

Teaching lawyers to be in the now



**JOHN
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The way we spend our days is the way we spend our lives
—Annie Dillard

With the new year now here it is time to take stock of where you have been and where you want to go. A book can help you make the changes you want this year. *Transforming Practices, Finding Joy and Satisfaction in the Legal Life* by Steven Keeva, an editor for the American Bar Association's *The Lawyers Magazine*, shows lawyers how to "find profound satisfaction, pleasure, and joy in his or her work," according to its cover.

A study at Johns Hopkins University in 1990 looked at the

incidence of depression among members of 105 different occupations. Lawyers topped the list. The Canadian Bar Association's Legal Profession Assistance Conference tells us that lawyers have up to three times the incidence of substance abuse and mental health issues as the general population. At the Ontario Lawyers Assistance Program, we anecdotally see that these factors are very relevant to disciplinary complaints and claims experience. Suicide ideation and completion is on the rise in the profession. This is all bad news.

As lawyers, we need to deal with these life-threatening issues by going to the resources that give meaning to our lives: relationships, giving back to society, creating something that endures, possessing a sense of spirituality, working productively and being in love.

Keeva's book talks about a

number of strategies but focuses on two main approaches — mindfulness and meditation.

Mindfulness means being in the moment, in the here and now. It means knowing yourself physically, emotionally and spiritually, mapping out a balanced day, allowing yourself to spend time in meditation daily, and by asking yourself the question: How could I spend my days in a way that would make me feel excited about waking up in the morning?

Keeva tells a story about a client who calls his lawyers' offices to ask that the documents and tax implications of selling his business can be ready for him in a day. The lawyer in charge of the legal work waits for the client to come into the office to talk. He advises that he does not just become a mechanical practitioner but needs to know why the work needs to be done. He listens, realizing that

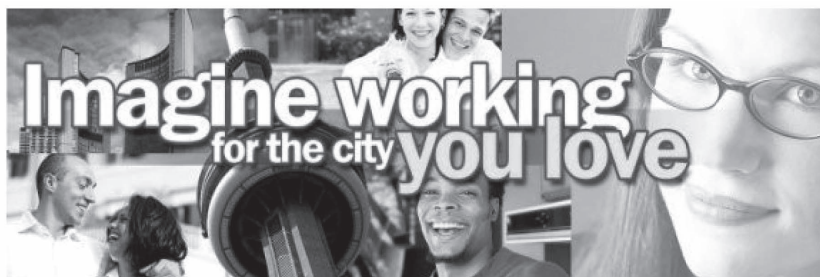
clients want more than just a legal fix and they come to you because they want to feel more whole and at peace. They want you to care about them. In talking to the client, he discovers that the client has had an offer for a long-standing family company, does not want to sell because he would like his kids to continue the family business but is in a cash crunch. The talk is of the client as a person, businessman, father and provider. The lawyer discusses other ways to deal with the capital challenges and the client leaves happy that he has not made a mistake. The lawyer does not get that piece of business, but the client is so happy that someone listened and helped that business is referred to the firm.

In the matrimonial realm, there is the client-lawyer discussion about the reason for legal work and how it will be handled.

A lawyer who inquires about the underlying reasons for litigation may find the motivation to be anger or revenge. Who wants to be a part of that when you are not looking at the big picture of trying to settle disputes at the minimum of collateral damage to spouses, children and the financial viability of a separated family? You are a counsellor, trusted adviser, problem solver and peacemaker along with your role as advocate when that is necessary. As a lawyer, you are a healer.

I wrote an article a number of months ago in these pages about meditation. I will not repeat it here except to say that time spent in focusing on the breath and clearing your mind will help you to perform your work more effectively. Spend at least five minutes a day cultivating inner stillness. Stop and be still when you need

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The Legal Services Division of the City of Toronto is seeking two senior lawyers with a minimum of 8 years practice in real estate and/or expropriations law, experience in transit matters being considered an asset. These are one year contract positions, with possibility of renewals.

REAL ESTATE LAWYER (ONE YEAR CONTRACT)

You will provide a broad range of real estate law services to City Council, its Agencies, Boards, Commissions and staff, including the provision of advice and opinions, drafting reports, by-laws and transactional documentation, and attending Committee and Council meetings.

You must be a member in good standing with the Law Society of Upper Canada. You possess excellent interpersonal and communication skills as well as negotiation skills, with a demonstrated ability to provide sound legal advice, information and direction to Members of Council, senior management and City staff. Computer literacy is required.

Committed to employment equity, the City of Toronto encourages applications from Aboriginal people, people with disabilities, members of visible minority groups and women.

Accommodation will be provided in parts of the hiring process as required under the City's Employment Accommodation policy. Applicants need to make their needs known in advance.

Interested applicant should forward a cover letter and resume by **February 12, 2010** to:

Anna Kinastowski, City Solicitor,
Legal Services Division,
55 John Street, 26th floor, Metro Hall, Toronto ON M5V 3C6.
Fax: 416-397-5624. Email: akinasto@toronto.ca.

We thank all applicants for their interest. Only those selected for an interview will be contacted.



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Accident Benefits/Insurance Defence Lawyer Position

Miller Thomson LLP, one of Canada's leading firms in the field of insurance defence, is seeking an associate to join our Insurance Practice Group in the Waterloo Office. Our Insurance Practice Group offers a full range of services to the insurance industry and includes lawyers who are recognized leaders in areas of property and casualty claims, automobile accident benefit claims, life and disability insurance. We are looking for a highly motivated person who wants to build a successful career in insurance defence with a focus on automobile accident benefits.

The successful candidate will have 3–5 years of accident benefits/insurance litigation experience and excellent academic credentials. Superior drafting and advocacy skills are also required. The individual will support senior partners on various files as well as be responsible for the independent handling of files in all areas of accident benefits.

Interested candidates should apply in confidence with a cover letter, resume and law school transcript to the contact listed below. Candidates may be requested to submit a writing sample.

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TORONTO VANCOUVER CALGARY EDMONTON LONDON KITCHENER-WATERLOO
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In-house counsel can work well with outside lawyers



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Lawyers

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Every in-house counsel should ask, at the outset of every legal proceeding, how long the matter is likely to take to be resolved.

No in-house counsel should overlook the role played by operating expenses in determining what the legal costs will be. Always ask what the hourly rate is for partners, associates, paralegals, law clerks and anyone else who will be working on the file.

However, McCormack advised, “Hourly rates should be appraised with a full awareness that one lawyer’s hour can be another lawyer’s week, and that some lawyers can accomplish with a single phone call what others couldn’t pull off in a lifetime!”

In-house counsel should always demand a complete and detailed bill from the lawyer, and should review the document carefully. When it comes to expenses, such as meals and travel, make it clear from the outset that you’ll be reviewing all expenses, and that you expect your lawyers to be reasonable and prudent.

Don’t be too shy to ask how much a transaction or legal action is likely to cost. “This is a question you should always ask, even though it is virtually certain that a lawyer will bend over backward to avoid giving you an answer,” McCormack wrote. He reasons, even if an estimate is vague, it will still allow you to perform a cost-benefit analysis before embarking upon any legal action.

Ask if the law firm will accept a

cap on fees to keep litigation costs from ballooning out of control. McCormack wrote that for a cap on yearly fees to be acceptable to lawyers it must be somewhat in excess of estimated costs. While this might mean paying more, having a cap on fees is worth it, since it will provide peace-of-mind, ease of planning, greater certainty and protection against worst-case scenarios where outlays really run away from you.

Finally, McCormack advised letting your outside legal counsel know early on that if they perform well, charge fairly and are responsive to your needs, you will have plenty more work for them in the future.

To sue, settle or suck it up?

“May you be involved in a lawsuit in which you are in the right,” McCormack wrote — citing a Gypsy curse. Even if you’re in the right, the side that committed the injury maintains an unfair advantage through all the months or years it takes to get a lawsuit settled. The downsides of litigation are the same today as when McCormack penned his opus:

- (1) It costs too much;
- (2) It takes too long;
- (3) It benefits the lawyers too much and the clients too little; and
- (4) It opens the gates to a flood of complications that take time and energy away from productive pursuits.

Before proceeding with legal action, McCormack advised going through the following analysis: Does the problem necessarily call for a legal resolution,

or can it be handled in some other way — e.g., by a business manoeuvre or negotiation?

If you are thinking of suing, is there a reasonable chance of collecting a judgment? Is the other side broke? Can the other side present itself as broke? Is the principle at stake so crucial that you can’t afford not to sue?

If you are being sued, is there an affordable and honourable way to settle or, better still, to persuade the other side to drop the action?

When one has the choice of initiating a legal action, is the net result — figuring in time, money, anger, anxiety, and ruined relationships — likely to be more advantageous than doing nothing at all?

Never let your lawyers make the final decision to sue. “When you pass matters on to an attorney, you’re not just delegating authority, you’re surrendering it,” McCormack warned.

McCormack was a staunch advocate of avoiding litigation unless absolutely necessary by practising what he termed “preventative lawyering.” This means having established procedures in place for handling matters that might spark litigation, keeping current on the state of the law and its implications for your business, and consulting with lawyers early.

Dealmaking

Keep lawyers out of the early stages of a deal. While he concedes that businesspeople sometime run the risk of letting their enthusiasm for doing a deal cloud their assessment of the potential downside, he

cautions that there are times when a lawyerly thoroughness just isn’t appropriate, when the real danger is that the lawyers will get together and what-if a deal to death. Business ends are better served by stressing the positive up front and dealing with the negative only after the momentum has been established and agreement in principle has been achieved.

Given that lawyers can bust up a deal if brought in too soon, and that businesspeople can get themselves into a passel of trouble if lawyers are brought in too late, how can dealmakers and their lawyers stay usefully in sync?

McCormack’s solution to this quandary was the “deal memo.” He had his executives negotiate the points of the deal, but had them make it clear to all concerned that they did not have the authority to conclude the deal. After a rough draft of the deal was fleshed out, he would instruct his executives to send a copy for review to the other party with a note, “If this reflects our understanding, I will have contracts drawn up.”

One of the key insights that McCormack offers on deal making is that “lopsided deals don’t last... The more lopsided the contract, the greater the incentive for one side or the other to wriggle out of it.”

In sum

The terrible truth about lawyers, one may conclude by the end of the book, is that far too few clients know how to deal with lawyers successfully. ■

Find ways to make changes

Mindfulness

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to. Break the rhythm of work to relieve stress. Be mindful of the quality of your presence and how it affects other people. Are you keyed up, distracted, bored, overbearing or even bursting with energy? Make eye contact with others and be there when you greet other people. Try to be as present when you answer your phone for the 27th time that day as you were at call one. Ask yourself if your body and your mind are on speaking terms. When you find yourself being judgmental, try to be discerning.

Keeva talks about the fact that all this is not just pie in the sky. One of the largest law firms in Boston has gone on retreat to learn inner peace (Zen, if you will) and found a more productive and happier place. There are two resources referred to in the book. The first is the Fetzer Institute’s Ethics, Leadership, and Democracy: The Heart of the Law in Michigan. Visit the website for more information at: www.fetzer.org. The second resource listed was the International Alliance of Holistic Lawyers in Virginia; its website is: www.iah.org. You might also look at Stephanie Allen West’s blog on contemplative law at <http://westallen.typepad.com/idealawg/2008/09/contemplative-lawyers-some-mindfulness-resources.html>. Look at these resources to see another approach to law than just blindly churning out work.

Finally, there are three suggestions found on page 208 of Keeva’s book.

Find a colleague with whom you can discuss ways to renew your love of practising law. Don’t let the idea that “It just isn’t done” stop you from trying. The fellowship will be incredibly rewarding.

Make a list of three things you feel helpless to change. Then, figure out how to change them.

Finally, take a senior member of the Bar to dinner and pick their brain for advice and wisdom.

The poet David Whyte has said — “There comes a time when you find that you’ve promised yourself to things that are just too small.” Love yourself. You are worth it. ■

John Starzynski is the volunteer executive director of the Ontario Lawyers Assistance Program and a director of the Legal Profession Assistance Conference.