

Seven New Year's Resolutions for Canadian Law Firms

*I hope that in this year to come, you make mistakes. Because if you are making mistakes, then you are making new things, trying new things, learning, living, pushing yourself, changing yourself, changing your world. You're doing things you've never done before, and more importantly, you're doing something.*¹



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For some firms, 2017 was a banner year. Unfortunately, the membership in this club continues to decline. It was a year in which some long-standing members dropped out (or were self-forced out), and some new upstarts were admitted. Some of the challenges that served to limit or reduce membership included:

- Clients continuing to replace law firms' value proposition with their own;
- Continued growth in the number of lawyers (supply) in the face of a flat or declining legal market (demand);
- Millennial lawyers prepared to act upon their needs if law firms do not;
- Competitive disruptors in both low and mid-market legal work;
- Technology disruptors focused both on law firm's and client's processes; and
- Increased consolidation in the number of law firms and practices.

In looking back over the past year if there is one concept that is associated with the year, it is "Innovation." The new phrases include – innovative services; an innovative approach to the practice of law; innovation, etc. Unfortunately, buy-in to the suggestion that law firms are embracing the concept is not widespread amongst the clients.

...we often look so long and so regretfully upon the closed door, that we do not see the ones which open for us.²

That was then, and this is now! As Alexander Graham Bell pointed out *"when one door closes another door opens; but we often look so long and so regretfully upon the closed door, that we do not see the ones which open for us."*² In keeping with this wisdom, we have developed seven new resolutions that firms should make and stick to in 2018 to make it their banner year. The Table below includes both this year's and last year's resolutions:

	2018 RESOLUTIONS	2017 RESOLUTIONS
1	Go visit a legal technology incubator.	Manage the business aspects of the firm's practice in a businesslike manner.
2	Reconcile the firm's and the Millennial lawyers' perspectives.	Embrace meeting the demands of reality and accept that there is a risk in everything the

		firm does. To do nothing is to incur greater risk.
3	Recognize and reduce the risk to both the clients' and firm's electronic data.	Equate bullying to the same taboo as misappropriating client trust funds and deal with it accordingly.
4	Make the partners' compensation system align with, not obstruct, the firm's strategic direction.	Institutionalize quality control.
5	Just deliver superior client service.	Demand accountability.
6	Make succession planning transparent.	Treat the client as a peer and not someone to patronize.
7	Promote the leadership of the future and not the past.	Reward innovation.

1. Go visit a legal technology incubator.

The use of legal technology by both clients and law firms is only going to increase and law firms even if they are too stubborn to embrace this truth, from a survival perspective, need to be aware of what they are facing. There is a popular belief that embracing new applications doesn't make sense because of the lost revenue that could result from the firm being more efficient. Another perspective might be:

- Part of a loaf is better than none - as someone will have the vision to embrace the technology and when they do it won't be a case of reduced but rather eliminated revenue; and
- There is a large legal market that is currently going untapped (access to justice issue from a different perspective) because firms have priced it out of reach and so the potential source of fees goes unaddressed. This market is and will be accessible by firms that leverage applications to perform the tasks efficiently and with less costly lawyer intervention.

Leave the accelerators to the big competitors - mega-firms, Lexis Nexis, etc. and visit a true incubator like the Legal Innovation Zone ("LIZ") at Ryerson University. The self-described goal for LIZ is

"a co-working space and the first legal tech incubator with a focus on building better legal solutions for the consumers of legal services. The LIZ helps support, foster and develop solutions and techniques to improve legal services and the justice system".³

I had the opportunity to visit their location this past fall and meet not only with Hersch Perlis and members of his team but also with some of the developers participating in the program. Currently, there are 19 projects being undertaken at LIZ, including at least 6 involving the use of artificial intelligence in the applications under development.

...there are 19 projects being undertaken at LIZ...

The developers I spoke with are always looking for law firms to collaborate with on their applications. There are a number of obvious benefits to



such collaboration including guiding solutions that work in a real firm environment; focus on practicing law without incurring the cost of adding an application development team, and likely preferential pricing when it goes live.

The LIZ is active in promoting the efforts of its participants through various monthly events. The easiest way to gain awareness of these events is to [read](#) or [subscribe to their LIZ Newsletter](#).

Hersch and his team are very approachable, and I would encourage firms that have members traveling to Toronto to add a side trip to their office to get a hands-on tour of LIZ. Hersch can be reached by email at hperlis@ryerson.ca or by telephone at (416) 979-5000 extension 3380.

2. Reconcile the firm's and the Millennial lawyers' perspective.

As much change that is going on in the legal profession, both acknowledged and not (the "ostrich factor"), it is amazing (and perhaps decidedly sad) that Millennials are just the next generation of lawyers to raise the same concerns or issues. Perhaps Crystal Kadakia captured it best in her book *The Millennial Myth: Transforming Misunderstanding Into Workplace Breakthroughs*:

*"It's not an exaggeration to say that different generations may see the same behaviors or dynamics in the workplace and perceive completely different things, whether positive or negative."*⁴

The real difference is not as much as in the firm's handling of the concerns but rather in the Millennials lower tolerance to accept non-responsiveness to these concerns. There is a clear indication that "risk aversion" has been redefined for Millennial lawyers. In effect, the likelihood of achieving partnership has changed so much so that the risk of losing "marketability" is seen as a greater risk. Therefore, in-attentiveness to their concerns results in a demonstrated willingness to change firms or careers.

Hopefully, I need not remind firms of their "real financial investment" in this generation of lawyers and the absolute lack of return when they leave or are driven out in the first few years of their career.

...the four needs of Millennial lawyers...

Dr. Larry Richard, who has done extensive research into the self-rationalization of lawyers, has identified the four needs of Millennial lawyers that should be met in order to maximize the leverage of them by firms:

- i. Provide autonomy to associates – give them choices, discretion, even in small ways;
- ii. Foster ways to provide them with an experience that gives them meaning and purpose in their work;
- iii. Increase their opportunities for social connection, particularly in the following three areas:
 - o feeling included;
 - o opportunity to collaborate;
 - o opportunity to form friendships at work; and
- iv. Pay attention to the continual development of their mastery of a skill-set that helps them to become increasingly competent lawyers.

Implementing these simple needs has been more difficult than one should expect

3. Recognize and reduce the risk to both the clients' and firm's electronic data.

A 2017 study released by LogicForce shows the ubiquitous risk of hacking for law firms. The company surveyed more than 200 firms and found that all had been subjected to hacking attempts, while 40 percent of those attempts were successful.⁵ What's more, the 40 percent of firms who had been hacked were unaware of it, according to the report.

Law firms are seen as the weak spot in a corporation's data security arrangement with 89% of lawyers surveyed using unencrypted, unsecured emails by default for client communication. This includes data on unsecured thumb drives and unencrypted email on un-secure iPads. This is why hackers target law firms for intellectual property data and trade secrets.

The big four accounting firms, on the other hand, are not seen to be the weak link in a client's securing of its information, an advantage they will not be shy about exploiting with your clients. There are some fairly basic measures firms can take to protect both the clients' and firm's data including:

Law firms are seen as the weak spot in a corporation's data security arrangement...

- **Compliance** - firms need to embrace cybersecurity policies and have ZERO acceptance of non-compliance, e.g., passwords; shutting down workstations; shut off of mobile devices; encryption; unacceptable websites; etc.;
- **Cyber audits** - firms hired to attack your systems; report on weaknesses; provide solutions - expectation more clients will demand;
- **Cybersecurity insurance policy** - will pay for direct expenses associated with a hack, such as the cost of the ransom; hiring forensic investigators, and bringing on a legal team to advise the firm of its potential risk; and
- **Excess Errors & Omission Coverage** - review coverage to ensure that damage to clients as a result of losing the ability to serve them or their confidential data getting into the wrong hands as most cybersecurity insurance does not deal with client costs.

4. Make the partners' compensation system align with, not obstruct, the firm's strategic direction.

The end goal of all compensation systems should be to reward the behaviors that align with and support the firm's strategic plan. A gentle reminder that in the absence of a formal strategic plan your compensation system is your strategic plan! Is it worth following?

There is a straightforward two-step process to test this alignment:

- **Step One** - identify and prioritize the behaviors required to achieve the firm's strategic plan. A simple ranking system of 1 (most critical) to 10 (least critical) is used to rank these behaviors.
- **Step Two** - determine if there is a gap between the desired behaviors and those driven by the current compensation system.

A word of caution when approaching step two of this exercise: The partners cannot simply say that the compensation system drives (rewards) the behavior. Instead, they need to articulate "how" it drives (rewards) this behavior. Remember if it is not transparent to the partners, the odds of it having the desired result are greatly reduced.

If those behaviors identified as critical are not being rewarded by the current compensation scheme, the likelihood of successfully achieving the firm's strategic plan is significantly reduced from the start without wholesale changes to the firm's compensation system being implemented.

These gaps between what is desired and what is rewarded, combined with the notoriously poor track record of execution in many law firms, will increase the risk of failure to unacceptable levels. Remedial action on the part of the firm's leadership in general and the partners' specifically is imperative.

5. Just deliver superior client service.

The only complexity in superior client service is a failure to execute! Regrettably, the failure to execute is still way too frequent and thus the reason why clients are changing lawyers and law firms faster than ever. It is important to understand in today's legal market if you always do what you always did you will no longer get what you always got!

In all the various value propositions that clients will expect, the one constant is service because it is the easiest to be discerned by clients.

There are four simple pillars upon which superior client service is premised:

The four pillars of superior client service...

- i. Know your client;
- ii. Connect with your client;
- iii. Appreciate your client; and
- iv. Listen to your client.

6. Make succession planning transparent.

Succession planning is essential for firms that want to ensure the continuation of a strong, healthy firm for many years to come. Practitioners deserve to be rewarded for their hard work in building a practice within the firm. Likewise, the new generation of partners waiting in the wings deserves the opportunity to grow within the firm.

The reasoning as to why so many firms have done a relatively poor job of client succession planning are numerous but certainly include:⁶

- **Inertia or aversion to planning** - Historically, things have worked out over time; we've never had to plan this before; we're busy enough with the day-to-day pressures of serving our clients and running our business without worrying about what might happen;
- **Concern over lawyer retention** - We have seniors who are highly productive, at the top of their profession, and they are not receptive to discussing phase downs, transitioning their clients, or becoming lame ducks - we don't want to antagonize productive partners;
- **Concern over client retention** - We've been going above and beyond to retain and serve our clients, be completely reliable and responsive; if we broach the topic of transition, we are by definition, raising the prospect of change and potential instability;
- **Lack of viable successor(s)** - Our next-in-line, or our next generation, might not have the high-level expertise, client and industry knowledge, or the requisite "fire in the belly" to take the baton;
- **Over-reliance on compensation systems** - Our (formulaic or subjective) compensation system provides for decreasing compensation as individuals reduce production—therefore, our transitions are covered automatically.

The challenge for many firms is they over think how they should deal with succession planning and take the simple and make it complex. A simple three-step approach that has worked for firms sticking to the basics in client succession planning looks something like the following:⁷

A three-step approach to succession planning...

- i. **Start Now!** - The day-to-day demands of managing a practice make it difficult to step back and consider the future. This reality is one of the biggest reasons many firms find themselves in the current predicament – years of not having time to address relationship continuity and succession. The first step is to be done with hand-wringing and more talk;
- ii. **Engage Your Colleagues!** Inclusion is essential to obtaining the buy-in necessary for a plan to succeed. Conversations with those impacted that focus on long-term benefits, continuity of representation for clients, and the value of legacy are critical pieces of the puzzle. Some of these conversations may not be easy, but without them, you are reverting to a strategy of hope; and
- iii. **Execute and Monitor!** Very few plans roll-out exactly as intended but the routine monitoring of performance to the plan provides a means of adjusting as necessary to achieve the objective. Succession is about the *future* – and any conversation about the future must be on-going. Inside a successful firm, a good plan must be able to evolve.

The issues of experience and continuity are likely being dealt with inside your client's organization. A thoughtful collaboration between relationship partner, the client and firm

leadership is an opportunity to demonstrate that level of client-centeredness all law firms proudly tout.

7. Promote the leadership of the future and not the past.

While law firms have faced a variety of discreet problems in the past, these same problems can no longer be treated as separate discreet problems. They will require a harmonized style of leadership to solve them. These problems include (not in order of importance nor an exhaustive list):

The core solution to all of the problems identified is leadership.

- **Fiscal pressures:** expectation to do more with less;
- **Talent management:** attraction, retention, and mix;
- **Risk management:** problem prevention versus solving;
- **Technology:** artificial intelligence in particular;
- **Compensation:** valuing contribution;
- **Development:** professional, skills and leadership; and
- **Engagement:** quality of assignments, life balance, and esprit de corps.

The core solution to all of the problems identified is leadership. While leadership has been present in the past, the leadership style that is required to solve this melding of problems in the future needs to be different.

The skillset that this different leadership style must possess includes:

- Inductive problem solving;
- Instinctive use of participative teams;
- Descriptive communication style;
- Recognizing other's needs – EQ;
- Integrated multi-tasking;
- Promotion of individualism in thoughts and emotion rather than conformity and consensus; and
- Passive conflict management.

There are a number of credible studies which suggest that a blend of this skillset is more inherent in females than males (but not exclusively). Law firms who actively promote women into leadership roles to address the problems facing them are more likely to achieve long-term solutions than not.

Conclusion:

Nothing is harder to embrace than change especially in law firms. Some of the recent failures of law firms can be attributed to an unwillingness to step up to change and/or a failure to execute once they have stepped up.

Those firms that will excel in the current environment have reconciled their willingness with a properly executable strategy and subscribe to the three C's:

- i. **Communication:** they understand they cannot really over-invest in their efforts to ensure timely, accurate, and complete communication among all the stakeholders;
- ii. **Consultation/Collaboration:** they demonstrate empathy to understand what is important to their partners and then consult with them on these issues. That means really listening to their ideas and understanding their concerns rather than pay lip service and proceed to execute ideas and decisions; and
- iii. **Commitment:** to ensure all stakeholders, management, and firm leadership feel included, and are accountable for acting in a manner that supports the culture the firm shares as its aspiration.

¹ "[Neil Gaiman Quotes - Brainyquote](#)". N.p., n.d. Web. 26 Dec. 2017

² Collins, Alicia. "Limbo: Straddling the Present and Future." *Journal of Environmental Health*, vol. 76, no. 6,

National Environmental Health Association, Jan. 2014, p. 6.

³ "[Legal Innovation Zone - Ai Legal Challenge.](#)" N.p., n.d. Web. 26 Dec. 2017

⁴ "[Quotes About Millennials \(45 Quotes\) - Goodreads.](#)" N.p., n.d. Web. 26 Dec. 2017

⁵ "[Ransomware Attack On DLA Piper Puts Law Firms, Clients On ...](#)" N.p., n.d. Web. 26 Dec. 2017

⁶ "[Law Firm Succession Planning: Do One Simple Thing By Alan ...](#)" N.p., n.d. Web. 26 Dec. 2017

⁷ "[Law Firm Survival And Succession Planning - 3 Steps ...](#)" N.p., n.d. Web. 26 Dec. 2017

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