

Ten Baby Steps to Marketing a Litigation Practice

"Don't do to others what you wouldn't have them do to you. That is the Torah; all the rest is commentary. Now go and learn it." Rabbi Hillel

Unlike Rabbi Hillel, I don't have a simple answer. But there are basic questions and fundamentals issues that one must address.

For decades, I have been referring work to litigators and have been on the other side of litigation in a consultative capacity. In my experience, there is no other group of lawyers who individually better understand or misunderstand what marketing is all about. So I have the challenge in a few short words to introduce you to some preliminary concepts.

Firstly, there is no such thing as **one kind of litigation practice** and therefore no "one size fits all" answer to every litigation marketing question. Each litigation practice, be it insurance defense, plaintiff personal injury, intellectual property, commercial, municipal, corporate, real estate, estates, tax, etc. has different answers but there are *similar questions* that need to be posed in any litigation firm or practice group, regardless of its size or litigation orientation.

Let me start with my stiff and academic definition of what marketing is:

Marketing is: *"The process of planning and executing the conception, pricing, promotion and distribution of ideas, goods and services, to create exchanges that satisfy individual and organizational objectives"*

O.K. let's try this

"If the circus is coming to town and you paint a sign that says, Circus Coming to the Fairground Saturday, that's advertising.

If you put the sign on the back of an elephant and walk him into town, that's promotion.

If the elephant walks through the mayor's flowerbed, that's publicity.

If you can get the mayor to laugh about it, that's public relations.

And if you planned the elephant's walk, that's marketing."

Marketing is a process that speaks at every level of performance. It is not a department. It's your business. It is not effected in a vacuum. All marketing efforts should be consistent with and measured against clearly stated goals and objectives. You must be able to fulfill the expectations that you create. So here are 10 things you need to consider in marketing your practice.

1. Know who you are. What are your strengths and weaknesses. Underestimate yourself. Assess your service, harshly, brutally right from the outset. Are you in the right business, organized properly, with the right people doing the right jobs (give or take a few thorns in everyone's side)? I'm not talking about your competence or scholarship. I mean your service. Your people. You have a job that is earning you a living so you must be doing something effectively, but don't be smug. Be honest. Underestimate yourself!
2. Are you giving your clients what they need or what they love? Ask them. Ask them periodically and post-matter and any time else you can think of...but don't *you* ask them. Have a **third party** ask your clients what they like about you. Only survey orally, either in person or by phone. **Never** in writing. Both the written questions and the answers are more open to

varying interpretations. Besides, the response rate is very low. Some marketers will disagree, but they aren't writing this article. Never ..means never.

3. You may think your clients are companies but each of your client contacts thinks he is a person. So how do you utilize that? Be personable. For some, that is difficult. But you must learn to do it or stay away from your clients and do what you do best or are only capable of doing. Nothing will harm a marketing effort more than a super competent litigator who lacks relationship skills. You must understand your client before you can satisfy him. Being competent is just as important not more important than being popular. You may keep your clients by being competent, but may not get as many referrals as if you might if you were perceived to be a good person.
4. Your employees must also be marketers, since every act is a marketing act. For example, your receptionist and your assistants are no less important and may be even more important than you in building client relationships. Do you expect your clients to tolerate the inefficiencies in your telephone or fax communication systems or the learning curves of your students or juniors?
5. No matter who are parents are, we have an obvious interest in the outcome of each of their matters and more importantly, in our parents' level of contentment. Are you dealing with your client as if he were *your* mother or father? Is that level of commitment too much to demand of yourself? Not if you want to win the marketing game.
6. As the sardonic American humorist, Fran Lebowitz once wrote of people who wear sweat shirts with messages: "People don't want to hear from you, so what makes you think they want to hear from your sweatshirt?" People are interested in themselves. Your existing clients and prospective clients don't care what kind of work you like to do, why your firm is better than another one, or how you attract the best new talent to your firm. So stop talking and **start listening** to what your client says she wants. But don't just listen. Make a point of remembering what your client has said. Know what keeps each client up at night! Isolate your client's needs and make it a point to address them. Stop assuming you know what your client needs. Maybe what your client needs is a bombastic trial lawyer, maybe it's a litigation avoidance consultant, a risk manager, a smart mediator, a cost containment advisor. Ask your client and then listen to the answer! Because if a client is not getting what she needs from you she's either looking around, or even thinking of doing it in house where she can exercise more control.
7. Identifying your target clients is an extremely useful exercise. It forces you to know not just who you are and what you do but also what other skills you have that you can utilize Be open minded (but realistic) about not only who might be your potential target clients but also what other litigation-based work you might be able to offer your existing clients to meet **their** existing or future needs.
8. Prior to reading this article, many of you may have defined marketing as **only** a process to acquire new business. You already know that there are marketing benefits in writing articles and giving speeches, if you have the correct audience in mind. But here are some examples of other tactics that will help you attract and acquire new business. Understand that there are always marketing opportunities available to you if you look for them. Marketing is not what you do it's who you are:
 - i) For insurance defence and construction law lawyers; In addition to joining industry related organizations which are teeming with lawyers, join and attend the meetings of

industry-specific organizations where you have a good chance of meeting senior executives of companies that self-insure and where you may be able to write for their newsletter;

- ii) For real estate litigators: Opportunities abound. By way of example there are a number of real estate driven national weekly newsletters circulated via the internet to the real estate industry about commercial real estate; about major developments in the industry, who are the players etc. Do you think a weekly litigation avoidance or litigation management article under your name would fall on deaf ears?
 - iii) Circulate the writing that you do and the promotion material for your speaking sessions to targeted readers, including potential and existing clients, with whom you want to be 'top of mind'. Follow up with a phone call or at least an email. Think of yourself as a marketer every day.
 - iv) Make yourself a welcome resource to those lawyers who know little about your work and need help or questions asked or guidance. The best litigators I know, to whom I refer work, always take calls and questions with a cheerful and helpful manner. You never know when an important file will land on your desk from a lawyer referral you met and helped, particularly in light of the recent Law Society Rule allowing referral fees.
 - v) Get out of your office and have a face not just a voice. Networking savvy is half the battle. Be seen. Press the flesh. Circulate and create opportunities to promote your practice. Listen to what people are telling you and remember what you've been told. Write it down if you have to. You might argue that all these efforts are beneath you, that you're not running for office.....Oh really!
 - vi) If you practice in a large municipality get to know firms in smaller municipalities and vice versa. You never know when a small local matter may wind up in the Court of Appeal or when a large client may need some fast local knowledge....You want them to think of you first.
- 9 Branding is the ability to remember your name. Positioning is what they say about you after you leave the room. According to Al Ries and Jack Trout the authors of **Positioning**: A) You must position yourself in your prospect's mind. B) Your position must be one simple message. C) Your position must set you apart from your competitors D) You must sacrifice. You can't be all things to all people; you must focus on one thing. I know you are your partners will be reluctant to narrow the focus. But you have to remember that **one strong perception is better than a number of moderate ones**...and I'll bet you know the firms who do and don't follow this guiding principle. By the way, being positioned as small firm or practice group can translate into responsive and attentive so don't be afraid of who and what you are.
10. Service quality is invisible (Harry Beckwith: [Selling the Invisible](#)). So get it right but for marketing purposes –attracting and keeping clients–service is only what prospects and clients perceive it to be. So never forget it is they who must perceive the quality and you must drive the creation of that perception.
 11. Exceed all of your clients' expectations (ergo 11 rather than the titled 10 baby steps). Never create expectations you cannot meet; which does not mean that you should always minimize success for fear of disappointing your client later. Be honest with what you can and cannot do. Say thank you to the people who send your kids to summer camp and provide you with a renovated kitchen or trip to Rome. No, it's not you who make it happen. It's them! You can't thank them enough. So just keep it up. Take an interest in your client's business but also their family, health, holidays. Write or phone to say I'm thinking of you. Maybe it will even

encourage you to really think about them. And don't despair. There is much to learn from failed marketing efforts and rejection.

If you think conscientiously about anything in this paper, you will be on your way to beginning the process of successfully marketing your practice. Those of you who wish to fulfill your potential will be more aware of marketing beyond giving clients hockey tickets and fancy dinners. Many of you won't bother because the practice has always been very good to you; you've always done it your own way and you've made it work; or you just want to be left alone to do your 'work'. I understand.

Smart marketing can benefit everyone but is not for everyone. Some of you have no interest in marketing, even though you should. If that's o.k. with your financial dependents, it's o.k. with me too. In Decision Traps, Russo and Shoemaker tell the amusing story of the Spanish lottery winner who chose the number ending in 48 because for seven days he woke up thinking of the number seven and seven times seven is 48. We all act like that lottery winner at times. We mislead ourselves attributing our successes and failures to things that barely influenced the result. Often in marketing we assume that a tactic which does not achieve instant results has failed only to learn years later that the tactic worked slowly and unpredictably, but ultimately successfully. I hope this article will get you started.

Biography

Stephen J. Ruben
Barrister & Solicitor
45 St. Clair Avenue West
Suite 200
Toronto, ON M4V 1K6
Telephone: 416-922-0511
Fax: 416-922-0513
www.valuelaw.com
stephen.ruben@valuelaw.com

A graduate of University of Toronto and University of Toronto Law School in 1973, Stephen was called to the bar in 1975 and has practiced as a sole practitioner with a Residential and Commercial Real Estate practice. He is the President of Valuelaw Consulting Inc. (www.valuelaw.com) which provides law firm clients with strategies for controlling legal costs. Valuelaw Consulting Inc. also consults with law firms on matters relating to billing and client satisfaction. He is also a Director of the Professional Services Marketing Association and a member of the Legal Marketing Association, New York City Chapter