of the day despite a provider's diligent marketing efforts and careful attention to a prospective buyer, they (the provider) may be succumbed to a force of inertia that ultimately renders their efforts futile.

7.3 The Selection Process

Once buyers have 'discovered' their list of potential legal services providers, they are then compelled to select the one (or ones) that best fit their respective needs. As with the discovery process, the selection process is as complicated and decisions at this level are made much more subjectively as the buyers are now considering the working relationship and compatibility of the providers with themselves and their internal staff complement. In general, once the discovery short list is complete, all potential providers are essentially equal despite the fact that they may vary with respect to particular individual strengths and weaknesses. It is only now that providers really have the opportunity to 'sell' themselves to their prospective buyers.

As noted, in the selection process, key factors from the discovery process are re-evaluated, however this time in a different light as this process becomes much more subjective and emotional. When it comes down to final selection, the number one priority remains expertise, followed closely by the cost/value consideration, which takes on an even greater importance. Two factors to note that become more dominant in this phase are personal chemistry and firm reputation. In fact, for 19% of respondents to the 1999 Belser survey, firm reputation was rated as the *number one* consideration. (Belser, 2000, pp. 12) When considering the implications of the selection decision, this result should become somewhat self-evident, as the reality is that buyers must not only justify their purchases to senior management, but also need to ensure a safety net to fall back on. A provider that carries with it a strong reputation (brand) provides that safety net.

Other factors that surface during this phase also include in order; individual provider reputation, knowledge of industry, firm location, billing practices, responsiveness and prior experience with the firm. (Belser, 2000, pp. 12) Again, note that some of the same factors from the discovery process appear on this list but with a slightly different weighting. That prior experience with the firm appears near the bottom of the list should be a cause for serious concern for any and all providers and only underscores the need for them (the providers) to ensure constant communication with their respective clients.

7.4 Implications of Buyer Behaviour

In determining the implications of the buyer behaviour, it becomes imperative to contrast the discovery and selection factors with both the trends in the marketplace and shifts occurring within provider firms themselves. For ease of comprehension, the factors within each of the two buying phases as determined by both the 1999 Greenfield/Belser study and the 2002 Altman Weil are detailed in the following table.

Table 8: Legal Services Buyer Behaviour Factors

Greenfield/Belser Results (1999)		Altman Weil Results (2002)
Discovery Process Factors	Selection Process Factors	Selection Process Factors
Expertise	Expertise	Expertise
Cost/Value	Cost/Value	High Quality Work
Ind. Provider Reputation	Personal Chemistry	Ind. Provider Reputation
Provider (Firm) Innovation	Firm Reputation	Fee Structure
Industry Knowledge	Ind. Provider Reputation	Local Market Knowledge
Personal Chemistry	Industry Knowledge	
Billing Practices	Firm Location	
Client Orientation	Billing Practices	

Table created by author. Data sources: Belser, 2000, Altman Weil 2003

Note that provider reputation is highlighted in all three columns, giving credence to the initial proposition that a branding program would only carry value if it was identified by the buyers as an important factor in the decision-making process. In all, given their consistent

appearance at or near the top of table as illustrated above, the implications of expertise, cost/value and firm/provider reputation will each be explored in greater detail as follows.

7.4.1 Expertise

Law Society regulations in the province of BC currently prohibit providers from making claims within their advertising or collateral materials that are unverifiable. (Law Society, 2003) Short of researching each of the acts contained within the ten individual Law Societies in Canada, the assumption will be each charter contains a clause that mirrors the spirit of the BC clause. An 'unverifiable' claim would include any form of claim or pronouncement of expertise, as ultimately, expertise cannot be quantified. Therefore, the challenge for providers is to establish a reputation or defacto aura of expertise surrounding both the individual provider and the firm. Marketing, communications and public relations efforts can all play a significant role in the establishment of this aura of expertise by positioning the firm at the cutting edge of the particular practice area or legal issue. Such tactics as public speaking engagements, public relations activities that highlight the provider's success within or around the specific area/issue and advertisements noting the provider's commitment to the area/issue all support the notion of expertise. Ultimately, these efforts become a collective demonstration of the firm's insight and experience with the area/issue and serve to create the aura of expertise.

The challenge with the above tactics is that ultimately, they need to be grounded in reality. To build a practice platform based solely on conjecture, is a short term strategy that is doomed to failure. There must be substance behind the conjecture. Within the Canadian marketplace, the challenge is even greater, given the existing competitive structure and the expectation that competition will continue to escalate. As the leading firms continue to compete for, and secure, the top legal talent in the country, they eventually create a level playing field of 'experts' in a particular area of legal insight. While depth and breadth of practice areas are seen as a firm strengths, there exist diminishing returns to scale over time. Firm positions become

reduced to one firm being 'more expert' than another which is ludicrous to claim and still impossible to verify. In the end, the landscape becomes a generic arena of expert firms.

Hypothetically, while a firm could try to create a monopoly of talent within a single practice area in order to secure all the available business, over time, this strategy would become untenable, as individual providers would seek alternate opportunities in which to be able to achieve greater career opportunities. Therefore, within the Canadian marketplace, firms should continue to ensure depth and breath of top legal talent where possible and while ensuring that their respective marketing and advertising activities cultivate an aura of expertise, determine a unique selling proposition (USP) that their competitors cannot readily emulate. Moving forward, the development of a marketing platform based on expertise in an arena of experts would appear to be a strategy also doomed to failure. A marketing strategy that highlights the key differences of a firm rather than how it is similar to its competitive counterparts will be the only effective way to move it (the firm) successfully through both the discovery and selection buying phases.

7.4.2 *Cost/Value*

As noted earlier, legal services providers exist as an anomaly in the realm of buying behaviour, disregarding the principles of consumer psychology. As a profession, legal services providers have largely ignored the implications of price within the overall marketing mix. This is not often a deliberate action, given the inherently unpredictable nature of legal services provision. As legal services are often a dynamic interaction between two or more entities, predicting the cost of the engagement would undoubtedly put undue risk on both parties to the matter. Law firms, like most businesses operate to make a profit for their partners and/or shareholders, and likely no client would begrudge them of that. As noted, firms with the highest billing rates are often retained by the largest clients and continue to show the greatest profits. What these highly successful firms are able to do is effectively make cost (price) a moot point by

delivering exceptional value to their clients, which at the end of the day is what they (the clients) are seeking.

Note that price in itself is rarely a cause for client defection, rather in 68% of the time it is perceived provider indifference to the client's needs that acts as a catalyst for departure. (LOMA, 2003, pp. 12) This is further validated by the Altman Weil study, which noted that 55% of chief legal officers had either fired or were considering firing some or all of their outside counsel due simply to a "lack of responsiveness. (Altman Weil, 2003) Herein lies the paradox - value in itself is subjective and determined by the client not the provider. As a result, providers believe that they are in the business of selling billable hourly time, whereas clients want to purchase effective solutions to their legal problems. At the end of the day, the client decides the intrinsic value of the legal solution and is therefore in the best position to evaluate the relative weight or effective nature of the cost.

The implication in the cost/value paradigm is that providers ultimately need to develop marketing strategies and tactics that showcase the firm's ability to consistently deliver value over and above what their competitors can deliver – value that their clients both recognize and find relevant. The global industry movement towards fixed-rate or project-based billing is a means to an end in this regard simply because it solves two immediate client concerns; it fits with the client's psychology as a consumer by identifying a specific price and allows them to manage their operations budgets more effectively.

One axiom that providers should be always mindful of when dealing with the cost/value issue is that 'a service that is needed, is always worth more than one that has been delivered'. (LOMA, 2003, pp. 12) This final implication is that firms have a much stronger opportunity to leverage price at the outset of a matter even though it often means that they may have to assume some risk, which, as they enter more deeply into the business world as they will come to understand, is standard operating procedure. Passing the entire price risk onto the client simply

put, is unacceptable. At the end of the day will come the understanding that sharing the risks will also yield rewards.

7.4.3 Firm/Provider Reputation

Larry Smith in his book *Inside/Outside – How Businesses Buy Legal Services* notes that there are often times when a specific legal matter arises that a legal buyer does not know who to call. The buyer's approved list of providers is not appropriate for the matter, immediate referrals are not available and there is no one around to consult with. It is at this precise time that all the marketing efforts that the provider undertook to ensure that they were 'discovered' really pays off, when the firm reputation or brand really means something. (Smith, 2001) It is now that the advertising, the seminars, the public relation activities or sponsorships pay the provider back. Done effectively, targeted reputation-building activities create pressure in the provider's favour as they (the buyers) become essentially afraid to not include a particular firm on their list of prospective providers. Through cultivation of a firm reputation and brand, the buyer is forced to change his mind set from "Who do I choose?" to "If I do not include Provider X on the my short list, I am doing my company a potential disservice."

A common theme has been threaded through the both buyer behaviour chapters and elsewhere in this paper. That theme is differentiation and with respect to brand and reputation it means everything. Traditional law firm marketing has focused on such things as firm longevity, depth of practice areas and dedication to client service among other things. In short, providers allocate tremendous resources communicating to their respective target markets that they are essentially the same as every other provider of legal services. This reality of futility has only recently begun to resonate with the legal marketing community in North America. At the core, what these firms lack is not only brand differentiation but also business differentiation. That said, as evidenced over the past decade, in a sea of traditional grey and beige law firms, splashes of red on yellow have begun to emerge, signalling to the marketplace that some firms are willing

to embrace effective marketing strategies and tactics, by extending their activities to the branding arena.

At the end of the day, when the discovery stage is complete and it is time to select the chosen provider, reputation and brand still play a significant role. For example a corporation facing a particularly nasty litigation battle may engage an ultra-aggressive provider as a tactic to both demonstrate its commitment to winning and to also send a not-too-subtle message to its counterpart that they are in for a potentially rough legal ride. Note that on the two surveys highlighted in *Table 8*, both individual provider and firm reputation were identified as key factors in the buying process. This serves to underscore the multi-level brand-building approach that providers need to undertake as buyers ultimately hire both individual providers and firms.

The personal chemistry between the buyer and individual provider (seller) that is discovered during the selection process serves to validate and cement the negotiation, further reinforcing the notion that the discovery stage is objective, while the selection stage is subjective. Intuitively, buyers choose their provider largely based upon which provider they believe will work most effectively within their own environment. Those providers with a reputation for differentiated value-added client excellence are often the ones in the best position to win new clients.

Therefore when assessing the implication of the provider's reputation and brand during both the discovery and the selection process, the value, while often tough to actually quantify, cannot be underestimated. Moving forward, firms need to ensure that their respective position within their marketplace not only reflects their true capabilities, but that also they are communicating and delivering a sustainable competitive advantage that their rivals cannot easily or effectively match. In the proverbial sea of grey legal service providers, the red and yellow ones with the profile and reputation will be the ones that stand out, become noticed and get hired.

8 BRANDING

Throughout this paper the subjects of both positioning and branding have been only touched upon. This ‘scratching of the surface’ has been a deliberate action on the part of the writer as to enter into a dialogue outlining the pros, the cons, the tactics and the strategies behind the initiatives is best discussed in its entirety. Within the legal marketing community, the concept of branding has both its staunch advocates and fierce detractors. There are those that believe that if coupled together, a firm boasting a strategic positioning and brand is far more effectively able to compete in the evolving marketplace. Still, there are others that refuse to accept that branding will ever work within a legal services environment.

This chapter will not serve as the definitive writing on branding as there are currently too many other quality, commercially available texts in the marketplace such as Jack Trout & Al Ries “*22 Immutable Laws of Branding*” and Harry Beckwith’s “*Selling the Invisible*” that already afford the topic more than fair justice. Instead, what this chapter will offer is an overview of the principles behind differentiation, positioning and branding theory in order to bring sufficient clarity such to effectively apply the theoretical underpinnings to the legal services industry, and more specifically individual providers. This will serve as an attempt to ultimately determine the potential for success of a provider’s branding program within the Canadian legal services environment.

8.1 What is Branding

Over the past two decades branding theory has emerged as effective model for determining the complex psychology that results in name and logo recognition and loyalty between providers and buyers or legal services. The American Marketing Association (AMA) defines a brand as:

...a name, term, sign, symbol or design or combination of them intended to identify the goods and services of one seller or group of sellers and differentiate them from those of their competitors. (Kotler, 2001, pp.396)

The AMA definition serves as a solid starting point for this discussion. At the core of the brand development process are three distinct elements; differentiation, positioning and the actual process of branding itself. These elements do not exist as mutually exclusive, rather they are individual concepts that are interwoven into the process of branding. As such, there are both subtle and meaningful differences between the three elements. Therefore, in order to generate any meaningful comprehension on the subject of branding, these three elements are discussed individually and defined as follows.

8.1.1 Differentiation

Throughout this document, there have been many references to the need of legal services firms to differentiate their services offering. Differentiation has been identified as both an industry trend and a key success factor for firms moving forward. In order to better comprehend the implications of differentiation within the legal market, it is imperative to understand the underpinnings behind the tactic.

At its core, differentiation is the process of developing a set of compelling differences to distinguish a company's products or services from those of their competitors. In determining the potential for differentiation within a particular industry, the Boston Consulting Group determined that there exist four primary industry groups; *volume industries* where profitability is correlated with company size and market share, *stale mated industries* where profitability is unrelated to market share and there exist few competitive advantages, and *fragmented industries* where there is tremendous opportunity for differentiation but minimal potential for competitive advantage. Profitability potential within fragmented industries can be either great or small. Lastly,

specialized industries face many opportunities for differentiation and with opportunity offering high profitability potential. (Kotler, 2001, pp. 290-292)

As has been ascertained earlier, as a mature industry beginning to resemble an oligopoly, providers of legal services would likely fit into the category of *stalemated* industries. Given the highly structured legal environment, there exist few, meaningful ways in which to differentiate a provider's respective service offering. Therefore the challenge for providers and their marketing staff is to evaluate their manoeuvrability potential within their industry category in order to determine both the potential return on investment of a differentiation platform development strategy.

In general, the broad strokes options for differentiation within the legal services industry include; the ease of buyer interaction with the seller during the procurement process, the means by which the services are actually delivered to the buyer, the client-centric training and programs of the providers and staff, and the processes and value-added services that the provider is able to offer. At the end of the day, differentiation within the legal service industry is undoubtedly a challenging exercise. The key is to build in those processes and offerings that are not only unable to be quickly copied by a provider's competitors, but that are also meaningful to the buyers, thus instilling an intrinsic sense of value. Building a service differentiation strategy and platform based on an offering that carries no value to the buyer, is ultimately an immense misallocation of provider resources.

8.1.2 Positioning

The fundamentals behind positioning theory were popularized by Jack Trout & Al Ries in their 1982 book entitled *Positioning: the Battle for Your Mind*. In their book, the authors noted that in their everyday lives, consumers are bombarded with hundreds and perhaps thousands of advertising messages and communications about products and services that they may or may not need or want. In order to manage this overload of information, consumers

subconsciously rank the companies that they believe to offer the best fit for their needs, affording them (the effective, successful companies) a ranked-order 'position' within their subconscious.

In general, when asked, consumers are able to recall the brand names of only three to four companies within a specific product or service category that they have created deliberate 'positions' for within their own consciousness. As such, Trout & Ries proffered that the battle for consumers takes place not on a retailer's shelves, but within the consumer's mind. Therefore, in order to be successful, marketers and advertisers efforts should be directed at altering consumer perceptions of their respective product offering and thus affecting their brand's positioning within the consumer's mind – a much more subtle and effective technique. The authors viewed positioning as a creative exercise accomplished with an existing product or service as follows:

Positioning starts with a product. A piece of merchandise, a service, a company, an institution or even a person...But positioning is not what you do to a product.

Positioning is what you do with the mind of the prospect. That is, you position the product in the mind of the prospect. (Kotler, 2001, pp. 295)

The end result of a positioning effort should be the successful creation of a target-market focussed value proposition that clearly dictates to the potential buyers, why they should buy a particular organization's product or service offering. Simply put, it (the position) is what a business wants to be known for. For legal service providers, the challenge is to identify a unique importance service attribute or benefit that their firm can effectively 'own' within the minds of their respective buyers – an attribute or benefit that their competitors cannot easily copy. Positioning touches directly on and reinforces the importance of the unique selling proposition (USP) or sustainable competitive advantage (SCA) referenced elsewhere in this document. Note that regardless of the positioning objective sought by legal services providers, the end result must

be strategically supported through every tangible aspect of product, price, place (distribution) and promotion. The ultimate key to effective positioning is continuous, consistent reinforcement of the provider's respective position.

8.1.3 Branding

The formal definition of a brand was ascertained earlier in this chapter using the AMA designation. As such, it could be logically assumed that branding simply represents the active verb tense of this definition and for the most part, this assumption would be correct. That however, would be only scratching the surface and ultimately would not be doing the discipline the justice that it deserves. So far within this chapter, it has been determined that organizations including legal services providers need to differentiate their service offerings from those of their competitors. In addition, they also need to develop a clearly delineated value proposition for their target markets that allows the provider to be positioned or ranked within the buyer's subconscious. The sum of the processes that go into both differentiation and positioning all factor into the creation of the brand or as Greenfield/Belser define it:

“...a market position is a promise between a firm and the client. If you drive that promise through all your communications so that you develop an identification by clients with your service based on that promise, you have created a brand.” (Belser, 2000, pp.1)

Building on this, Greenfield/Belser goes further to describe the actual process of branding as:

“..the active development of a personal relationship between the consumer or client and the product or service.” (Belser, 2000, pp. 1)

The development of the ‘personal relationship’ that Belser alludes to, does not come easily.

With many of successful global brands such as Coca-Cola, IBM, Nike, and Campbell's there

exists an element of histrionics that spans decades and even centuries. As such, branding efforts require complete and absolute buy-in from all levels within an organization over long periods of time.

While some organizations, including legal services providers, have been able to establish a brand name due simply to their reputation and longevity, this should be considered the by-product of both good fortune and hard work. True branding is a disciplined activity that is practiced on every front within the organization from the marketing, advertising, and public relations efforts, to the staff hiring and training, to the office décor, to the types of clients/consumers engaged, to the company's formal policies. All these activities are measured against the organization's brand and either accepted or rejected based on the fit. Building a strong brand is tantamount to delivering on an organization's promise to their clients/consumer through each and every touch point that the clients/consumers have with the organization. As Trout & Ries noted in the early 1980's, clients/consumers are bombarded by over 3000 messages each and every day, forcing them to in effect, develop a sophisticated, intellectual screening system to block out those messages that have no relevance. (Trout & Ries, 1982) An effective branding program serves to create for clients/consumers an effective bypass around intellectual proof. Ultimately, when they (clients/consumers) do not know all the purchasing decision specifics, they can revert to their consumer 'safety net' which exists as a collection of brands and brand names that they know, understand and trust. For a legal services provider, to be always included in the buyer's 'safety net' means that more often than not, they will be the ones considered first in the event of new legal matter engagement.

8.2 The Business Case for Branding

In general, as the previous section noted, consumers are overwhelmed with the deluge of mixed messages they receive on any given day. As such they are forced to reject a great many of them simply due to the inherent inability to process and evaluate each and every message. For

the simple reason that effective branding programs create value for both the organizations and their clients/consumers should be reason enough for legal services providers and marketers to advocate exploration and development of branding strategies for their firms. If this fact alone is insufficient as a 'wake-up call', Greenfield/Belser has noted that there exist other global trends that further impact the business case for branding. These include global population growth, tribalization, database development and niche marketing. (Belser, 2000, pp. 3)

The increase in population bases throughout the world should come as no surprise to anyone even remotely interested in current global economic affairs. As population bases increase in size throughout the world, they develop into larger market bases. These bases in turn, evolve into distinctive market segments with characteristics unto themselves, ultimately creating new markets. This growth process of new, large, and distinctive market segments has come to be known as tribalization. For marketers, this not only serves to create new opportunities but also to render their marketing efforts far more strategic. A corollary to this is the aforementioned database development. As marketers strive to be able to characterize, identify and reach their specific target markets, the precision at which they are able to do so has escalated dramatically over the past decade. The increase in the use of technology-based tools such as the Internet, customer relationship management (CRM) software and customer call centres has dramatically reduced the cost of reaching narrow groups of consumers and even individuals. Indeed, the use of the Internet has enabled marketers to turn 'mass marketing' into 'mass customization' over a very short period of time. Lastly, the previous three trends have only served to exacerbated the concept of niche marketing. Both sellers and buyer alike form unique market niches, with each seeking and/or requiring, specific expertise. As a result, coordinating the unique needs of the two groups creates tremendous pressures on the marketing departments of most organizations.

Any discussion of the branding business case would be incomplete if anecdotal evidence could not be presented that created a compelling bottom-line rationale. To this end, a 1998

Fortune magazine benchmark study demonstrated that “financial performance, including measures like total return and earnings growth, correlates strongly with reputation.” Within the study, twelve of the top fifteen organizations profiled that held the best reputations, also possessed strong brands. The conclusion – strong brands increase shareholder value.

(Brandactive, 2002) In general, there are three primary methods by which a strong brand can effectively contribute to an organization’s bottom line; by shifting the demand curve, by more effectively harnessing the energy of management and staff and by sending a clear and consistent message to buyers and other key stakeholders. The Economist presented yet another compelling business case for branding as detailed:

“Between 1990 and 1994, a plant jointly held by Toyota and GM manufactured near-identical Corollas and Prizms at a cost of about \$10,300 each. Toyota sold 200,000 vehicles at \$11,000 while GM managed to only sell 80,000 at \$10,700. When asked, (about their choice) buyers explained that they considered Toyota to be superior to a GM in the same class. (of automobile) As a result, Toyota made \$108 million more than GM in operating profits, and their dealers, for their part, made \$128 million.” (Brandactive, 2002)

The key take-away from this is that the role of branding will continue to become more relevant in determining an organization’s success as global economic factors continue to play stronger roles within domestic markets including that of Canada. In the words of Disney’s Michael Ovitz (whose Disney brand is estimated at \$14.5 billion dollars) “the more complicated the world gets, the better it will be for brands” (Brandactive, 2002)

As a final issue, while the brands have been widely acknowledged to be one of the key factors determining the increase in the ratio between market value of companies and their book values over the past decades (note Coca-Cola/Disney value examples elsewhere in this and earlier chapters), the greater challenge has been in quantifying the linkage of brands to value creation for firms. Traditional marketing metrics such as benchmarking coupled with

unprompted awareness and market share have ultimately proven to be poor predictors of profitability. (Knowles, 2002, pp. 13-17) In addition, discounted cash flow (DCF) valuations have faltered due to the subjectivity in applying the role of brand to financial performance. The crux of the problem lies within the fact that most marketing metrics (awareness, recall noted above) are focused on current indicators of brand performance and yet ignore its future potential. As an economic asset, both brands and their respective brand strength should be and need to be measured for their ability to generate future cash flows.

Brandconomics, a branding consultancy has developed a model that appears to address these issues quite effectively. By measuring a brand's health on four dimensions: differentiation, relevance, esteem and knowledge, *Brandconomics* was able to implement an economic value-add (EVA) model that determined four key findings as follows:

- Industry sector plays a critical role in determining the ability of a brand to deliver financial performance. For example, brands have a greater impact on the success of food and beverage companies than they do on technology-based companies.
- Brand differentiation is a key driver of margin. The greater the differentiation of a brand, the higher its current margin and future potential.
- On the issue of trade-offs between margins and growth, in a brand context you rarely gain in volume what you sacrifice in margin. As such, increasing market penetration while losing differentiation results in little value creation.
- By splitting brand value into a current franchise value (defined as the capitalization of the contribution of the brand to current earnings) and a future growth value component, future growth value accounts for over 70% of the value of most brands. (Knowles, 2002, pp. 13-17)

Marketers of both products and services have long struggled with the presentation of the business case for branding simply due to the lack of available models. As the above examples from a variety of industries indicate, not only is there a compelling rationale *for* the development and reinforcement of an organization's brand, moreover, sufficient modelling frameworks also exist to enable definitive insights into how to enhance a brand's potential to create value for the long term.

8.3 Characteristics of Effective Brands

Throughout the preceding sections and chapters of this document there have been references made to a number of strong brands – brands that have not only endured over time, but that continue to remain effective regardless of the domestic or external market conditions. Of these, some examples include Coca-Cola, IBM, General Motors, Disney and Campbell's among others. For the most part these brands are all working within relatively diverse industries. Despite their differentiated positionings, they have all withstood the test of time to reach the lofty status of a 'legacy' brand. As their focuses on different industries should be readily apparent, so should the similarities in their qualities, all of which have contributed greatly to their continued success. These qualities and attributes and those of other great brands, some of which have been touched on previously, include but are not limited to, the following:

8.3.1 Differentiation:

As touched on throughout this document, legacy brands are differentiated from those of their competitors. Differentiation captures both the inherent and the perceived distinctiveness of the brand, making it the basis of choice for the client/consumer. As a stand-alone factor, differentiation exists as relative measure of the uniqueness of the brand's promise to consumers and as a result, also exists as a strong indicator of a brand's ability to command a premium price in the marketplace.

8.3.2 *Relevance*

Legacy brands remain meaningful and relevant to their target markets over time. A brand's relevance captures its perceived usefulness to the target market and its ability to meet client/consumer needs. Of all the factors, relevance provides the greatest measure of a brand's ability to penetrate a marketplace. For this reason, relevance is always very closely related to product, price, place and promotion. That Coca-Cola has been able to remain relevant over the past century exists as a testament to the effectiveness and competency of its brand management strategies and of its marketing staff.

8.3.3 *Esteem*

Legacy brands command respect in the marketplace and especially in the minds of their target consumers. Brand esteem is based on the belief of the extent to which the brand will deliver in its promise. Quality and popularity are often strongly correlated with the esteem quality.

8.3.4 *Knowledge*

Legacy brands are deeply understood by their target markets leaving clients/consumers able to accurately assess and internalize what the brand ultimately stands for. Deep brand knowledge cannot be achieved solely through high allocation levels of marketing and communications resources. Rather, brand knowledge is achieved over time and exists as a function of all of the marketing and communications efforts coupled together with the client/consumer's experience with the brand over this same time period.

8.3.5 *Consistency*

Legacy brands are consistent over time. Coca-Cola, expect for a brief experimentation with a new formula in the early 1980's has remained essentially the same for the better part of a century. This identical product offering, coupled with the distinctive red and white colour scheme and scroll text, leaves target consumers with no illusions about what constitutes the 'real'

thing. Legacy brands may be dynamic but they remain steadfastly loyal to their current clients/consumers.

8.3.6 Commitment

Legacy brands have the commitment of all of the organization's resources from marketing to finance to operations to human resources. All functional areas of the organization are committed to the brand and staff complements are often measured by their respective fit with the brand. McDonald's for example, has a history of staff longevity, the most senior of which are proudly described as having 'ketchup in their veins'. The 'McDonald's Way' is threaded through all internal communications and training, and all employees are indoctrinated into it upon hiring.

In all, legacy brands do not happen overnight. Rather they continue to exist as the end result of tremendous dedication by all facets of their organization. All organizations, including legal services providers considering undertaking development of a branding program, need to be readily aware of the commitment necessary to build and sustain a successful brand. Individual providers and firms alike must also be cognizant that possessing a legacy brand or a brand leadership position in the legal services marketplace has both unique benefits and drawbacks. Put simply, legacy brand firms get called to the table by virtue of their name recognition and reputation. Ultimately, any buyer's shortlist that does not include the perceived market leader is considered incomplete. In addition, legacy brand firms also enjoy a presumption of quality in both practice areas and individual providers. As such brand 'extensions' into new practice areas are not subjected to the same level of quality scrutiny that a lesser firm may face in the same circumstance.

The drawbacks to legacy brands include a reputation for being the most expensive in the marketplace, with the term 'expensive' usually measured in hourly billing rates. Thus the challenge for legacy firms is to develop a strong client service value-add platform that will allow

them to blunt the lower cost proposition of smaller, lesser-known providers. Lastly, legacy brand firms are often perceived as being both old fashioned and technologically-stilted. This is generally a function of the conservative nature of most legacy brand firms. As such, these firms would do best by avoiding references to their past and ensure that their respective market position is one focused on the future. In the end, despite the minor drawbacks outlined above, the overall benefits certainly outweigh the costs and as virtually all industries and marketplaces can expect intensifying levels of competition over the next decade, legal services providers need to ensure that they have effectively marshalled and maximized the use of all the available marketing and business development resources in order to remain profitable. This includes branding programs.

9 BRANDING AND THE LEGAL SERVICES INDUSTRY

The previous pages and chapters have essentially served to 'set the table' for this chapter. In researching the Canadian legal services industry it has been determined that the basis for competition within the marketplace revolves around three primary scarce resources; clients, legal talent and provider profile. In addition, there is demonstrated consensus that the trends that will most greatly impact the industry over the short to medium term include the continued consolidation of regional and niche provider firms into national portfolios, the rapid pace of technological change, threats from multi-disciplinary consultancies and other non-traditional forms of competition, the changing needs and demands of clients and the seeming inability of firms to differentiate their service offering.

In exploring the potential for overall growth within the industry, the belief is that growth would continue to mirror that of the Canadian economy as a whole and that the key success factors for individual providers/firms includes a multi-jurisdictional presence or unassailable regional niche, deep levels of legal talent, an ability to pro-act to dynamic market conditions and lastly, a differentiated service offering that rivals cannot easily match. In the end, the overall pronouncement was that as competition continued to intensify and consolidation continued to flourish, the resulting marketplace would ultimately come to resemble an oligopoly of identical legal services providers offering a declining base of relatively identical buyers a relatively homogenous service offering. All in all, this would not appear to be an entirely attractive future for the industry.

The buyers within this marketplace go through two separate purchasing processes, *discovery* and *selection*, prior to making a final decision. Within these two processes, similar forces and evaluation factors come into play including firm expertise, the cost/value proposition offered, the reputation of the firm and that of the individual provider, industry knowledge of the provider and the quality of work. Of these factors, virtually none of them are sufficiently

tangible such that a buyer can make entirely informed, objective decisions. As such, the end selection process tends to become somewhat more subjective.

After determining the behaviour of the legal services buyer and in exploring the development of differentiation strategies, positioning theory, brands and branding efforts, the business case for and the inherent attributes of world-class brands, clearly both the practical and theoretical concepts of branding have definitive applications to the legal services. The following final chapter of this document explores the application of branding principles and strategy to the legal services industry in the hopes of ultimately determining the rationale for, and viability of, such a strategy. Note that given the disparities between individual legal services providers and firms, making specific recommendations as to a specific firm's branding strategy likely exists as a relatively unproductive exercise. Rather than a how-to guide to legal services branding, the chapter will focus its energies on the development of general recommendations and guidelines under which application of a branding strategy would most likely achieve success within the Canadian legal services market.

9.1 The Need to Differentiate Legal Services Providers

As determined, industry buyers are being increasingly approached by legal services providers, primarily offering identical rather than dissimilar services offerings. As talent raiding by the multi-jurisdictional firms continues, virtually every leading firm maintains very high levels of legal talent. In addition, for the most part, the service quality levels of leading firms can be pretty much expected to be high as are the depth and breadth of their practice areas. Oddly, many firms continue to promote these three factors as what differentiates them from their competitors, when in reality, quality of providers, excellent client service and practice area depth exist as basic, bottom-line expectations by buyers.

As noted on many occasions throughout this document, that given the conservative nature and the limited manoeuvrability afforded legal marketers by the respective Law Society

regulations, that effectively marketing a legal services provider is not without its challenges. The primary challenge within the industry is the lack of acknowledgement that there is a critical need for an effective dismissal of the notion that a solid legal marketing strategy is to position one legal services provider as the same as another. A quick scan of any legal-related journal will bring instant clarity to this statement. As noted above, with quality and client service, the majority of law firms focus their resources around the notion of 'sameness' rather than through differentiation of their firm's offerings. Since brand preference cannot exist without brand differentiation, the result is that 'sameness' firms that allocate significant budgetary resources towards advertising usually do not realize a tremendous return. This strategy in turn, does nothing more than discredit the firm's marketing department as they (the firm's marketing staff) are now forced to answer to the firm's partners as to why their investment in marketing has not generated a return. Note that this sameness strategy is not endemic only to the legal service industry, rather it extends to other professional services providers as well. Witness KPMG who spend the better part of \$60 million dollars on a branding program with a positioning statement of "Its time for clarity". Ultimately, this accomplishes very little in the way of differentiating them from Deloitte & Touche or PriceWaterhouseCoopers and adds very little brand equity within the buyer's mind. (Greene, 2001)

In simple terms, brand differentiation is how one brand is perceived relative to a competitor's brand. Ignoring the term 'brand', differentiation within the legal services industry exists as 'what makes one firm different from the other'. In determining upon what factor or factors should be the correct one(s) for any particular firm, the list of 'right' choices could be seen as limitless. Nevertheless, the recommendation here is to choose wisely, by having the courage to avoid the 'sameness' strategy engaged by many firms. Providers should also ensure that there exists a client-focused value proposition in what makes them different and that this proposition has some form of quantifiability attached to it. To this end, it may be certainly

tempting to create a differentiation strategy based on provider expertise, given that the expertise factor appeared at the top of buyers list of desirable firm attributes. The reality is however, that ‘expertise’ cannot be readily quantified either in its entirety or against a competitor.

In the end, the root of the problem for most legal services providers is not brand differentiation, but business differentiation. More often than not, providers employ the same business and operating model, the same strategies and even the same mission statement. In the Canadian (and other) legal marketplace, historic points of difference such as quality and longevity are now simply commodities. Thus at the end of the day, they communicate no value-add to the buyer and leave the firm no more uniquely differentiated within the marketplace.

Understanding the foundations of branding leaves legal services providers with many differentiation options. In the previous chapter, it was noted that in the professional services arena, such things as ease of seller/buyer interaction, types of services offered and methods of service delivery, client-centric training and programs undertaken by the providers and firm staff, and the processes and value-added providers’ services all exist as viable platforms for an effective differentiation strategy. Lastly, whatever the end choice, firms should endeavour to be the leader of their differentiated position. By determining what ‘*one thing*’ the firm does better than any other firm, how that ‘*thing*’ creates value for the buyer, and how to easily communicate that ‘*thing*’ to the buyer is at the core of the differentiation process. Those providers that have the courage to undertake the internal analysis process necessary to step beyond the traditional ‘sameness’ marketing model will be the ones that continue to attract the attention of industry buyers over the long term.

9.2 Positioning and Legal Services Providers

The differentiation function of the brand development process is the often the most difficult one due simply to the level of engagement necessary by the provider’s lawyers and staff in determining the appropriate differentiation factor. The process can rarely be done quickly and

inevitably requires both time commitment and buy-in from the senior providers. The positioning component is also not without its challenges not the least of which is that it is often the most misunderstood. Discussion of positioning strategy inevitably leads to a fragmented discussion of potential provider taglines, which to the branding neophyte, usually serves as the sum of their comprehension of the positioning and branding. This is due simply to the fact that a tagline often serves as tangible proof of a brand. This understanding cannot be further from the truth. The ultimate goal of positioning strategy is to create and communicate the unique value-added proposition of the provider, within the mind of the potential buyer. The eventual tagline exists as the sum of the entire process. The process drives the tagline, not the inverse.

When determining the appropriate positioning for a legal services provider firm, as was noted with differentiation strategies, the options are limitless and ultimately dependant on the firm's strategic goals. Firms should be advised however, that the actual positioning process is one best managed by the provider's marketing department but developed and executed by a creative agency (advertising, brand development) that possesses both the requisite experience and creative insights necessary for effective positioning. One key to this process is the singularity of messaging. Every legacy brand demonstrates one single promise that clearly identifies what the provider stands for and that promise is woven through every element of the provider's communications. *Interbrand* determined in a 2002 study that what clients of professional services want most is 'practical innovation' which they define as "unique and achievable solutions that produce tangible results". (Interbrand, 2003) The great news for legal services providers is that ultimately, clients will pay a premium for practical innovation. Therefore, developing a firm position that removes the intangible aspects of legal advice and clearly communicates the firm's benefits to the clients is critical. Moreover, understanding that legacy brands take years to build and are built upon a platform of consistency and authenticity,

also brings clarity to the value of investing wisely in professional resources for the positioning and brand development process.

9.3 Applying Branding Strategy to the Legal Services Industry

The previous two sections have provided a brief overview of the processes involved in the differentiation and positioning strategy development. In all, these two processes serve as critical inputs into the overall branding process. Providers undertaking a brand development program need to fully appreciate that it is not a process to be taken lightly. As noted, done effectively the process requires both tremendous resources and tremendous commitment over a long period of time. As well, note that undertaking a brand development process is not necessarily mutually exclusive of other existing marketing and business development initiatives. In his book, *Inside/Outside – How Businesses Buy Legal Services*, author Larry Smith argues against the business case for legal services provider brand-building activities asserting among other things, that one cannot possibly brand an entire firm and that branding has nothing to do with adding value to the client. To this end, Smith argues that a provider (and their clients) would do far better hosting/attending a client seminar than investing resources into branding. While the cost differential is certainly noted, the point Smith fails to elucidate is that providers can actually undertake both initiatives concurrently. Provider seminars exist as excellent opportunities to develop brand ‘experiences’ for their clients, a far more powerful tool than simple brand impressions. The value-add of the brand to the client is the continued reinforcement of the appropriateness of their respective buying decision. For prospective buyers and potential clients as established earlier, the value exists in the intellectual shortcut that the brand provides in narrowing down choices of potential providers.

As to Smith’s assertion that it is not possible to brand an entire firm, especially a large one due to the ‘institutional disruption’ that it would cause, there is some agreement. There will be institutional disruption as those that do not fit the provider brand either leave on their own

volition or are asked to leave. Clients that do not feel comfortable with the fit of the provider brand will often exit as well. That exists as a natural consequence of an effectively executed branding program. At the risk of redundancy, branding requires the total commitment and total buy-in from all aspects of the provider's operations. A critical issue that legal services providers often struggle with (that is also directly related to the sameness marketing strategy) is that of trying to appeal to every client group. Providers need to take a stand and declare that not all clients fit their brand, which again, exists as an inevitability of an effective branding program. By identifying with one particular target client group, another group is inevitably alienated. By trying to appeal to everyone, provider firms ultimately end up appealing to no one.

In the end, contrary to Mr. Smith's assertions, it is entirely possible to develop an effective brand for a legal services provider. Certainly the business model of most providers is such that the branding efforts will face stiff pockets of resistance and that inevitably the process will result in the potential loss of individual providers, in-house staff and possibly a few clients. This is the tough part of the process that brand detractors find both unappealing and unacceptable, and therefore are wont to dismiss the concept as a passing fad. The reality is that branding is a gut-churning process, is not a fad and as the legal services market in Canada continues to evolve in the manner that has been demonstrated, critical to the continued profitability of leading providers. Effective legal services provider brands will not and should not resemble traditional legacy consumer brands as the business models and market needs are invariably diverse. The core characteristics however, should remain consistent with those of the legacy brands for the provider to enjoy continued long-term prosperity.

WOW! – A Branding Company, a Vancouver-based brand consultancy identified six 'commandments' of branding that legal services providers should use to guide their respective brand development efforts. In all, each of the commandments has been touched on at some point

over the previous chapters however, isolating and identifying them collectively brings the greatest clarity to the process. The six commandments are as follows:

1. ***The Rule of One*** – A brand always communicates one single message and one single promise – a personified statement that clearly identifies what the firm stands for. Every element of the brand communicates this promise regardless of how the message is delivered.
2. ***The Rule of Leadership*** – Firms must be the leader of their market space. If one already exists, firms must determine what it is that they are best at and lead the way. Firms should be very specific. If a firm is entering into a market category that already has a leader, they need to determine why they are there and what it is that they have to offer.
3. ***The Rule of Authenticity*** – A firm's brand will only become what everyone in the firm is willing and able to commit to. Perception is 100% truth and everything speaks. What the firm's clients perceive the brand to be is what it is – period. Ultimately a brand is all about a promise and a demonstration of that promise. Living up to that promise is simple once everyone is committed and given the ability.
4. ***The Rule of Time*** – The branding process takes months if not years. Thus, have a plan and a strategy. A strong brand is based on promise, delivery and consistency of the perceived value experience. A strong brand becomes equity for a firm and increases the value of the firm over time.
5. ***The Rule of Identity*** – A strong brand wears its visual identity as a badge of honour. Thus firms need to own the images, colours and icons that are the essence of their brand. A brand's identity is its pervasive influence with the power to inspire character, environmental and cultural choices. Note that only 7% of communication is verbal – the rest is intuitive.

6. ***The Rule of WOW!*** – Be memorable. The opposite of a brand is a commodity.

People choose products, services or companies because they relate to the cause – the promise of the brand. Buyers of legal services are no different. Firms need to be what their clients want and be willing to take a stand for what they believe in.

(WOW, 2003)

From this one can correctly gather that successfully branded firms base their brand on a core positioning that is uniquely ‘own-able’ and represents a distinct attribute or capability that is supported by everything the firm does. This requires buy-in by both the lawyers and staff to live the brand very day, which within the legal services industry, presents some unique challenges which are discussed as follows.

9.4 Legal Services Branding Challenges

Branding efforts, not unlike other marketing initiatives, and regardless of industry type contain both challenges and risks. Therein lies the value of a strategic, professionally developed and executed branding program versus an ad-hoc program. Relative to a consumer product-based marketing or branding initiative however, the branding of a legal services firm is fraught with some very unique challenges, not the least of which is the impact of the business model of the traditional legal services provider. These challenges and risks are identified and discussed under the following headings.

9.4.1 Traditional Legal Services Business Model

The traditional legal services business model is that of a democratic partnership of senior practitioners. Although as noted earlier, this model is slowly being replaced by one with a decidedly more corporate look and feel and operating platform, the reality is that change in the industry is always gradual and for the most part, resisted. Initiatives such as branding that are poorly understood and that require significant commitments of resources are often virtually impossible to secure full partnership approvals for. Whereas in the consumer-product market,

most branding efforts are conceived, developed and executed by small groups of marketing professionals that for the most part, operate autonomously and deliberately, and are entirely committed to the process. For a branding effort to succeed within a legal services environment, there must be complete buy-in from all facets of the firm partnership such that all involved are committed to both the branding process and the potential end results and accept the inherent risks attached in achieving those results.

9.4.2 *Requisite Resources*

An effective, comprehensive branding program cannot be done on a shoe-string budget, nor can it be accomplished without the direct support and management of a dedicated marketing, management and administrative team. The success of a brand development program is directly related the commitment of firm to the process both in terms of capital and human resources.

Using the LMA 2001 Survey of Law Firm Marketing Budgets, 51% of law firms reported that they had undertaken comprehensive branding campaigns with a median expenditure of \$136,100. (Greene, 2001, p.4) This would suggest that there is not only a disconnect with what respect to what constitutes a 'comprehensive' branding program, but also with respect to the investment that is ultimately required. In reality, a firm may need to spend double that amount to simply launch a branding campaign and will require even significantly more dollars over long periods of time to sustain the branding momentum. In the end, legal services providers need to understand that branding is challenging work that requires both a long-term vision and significant allocations of resources in order to meet the program objectives.

9.4.3 *Loss of Clients/Talent/Staff*

Determining a firm brand is tantamount to drawing a line in the sand. It is a public demonstration, commitment and reinforcement of the complete legal service experience that is threaded through every touch point that the firm's clients, lawyers and staff have with the firm, from personal interactions, to advertising, to sponsorships, to seminars to publications to

speaking engagements. In short, the firm brand is the sum total of the experience with the firm. Ascertaining what the firm ultimately stands will inevitably alienate those that cannot reconcile the brand with their own personal beliefs, not only causing discomfort but likely serving as a catalyst for departure. Somewhat ironically, a mark of success of an effective branding campaign is an initial departure of clients, lawyers and staff that do not buy into the concept of the brand. Over time however, the firm will emerge a stronger, more profitable entity as it will continue to attract those clients, lawyers and staff the support, cultivate and fit the notion of the firm brand, leading to a more strategically-aligned, effective and efficient organization.

9.4.4 Firm Names

Lastly, one branding related issue that legal services providers continue to struggle with is that of the firm name. Traditional firms often include multiple names of prominent or even deceased former partners, some a compilation of four and five deceased partners. Reflecting on Trout and Ries' positioning determination in that consumers (buyers) only retain a small amount of information about a company, a five-name firm is simply too much to retain. As such, and regardless of the resources that firm expends to ensure it does not happen, consumers (buyers) subconsciously reduce the names of firms in order to assist in their recall. As a result, prominent New York Mergers & Acquisitions firm; Skadden, Arps, Slate, Meagher and Flom, has simply become known as 'Skadden'. Meanwhile, Brobeck, Phleger & Harrison has become known as Brobeck. Note that in each of the above cases the methodologies in arriving at the single name differed. In Skadden's case, the evolution was a natural, long-term evolutionary consequence of the buyers and industry insiders in essence 'defacto branding' the firm, while in Brobeck's case, the shortening of the name was deliberate component of the firm's comprehensive branding strategy. While to-date no firm has launched a firm branding effort with a generic corporate-type name, the expectation is that the single name movement will likely continue throughout the

industry as branding efforts continue to evolve. As such, firms will need to consider the potential impact that their existing firm name will have on future branding efforts.

9.5 Legal Services Branding Tactics

The specific branding tactics that any single law firm should employ are entirely variable, depending on its size, nature of practice, geographical presence, clientele and overall strategic goals. Noting that there are three elements to a firm brand including; 1) the brand image (the marketplace's perception of the firm; 2) the brand identity (how the firm wants to be perceived today) and 3) the future brand identity (how the firm wants to be perceived in the future). While legal services firms may not necessarily subscribe to branding theory or these three principals, they (the principals) are active naturally with the firm and the marketplace. Thus firms can choose to let the marketplace decide their brand fate or they can take an active role in shaping it to their benefit.

In order to effectively shape a firm's brand, the firm must firstly have a well-articulated understanding of each of the three aspects of its brand. Only then can it determine the appropriate communication vehicles, messaging and tactics. Without this understanding, the firm risks the establishment of a brand identity that is ultimately disconnected from the brand image leading to a potentially inappropriate selection of communication vehicles, messaging and tactics. This incompatibility would inevitably cause more damage to the firm brand than good. With this understanding however, the firm is in much stronger position to build equity in its brand through the selection of the appropriate tools. Note that there does not exist a 'right' choice of branding tools, nor tactics. Each selection is dependent not only on the identity desired but also on the firm's existing marketplace realities as mentioned earlier.

As nature of practice, firm location, firm size and clientele require different strategies, there is no one single best branding formula or set of tactic designed for success. Firms need to understand that in a legal services environment, branding efforts should serve as complementary,

overarching support for more tactical grassroots marketing efforts, not a replacement for the same. That said, given the document's focus on full-service, corporate law firms and building on the '*Branding Commandments*' identified in Section 9.3, there are however some general insights into brand development tactics that firms should be cognizant of as follows.

9.5.1 Advertising

There is general agreement that mass advertising and communications vehicles such as television and radio advertising do not serve as overly effective tools for legal services firm brand-building efforts. In general, given the narrow and sophisticated target market of *most* legal services firms, and the high costs of advertising production and airtime, neither television, nor radio would appear to be an effective or efficient tactical choice. The media spill from television and/or radio is simply too great. The target market of full-service legal services providers tends to skew towards both individuals and leaders in the business communities in which the firms operate. While this group is small in numbers, they determine the majority of business decisions for their respective organizations and can be expected to be savvy business people.

Communicating with/to these individuals in well-targeted, tasteful print advertisements in newspapers, business publications and relevant periodicals would serve as the most effective use of advertising dollars. Note again that legal marketing efforts, including advertising serve to introduce the firm to potential new clients, reinforce existing clients' purchasing decisions and differentiate the firm from its competitors. Marketing does not serve to sell the firm.

While mass advertising can serve as an effective vehicle for communicating brand identity to a mass audience, this tactic works well only for consumer products and/or services that have mass appeal. For example, legal services firms that defend drunk-drivers or offer personal injury litigation services can and do make effective use of both television and radio mediums, often selecting inexpensive airtime packages that would offer exposure to the appropriate demographic. In these cases, production quality is not an important attribute and the

firms are not overly concerned with brand denigration. In short, and in general, the majority of firms that utilize mass advertising often represent the ‘ambulance chasers’ identified earlier in the document. Lastly, firms that do engage in targeted, tasteful advertising are advised to employ the services of creative professionals. Put simply, advertising is too expensive to be done poorly.

9.5.2 Public Relations Activities

Tactical public relations activities including dedicated media relations activities can often offer individual legal services providers and their firms excellent brand building potential. Making a firm’s legal complement available for media consultation on relevant legal issues, serving on high-media profile panels, writing opinions for newspapers and other print mediums all serve to reinforce not only the expertise of the individual provider and his or her firm, but done well, often serve as the most cost effective use of a firm’s marketing dollars. Development and distribution of a media kit, providing initial media training for individual providers and managing the flow of media requests is relatively inexpensive given the credibility and targeted reach that well-executed public relation activities offer over traditional paid advertising. Regular media releases that convey topical, relevant news that provide both content and value to the respective media outlets are an excellent tactic for supporting the firm’s branding activities.

9.5.3 Sponsorships

The role of sponsorship marketing is to create unique targeted opportunities for buyers and consumers to experience and interact with the firm’s brand, contributing further to its goodwill and potential market leadership. Done effectively, sponsorships exist as an extremely effective brand building tactic, as they allow the firm to trade brand equity with the property that they are sponsoring. For a corporate legal services firm, an appropriate property may be arts or culturally-related including, but not limited to, symphonies, ballet, jazz festivals and the like. By becoming engaged in a physical and emotional environment whereby they (the clients) are in their respective ‘element’, clients ultimately develop greater acceptance of the firm’s brand and

message. Sponsorship marketing works best when there is a leverage-able linkage between the firm's business strategy and its clients or stakeholders to the sponsored property. To be successful, firms need to proactively manage their sponsorship portfolios to ensure that they are reaching a solid cross-section of their respective target markets. Lastly, firms need to be cognizant of the potential dangers of sponsorship marketing. As sponsorships often involve or include dynamic live events, there always exists the potential for the property to fail. An association of a Tier One firm with a failed property, can serve to seriously denigrate a firm's brand. Lastly, sponsorships also offer the firm an effective platform for developing unique client hospitality opportunities that further support the brand. By creating a memorable experience for the client that is on-brand will go exponentially further than a brand impression that static tactics such as advertising offers.

9.5.4 Client Relationship Management

Client relationship management (CRM) activities serve to allow both firms and their clients a better understanding of each other, giving the firm the opportunity to better cater to the specific needs of the client. How a firm manages their respective CRM activities speaks volumes about how they perceive their brand identity and allows it to more effectively manage its brand image. Regular contact with, and feedback from, clients is an excellent tactic for managing the scale and scope of brand building activities as they (the CRM activities) should give the firm tremendous insights into their brand image directly from the group of individuals that matter the most – the firm's clients.

9.5.5 Internal Brand-Building

Note that the tactics discussed above deal primarily with communication and management of the brand to clients and external stakeholders. The reality is however, that considerable efforts and resources must also be allocated inwardly within the firm to ensure that the firm's brand ambassadors, its lawyers and staff, are all integrally linked with the brand. By

engaging the brand ambassadors in every aspect of the brand implementation, the firm is much better able to capitalize on the collective energy and insights of its people and build in greater commitment to both the process and the brand itself. Ultimately, brand-building is not a one-day transformation of an organization or firm. It is a long-term commitment to doing things differently than in the past, creating a dynamic, strategic identity for the firm and consistently and creatively moving it forward. The firm's lawyers and staff represent the foundation of this new identity.

Given the narrow target markets and small numbers of buyers, such things as sponsorships, seminars, public relations activities, targeted print advertising and internally-focussed activities serve as the most effective and efficient branding tools for the majority of legal services firms. In the end, every employee, and every piece of firm collateral from letters, to forms, to brochures, to advertisements, to websites, to the types of sponsorships, to the depth of a firm's CRM activities all reflect the firm brand. They all need to be coordinated, consistent, creative and ultimately compelling to the firm's target market. Communicating the firm brand to the target market in way that the leaves the individual buyer better off ultimately creates the most compelling connection. Ultimately, brand-building is tough work. At the end of the day however, branding provides tangible value for the both the firm and its target markets that can be effectively measured over time as the following section demonstrates.

9.6 Measuring Legal Services Branding Effectiveness

By now, the potential for legal services provider differentiation should be considered without reproach, as should the ability and need to carve out and define a particular provider position within the buyer's subconscious. Branding as a long-term strategic process has been determined as extremely challenging but entirely possible within the context of the legal services market. If this is indeed the case, then in theory, there should be benchmark studies or successfully branded firms that exist to validate the assertions of the pro-branding camps as to

the process's effectiveness. In reality however, and to-date, this is not the case for which there are a number of contributing factors.

Brobeck, the San Francisco provider who wowed the industry in the early part of the millennium with its \$3.5 million dollar marketing budget and branding campaign that offered "When your future is at stake" as a signature tagline and maintained a marketing staff complement of twenty five, was the leading proponent provider and disciple of branding. (Bodine, 2002) In the end, Brobeck also filed for dissolution in January 2003 under a cloud of bankruptcy. Brand detractors quickly point to Brobeck's failure as proof that branding a legal services provider exist as a waste of marketing resources. These same detractors have simply chosen to ignore the facts in that Brobeck's demise has far more to do with an exceeding over-dependency on the technology industry and internal partner management issues than on an ill-conceived marketing initiative. The reality is, as general marketing principles are relatively new to the legal services industry, branding is even that much newer. As such, there has not been the opportunity to establish effective benchmarking exercises and studies that will capture the data necessary to prove or disprove the viability of the strategy. In addition, even if there had been concise benchmarking studies at the beginning of Brobeck's branding undertaking, there would still be too many other factors that come into play that could potentially skew the results. The existing economic climate, the marketing responses of competitors, the business cases of key clients, and the individual actions and activities of the firm's individual providers all have tremendous potential to bias the potential impacts of a firm's branding campaign. In order to ultimately determine the impact that a branding effort has had (or will have), researchers would need to set up a performance model that would create in effect the *ceteris paribus* environment described earlier. Common sense and insight into any dynamic business world would clearly indicate that this is not possible.

That said, there are certainly methods by which firms can measure the effectiveness of their respective branding efforts. Burkey Belser, of branding consultancy Greenfield/Belser, notes that while determining overall firm awareness is proving to be a relatively ineffective measure, there are other more productive, albeit non-scientific methods. In all, Belser outlines six indicators or measurements that he believes provide great insights as to a branding program's effectiveness, cautioning that they too are subject to external market factors, as is virtually all statistical research. Note that these measurements could also concurrently serve as the objectives of the firm's branding efforts and as such, would could also serve to as determinants of appropriate branding tactics and communications vehicles. Nevertheless, the six indicators are as follows:

9.6.1 Lawyer and Staff Retention

There should be no argument that branding helps build lawyer and staff morale by giving them a distinctive point upon which to rally. Branded firm employees take pride in the firm logo, reflect on the tagline and in general feel good about where they work simply because they identify with the cause. They understand the firm's position and direction and can often articulate their respective role in and contribution to the branding process. It should go without saying that employee who feel good about where they work seldom leave. The reduction in hiring and training costs from decreased staff turnover, coupled with increased levels of productivity are only a couple of the benefits afforded branded firms. Benchmarking turnover rates prior to branding and then revisiting them over a five-year period should yield increasingly positive results.

9.6.2 Law School Recruiting Efforts

Those new to the both the academic and business world arrive with far different expectations of employers and careers than did the previous two generations. Law school students and graduates are certainly included in this group. As a student's decision to join a law

firm is largely an emotional one, by instilling in them and communicating to them, insights into the firm through creative branding on recruitment collateral materials, the end result is students and ultimately new associates, who not only understand the firm better, and therefore make more informed choices, but are also attracted to join because they believe in a sense of connectivity to the firm's guiding principles. Benchmarking quantity of student applications, coupled with quality and retention of new hires should both yield positive insights into the branding process success.

9.6.3 Practice Area Expansion

In the corporate world, a strong brand gives a company much freer license for expansion into brand extensions. Diet Coke, for example comes with complete credibility to its target market given its connection to Coca-Cola. The same paradigm exists with legal services providers. Effectively branded providers can expand their practices to include new areas of expertise to either new or existing clients with far more credibility and success than can non-branded firms. By tracking the provider's top 25 clients and plotting the cross-pollination of practice areas (utilization of more practice areas) will likely generate some interesting, positive results for branded firms.

9.6.4 Better Fit With Clients

As noted, effective branding often results in clients that no longer fit with the provider brand. It also helps more narrowly determine those clients that the provider does want to work for. Also as noted, in trying to appeal to everyone, the provider inevitably appeals to no one. In the end, firms that are explicit as to their value delivery to clients, often attract those clients who are best able to capitalize on that value delivery. A strong brand helps determine better fits from both the provider and client perspective and can be measured over time via increased target market penetration simply by plotting progress against a list of desired clients.

9.6.5 Increased Media Attention

When media seek the opinions of legal ‘experts’ for new stories and other public activities, inevitably they seek out those providers aligned with strong brands as often the credibility of a provider’s opinion is greatly enhanced by the profile of their firm. Positioned as an expert among experts will go a long way in ensuring continued media coverage, noting of course that media relations activities also require strategic management. Tracking and measuring how often various media call seeking legal opinions is a simple method for measuring brand effectiveness.

9.6.6 New Client Procurement

Lucrative new business from new clients is the not only the most obvious goal of a branding exercise, but also the easiest to measure. New clients and their buyers rarely invite new firms to the table unless they know who the firm is and what it stands for. Measuring not only the end results in monetary terms, but also in terms of opportunities (RFP’s received, pitches made, seminar invites) made available, works well as a measurement tool. Providers should make a habit out of asking clients and buyers why their firm was asked to the table. The results often provide great insights into the provider’s brand.

In the end, and as noted at the outset, measuring provider brand effectiveness is an extraordinarily complex, time-consuming process and one that may take years to fully appreciate. Effective brands build momentum over time, developing brand equity exponentially. The factors at play both within the branded firm and in the external market environment all have the potential to skew the results either positively or negatively. As such, the recommendation for providers is to proceed with caution with brand measurement, seeking long term trends rather than short term gains.

10 CONCLUDING REMARKS

The Canadian legal services industry is at a strategic crossroads of sorts. There exist a tremendous variety of pressures facing the industry as a whole that have the potential to radically alter the competitive landscape in as short a time as a decade. In short, providers need to begin to plan now for the future to ensure that they remain at the industry forefront, and sufficiently flexible such to be able to pro-act to the marketplace dynamics. The future of the industry will see increased consolidation amongst firms, creating powerful multi-domestic firms that compete with escalating intensity for new clients, new legal talent and industry profile. All the while, the provider firms begin to resemble an oligopoly comprising a handful of large firms in each major market offering an essentially identical product.

As the industry continues to consolidate, the key success factors that providers will need to be cognizant of include depth and breadth of practice areas and providers (expertise) the effectiveness of the management team and the ability to differentiate themselves from their key competitors. As the future includes escalating gains in industry efficiency, additional profit pressures will force firms to explore alternative billing arrangements and other opportunities to add incremental value to their clients to shift the client focus away from billing rates. Inevitably, the practices of law will become businesses of law, managed by teams of professional strategists and administrators from the ranks of the corporate world.

The task of buying legal services will also increase in complexity as buyers will be hard pressed to choose between one provider and another given the industry proclivity towards 'sameness' marketing and the virtually identical services offering. Thus, the challenge for legal services providers and their respective marketing staff is to ensure that when there exists an opportunity to profile the firm to a buyer or respond to an RFP, that they get discovered and eventually selected for new legal matters.

Considering the leading economic indicators, the overall industry pressures, the competitive actions and responses of provider firms and the behaviour of the buyers within the industry, the need for a comprehensive, articulated branding strategy to move a provider firm forward is clearly evident. The assertion that provider firms need to differentiate their service offering to create distinctive value-add for their clients should be without reproach. That provider firms need to position their service offerings in the minds of their target buyers in order to be considered for new and incremental engagements should also be considered without reproach. In all, taking all of the issues addressed over the previous chapters, the need for senior leaders of legal services providers to explore the development of an articulated brand for their firms is clear.

By undertaking the requisite internal soul searching to ultimately determine what it is that sets them apart from other firms, by developing a unique, defensible differentiated value-add for their clients, developing an appropriate positioning the firm and reinforcing it through a comprehensive branding effort will be the most effective way for firms to ensure their continued long term growth. Make no mistake, the process of branding a law firm is extraordinarily challenging, much more so than that of a consumer product. Through an effective branding process, senior partners, clients and staff may depart the firm, as the new firm does not make for a good fit for them. In the end however, the branded firm will emerge in a far stronger position to compete for new business and will attract new and better fitting clients. Jack Trout and Al Ries, the true pioneers of positioning and branding theory have been both quoted and referenced through this document. Their latest work on the subject of branding is entitled "*Differentiate or Die*". While these may be strong words they are also chillingly accurate. Providers of legal services must accept that there exists a new marketplace that requires implementation of new strategies and tactics in order to survive. Differentiation, positioning and ultimately branding provide the platform for competing in this new marketplace. The firms that believe branding to

be too hard, a passing fad, or impossible for a legal services provider will come to realize only too late the value an effective branding strategy brings to a firm. As noted earlier, those firms that continue to try to appeal to everyone, ultimately appeal to no one.

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