



Diversify
without
dabbling:

before expanding your practice, expand your competence!

Think you have the confidence to bluff your way through a file that's outside your normal scope of practice?

It might work if you were playing a lawyer on TV... but that's only because your opponent (and the judge, if it's a litigation file) would be actors, too. In the real world, trying to "fake it to make it" in an unfamiliar area of law is unfair to the client, dangerous to the lawyer's reputation, and risks a potential legal malpractice claim.

In a challenging economy, many lawyers scramble to maintain a steady stream of work in their established areas of practice. Faced with pressure to keep fees stable, these lawyers sometimes decide that the only way to boost billable hours is to take on new clients with legal needs in areas in which they haven't previously practiced, or to offer new categories of legal services to existing clients.

For example, a lawyer who normally practises only family and estates law may be asked to set up a charitable corporation for a family law client. She might be tempted not only because it's new business, but also because it would be rewarding to contribute to the establishment of the charity, and she knows she has her client's trust. What could go wrong?

"Plenty," explains W. Grant Buchan-Terrell, an Oakville sole practitioner who practises exclusively business law. Over the course of his career, Buchan-Terrell has noticed that lawyers seem more willing to dabble in business law (especially vendor-side) than in other areas with a more significant courtroom component.

"There's this mythology of general practice – that a standard legal education equips you to practise in any area you want. But the law has become so much more complex. That's just not realistic anymore."

Errors that flow from dabbling in practice areas outside a lawyer's scope of competence can have significant financial consequences for clients. Those consequences can prompt a client to complain to the Law Society, to sue the lawyer in negligence, or both.

While judges and discipline committee members tend to show a certain level of restraint when commenting on lawyers' competence, it is clear from the wording of certain decisions that dabbling without an appropriate foundation of knowledge or experience underlies many findings of incompetence. One of the clearest condemnations, in the discipline context, of a lawyer's dabbling

can be found in the Law Society's reasons in *Re Cosway*, (1995 CanLII 1765). Recommending a one-month suspension for incompetence, the discipline committee offered the following pointed advice:

“Get out of areas of practice about which you know little or nothing. You cannot cope with the complexity and difficulty those cases cause you. If there are any further difficulties, a further suspension is really quite unlikely. To be disbarred at your age would be a great tragedy.”

At the time of his hearing, the lawyer had been in practice for 30 years; the one-month suspension was the fifth discipline order made against him between 1986 and 1993.

Dabbling also appears to have been a factor in a 2002 discipline decision. In that case (*Re Wilson*, 2002 CanLII 42273), the committee cited “extreme inertia” when describing the lawyer’s record in responding to clients. In recommending a reprimand and that the lawyer be restricted to practising under supervision and taking on new client matters only with a supervisor’s approval, the committee found that the lawyer was competent in his own area – commercial litigation – but noted that he “ran into trouble when he exercised poor judgment and took on cases outside his area of practice.” Those areas included employment law and personal injury litigation.

So does this mean you are stuck taking on the exact same range of file types for the rest of your career? Of course not. The following tips can help ensure that your practice expands in lockstep with your competence:

1. Expand purposefully

If you decide to expand your scope of practice, make sure that the decision to do so is conscious and considered. Resist the temptation to end a business drought by taking any case that walks in the door. A change in practice requires planning. Above all, avoid taking on a case in an unfamiliar practice area on an emergency basis, or at the request of a valued client. Why risk providing novice-level service to a valued client?

2. Choose carefully

Make sure that the practice area in which you’d like to expand is compatible with the work you already do, and that it plays to your strengths. If your background is in commercial litigation you might not adjust easily to, for example, real estate practice. Consider your strongest skills. Are you detail-oriented, logical and a good writer, but have trouble “thinking on your feet?” You might do best to branch into wills and estates, rather than into an area that requires lots of negotiation over the phone.

3. Hit the books

Or perhaps, more productively, the CPD circuit. Don’t assume that you can rely on your distant memories of law school classes. The law changes quickly. You will need to familiarize yourself with not only the substantive law in your target area, but also the procedures, forms, deadlines, software, technology and other tools unique to the new area. Remember – your opponents already know this stuff inside and out.

Do this general learning on your own time, and don’t bill clients for it. If you need reinforcement of this point, read the reasons in *LSUC v. Ravinder Pal Sawhney* (2012 ONLSHP 13).

4. Find a mentor

There is no better way to familiarize yourself with the demands of a new area of practice than to observe a successful and seasoned expert. Find a mentor in your new area. If you’re lucky, you might identify someone who has more work than he or she can handle, and who can refer some simple files your way. On the other hand, if competition is stiff in your local area, you may find that an expert in another city is more receptive to sharing knowledge with you. If you’ve referred matters to other practitioners in this area of practice before deciding to expand into it, the recipients of those referrals might be willing to mentor you. Do what you can to keep the lines of communication open with your chosen mentor (including the setting of ground rules for your new relationship). Observe him or her in court, ask about where to find the best resources, and get in touch any time you have a question.

5. Invest in the right tools

As mentioned above, there are forms, resources, software and technologies specific to every practice area. You can’t level the playing field between yourself and your opponents unless you invest in these. Also, don’t overlook a *personnel* investment: a law clerk or paralegal with considerable experience in your new area can give you an instant leg-up on routines and conventions you would otherwise have to figure out for yourself. Consider hiring such a person even on a short-term or part-time basis.

6. Expand by increments

To the extent that you can, build your expertise in your new practice area beginning with the simplest matters first and working up to more challenging files. An effective way to do this is to spread the word that you are looking for referrals of a specific type. Restricting your practice at the beginning and growing it by increments of difficulty will help ensure that you expand your competence in tandem with the scope of the work you do. ■

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