

Enhancing your client experience

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Lawyers facilitate clients' access to and interaction with the law. Clients come to us with problems and goals, and we bend and shape those problems and goals into legal systems and structures. From law school onwards, we are taught most often how to recognize issues, identify facts that are relevant to the law, and how to navigate legal processes to shepherd our clients to the results they want.

There's a body of writing and practice focussed on businesses and, increasingly, social services that emphasizes the opposite approach. It starts with the clients - with their experiences, feelings, impressions and goals - and seeks to build services, products, and processes that map neatly on to clients' experiences. This is called design thinking, and it aims to tailor products and services so precisely to clients' needs that, in many cases, those needs are anticipated by the business or service provider before the client even fully realizes they have them.

This paper will begin by explaining why and how to build a legal practice that genuinely meets the needs of its clients (Part 1). We discuss the "job" legal services are hired to do, the opportunities that exist to deepen your relationship with existing clients, and the ways we can design legal services to connect with new clients and meet unmet legal needs.

Part two seeks to inspire by providing examples of other businesses and service providers that have found success by designing services and products that meet clients' needs. Part three provides an overview of an exercise we undertook at Mathers McHenry & Co. to improve our intake process and make it more client-centred. We conclude the paper and offer some resources for further exploration, whether you want to dive into design thinking or look at some of the many other approaches to improving your business and processes.

Part 1: How to build a legal practice that genuinely meets the needs of clients

Building your practice to anticipate and respond to ongoing legal needs

Lawyers do not always have the advantage of being able to anticipate their clients' needs. However, lawyers who take the time to think deeply about their clients and how they access legal services may find opportunities to get ahead of issues, provide services that wrap around their clients' needs, and address them in ways that are much more satisfying for both lawyers and clients.

Jack Newton is the CEO of CLIO, a practice management software and an author. He provides a powerful example of how the absence of a client-centred approach can result in wasted opportunities to deepen the relationship with existing clients:

I had a will done with my wife around ten years ago, and this is before we had kids, this is before Clio, this is before I moved to Vancouver.

So major life events for me happened over the last decade. Still, the estates' lawyer that I used over ten years ago to help craft our wills, I haven't heard a word from him in the last decade. Whereas if he reached out to me even on an annual basis, even if this was a simple drip marketing campaign run from an email automation package that he used to ping me and say, 'hey, has anything interesting happened in your life in the last year? If so, let's jump on the phone and figure out how that impacts your will.'¹

The simple – and perhaps automated – follow up that Newton recommends would help the client keep their will up to date and eliminate the need for the client to reach out to the lawyer to update their will. For the lawyer, the result may be a better and longer relationship with clients and more referrals from satisfied clients.

A corporate lawyer can easily adapt this approach, prompting clients to hold AGMs and update minute books instead of waiting for clients to reach out and ask for help. Employment lawyers who have helped a client exit one job can offer to review the contract for the client's next job. Any lawyer can take time to identify complementary services that their clients might need and build out referral lists and relationships to other service providers.

Anticipating needs and proactively extending an offer to help allows clients to identify and address legal needs. It also positions you to be the one they turn to, creating repeat business and long-term profits.

Milkshakes

Clay Christensen tells this archetypal story of how understanding and responding to clients' needs can improve business results.² McDonald's wanted to improve its milkshake sales. The company had tons of data and used it to create a customer profile of who buys milkshakes. They invited people who fit the profile to join a focus group and asked members of the focus group to list the

¹ Christopher T Anderson & Jack Newton, "Into the Future with the Client-Centered Law Firm" (15 Jan 2020), online (podcast): Legal Talk Network www.legaltalknetwork.com/podcasts/un-billable-hour/2020/01/into-the-future-with-the-client-centered-law-firm/ [Legal Talk Network].

² HubSpot, "Clay Christensen: The 'Job' of a McDonald's Milkshake" (November 19, 2018) online (video): YouTube < <https://www.youtube.com/watch?v=StcObeAxavY> > [HubSpot].

characteristics of an ideal milkshake (thick, thin, chunky, smooth, fruity, chocolaty, etc.).³ The group participants answered as honestly as possible, and the company responded to the feedback, but sales did not improve.⁴

Christensen and his team suggested a new approach. They sought to understand the "job" that customers were "hiring" a milkshake to do.⁵

"One of our colleagues stood in a McDonald's restaurant for 18 hours one day and just took very careful notes [about people buying milkshakes] ... It turned out that about half of the milkshakes were sold before 8:30 in the morning. It was the only thing [the customer] bought, they were always alone, and they always got in the car and drove off with it."⁶

After observing milkshake sales, Christensen's team came back and asked people who bought milkshakes why they were buying milkshakes early in the morning. They also asked people what other things they would buy to "do the job" that the milkshakes were doing. It turns out, milkshakes competed with doughnuts, bagels, chocolate bars, or bananas, all of which people "hired" to do the same job.⁷

By shifting the focus onto why customers were buying milkshakes, they discovered that the majority of milkshakes were bought in the morning and that customers wanted something to enjoy during their morning commutes: "They weren't yet hungry but knew that they'd be hungry by 10 a.m.; they wanted to consume something now that would stave off hunger until noon. And they faced constraints: they were in a hurry, were wearing work clothes, and they had (at most) one free hand."⁸

The milkshake, it turns out, was performing multiple jobs. It was keeping people occupied during a long and boring drive to work. It filled them up, so they weren't hungry at 10 a.m. It was tidy and contained, so they could consume it while driving. And, unlike chocolate bars and doughnuts, it didn't make them feel bad. Milkshakes did these jobs better than other options – bagels were dry; doughnuts and chocolate bars led to feelings of guilt, and bananas did not take long enough to eat.⁹

³ HubSpot.

⁴ HubSpot.

⁵ Clayton M Christensen, "The Innovator's Solution" (Harvard Business Review Press: Boston, 2003) at p 75-78 [Christensen]; HubSpot.

⁶ HubSpot.

⁷ Christensen at 76.

⁸ Clay Christensen, Address (Keynote delivered at TechPoint's Innovation Summit, 29 September 2009), online (video): www.youtube.com/watch?v=s9nbTB33hbg.

⁹ Hubspot.

The "job" legal services get hired to do

What exactly is the job your clients are hiring you to do? Is it to prepare a will or protect their interests and the interests of their loved ones in the event of their death? Is it to set up their corporation or to manage the legal requirements of running a business and let them focus on serving clients? Is it to review their contract or to help set them up for success in a new position? Asking this question is a good place to start.

Thinking about what your clients want to achieve is a start, but its even better to ask them what their goals are. Executives who have been constructively dismissed may need you to explain the same legal principles, but we have learned in our practice that they may have widely divergent goals. Some want a package and to move on to a new position, whereas others want to make it work and fix the problems they are experiencing. Recently, a client approached a lawyer at our firm. She was the third lawyer he had spoken to about his situation, but she was the first to ask him what he wanted to achieve. The two other lawyers he had called hadn't paused to ask what he wanted - they launched right into a discussion about the strength of his case and how much he could get in damages when he left his position – the only problem was that he didn't want to leave. When our lawyer started by asking him what his goals were, he was thrilled and decided to retain us.

Jack Newton's book, *The Client-Centered Law Firm*,¹⁰ applies some of the principles of design thinking and other process improvement techniques to law firms. His focus is on how providing a client-centred experience can help you run an efficient and profitable law firm. He sets out five values to focus on when designing a client-centred practice:

- “Develop deep client empathy.”¹¹ Empathy can be used to unpack clients’ evolving needs at various stages of the legal process. In other words, put yourself in the client’s shoes and try to see their problems and goals – and your services – from their perspective.
- “Practice attentiveness.”¹² Great results can be achieved by lawyers who aim to “understand when and where they should interject themselves into the client's experience,” and those positioned to offer meaningful support.¹³
- “Generate ease with communication.”¹⁴ Aim to answer all asked and unasked questions in a way that is easily understood. Consider providing status updates through email, texts, or online platforms that can proactively share information and reduce a client’s anxiety and stress.

¹⁰ Jack Newton, *The Client Centered Law Firm: How to Succeed in an Experience-Driven World* (Blue Check Publishing, 2020) [Newton].

¹¹ Newton at 101.

¹² Newton at 103.

¹³ Legal Talk Network.

¹⁴ Newton at 103.

- Clients want an effortless experience. Let clients know what to expect, how long it might take to resolve their issue, and how much it will cost. Where possible, go to the clients instead of asking them to come to you.¹⁵
- Extend the client relationship beyond the life of the file.¹⁶ For many lawyers, referrals and repeat clients are the biggest sources of "new" business. The lifespan of your relationship with a client can be extended by meeting the client's needs during the initial retainer as well as anticipating future needs.

Using Newton's five values, firms can explore ways to improve the client experience at every stage of a file from marketing and intake to file closing. Moreover, well-designed legal services can help you access the significant number of potential clients who have unmet legal needs.

Expanding access to legal services

Many people, at all income levels, have unmet legal needs. Lawyers who approach those needs with empathy and with services that respond to those unmet needs could reach new clients in ways that improve access to justice and build successful businesses.

A 2010 study conducted by the Law Society of Ontario, Legal Aid Ontario, and Pro Bono Ontario surveyed Ontarians to identify and quantify the civil legal needs experienced by low and middle-income Ontarians.¹⁷ The survey of low and middle-income Ontarians reported that 35% of those surveyed had experienced a civil legal problem or issue¹⁸ and that 14% (1 in 7 people surveyed) had a civil legal problem or issue in the past three years for which they had not sought legal assistance, even though it would have been helpful.¹⁹ The Legal Innovation Zone (LIZ) at Ryerson University has identified "a potential annual market of \$40 to \$200 million [in family law] that is not being met by lawyers or other professionals today."²⁰

Two projects that have emerged from the LIZ provide examples of creative thinking about how to meet legal needs in new ways that are more client centred.

First, ParDone, the winner of the 2016 Access to Justice Challenge at LIZ, created a platform that reduced the cost, time, and complications associated with applying for a record suspension.²¹ It created "an online platform that helps individuals with a criminal record go through the record

¹⁵ Newton at 105.

¹⁶ Newton at 107.

¹⁷ The Ontario Civil Legal Needs Project Steering Committee, "Listening to Ontarians, Report of the Ontario Civil Legal Needs" at 2 <online: http://www.lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/m/may/may3110_oclnreport_final.pdf> [OCLNP].

¹⁸ OCLNP at p. 2.

¹⁹ OCLNP at p. 2.

²⁰ Chris Bentley et al., "Legal Innovation Zone's Family Reform Community Collaboration" (2016) at 2, online (pdf): Legal Innovation Zone <www.legalinnovationzone.ca/wp-content/uploads/Ryerson-LIZ-Family-Reform-Report.pdf> [Bentley].

²¹ Ryerson University, "Legal Innovation Zone", online: LIZ <www.legalinnovationzone.ca/startup/pardone/> [Pardone].

suspension process from the comfort of their home.” This platform aimed to help the more than three million Canadians with a criminal record by increasing their ability “to find employment, apply for certain educational programs, buy a house and travel.”²²

Second, NoticeConnect helps people find estates and notify people of estates online instead of publishing notices in newspapers.²³ “Estate trustees who fail to advertise for creditors may be held liable for the debts of the deceased. Publishing a Notice to Creditors on NoticeConnect.com protects estate trustees from this liability.”²⁴ In 2017, the Superior Court confirmed that publishing a notice to creditors on NoticeConnect entitles an estate trustee to the liability protection afforded by the Trustee Act. Since then, the company has developed products for creditors and the Canada Will Registry.

Some newly called lawyers are also redesigning traditional processes. Before COVID-19, Robert Theofanis, an estates lawyer, had noticed that his clients were not thrilled about having to meet in-person to execute a few dozen notarized signatures.²⁵ It was time-consuming and not a very client-centred practice.²⁶ In response, Theofanis digitalized the entire notarization process:²⁷

- First, Theofanis adopted a digital platform that complies with state laws regarding notarized documents and offers video-to-video meetings on demand.
- Second, Theofanis sends his clients hard copies of the documents by express mail. He also includes a return label, packing tape, and information on returning the documents to local drop-off locations.
- Third, he created a unique agreement with the digital platform and added a checklist to ensure all the signatures are recorded properly. By taking this additional step, Theofanis saved both himself and his clients the time and effort required to correct mistakes.

Each of the above examples tells a story of a legal professional who reflected on an existing process or legal need from the point of view of the client and found ways to improve that process or better meet that need. In so doing, they made their clients happier and their practices more satisfying.

²² Pardone.

²³ NoticeConnect, “Home”, online: Notice Connect <www.noticeconnect.com> [NoticeConnect].

²⁴ NoticeConnect, “How it Works”, online: Notice Connect <<https://www.noticeconnect.com/how-it-works/>>.

²⁵ Robert Theofanis, “How I’m Using Client-Centered Design in My Law Firm” Attorney at Work (28 May 2020), online: <<https://www.attorneyatwork.com/how-im-using-client-centered-design-in-my-law-firm/>> [Attorney at Work].

²⁶ Attorney at Work.

²⁷ Attorney at Work.

Part 2: Examples of successful efforts to design with clients in mind

Beyond the law: client-centred success in business

It is helpful to look outside of the law for inspiration and to see examples of businesses that have succeeded in mapping products and services onto client needs. The companies identified below have designed products and experiences for clients that meet their needs and respond to people's frustrations with existing products and services.

We'll start with the obvious contenders. Volumes have been written about Apple, Netflix, Spotify, AirBnB, and Uber and their disruptive impact.²⁸ While each company can be criticized and complemented for different aspects of its business, each took a fresh look at what consumers need and want and successfully developed new approaches to meeting those needs. Before Netflix, customers had to go to a store and rent a movie from the available selection, TV programs had to be watched live or you had to record the program using a VCR (and remember to label the tape or spend too much of your life trying to find your recording). Uber and AirBnB allowed people with cars and homes to generate income with assets that would previously have been only for personal use. Spotify and Apple have made huge volumes of music available to customers.

Below we have included a short list of other companies we found online that are working to improve the experience of customers or leverage professional expertise to achieve better outcomes:

- **Figure One (F1)** is a Toronto-based service where healthcare professionals can network and share information. F1 is a physician-to-physician platform to encourage referrals and consultations for complicated medical conditions. Physicians, who were historically more like to consult within their network of colleagues, can now reach a wider group to collaborate on a secure platform.²⁹
- **EyeBuyDirect and Clearly.ca** allow customers to buy – and try on – glasses and contacts from home. Customers can schedule purchases to ensure they never run out of contacts and can have purchases delivered to their home, eliminating the need for trips to a store to select frames, get fitted, and pick up the final product. EyeBuyDirect was one of the first companies with a "try-on" function that allows users to upload photos and then superimpose available glasses overtop their photos to "try on" the glasses.³⁰

²⁸ Walter Isaacson, "How Uber and Airbnb Became Poster Children for the Disruption Economy," *The New York Times* (19 June 2017), online: <<https://www.nytimes.com/2017/06/19/books/review/wild-ride-adam-lashinsky-uber-airbnb.html>>.

²⁹ Figure1, "Home", online: Figure1 <www.figure1.com>.

³⁰ EyeBuyDirect Canada, "Home", online: EyeBuyDirect <<https://ca.eyebuydirect.com/>>; Clearly, "Home", online: Clearly Canada <www.clearly.ca/thelook/how-to-buy-glasses-online/>.

- **Mint** is a free, web-based personal financial management service. Mint allows users to track accounts, credit cards, investments, loan balances, and transactions from multiple institutions through a single platform. It also allows users to create budgets and set financial goals. It also “updates and categorizes your information” and provides tips and product recommendations.³¹
- **Second Closet** addresses the needs of Torontonians lacking closet or attic space in their home. The company comes to its customers to pick up boxes and stores them for you. When you want your boxes back, they will deliver it. Second Closet allows people with limited storage space to pack stuff up and get it back the way someone else might access their basement or attic storage boxes.³²
- Google **Nest** provides remote home monitoring services and, increasingly, aims to build an integrated “smart home” experience.³³ You can control security cameras, thermostats, home speakers, and other features from a mobile app. Questions around privacy and data security abound, but for users who embrace it, Google Nest can provide an easy and integrated way to control many features of your home.

Part 3: Our experience examining our intake process

We opened the doors of Mathers McHenry and Company in April 2019. We had two practicing lawyers and one administrator. Within a year, we added a commercial litigation lawyer and a law clerk, and by August, we had hired three more lawyers and third administrator. We went from a small firm where both lawyers had worked together at another firm and shared an understanding of how the practice should work, to a bigger group with more varied experiences and different ways of managing and interacting with clients.

Early in 2020, we recognized that intake represented a critical opportunity to make an impression and set the tone with our clients. We undertook a review of our process and looked at ways to make it more client-centred and functional for everyone at the firm. The process took two months from beginning to end and probably required about 20 hours of staff time total to complete. Here's what we did.

Research: I read a variety of articles on intake across industries. It’s important not to confine yourself to information about the legal sector and to understand what best practices have emerged in other industries as well.

³¹ Mint, “Home”, online: Mint <www.mint.com>.

³² SecondCloset, “Features”, online: SecondCloset <www.secondcloset.com/second-closet-features>.

³³ Nick Statt & Dieter Bohn, “Google Nest: Why Google Finally Embraced Nest As Its Smart Home Brand” (7 May 2019), online: The Verge <www.theverge.com/2019/5/7/18530609/google-nest-smart-home-brand-merging-hub-max-rebrand-io-2019>.

Focus on the clients: While we did not consult clients directly, we talked a great deal about the clients' perspectives and experiences. We talked about how clients feel when they reach out to a lawyer. We talked about how the firm wanted our clients to feel when they hung up the phone after their first contact with our firm. We spoke about different clients – clients who are excited about a new job and need a quick contract review and clients who about to embark on multi-year litigation. We considered the needs of clients who experience discrimination at their workplace and executives who need expert assistance to navigate an exit. We thought carefully about how each kind of client experiences our intake process and how we could improve or tailor intake to meet the needs of each type of client better. (It can be helpful to develop personas that guide you through a process like this.³⁴)

Build a shared understanding of the process: I conducted interviews with each lawyer and administrator at our firm to understand the process from beginning to end. I asked what works and what doesn't and made sure that each person broke down the steps they see and take in the process. Don't be satisfied with, "and then I have the call with the client." Who sets up the call? How many emails does it take? Who initiates the call? Everyone thinks they understand the process and what happens at each stage. The lawyers believe that they know what happens when they tell the administrative staff a new file is ready to open. The administrative staff think they know what the lawyers are doing on the intake calls with clients. At this stage, it was important to highlight discrepancies and points of friction and share different perspectives with the whole team.

Write it down and validate it. I documented our existing process highlighting points in the process where staff had divergent opinions about what could and should and was happening. I confirmed that with a few key members of the team to make sure I had appropriately captured the experience of both clients and lawyers through the intake process.

Do more research: Now that you understand what people are doing and some of the different points of transition in the process, you can dig deeper to learn from others how the kind of process you are working on can work.

Refine it: Go back to your client personas. Go back to your key staff. Write out the process step by step and work through it to identify places where improvements can be made, and systems can be adapted. At this point, you may want to consider technological solutions. Once we had a firm grip on what we wanted the process to look like and how we wanted the process to feel for clients, we were able to look at different services and software that could improve our intake process.

Manage the change: Communicate clearly about what is changing and what is not changing. Then manage the change. It's never enough to announce a policy or process change and walk away. Monitor the changes you want to make. Talk to people to see which pieces of it they have picked

³⁴ InnovativeTraining, "How to Create Personas for Design Thinking", online: InnovativeTraining <www.innovationtraining.org/create-personas-design-thinking/>.

up and which parts of it they are ignoring. Revisit the new process and refine it more until it is working well for everyone.

Ultimately, we ended up with a streamlined process with fewer hiccups, checklists for lawyers and administrators, and a policy/process document that sets out our shared expectations for intake and has been a valuable training tool that communicates a lot about the culture of our firm.

Conclusion

Putting clients at the heart of your practice will make clients happier, improve your practice and quality of life, and lead to referrals from even more satisfied clients.

Many people have argued for years that law is an industry ripe for “disruption” – the kind of seismic change brought on by companies like Uber, AirBnB, and Apple in other industries. Gillian Hadfield argues that the law and legal methods on which we currently rely have failed to evolve along with technology and that, while everything else in the economy strives to become cheaper, sleeker and faster, our outdated approach to law has slowed innovation and the development of new business models.³⁵

Whether you are interested in redefining the practice of law, designing completely new legal services, dramatically increasing access to justice, or just making your clients happier and your practice easier and more lucrative, it is helpful to start by putting yourself in your clients’ shoes and asking how a particular process or service could be done better.

There are many tools and theories to support process improvement. For more about design thinking and its applicability to law, “The Practice” at Harvard is a great start.³⁶ Lean,³⁷ Six Sigma,³⁸ and – my favourite – Lean Six Sigma for Services³⁹ – are all approaches that you can read about. Ultimately, many of these simply ask you to think about your processes and services from other perspectives and to engage critically not just in resolving your clients’ legal problems, but in designing a practice that works as well as it can for clients.

³⁵ Gillian K. Hadfield, *Rules For A Flat World – Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (New York: Oxford University Press, 2017) at p. 5.

³⁶ Center on the Legal Profession, “Disruptive Innovation in Legal Services”, online: The Practice <https://thepractice.law.harvard.edu/article/disruptive-innovation/>; Centre on the Legal Profession, “Designs on the law”, (2019) Adaptive Innovation 5:2 online: www.thepractice.law.harvard.edu/article/designs-on-the-law/.

³⁷ Angie Lin, “10 Best Lean Manufacturing Books”, (28 November 2018), online (blog): Tulip <www.tulip.co/blog/lean-manufacturing/10-essential-lean-manufacturing-books/>.

³⁸ Angie Lin, “10 Best Six Sigma Lean Books”, (1 February 2019), online (blog): Tulip <www.tulip.co/blog/six-sigma/six-sigma-books/>.

³⁹ Michael L George, *Lean Six Sigma for Service: How to Use Lean Speed & Six Sigma Quality to Improve Services and Transactions* (McGraw Hill Education, 2003).