



Surviving the slide:

What firms should (and shouldn't) do to ride out the economic storm

The debate over whether Canada is or will head into a recession is really moot. It is clear the economy is slowing down significantly, and as surely as night follows day, clients will feel the squeeze, and in turn, lawyers will feel their clients' pain. To help Ontario lawyers and law firms get through trying times, LAWPRO Magazine convened a panel of experts on law firm management and operations. They provide insights on leadership issues and strategy in difficult times, dealing with marketing and client relationships, managing law firm finances, and tackling technology. Their responses are thought-provoking and eye-opening. They will help you get beyond the usual (and wrong) responses to an economic crunch: protecting the partners, firing associates and staff, slashing the marketing budget and looking for a merger partner.

Profiles of panelists Ed Flitton, Karen MacKay, Gerry Riskin, and Marilyn Tarlton are included on the following pages. The panel was moderated by Dan Pinnington, director of LAWPRO's practicePRO program.

Read on to learn what you and your firm must do to survive the slide.

Due to space limitations, this is a condensed version of a roundtable discussion. The full version is available at www.practicepro.ca/lawpromag.

Leadership

What do the best law firm leaders do in tough times? Do they do things differently? Should they be thinking about mergers?

Gerry

Number one is to manage the expectations of the folks inside the firm – including managing the expectations of partners in terms of what they're going to earn. Candid discussions on an ongoing basis are a must to prevent ending up with a number of surprised or disappointed partners who may trigger an event you don't want.

Second, data has to get managed with much greater frequency. In ordinary times it's okay to look at various things – like WIP, receivables and cash flow – from time to time, but in these times one eyeball has to be on the data at all times.

Third, it's really important to watch the trend lines to see what's going on. For example, are lawyers being laid off at other firms? If so, you want to know that real-time because again that trickles back to managing the expectations of your own people in terms of what's going on in this profession.

Merrilyn

To quote my favorite leadership philosopher, Ford Prefect from *Hitchhikers Guide to the Galaxy*, "Don't panic!" And because the leader always sets the tone, this message has to come first from the managing partner's office.

It's also a leader's responsibility to keep the long view ... You can quickly destroy a law firm by focusing too much on the short-term solutions at the expense of your firm's future – out west we say "Don't eat the seed corn."

Ed

One of the most important jobs for a leader in tough times is communicating reassurance. Us older folk have been through these cycles, we know better times will return. But younger partners, associates and staff, may think that if the firm isn't doing well, it's the problem of the firm. The leader needs to convey that this is reflective of the economy, that we've been through and recovered from this before, that things are going to be okay. I think it's critical to get that point across repeatedly.

Karen

I particularly like a Warren Buffett quote that puts these economic times in perspective. He said that beside every bubble is a pin

waiting to teach the next generation. This recession will teach us a lot about leadership. A leader can and should certainly put things in perspective and provide some context. Tell them what's going to happen, why it's going to happen, how you're going to do it and when. And as Merrilyn said, take the long-term perspective and remember, what you do in the short term could impact your reputation for a very, very long time.

More reading

Here are some books on leading your firm through tough times, which are available from the practicePRO lending library (www.practicepro.ca/library).

1. *The Lawyer's Guide to Buying, Selling, Merging and Closing a Law Practice*. Sarina A. Butler & Richard G. Paszkiet, published 2007.
2. *The Lawyer's Guide to Strategic Planning: Defining, Setting, and Achieving your Firm's Goals*. Thomas C. Grella and Michael L. Hudkins, published 2004, 230 pages with CD-ROM.
3. *Managing Partner 101: A Guide to Successful Law Firm Leadership* 2nd Edition, Lawrence G. Green, published 2001, 152 pages.
4. *Anatomy of a Law Firm Merger: How to Make or Break the Deal* 3rd Edition. Hildebrandt International, published 2004, 208 pages with CD-ROM.

Human capital

One of the usual responses in tough times is to lay off associates and/or staff. What do you do about your superstars, your new associates, your underperformers?

Ed

The biggest mistake you can make is to either stop hiring associates or, worse yet, ask those who are coming to come later in the year, as some are doing now. That – and laying off associates – has a terrible impact on one's reputation at law schools ... and also means that you can lose some of your future in the firm. You don't want to find yourself in five years with no mid-level associates.

At the same time, this is a good time to weed out underperformers because some of their protectors, the partners who are protecting unproductive favourites, can be convinced now that this is the right time to do it.

An economic downturn is an opportunity ... where practices can be developed to respond to the substantial changes that are going on in our economy ... to take people who may be talented, ambitious and energetic but just in the wrong place for what's



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Edward H. Flitton the former Managing Partner of Holland & Hart LLP, a leading Denver-based law firm, and now acts in an Of Counsel capacity to the firm. He is a member of the Council of the Law Practice Management Section of the American Bar Association, serves as the Section’s Chair of Finance and is a member of the Editorial Board of *Law Practice Magazine*. Ed is a Fellow and currently President of the College of Law Practice Management. Ed can be reached at EFlitton@hollandhart.com.

happening and move them over to some of these new opportunities.

Gerry

Shame on the leader who has left it until now to cut under-performers. You’re now releasing people into a far more dangerous environment and hurting them a lot more. One of the lessons here is to not wait for this kind of environment to start doing what you need to do on an ongoing basis.

In terms of the associates, I think if we don’t have enough work for them, then spend the time training them. Help them learn how to develop business or enhance their client relations. In other words, make them better.

This is a time when the pie is shrinking (and) every partner comes out of the woodwork with 300 pieces of evidence or a rationale as to why they should do better, especially relative to the others. This is a time for a leader to have enough courage to protect the superstars from getting gobbled up by rank and file who just are too uncomfortable with how this is affecting them, and therefore start to rationalize that the superstars aren’t really superstars.

Karen

To build on what Gerry said, I think that this is a time to be creative on two fronts. Be creative with your clients because clients are dealing with the same economic issues. Can you retain great

talent in your firm over the long haul by partnering with your clients and doing secondments? Perhaps you share the costs, perhaps not, but this is one way to get through this economic downturn and retain and train your talent. So I think that’s a huge opportunity to do something different.

It’s also a time to be creative about the law firm model of the billable hour. If we listen to the thinkers on how the law firm of the future needs to be shaped, the work perhaps needs to be more standardized (and) systematized using technology.

This is perhaps a time to have really good people in your firm working on your business, not just in your business – look at how you do your work and see about doing it differently. Tear apart files that you’ve completed and look at ways to do it faster, better with more technology, higher quality and cheaper resources.

Employee relations, engagement and morale

How do you keep your firm staff engaged and motivated?

Gerry

You involve them a lot and you have to be very clear about what you’re doing. We’ve learned from previous recessions that uncertainty is a killer. Be really clear as to how you’re managing (and) making decisions and let them know that if they’re at risk they’ll know about it, and if they’re not at risk they’ll also know that.

The other issue is not to hide bad news. These are adults, they’re smart and they know what’s going on in the world: Bad news has to be delivered. If they don’t already know it, it will leak out, so I think it’s time for candour.

Merrilyn

One of the things that we know about successful organizations is that every individual at every level is motivated by the organization’s goals. But when any kind of significant change or threat occurs, everyone’s individual motive base switches to their own interest. So rather than focusing on helping the firm achieve its goals, we find secretaries, partners and even messengers working on their resumes, talking with headhunters and wasting a lot of time.

So I think it’s very important to involve everyone in the firm in solving the problems, and you can’t solve a problem unless you have information about what the problem is ... You’re not going to turn over all of the financials to all of the staff; but you need to provide them with some kind of a basic benchmark to understand how we’re doing and when we’re doing better or when things are getting worse. You also have to provide that kind of information to challenge them to do effective problem-solving.

Firms that have a strong culture founded on a certain set of values (must not) lose sight of those values. Too often in this type of crisis an organization will unwittingly step away from its core

values. And one of the things that employees in the organization will be watching for is whether or not the values that you've talked about for so long suddenly turn into merely words and not actions.

I also strongly recommend that leadership make certain that they include people issues – yes, feeling issues – in any discussion prior to making a decision. By their very nature, law firms have an overabundance of fact-based decision makers who decide based on "what makes sense" or what is "right"; but in crisis it's absolutely critical that decisions take into account how they affect people and how people will respond. In some firms where they are savvy about this sort of thing, they go so far as to invite different decision makers into the room to speak on behalf of how this is going to make people feel and how that should influence the decision.

Client relationships

How do you get closer to existing clients and figure out what they really want and need? Are there opportunities out there in this kind of market?

Merrilyn

The first thing you do is view the world through your clients' eyes: Sit down one-on-one, side-by-side and take a look at their challenges and determine if you can help them save money or be more efficient ... Look at whether or not you might place younger, under-used lawyers in your clients' offices at a significant reduction in fee in order to continue to provide training for that associate as well as to build bonds between the firm and that client.

Another suggestion – and this gets a bit into firm finances – is to be creative about rates. I don't think lowering your rates is the right thing to do, but I do think you should be watching those organizations that you would like to be your clients, and determine whether or not they can be approached with a more competitive package. And I don't propose that that's necessarily a lower hourly rate. I suggest that it's some better way of resolving their issues than is currently being implemented by a competitor law firm, a different way to package services, a proposition that allows for cost savings based on a certain quantity of work for your firm.

Karen

Secondments or creative partnering with clients don't have to involve young lawyers only. If we could take the entrepreneurial client base that many firms serve (and as we know from statistics, entrepreneurs are overwhelmingly younger) and combine that with law firms' succession planning and aging partnership issues, there may be a real opportunity for older lawyers to add wisdom. They've just lost a big chunk of their portfolio, so

freedom 65 is now freedom 85. They need income too. I think there's a real creative opportunity here for older partners and older lawyers to add wisdom to young entrepreneurial businesses.

Gerry

Talk with clients, get them in to do reverse seminars about their businesses and meet with them one on one to explore how we can help them.

I recommend having the appropriate team within the firm propose an actual conference or session with key clients on the topic of recession planning. Make it an interactive topic where client and law firm try to figure out how they can interactively help each other given the nature of the challenges they face.

We also need to think in terms of opportunities. I know of one firm that is ratcheting up its real estate capability at a time when there is no real estate work. They believe that now is the time to attract talent like never before. They're also seeing it as a client relationship and marketing opportunity. For example, we're now seeing a trend toward re-negotiating leases. We also know that real estate attorneys can help with workouts that involve a lot of real estate components.



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Karen MacKay is the President of Phoenix Legal Inc. and a recognized expert in management of professional talent in law firms including retention, evaluation, development and succession planning. She contributes to numerous legal publication in Canada, the U.S. and abroad, is a member of the Practice Management section of the American Bar Association and a member of the Editorial Board of *Law Practice Magazine*. She previously headed up the Canadian legal practice of a major human capital management consulting firm, and served as Chief Operating Officer of a large Canadian law firm. She can be reached at kmackay@phoenix-legal.com.

More reading

For more tips on better client relations, try these books from the practicePRO lending library (www.practicepro.ca/library).

1. *How to Get and Keep Good Clients* 2nd Edition. Jay Foonberg, published 1994, 600 pages.
2. *Women Rainmakers' Best Marketing Tips*. Theda C. Snyder, published 2003, 142 pages.
3. *The Successful Lawyer: Powerful Strategies for Transforming Your Practice*. Gerald A. Riskin, published 2005, 256 pages or 6 audio CDs.

Marketing

The usual response is to slash marketing efforts and expenditures. Do you do more, less, change your efforts, cross-sell?

Gerry

Yes, you do more marketing, but you focus more on the existing clients. Firms generally are reluctant to talk to clients in bad



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Gerry Riskin is a partner and co-founder of Edge International, a leading consulting firm for the global legal community. A lawyer and management consultant, Gerry is also author or co-author of several best-selling books (*The Successful Lawyer*; *Herding Cats and beyond KNOWING*) and creator of acclaimed video productions *PracticeCoach*[®] and *Rainmaking*[®]. He has served on the Conference Board of Canada and is a Fellow of The College of Law in London and a Visiting Professor at the University of Pretoria in South Africa. He can be reached at riskin@edge.ai or through his blog at www.gerryriskin.com.

times ... They assume the last thing the client wants to do is talk about its difficulties. Get over that and call and say: "Hey, how are things going? What's going on?" It's a time to get close to these people.

Karen

It's not the time to be extravagant. You risk offending both your partners because you don't have the money and your clients because they know they'll pay for it. Change your focus to one-on-one. Pick up the phone and call your clients, go and visit them on your way into the office ... but make sure they know that the visit is off the timesheet.

Ed

A partner whose work is down (can either) keep work that he would normally delegate to associates ... (or) take that same time and spend it talking to his clients and engaging in other marketing efforts.

... I think it's up to the leadership of the firm to convince the partners of the firm that they need to keep sending that work down to the associates, to keep the associates engaged and learning ... And that gets down to compensation. To really make this effective, those partners need to be convinced that if they do that, they will not get hurt at compensation time.

Merrilyn

Invest your free time ... (by) laying the basic groundwork ... putting the pieces in place to make (yourself) "famous."

This has to do with identifying organizations that you can become involved with to demonstrate your competence, finding places where you can publish (or) speak, identifying groups that you will become an involved member of like boards of organizations, trade associations, community organizations When things get busy again it's a matter of ticking off the things on your calendar rather than starting from ground zero.

More reading

Smart marketing doesn't have to be expensive. These three books are full of strategies to get your firm's message out to potential clients. You'll find them at the practicePRO lending library (www.practicepro.ca/library).

1. *The Lawyer's Guide to Effective Business Development*, William J. Flabberly Jr, published 2007, 150 pages.
2. *The Lawyer's Guide to Marketing Your Practice* 2nd Edition. Edited by James A. Durham & Deborah McMurray, published 2003, 328 pages with CD-ROM.
3. *Personal Marketing and Selling Skills*. Catherine A. MacDonough and Beth M. Cuzzone, published 2007, 146 pages.

Finances

How do firms respond to clients' economic constraints? Is this the time to decrease fees or increase billing rates, or look at alternative billing options?

Ed

This is not the time to decrease billing rates or even freeze them across the board ... because you can't catch up.

Instead, now is the time to prioritize your clients. Recognize the clients that you want to keep and help, and make some deals with them either about billing rates or about how they're going to pay their bill, giving them some time. Look at the clients who are key to the firm and being the most adversely impacted by the recession, but also look like the ones that will come through. There should be deliberate efforts to communicate with them and help them survive. I would be willing to cut some special deals with them, like freezing your rates for a year.

Gerry

The linear reaction when we find out clients want to decrease their legal spend is to think we need to lower our hourly rate by whatever the percentage is that clients are trying to reduce their legal fees.

The creative option – which is too rarely exploited – is to sit down with a client and say "Look, let's look at your big picture. Let's look at how you allocate your legal spend and what you get for it and let's at least try to help you reduce that legal spend, not necessarily by cutting rates across the board but maybe by doing things differently or prioritizing work differently or whatever."

More reading

Try these books for ideas on better managing your firm's finances and bringing in new revenue. Borrow them from (for free!) from the practicePRO lending library (www.practicepro.ca/library).

1. *The Lawyer's Guide to Increasing Revenue: Unlocking the Profit Potential in Your Firm*. Arthur G. Greene, published 2004, 180 pages with CD-ROM.
2. *Results-Oriented Financial Management: A Step by Step Guide to Law Firm Profitability 2nd Edition*. John G. Iezzi CPA, published 2003, 272 pages with CD-ROM.
3. *Winning Alternatives to the Billable Hour: Strategies that Work*. Mark A. Robertson & James A. Calloway, published 2003, 175 pages with CD-ROM.
4. *Compensation Plans for Law Firms 4th Edition*. Edited by James D. Cotterman. Published 2004, 192 pages.



"This is a time to unleash your firm's creativity. Don't mess around now ... really apply your best minds to ways you can use technology to create better and less expensive solutions to your clients' problems ... Now... when the economic pressure is on your clients and you have time-keepers with time on their hands ... invest in your future."

Merrilyn Astin Tarlton: A recognized advocate for innovation in the business of practising law, Merrilyn has been consulting with law firms and lawyers for over twenty years. She frequently speaks and writes on leadership, innovation, management, marketing and the peculiar world of the legal profession. She served as Editor-in-chief of the American Bar Association's *Law Practice* magazine for nine years, is past-President of the international College of *Law Practice* Management and was inducted in the first class of the Legal Marketing Association's Hall of Fame in 2006. She blogs at www.astintarlton.typepad.com.

Firm compensation

It's the biggest expense at every firm – so what do we do about the shrinking pie? Is this a time for new compensation approaches?

Merrilyn

I don't think that this is a good time to explore new compensation approaches or formulas, because you already have everyone so off the nest and so upset about everything else that is changing. I would keep at least this one thing constant.

But firms that have been hanging tight to the utmost objective method of compensation designation (may) have to apply greater subjectivity now that things are a little bit tighter. In other words, while it's been easy to let the formula make the decision for you in compensation for partners, it may be that you're going to have to make more difficult decisions based on subjective information, as well.

Ed

The job of management is to convince partners that it is in their best interests that the long-term best interest of the firm is going to be the gauge against which are evaluated the economic decisions that are made in the short term.

So laying off associates who are good associates, deferring important decisions about technology, eliminating marketing because it is a luxury, taking some of these other steps that impact morale are just not in the long-term interest of the firm.... Partners are just going to have to get used to making a little less money. They're also going to make more money when the going is good and the big fees come in. That's a message that it's up to leadership to convey to the partners.

Gerry

It may also be necessary to make some changes to other costs and compensation so that the partners could have at least a reasonable compensation. There are lawyers who may have been used to living on more than they earn because they were consistently getting an increase. They are going to have some very specific problems. It may be part of management's responsibility to communicate with those people and find out how this



Surviving the slide: Your “to do” list

1. LEAD & MANAGE

Leadership and management are critical and more important than ever. They are different. Know the differences but remember both are required, particularly in this slide.

2. MANAGE EXPECTATIONS – INCLUDING MANAGEMENT’S

Keep surprises to a minimum. Demonstrate strong leadership. Share good news and bad to earn firm staff trust.

3. TAKE THE PULSE – OFTEN

Monitor, measure, watch what’s happening internally and externally. Touch clients often.

4. MANAGE YOUR REPUTATION CAREFULLY

Today’s action is tomorrow’s reputation: Think long-term.

5. KNOW AND LIVE YOUR VALUES

Your values determine your behaviour, collective behaviour determines culture. Get clarity around that and have your values as a firm and as a leader drive your decisions.

6. TOUCH CLIENTS CREATIVELY

The best business development types think in terms of high touch. Share a beverage with a client. Or pick up the phone. If you can’t do either, write a personal note. E-mail is the last resort.

7. COLLABORATE

Web. 2.0 technologies offer exciting new ways to interact, collaborate and share knowledge with your clients and among members of your team.

8. INNOVATE

Looking back at precedents doesn't help you here. Look forward and be a leader on change and innovation. Use the fear to make change happen.

9. LEARN

Be open to new ideas and perspectives – you should be learning something new every day.

10. KEEP IT FUN

Focus on what’s great about your firm, your goals, your determination. Believe that you’re going to get through this (you have before) and spread that positive outlook around.

ABOVE ALL: DON’T PANIC!!!!

As those who are a tad older will remember, downturns have happened before (and they will happen again). Don't panic, we will all get through. Approach this as an opportunity to evolve and improve.

recession is going to impact them and find imaginative ways to cushion that individual from really severe personal problems.

Operations: costs, expenses, budgets

**What do you do to control expenses and/or cut costs?
What do you do differently?**

Merrilyn

Don't nickel and dime the budget, rather take an overall strategic approach to it. If significant investments going forward need to be eliminated or delayed, do that. But don't go in and make these silly cuts (like eliminating cheese in sandwiches at client meetings as one firm did) that make you look foolish and get in the way of any kind of confidence or trust that the rest of the firm will have in your ability to lead through these difficult times.

Gerry

I'm obsessed with frequency during times like this because I think the normal early warning systems aren't early enough. Firm leaders need to have their hands on the pulse of what's going on far more frequently. Reports that were generated monthly get generated weekly, and some daily. For example, on the issue of collections, I'd want to know the receivables of the firm day by day, and I'd want to know person by person – because it's not just the discipline of the lawyers in the firm that are going to lead to problems, it's going to be problems that the clients are experiencing themselves. And so you need to know about that and attack that early so you know what is going on and what are the right answers.

Edward

If firms are going to be deferring things, they need to think about what do they do if next year is just as bad as this year, as it may well be. And I think that says sometimes deferrals may not work or you may be thinking of other things you need to defer next year to offset that. It can really get you out of whack if you're not thinking long-term.

Technology

How do you make good decisions about technology issues and costs when money is tight?

Gerry

We can postpone conveniences – but we cannot postpone quality. And we should make these decisions as if an actual client is ... sitting around the table with us and we were thinking about what to do about these decisions. What would they say? I have a hunch they'd say, "We're going to be pretty upset if you defer or eliminate anything that adversely impacts the quality of

what you give us and the efficiency with which you can deliver it to us."

Karen

In many firms you have one person, the tech person, who is running all that and making those decisions – and it's an area where there can be tremendous waste. This may be a time when you want somebody on the outside to look at your technology and look at what you're spending to see where you can save money. But it may not be the person that's inside the firm who can do that. So it may be a little bit of "spend a bit of money in order to save money."

Merrilyn

This is a time to unleash your firm's creativity. Don't mess around now ... really apply your best minds to ways you can use technology to create better and less expensive solutions to your clients' problems. Product-ize and package services. Unbundle them. Deliver services electronically. Use technology to remove the boundary between you and your clients. Now ... when the economic pressure is on your clients and you have time-keepers ... invest in your future.

Editors note: For an in-depth review of technologies you should be using to improve client services and your bottom line, see page 12.

More reading

These books are a great start to learning how you can put technology to work for your firm. All are available from the practicePRO lending library (www.practicepro.ca/library).

1. *The Lawyer's Guide to Adobe Acrobat* 3rd Edition. David L. Masters, published 2008, 284 pages.
2. *The Lawyer's Guide to Collaboration Tools and Technologies*. Dennis Kennedy and Tom Mighell, published 2008, 314 pages.
3. *The Lawyer's Guide to Marketing on the Internet* 3rd Edition. Gregory H. Siskind, Deborah McMurray & Richard P. Klau, published 2007, 192 pages.
4. *Internet for Lawyers: How to Use the Internet for Legal & Investigative Research – A Guide for Legal Professionals* 8th Edition. Carole E. Levitt & Mark E. Rosch, published 2006, 205 pages.

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