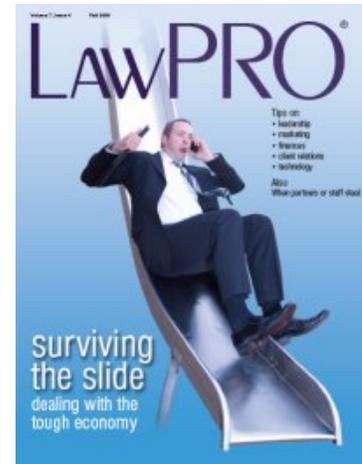


This is the full version of an article that appeared in the Winter 2008/2009 edition of LAWPRO Magazine: Surviving the Slide. It can be found at www.lawpro.ca/magazine

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 finances, 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 often wrong) responses to an economic crunch: protecting the partners, firing associates and staff, slashing the marketing budget and looking for a merger partner. Read on to learn what you and your firm must do to survive the slide.



This panel was moderated by Dan Pinnington, Director of practicePRO. The participants were Edward H. Flitton, Merrilyn Astin Tarlton, Gerry Riskin, and Karen MacKay. (see full bios below)

Leadership

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

Edward H. Flitton

The most important job for a leader in tough times is communicating reassurance. Us older folk have been through these cycles, we know we will come back, but younger partners, associates and staff, may think that because 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.

Merrilyn Astin Tarlton

To quote my favorite leadership philosopher, Ford Prefect from *Hitchhikers Guide to the Galaxy*, the most important thing to do is not panic. And because he or she sets the tone for the entire process, this message has to come first from the managing partner's office.

What effective leaders do in difficult times is to provide an overall structure for the response to that crisis: They set the tone, they communicate over and over and over again with everyone because that provides them a way to manage the morale and to manage the response to the crisis.

It's also a leader's responsibility to keep the long view - even though it's very, very difficult in this kind of a situation to focus on anything more than the short term. You can really destroy a law firm by focusing too much on the short-term solutions and eat away at what you need in order to have long-term success.

Gerry Riskin

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 on the nature of the compensation system are a must, or you could end up with a number of partners are surprised or disappointed or unhappy and they 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 receivables management, 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 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.

In terms of mergers, I feel pretty strongly that these times do not change the basic criteria for whether a merger is advisable. So if a merger wasn't advisable otherwise, I'm hard-pressed to see how these hard times make it advisable. We've all heard the jokes about if you take two losers and you merge them you get a bigger loser.

Karen MacKay

I particularly like a Warren Buffet quote that puts these economic times in perspective; he said that beside every bubble is a pin to teach the next generation. So a leader can and should certainly put things in perspective and provide firm staff with context. Tell them what's going to happen, why it's going to happen, how you're going to do it and when. Put things in some perspective so that they have a context. And as Merrilyn said, take the long-term perspective but from a reputation management perspective what you do in the short term could impact your reputation for a very, very long time.

Human capital

Lawyers and staff are a cornerstone of every law firm, and in tough times one of the usual responses is to lay off associates and/or staff. In that context, how do you identify and retain your superstars and other key talent? What do you do with associates and new hires that are starting in the next few months? Is this the time to weed out underperformers or other dead wood? What about retooling?

Merrilyn

The answer is yes. This is a perfect time to weed out underperformers or dead wood. This crisis is going to motivate you to do the things you should have been doing. I really don't have any thoughts on retooling except to say that it's a very complex question because that requires a significant investment. You have to evaluate whether or not that person has other skills and is a different kind of resource to the firm in order to invest significantly into the time and training to retool them.

I guess you're not going to need help identifying who the stars are. You're not going to have any surprise information about what you want to save. The surprise may be in your ability to make decisions you've not been able to make before.

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 which some are doing now. That has a horrible impact on one's reputation at law schools. Laying off associates similarly makes law students less than eager to be going to your firm and also means that you can lose some of your future in the firm.

Yes this is a good time to weed out underperformers because some of their protectors, in other words the partners who are protecting their favorites who may not be productive, can be convinced now that this is the right time to do it.

In terms of retooling, I think you have to remember that an economic downturn is an opportunity as well as a problem for a law firm. Certainly in this case we can see a number of new areas where practices can be developed to respond to the substantial changes that are going on in our economy and the way it's being managed. So there is an opportunity to take people who may be talented, ambitious and energetic but just in the wrong place for what's happening and moving them over to some of these new opportunities.

Karen

I think this is a time to be very careful. How you treat people on the way out will send huge messages to the people that are there. Often associates have friends in other practice areas but have no idea that they're not performing. It's much like a ripple effect of a stone in a pond. You may be dealing with the issue at the center but the ripple as it goes out impacts the people that you want to keep.

Yes you've got your A players but you've also got the valued bigger group. If your A players are 10 per cent of your firm, probably 70 per cent are that core of your talent that you need to retain and keep engaged. So how you treat people on the way out is important.

Gerry

I'm against cutting the under-performers unless you really have to. Sure, sometimes there is no choice. But shame on the leader who has left it until now: You're now releasing people into a far more dangerous environment and you're hurting them a lot more. One of the learnings 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. They came to a good firm because they wanted to learn. If at all possible keep them on board and make it as positive as possible an experience for them.

In terms of the superstars, the only thing I'd add is that this is a time when the pie is shrinking. And with pie shrink every partner comes out of the woods with 300 pieces of evidence or 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 just 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 freight, 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. As soon as you go out of direct practice you become overhead, you go into a non-billing role. But if we listen to the thinkers on this stuff and how the law firm of the future needs to be shaped, the work perhaps needs to be more standardized, needs to be more systematized using technology, and people are looking for flexibility.

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? How much do you involve employees in the changes? How much do you tell them?

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. The last thing you want, especially if you have to let some people go, is for some or all of the rest of your staff to be wondering whether they're next. They may just end up taking jobs in another industry or with a competitor because of their uncertainty. It's key to be really clear as to how you're managing, how you're making decisions and letting 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: When bad news is there, it has to be delivered. I think there's a tendency to hide bad news behind partner doors and worry about the dangers that would befall the firm if the rank and file knew about this or that. If they don't already know it, it'll leak out. So I think it's time for candor.

Karen

I'd ask, what do we really mean when we talk about employee engagement? First, it means that people speak highly of the firm, they feel good about the firm, and are proud to be a part of it. Two is that they stay with the firm and wish to stay with the firm. They're not actively out there looking, they're not spending 20 per cent of their time thinking about their next move.

And then the third thing is that they flourish, they strive for excellence because they have pride in the organization and its quality and want to be part of that actively.

You keep people engaged by keeping them informed. Communicate more openly and in person; allow people to ask questions – hold a town hall meeting to answer questions openly and honestly. I would absolutely, in down times, avoid communicating and writing.

There are many ways to keep people engaged: I remember reading about one firm that started inviting an associate or a representative associate or a group of associates to the Executive Committee meetings as part of their associate-retention strategy, giving associates a window into the leadership.

Ed

There's a great temptation when there are downturns like the one we're in for the leaders of a firm to try to satisfy their partners' clamor and concern by eliminating costs: Firm leaders need to be very, very careful that in the process of doing this they're not affecting employee morale.

In short, don't cut out the Christmas party or stop paying for their parking because it's a bad year. You need those events and the other sort of privileges to keep up staff morale. If you do what some of your more conservative members of your management team have been dying to do all along and they take advantage of this time to do it, you sort of increase the fears that have been caused by the recession in the first place.

Merrilyn

One of the things that we know about organizations is that in the most successful ones, every individual working in that organization at every level is motivated by the organization's goals. And what happens when any kind of significant change occurs is that everyone's individual motive base switches to their own interest. So rather than spending extra time focusing on helping the firm achieve its goals, we find secretaries, partners as well as messengers working on their resumes and talking in the hall and wasting a lot of time that could be spent otherwise.

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. So I recommend that everyone at every level have access to information about how the firm is doing, in some measure. 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 benchmark in order 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 in order to challenge them to do effective problem solving.

If you can turn improving that bottom line, improving the progress of the firm into a goal firm-wide and challenge people to, as Karen said, think creatively about better ways to do things, it becomes something that the whole firm is doing rather than something that the firm leaders are talking about in their bunker which no one else can access.

I also would encourage those law firms that have a strong culture founded on a certain set of values, to 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 that happens, whether or not the values that we'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 – 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; but in these times it's critical that decisions take into account how they impact people. 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.

I know one firm that has an empty chair because they know that everyone on the Management Committee is very data and fact-based and they will make decisions based on what is right and never contemplate how will this affect people. It sometimes has the reverse effect to what you might ordinarily think. It might turn out to be more humane to outsource, outpace people quickly rather than give them a couple of months, but it's important that those people issues be considered at the table as well.

Client relationships

Recognizing that most new business for firms comes from existing clients, how do you get closer to existing clients and figure out what they really want and need? How will client needs change in a downturn and how do you respond? 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.

As Karen said earlier, this is a great opportunity to 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 thing to contemplate is whether or not there isn't a completely different kind of legal advice that you can be providing that's very helpful to clients, and that has to do with how they manage assets, how they manage agreements in downturns. I've recently been working with an all-intellectual-property firm creating particular products that can be used by client firms to protect their most strategic intellectual property, eliminate the cost of maintaining intellectual property that may no longer be strategic, and to use the time that's available to their client company to do the kind of competitive research and take competitive action that they might not otherwise be able to do.

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 a lower hourly rate. I propose that that's some better way of resolving their issues than is currently being implemented by a competitor law 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. So they need income too. So I think there's a real creative opportunity here for older partners and older lawyers to add wisdom to young entrepreneurial businesses.

Gerry

Although we may think we know all about our clients' businesses, research shows that is not the case. So I think a tablespoon of humility is appropriate. We have to be talking with our clients, getting them in to do reverse seminars to us about their businesses and meeting with them one on one or in groups to make sense, to explore how we can help them. If part of our work for that client involves travel, perhaps we look at virtual meetings to help reduce costs that neither they nor we benefit from.

It's also time for imagination about how we get paid. I'm not suggesting we reduce our fees or that we take extraordinary risks, but there may be options that are win-win. Perhaps we can work different ways that reduce costs to the client; or there may be some kind of deferrals we can make for fees that help them cashflow-wise even if we take securities on those fees so that we're not in danger; or we can explore whether some portion of fees should be based on success; there may also be alternatives that clients can suggest.

A specific suggestion: Have 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 the two 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 to do. They're optimistic that they're going to remain in business and believe that now is the time they can attract talent like never before. They're also seeing it as a client relationship and marketing issue because if you look at real estate, we're now seeing the trends for negotiating the least amount because of the recession or workouts that have a lot of real estate components, etc.

Ed

To take Gerry's idea about getting together with clients about recession planning one step further, I think there's an opportunity as well to get clients together with each other to talk about recession planning with the law firm being the moderator.

I was talking over the weekend to a banking client and was fascinated and sort of amazed to hear what it feels like to be inside a bank through what we've been through over the last couple of months. And it would be very interesting to put together a meeting of banking clients with other business clients. The bank would be kind of sharing what it knows but also having an opportunity to attract clients in the process. But everyone to kind of share what they're doing with a law firm as a moderator is a great way to provide a unique service to our clients without very much cost.

Marketing

The usual response is to slash marketing efforts and expenditures. So do you do more marketing, less marketing? How do your marketing efforts change or adapt? Do you do more cross-selling?

Gerry

Yes you do more marketing but you focus more on the existing clients. Firms generally are reluctant to talk to clients in bad times. It's like they're afraid to call; they assume the last thing the client wants to do is talk about his difficulties. Get over that and call and say hey, how are things going? What's it like over there? What's going on? It's a time to get close to these people.

I don't think it's time to ratchet up cross-selling if the cross-selling is a sort of a selfish act. In other words, if it's "hey you know, we're short of work, there's more potential work we could be doing for existing clients, but let's ratchet up the cross-selling efforts", I say no.

But it's always okay to call if we have something truly useful to offer, if we know we have expertise that could be helpful to them. It's time to get close to clients and it's time to figure out what they need and then help them.

Karen

It's not the time to put up the big billboards or put on the big costly event on that may risk both offending your partners because you don't have the money and offending 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 this stuff is off the timesheet. If you visit their firm they need to know right up front that these calls are not on the timesheet. That has to be really clear.

Ed

A partner whose work is down has a couple of options. One is to keep work that he would normally delegate to associates. Another is to take that same time and increase the amount of time he's spending talking to his clients and engaging in other marketing instincts.

I can guarantee you that the instinct of nine out of 10 partners is to do the former, is to keep the work because most partners are convinced that the primary measure of their compensation is the billable hours or billable hours that they achieve. 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. They need to use that time to actually increase the amount of marketing that goes on.

And that gets down to compensation. In order to really make that effective, those partners need to be convinced that if they do that they will not get hurt at compensation time.

Merrilyn

You know, the biggest argument that any of us get from individual lawyers about marketing is: "I just don't have time for it." Well the perfect storm combination of "I don't have enough billable time" and "I need more work" is the best time to invest your free time.

The most important – and most difficult to get to – is to lay the groundwork. Particularly associates, after they have been in practice for a few years, need to be doing the things that develop their own personal platform. And I talk about it in terms of making 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, where you can speak, identifying groups that you will become an involved member of like boards of organizations, community organizations. These are the kinds of things that you may not have time to do under ordinary circumstances but now you do, and so if you can lay that groundwork, later when things get busy again you've already done that and it's a matter of ticking off the things on your calendar rather than starting from ground zero.

One of the things that we frequently see is that marketing people in law firms are fired during these times because they are seen as a luxury. But it's not a luxury to invest in the future of the practice. This is a time to be examining what sorts of opportunities have been missed before because there was no time, because there was no need.

The greatest way to solve issues in any organization is to wait until a point in time when there is so much pain that it hurts more not to change than to change. And if marketing is one of those ways in which a law firm can do things differently, and the pain is present because of the current financial circumstance, then what a great opportunity.

Finances

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

Ed

It is not the time to decrease billing rates or even freeze them.

Instead, now is the time to prioritize your clients. Recognize the clients that you want to keep and you want to help, and to be making some deals with them either about billing rates or about how they're going to pay their bill, giving them some time. But you can't have every partner doing that for their favorite clients. You want to look at the clients who are key to the firm, who are also 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 to keep them and to help them survive this. I would be willing to cut some special deals with them like freeze your rates for a year.

But don't freeze them for new clients or freeze them across the board. You just can't afford to do that because you can't catch up. If you go for a year or two with frozen billing rates and then to try to catch up, you have to jump them by 10 per cent or something, and you're going to have huge client pushback.

I think that there needs to be a lot of imagination brought to that at all times but I don't think that the economic downturn increases that. It should be an ongoing effort to find places where you can do it because of the obvious benefits.

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 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 what you spend your legal costs on and what you get for it and let us at least try to help you indeed reduce your legal spend but not necessarily by cutting rates across the board, maybe by doing things differently or prioritizing work differently or whatever.

Take the example of litigation. In certain kinds of repetitive litigation, you can arrange with clients that they'll depose fewer witnesses; that's sort of a risk assessment and clients need to agree on that and that they lower

costs that way. So the message here is: Instead of thinking in a linear fashion about lowering hourly rates, let's think about the big picture and maybe different configurations of service so we can have a win-win on the deal.

Firm compensation.

It's the biggest expense at every firm and we've already touched upon the shrinking pie once or twice. Is this a time for new compensation approaches?

Merrilyn

Well, of course the short answer is no. But I want to tell you a cautionary tale of a law firm that decided in a down economic time that things were so bad it needed to ask everyone in the firm to take a reduction in their compensation. This of course was focused on employees as opposed to partners. So they asked everyone in the firm, like you're supposed to, to be a participant and the solution to the problem, they shared information with them, and asked them to take for the next 12-month period a 5% cut in pay. Everyone agreed, everyone wanted of course to preserve their job and to contribute to the solution of the problem within the firm.

And then 12 months later at the Christmas party as the leader of the firm was making his presentation about how the last year had gone, he asked for a standing ovation because they had had such a successful year that across the board every single partner had had a 5 per cent increase in their compensation.

I guess the purpose of the story is to illustrate that you have to be very thoughtful not only about what you do in terms of compensation, but how you communicate about it. I don't think that this is a good time to explore new compensation approaches, new formulas, because you already have everyone so off the nest and so upset about everything else that is changing. I would keep this constant. But it may require that those firms who have been hanging tight to the utmost objective method of compensation designation are going to 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 bit more difficult decisions based on subjective information as well.

Gerry

Well, even in great times I am slow to come to compensation as a way to solve anything. So no, under any circumstances, don't touch a compensation system. But if you're looking for different behaviors, for example you don't want people to hoard work, you want them to delegate to associates and so on, then you may have to align your compensation system or tweak it or fine tune it so that it's consistent and in harmony with the behavior you want.

Karen

I agree that it's not the time to do anything. I don't want to confuse partner compensation with compensation at the associate or staff level. Certainly when the spoils and riches fall to the partners, that is a benefit of ownership, but in a tough year or in tough times it's the very same people that need to suck it up in tough times and that's critical.

Holding salary levels in one way to hold your costs – but lawyers hesitate to do this unless everybody else in town kind of does the same thing.

But compensation and what you reward is the fabric of the firm and creates its culture in large part. So unless you want to change your culture and put the firm at risk this is not the time to change anything. But you can certainly hold your costs.

Ed

I think that 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. And that's going to mean that the partners are going to make less money in the downturns. They're also going to make more money when the going is good and the big fees come in.

But they have to understand that they're going to make less if they want their firm to have a long-term viable option. 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. So partners are just going to have to get used to making a little less money. I think that's a message that it's up to leadership to convey to the partners.

Karen

You know, it's been 17 years since the last real, real recession and that's a lifetime. So that's my seven years as an associate and probably another seven as a partner with fees going up every year, compensation going up every year, with a couple of blips in the early nineties. But really it's been a whole lifetime in a profession, and a sense of entitlement in the partners sets in that of course my compensation is going up every year. This is a reality check for them too.

Gerry

It's really important here that we watch trends going on in the profession because in managing the expectations of partners and associates in terms of their income, it's very helpful to be able to say: "This is the impact this recession is having on the legal profession."

We also have a couple of minor problems with saying well, the partnership sucks it up. One is because of the financial structure of most law firms, partners take the very thin edge that's left at the end of the day and if that thin edge is hard, that could mean a very major and drastic reduction for the partners. We're talking much more than 5 to 10 per cent.

So it may be necessary to in fact make some changes 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 always getting an increase, and are going to have some very specific problems. It may be part of management's responsibility to actually communicate with those people and find out how is this going to impact them, and find imaginative ways to cushion that individual from really severe personal problems. I appreciate that's slightly Utopian but maybe it's part of the game here.

Operations: costs, expenses, budgets

Do you do things differently now? Does the budgeting process change? What do you do to control expenses and/or cut costs? Are collections handled differently?

Merrilyn

Another cautionary tale. Don't eliminate cheese. I know of a law firm which, when things got difficult, looked for small ways in which to cut back, and they issued an edict that even though they would continue to buy lunches for client meetings inside the firm, there would be no cheese on sandwiches any longer. Now if you want to find a way to just immediately impact morale and become the laughing stock of the firm, that is a way to approach it. But I suggest not to do that and not nickel and dime the budget, but rather take an overall strategic approach to it.

And if there are significant investments going forward that need to be eliminated or delayed, do that. But don't go in and make these silly cuts 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. I think the leaders of the firm need to have their hands on the pulse of what's going on far more frequently. So maybe 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.

In terms of controlling expenses no doubt there are some costs you can defer and that's a rational, logical sort of assessment. But you can't defer them too long. It's sort of like maintaining an apartment building. You can put off maintenance for a while but if you put it off too long then you pay huge costs down the road.

Karen

I'm a big fan of looking at your processes and procedures: The firm's principal administrator should always be looking at that stuff. And keep an eye on collections. So many firms leave it up to each individual lawyer to deal with collections. It is definitely time to bring leadership to that process.

You should always be looking at what you do in the firm operationally day to day, how you deal with files, why you do it and if the answer is "because we've always done it that way" that process needs to get picked apart: As they do in the JAG Corp -- do an after-action review. Look at everything that you're doing and see if you can do it faster, better, higher quality and cheaper.

Ed

On the topic of deferring things - I'm afraid that the underlying assumption is that next year we'll be OK so we can defer this until then -- but that may not work. If firms are going to be deferring things from this year to next, 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. And 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? What do you go ahead with? What do you postpone? Can you afford to innovate? Can you afford not to?

Gerry

We can postpone conveniences – but we cannot postpone quality. And we should make these decisions as if the actual client is in the room. If our most important client is sitting around the table with us and we were thinking about what to do about these decisions, what would they say? And 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.”

But if it's just the neat, fun stuff (and not too many things fall into that category) then OK, put it off.

Ed

Yes, there are major expenditures (for example moving the guts of your system out to a co-location facility) that really take quite an investment of capital that can be postponed, and I don't think that really falls into convenience and quality. So I think there are some things you can postpone for a year if you think that it'll help you get through this year and next year is going to be better.

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 with time on their hands, invest in your future.

Surviving the slide: Top 10 “to do” list

1. Lead & manage

Leadership and management are critical and more important than ever. They are different. Know the differences but both 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 behavior, collective behavior determines culture. Get clarity around that and have your values as a firm and as a leader drive your decisions.

6. Touch clients creatively

E-mail is not a good way to communicate. The best business development types think in terms of high touch. Share a beverage with a client. Or at least pick up the phone. If you can't do either, write but even then a personal note in a card is a much more powerful than an e-mail. E-mail is the last resort.

7. Innovate

8. Learn

9. 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.

10. DON'T PANIC!!!!

Biographies of the Roundtable Participants

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.

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.

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.

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.

This is the full version of an article that appeared in the Winter 2008/2009 edition of LAWPRO Magazine: Surviving the Slide. It can be found at www.lawpro.ca/magazine

Other articles from that edition of the magazine include:

- [Building a better clientele](#): Ideas from practicePRO Director Dan Pinnington on how to build and retain a better clientele - more important than even in trying times
- [Technology in trying times](#): Innovating with technology is an even more important imperative in rough times. So how do you select and implement the right legal technologies when money is tight?
- [Fraud on the inside](#): Why do trusted members of your firm turn to fraud? How can you spot these frauds? What do you do once you've discovered the fraud? A forensic examiner and lawyer shares his insights.
- [Phantom clients and non-retainers](#): Recent claims have driven home the importance of formal retainer arrangements and avoiding the spectre of the phantom client