

## TAX FUTURE SHOCK FOR SMALL-FIRM PRACTITIONERS – DEALING WITH THE FAST PACE OF CHANGE<sup>1</sup> - KIM G C MOODY CA, TEP<sup>2</sup>

In 1970, the futurist Alvin Toffler wrote his landmark book entitled “*Future Shock*.” In his book, Toffler argued that society was undergoing an enormous structural change, a revolution from industrial society to a “*super-industrial society*.” This change overwhelms people, he believed, with the accelerated rate of technological and social change leaving people discontented and suffering from “*shattering stress and disorientation*” – future shock.<sup>3</sup> Mr. Toffler, in many discussions about this concept, stated that the term future shock is a personal perception of “*too much change in too short a period of time*.” As a youngster in elementary school in the 1970’s, I recall studying the concept of future shock in a social studies class. Although I did not fully appreciate the concept back then, as a small-firm practitioner growing up in the tax world, I can fully appreciate what Mr. Toffler, I believe, described in his book.

Heraclitus, the ancient Greek philosopher stated: “*Everything changes and nothing remains still. You cannot step twice into the same stream*.” How wise. Given the fast pace of change in society and in particular the world of the tax professional, the purpose of this paper is to discuss current challenges that small-firm practitioners face when dealing with the taxation aspect of their practice and offer some suggested strategies to cope. This paper comes with a caveat...I am not an expert in change management but after 20 years of professional practice I do know something about managing change. The following observations are based on my experience coping with rapid change and the shock that it can create. I hope you find it helpful. If you are expecting a technical paper or an authoritative “how-to” guide, please stop reading now...you will be disappointed.

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<sup>1</sup> I acknowledge the very helpful comments of Roy Berg JD, LLM (US Tax) and Dale Franko CA, CPA (IL, USA), TEP (both of Moodys LLP Tax Advisors). Similar thanks to Phillip Friedlan of Friedlan Law and Paul R. Lebreux, LL.B., LL.M. (Tax), TEP of Globacor Tax Advisors PC for their very insightful comments. All errors are mine.

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<sup>3</sup> See [http://en.wikipedia.org/wiki/future\\_shock](http://en.wikipedia.org/wiki/future_shock).

## A. AN INTRODUCTION TO THE SMALL-FIRM PRACTITIONER IN CANADA

In Canada, there is an abundance of small-firm practitioners.<sup>4</sup> As an example, in Alberta, 62 percent of lawyers work either as a sole practitioner or at a small law firm.<sup>5</sup> In Alberta, of the 782 registered offices of practicing Chartered Accountants (“CAs”), 98 percent of such firms have 10 or less partners.<sup>6</sup> In Canada, approximately 44 percent of CAs practicing in public practice work in a small-firm environment.<sup>7</sup> In the U.S., approximately 453,000 lawyers, or 59 percent, work in a small-firm practitioner environment.<sup>8</sup>

During my lifetime, it is doubtful that the phenomena of practicing in a small-firm environment will disappear. Anyone who has the luxury of practicing in a small-firm environment knows the advantages. The primary advantage deals with control and the ability to dictate one’s day-to-day work environment to the extent possible. Bureaucracy can be minimized. Clients can be selected or de-selected. Close personal relationships can be forged with clients. Notwithstanding the obvious benefits, *“solo and small-firm practitioners occupy the mid-to-lower rungs of the legal professions hierarchy. Lawyers who practice in these settings tend to receive significantly less income and substantially more discipline from their big firm colleagues.”*<sup>9</sup> The immediately prior statement refers to lawyers but I would submit that it is equally applicable to accountants. Why? I think it is a fair statement to suggest that small-firm practitioners generally do not have the resources or bench strength to service very profitable service lines and instead will often revert to providing the general services that many other practitioners provide thus resulting in an ample supply of these services. Such robust supply leads to the inevitable

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<sup>4</sup> In this paper, I will only discuss accountants and lawyers given that it is those two professions that practice taxation in Canada. In addition, I generally refer to small-firm practitioners as meaning firms that practice outside of a national firm.

<sup>5</sup> As disclosed in the Advisory, Volume 9, Issue 1, March 2011, Page 7, The Law Society of Alberta.

<sup>6</sup> Thank you to the Institute of Chartered Accountants of Alberta for their assistance with obtaining this information.

<sup>7</sup> There are approximately 81,000 CAs in Canada with approximately 40 percent, or roughly 32,000, of such members who work in public practice. With 14,000 out of 32,000, or 44 percent, of such members working in small-firms, that is a significant proportion of CAs in public practice who are small-firm practitioners. Thank you to the CICA for their assistance in obtaining these approximate figures.

<sup>8</sup> <http://www.law.harvard.edu/programs/plp/pages/statistics.php#wlw>.

<sup>9</sup> Ibid.

commoditization of the services provided by the professional which in the worst result leads to price competition amongst professionals.

Notwithstanding, small-firm practitioners play a critical role in the delivery of professional services, including taxation. Clients often seek out small-firm practitioners (as opposed to their larger firm cousins) since they feel that they will receive better, or more personalized, services. I believe this is often true. It is also probably fair to say that clients often seek out small-firm practitioners since they believe that the cost of the services will be less expensive. That, I believe, is also often true...but not always.

## **B. PRACTICE CHALLENGES FOR THE SMALL-FIRM PRACTITIONER IN TODAY'S ENVIRONMENT**

Most of the challenges listed below are obvious. If one were to simply spend some time observing and thinking about the challenges that exist, all of the following would come "top of mind" very quickly. Accordingly, the list below is based upon my impressions and not that of empirical research.

### **1. An Overview of Today's Working Environment**

I invite you, to the extent that you have been practicing as long as I have, to think back roughly twenty-five years ago. The internet, in its current form, did not exist in 1987 and the use of personal computers in the context of delivering professional services was in its infancy. I recall the day in February 1987 at my firm, a large Big 8 CA firm, when new "laptop" computers were delivered. What an exciting day! The orange screen computers represented a significant day in the history of technological advancement for that particular firm. Now, instead of sending out personal tax returns to be prepared and printed based upon key-punch cards that were delivered to the printer, actual income tax returns could be prepared on screen. In those days, tax research was conducted in the professional firm library (to the extent one existed) and pouring through books that you hoped were up-to-date because most of them were updated from loose leaf services. Most business was conducted face to face or by telephone calls.

Fast forward to 2012. Today's work environment is dominated by fast, easy to access information. One cannot imagine practicing in the tax area without use of the internet, email, instant messages, "apps", video conferencing, virtual data rooms, and social media that delivers valuable information. When The Department of Finance releases proposed legislation, it is instantly available. When a Court releases a decision, it too is instantly available. This is all to say that there is no shortage of tax information that one can instantly access in order to assist with their tax research.

Twenty-five years ago, as previously mentioned, most business was conducted face to face or by telephone calls. Today, with emails, instant messages, social media and mobile technology being the norm, clients may be annoyed to the extent that you do not respond quickly to their ability to "touch you." Future shock.

## **2. Talent Shortages**

Most employers know that finding great talent is a challenge. Finding "bodies" is easy. However, as a small-firm practitioner, client management and high quality delivery of services is a must. Given such, it is obvious that more than just a body must be found in order to compliment and assist the small-firm practitioner in delivering their services. It goes without saying that geography can place a tremendous challenge in attracting great talent. A surging economy can also cause a strain on finding talent. For example, with the Alberta economy growing at a tremendous rate, the province expects that there will be 114,000 more jobs than people in the province by 2021.<sup>10</sup> Future shock.

## **3. Technology Changes**

It should be obvious to the reader that technology changes very rapidly. Hardware, software, "cloud computing" and mobile technology changes faster than most people can keep up. Of course, all these changes come with challenges and economic costs. Future shock.

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<sup>10</sup>See <http://www.edmontonjournal.com/business/Looming+labour+shortage+haunts+Alberta+employers/5959485/story.html> and numerous other articles that describe this.

#### **4. Professional Changes**

Changes in society, the economy, the need for new services, technology and many other factors all influence how the professions react to the delivery and management of services. As an example, the Canadian accounting profession is currently exploring the possible unification of the various accounting bodies.<sup>11</sup> The various professional bodies, as they should, are always analyzing the current environment and implementing or suggesting change for the perceived benefit of the public and its members.<sup>12</sup> Such changes can have a great impact on the small-firm practitioner. Future shock.

#### **5. Competition**

The new small-firm practitioner will quickly realize that there is a tremendous amount of competition in the delivery of professional services. Accordingly, for the accountant or lawyer who wants to hold to the old adage that they first are a professional and second a business person or entrepreneur, such a belief may not bode well for that particular small-firm practitioner in today's very competitive environment. Some writers believe that at some point, all people will need to become entrepreneurs in order to survive in today's competitive and fast changing society.<sup>13</sup> If you subscribe to that theory, are you ready? How will you deal with the inevitable competition?

Very obvious examples of competition in the tax profession would be in the tax preparation industry. There are numerous non-professional tax preparers in Canada. Similarly, in the legal profession there are numerous competitors that provide "will kits" and other "form documents" that profess to being a cheaper alternative to legal services. As mentioned earlier, competition can ultimately lead to the commoditization of services that were once thought to be the sole dominion of the professions. Future shock.

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<sup>11</sup> See [www.cpacanada.ca](http://www.cpacanada.ca) for information on the efforts that are being undertaken in attempt to unify the Canadian accounting profession.

<sup>12</sup> For example, the long standing debate of whether non-lawyers should be allowed to be investors in U.S. law firms has recently resurfaced in the U.S. See <http://online.wsj.com/article/SB10001424052702304750404577317761468323458.html> for an example of the reporting on this matter.

<sup>13</sup> See <http://www.forbes.com/sites/actiontrumpseverything/2012/05/13/why-everyone-will-have-to-become-an-entrepreneur>.

## **6. Marketing**

Most small-firm practitioners do not have large marketing budgets that they can draw from in order to differentiate themselves from their peers. Accordingly, small-firm practitioners usually need to be creative in other ways (while still being in compliance with their professional ethic requirements with respect to marketing). I think it is fair to state that the professions have historically frowned on the use of marketing to obtain work. While this attitude has certainly diminished over the years, the unfortunate truth is that there is still a large number of professionals who view marketing in a negative way. This is a challenge that the small-firm practitioner needs to embrace. In other words, the professional is challenged to use marketing methods that assist in obtaining new work but at the same time ensure that the marketing strategies are employed in such a way that they are in compliance with professional standards and enable them to maintain the respect of their peers. Challenging indeed. Future shock.

## **7. Increasing Compliance**

Being a small-firm practitioner comes with all the usual compliance of being in business (such as income tax and sales tax filing, business tax, insurance reportings, etc.) but includes another burden... professional compliance obligations. Some of the compliance standards are rather mundane (like ensuring that your firm is properly registered with the professional body) but some are not. For example, the small-firm accountant must keep meticulous files that are subject to regular practice review. In addition, professional continuing education requirements for most provinces require both the completion of such courses and the proper documentation of such completion. The small-firm practitioner lawyer faces identical challenges but also a unique additional challenge that most accountants do not face. A lawyer's trust accounts are subject to strict rules involving documentation and handling. In addition, such trust accounts are subject to annual audit requirements and possible review by the applicable provincial Law Society. Future shock.

## C. TAX CHALLENGES

### 1. The Ability to Keep Up

As mentioned earlier in this paper, there is no shortage of new tax information being released. Tax practitioners are constantly bombarded with new case law, new legislation, and new administrative practices.

For small-firm practitioners who practice tax, the above observation is obvious. The commercial tax research databases<sup>14</sup> do a great job of “pushing information” to their subscribers. The challenge, however, is to digest such information while still fulfilling client and business obligations. Often times, the client load is the primary responsibility which may leave little time to study the new information being released. Future shock.

### 2. Very Complex Legislation Being Introduced

For tax practitioners, one of the greatest challenges that exist in practice is the ability to keep up with and understand new legislation.

Former Chief Justice Bowman of the Tax Court of Canada had his own view on this difficulty. In 2008, he had the following to say in a question and answer session where he reflected on his many years on the bench in anticipation of his impending retirement from the Tax Court of Canada:

*Scott Wilkie: There are many these days who would say that the law and how it is being formulated contribute to making it impenetrable, and that one often needs a head start to know where one is going in order to be able to navigate many of the rules. Do you think that that's a common problem?*

*Chief Justice Bowman: It is a common problem. If you are asking me whether I think that a lot of legislation is incomprehensible, yes, I think that it is a very common problem, and it started back*

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<sup>14</sup> CCH, Carswell and Knotia are all examples of the commercial tax databases available in Canada.

*in 1971. The old Income Tax Act, before tax reform, was written rather broadly, stating broad propositions and leaving it to the good sense of administrators or the courts to figure out what it meant. By 1971, however, a new philosophy came along that was one of specificity. In other words, reduce these things to algebraic formulae, and try to turn that into legislative language. It becomes incomprehensible, and every time somebody finds a loophole – and of course there are lots of loopholes – you fill it up with some more specificity.*

Some practitioners believe that the continuing release of incomprehensible tax legislation has reached a tipping point and advocate for an entire re-write of the *Income Tax Act* (the “Act”). I personally do not subscribe to that theory. As the world continues to become smaller and as business transactions become more complicated, more “loopholes” will be found and taken advantage of. Given such, it is my belief that specificity will continue to be the ultimate end result of new tax legislation thus leading to the “incomprehensible challenge” alluded to by Former Chief Justice Bowman. My belief is that interpreting very complex tax legislation will continue to be the norm and a challenge long into the future. Future shock.

### **3. Continuous Delivery of Case Law That Impacts the Interpretation of the Act and Other Statutes**

Again, this is an obvious challenge for any small-firm tax practitioner. For example, the residency of a trust for tax purposes was once thought to be rather straightforward. Given old case law<sup>15</sup> and Canada Revenue Agency (“CRA”) administrative positions,<sup>16</sup> it was generally viewed that the residency of a trust was determined by establishing where the majority of the trustees of the trust resided. However, recent case law has caused a significant re-think of that principle.<sup>17</sup> The result is that small-firm tax practitioners

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<sup>15</sup> *Thibodeau Family Trust v. R.* (1978), 78 DTC 6376 (Fed. T.D.).

<sup>16</sup> See *Interpretation Bulletin IT-447* dated May 30, 1980.

<sup>17</sup> See the case of *Garron Family Trust (Trustee of) v. R.*, 2009 TCC 450; *Garron Family Trust v. R.*, 2010 FCA 309; and *Garron Family Trust (Trustee of) v. R.*, 2012 SCC 14.

will have to review their current files in a major way to see if proper advice has been given to their clients as a result of such a decision.

While this challenge is also faced by their larger firm colleagues, the small-firm practitioner may not have sufficient resources to aggressively keep up-to-date on new case law that may impact their practice and clients. Future shock.

#### **4. Administrative Changes**

The tax administrator, the CRA, is constantly updating their administrative views and practices in order to better serve the public. The release of advance tax rulings, technical interpretations, and Technical News are all examples of administrative changes occurring at a rapid pace. The small-firm tax practitioner is therefore challenged to keep up-to-date. Future shock.

#### **5. Draft Tax Legislation Not Being Passed**

In Canada, tax policy and the implementation of tax legislation is under the purview of the Department of Finance. Much of Canada's new tax legislation arises from the annual Federal Budget. However, there are also technical amendments released in draft form (often for public comment) throughout the year. Such draft or proposed legislation may be further amended to correct for errors, provide clarification and address public submissions before it is finally released into a Bill. The Bill is then put before Canada's House of Commons and the Senate for debate and eventually receives Royal Assent and becomes law (unless for some reason the Bill fails to pass). The proposed legislation will often contain detailed "coming into force" provisions that establish the date from which a specific proposed provision will have legal application. Often, but not always, the application of the proposed legislation will be effective from a date earlier (i.e. retroactive effect) than the date that the provision is actually passed into law. Given such, the process to convert draft legislation into law can often take a long period of time. In recent years,

there has been a tremendous amount of draft legislation and comfort letters that have been released and have not yet been passed into effective law.

Accordingly, what is a small-firm tax practitioner to do when they are dealing with a tax matter that might be the subject of proposed legislation? For example, if a taxpayer granted a restrictive covenant in 2011, should the tax practitioner advise his or her client to file his tax return on the basis of existing law or under the basis of the proposed legislation<sup>18</sup> (which will generally be very complicated to deal with and may not have favourable tax results in comparison to existing law)? Are clients willing to pay to deal with this issue? Challenging questions and a difficult one for the tax practitioner to deal with in practice.<sup>19</sup> Future shock.

## **6. International Changes**

Given the fact that the world has become a much smaller place to engage in business, international changes can have a quick and dramatic impact on the small-firm tax practitioner. A current example would be the U.S. and its recent enforcement to try to catch their non-compliant U.S. citizens.<sup>20</sup> The National Taxpayer Advocate<sup>21</sup> 2011 Annual Report to Congress (the “Report”) was very critical of the current compliance burden of U.S. citizens residing abroad. In its introduction to this issue the Report states:

*The complexity of international tax law, combined with the administrative burden placed on these taxpayers, creates an environment where taxpayers who are trying their best to comply simply cannot. For some, this means paying more U.S. tax than is legally*

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<sup>18</sup> See proposed section 56.4 of the Act.

<sup>19</sup> Our firm recently wrote on this issue and challenge. See <http://www.moodytax.com/blog/28-personal-tax-planning/183-filing-on-the-basis-of-proposed-tax-legislation.html>

<sup>20</sup> Our firm has written extensively on this matter at <http://www.moodytax.com/blog/33-us-taxation-services/167-official-irs-guidance-for-taxpayers-who-have-not-filed-.html> and <http://www.moodytax.com/blog/33-us-taxation-services/180-irs-promises-new-procedure-for-taxpayers-who-havent-filed-but-owe-no-tax-indefinitely-extends-offshore-voluntary-disclosure-ovdi-program.html>.

<sup>21</sup> An independent office within the US Internal Revenue Service (“IRS”) that acts in a function very similar to the Taxpayers’ Ombudsman in Canada.

*required, while others may be subject to steep civil and criminal penalties. For some U.S. taxpayers abroad, the tax requirements are so confusing and the compliance burden so great that they give up their U.S. citizenship.*<sup>22</sup>

The Report continues to address more specific areas that are particularly challenging for these taxpayers:

- The overwhelming complexity of international law;
- The complexity and administrative detail of often duplicative international reporting requirements;
- Steep penalties that may be disproportionate to tax liability;
- The IRS's focus on international tax enforcement without adequate coordination or a corresponding increase in service, and
- The lack of targeted taxpayer service for each of the four groups of international taxpayers, which leads to confusion, errors, and higher compliance costs for this population.<sup>23</sup>

Another example involving the U.S. would be the introduction of the *Foreign Account Tax Compliance Act* ("FATCA").<sup>24</sup> These activities have a direct impact on many small-firm practitioners' practices and their clients. In addition, estate and succession planning for the international client can be tremendously complex. Future shock.

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<sup>22</sup> National Taxpayer Advocate 2011 Annual Report to Congress at p.129. Citing Memorandum for Secretary Geithner from J. Russell George, Treasury Inspector General for Tax Administration, *Management and Performance Challenges Facing the Internal Revenue Service for Fiscal Year 2011* 13 (Oct. 15, 2010).

<sup>23</sup> Ibid at p. 130.

<sup>24</sup><http://www.moodytax.com/blog/33-us-taxation-services/187-new-regulations-clarify-how-non-us-banks-will-find-and-report-us-customers-to-irs.html>.

## **7. Section 163.2 and Proposed Section 237.3**

Section 163.2 - the “third party civil penalty rules” - has been written about a lot.<sup>25</sup> In general, the third party civil penalty rules impose a penalty against practitioners to the extent that such practitioners cause others to misrepresent their tax liabilities. While it is true that most good small-firm practitioners should be able to avoid the application of these penalties, such practitioners should be well aware of the existence of this legislation and keep it top of mind so as to reduce their exposure.

In addition, the small-firm practitioner needs to be aware of the “aggressive tax proposals” under proposed section 237.3.<sup>26</sup> These provisions are much broader than the third party civil penalty rules and can have a dramatic impact on the already resource-stretched small-firm practitioner. Future shock.

## **8. The Distinct Difference between Accountants and Lawyers**

The small-firm practitioner lawyer is very different than the small-firm practitioner accountant. In law, there are many distinct areas of practice which are independent of each other. For example, family law, bankruptcy law, real estate and securities law are very distinct areas of practice that, for the most part, will not intersect. Of course, income tax can be relevant in all of those legal areas (and the small-firm practitioner lawyer needs to be aware of when to call in tax experts) but for the most part such areas of law can likely be practiced without the need for income tax expertise. For small-firm accountants, however, most practice is in the traditional areas of accounting. Such traditional delivery of services would include preparation of “notice to reader” financial statements, reviewed financial statements and perhaps the audit of financial statements. Generally, they will be serving private clients. Such private clients will usually expect the preparation and delivery of relevant income tax returns. The preparation of income tax returns will often involve the interpretation of the Act, case law and administrative law. Accordingly, it is

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<sup>25</sup> Brian Carr and Grace Pereira, “The Defense Against Civil Penalties,” 48(6) *Canadian Tax Journal* 1737-92 [2000] is a good example.

<sup>26</sup> Douglas J. Forer and Glen F Thompson, “Recent Legislative and Administrative Developments in Federal and Provincial Tax Law,” 2011 Prairie Provinces Tax Conference, (Toronto: Canadian Tax Foundation, 2011), 2:1-53.

likely a fair statement to suggest that the small-firm accountant and the practice of income tax is inextricably linked.<sup>27</sup> Given such, it is very important for the small-firm accountant to aggressively keep up-to-date in the income tax area in order to deal with this challenge. Future shock.

## **9. Is Privilege Necessary?**

When working on income tax matters, the small-firm practitioner must be constantly aware of whether or not solicitor-client privilege would be ideal for their client. Given that the privilege is the client's privilege and not the professional's privilege, this matter should be addressed with the client up front. It is well known that the current state of affairs in Canada is that communications between an accountant and a client are not inherently privileged.<sup>28</sup> In many other countries around the world, communications between non-legal tax specialists and their clients can be privileged by virtue of specific statutory provisions when dealing in tax matters.<sup>29</sup> Given such, small-firm practitioner accountants who deal in income tax matters should be very aware that all of their communications may not be solicitor-client privileged. Future shock.

## **D. SOME SUGGESTED STRATEGIES TO COPE**

As mentioned in the opening section of this paper, the following suggestions come with the aforementioned caveat. I struggle with all of the above challenges. Notwithstanding, the following suggestions are drawn from my experience and do assist me day-to-day. Accordingly, I offer the following suggested strategies.

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<sup>27</sup> Thanks to Phillip Friedlan for his very helpful comments with this challenge.

<sup>28</sup> See Brian R. Carr, "Solicitor-Client Privilege," Report of Proceedings of 62<sup>nd</sup> Tax Conference, 2010 Tax Conference (Toronto: Canadian Tax Foundation, 2011), 7:1-31 for a good overview of solicitor-client privilege in Canada.

<sup>29</sup> For example, see §26 U.S.C. 7525 for limited tax advisor privilege that exists for non-lawyers in the United States. Similar provisions also exist in the United Kingdom and New Zealand. Australia is also in the midst of trying to introduce statutory privilege for non-lawyers in tax matters.

## 1. Embrace Technology and Explore How It Can Help You Cope

In my travels, I have found the small-firm practitioner to fit into one of two general camps as it relates to technology. The first camp includes the practitioner that struggles with technology and uses the bare minimum in order to get by. The bare minimum by today's standards would include internet access, email accounts and perhaps a mobile smart-phone which would enable them to read their emails outside of the office. The second camp includes small-firm practitioners that are aggressive in their use of technology in order to help them become more efficient. It is my belief that small-firm practitioners should try to fit within the second camp in order to help them cope.<sup>30</sup>

To start, the use of commercial tax databases<sup>31</sup> is a must, in my opinion, for the tax practitioner. Other tax databases should be acquired and diligently used.<sup>32</sup> While one could try to do research from free resources,<sup>33</sup> the ability to have access to an "all-in-one spot" database is invaluable and necessary, in my opinion. These tax research platforms are also available on the web which can greatly assist in keeping up-to-date and accessing such information remotely.

E-book technology is currently in its early stages. In Canada, as I write this, there are not a lot of tax text books that are available in e-format. However, more e-books are being made available every day. The great advantage of e-books is the ability to have instant access and better search functions which should result in better tax research. Accordingly, watch for new titles being released and become comfortable

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<sup>30</sup>One could argue that perhaps there is a third camp of practitioners. This would include people who are "early adopters" that may ultimately waste valuable time on untested and ultimately useless new technologies.

<sup>31</sup>Supra note 13.

<sup>32</sup>A great tax database is the Canadian Tax Foundation's TaxFind Online. See [www.ctf.ca](http://www.ctf.ca), then login using your membership details and you will have access to TaxFind Online assuming that you have purchased access to it. Another is Tax Notes by Tax Analysts. See [www.taxanalysts.com](http://www.taxanalysts.com) for more information on this great tool.

<sup>33</sup>For example, see [www.Canlii.org](http://www.Canlii.org) which is a great database for Canadian statutes and case law; see also the Tax Court of Canada's website ([www.tcc-cci.gc.ca](http://www.tcc-cci.gc.ca)); the Federal Court of Appeal's website ([www.fca.caf.gc.ca](http://www.fca.caf.gc.ca)); the Supreme Court of Canada's website ([www.scc-csc.gc.ca](http://www.scc-csc.gc.ca)); and the CRA's website ([www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)) for great open resources.

with e-book technology. In my opinion, e-book technology is a game changer and can greatly assist the small-firm practitioner.<sup>34</sup>

The introduction of tablet hardware, such as iPads, has increased the proliferation of tax “apps” that are available. For example, there are general income tax apps, international tax calculator apps, tax-treaty comparison apps and many others.<sup>35</sup> The small-firm practitioner, in my opinion, should be aggressive to look for tools such as tax apps that can make research easier and more accessible.

The use of social media should also be explored. I find, generally, that tax professionals have had a difficult time finding utility in social media strategy. However, one should explore how powerful the use of social media can be. For example, I use Twitter<sup>36</sup> to receive and share information on a timely basis. The Twitter users that I follow very selectively provide great and timely tax information links. The use of Twitter can lead to “forced brevity” with access to very powerful information links. While one could argue that the use of social media is just one more thing they have to keep up-to-date with, I would argue that the use of social media can be a great way to help small practitioners cope since it is an easy way to receive and disseminate information.

The use of social media, especially LinkedIn, can also be helpful to find expertise that you may need. For example, on my LinkedIn account,<sup>37</sup> I purposely try to connect with people that have expertise in areas that I do not so that if an opportunity ever arises to use my connection’s expertise I may do so by easily reaching out to him or her and use the connection as an “ice-breaker”. The use of social media makes it very easy to reach out and connect with people that otherwise may not have been readily available to the extent that you would have to phone or physically meet them.

Today’s mobile technology, such as tablets and smart-phones, has made it very easy to store and organize information in a logical fashion so that it may be obtained at a later time. For example, I use my iPad and

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<sup>34</sup> One of the e-book platforms I use is Thomson Reuter’s Proview that has the *Income Tax Act* in e-book format. It is excellent.

<sup>35</sup> See Appendix 1 for some useful apps that I use. This list, however, is constantly changing as I add or delete apps.

<sup>36</sup> My Twitter handle is @moodystax.

<sup>37</sup> <http://www.linkedin.com/in/kimmoody>.

a number of apps<sup>38</sup> to electronically store reading articles that may be read during some down time from client activities. This compares favorably to the traditional method of keeping paper reading files that typically build up in one's office to be read when there is down time. However, the reading pile is not often available (or I would have to physically bring my reading pile with me wherever I go). To deal with this, I will often copy articles to my Dropbox account that I created called "Tax Reading." I will access that account and read the articles when I have some spare time. This may include reading on airplanes, on weekends or at night when client demands are less. I find this to be a very powerful way to keep up-to-date. I also use various subscription type services that will push timely and relevant information to me to read and copy website links of interesting articles to reading lists.<sup>39</sup> I am also constantly on the lookout for new apps, e-books or any other type of mobile technology that can assist me with keeping up-to-date in both my practice management<sup>40</sup> and in my technical knowledge. In addition, we have given the option to every team member to utilize mobile technology. This includes firm paid for smart-phones and tablets. While certainly such investments are not cheap, we have found that it has greatly improved firm production and efficiency when dealing with client projects. Team members have also responded positively and have embraced mobile technology in order to help them keep up-to-date and complete their projects efficiently.<sup>41</sup>

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<sup>38</sup>See Appendix 1 for my list of favorites.

<sup>39</sup> For example I use Google News and Google Reader (using tag terms such as tax, estate tax, US tax, Canada tax, Department of Finance and many others) to push me relevant news articles that assist me in keeping up-to-date.

<sup>40</sup> As an example, our firm uses a time and billing package published by Thomson Reuters called Practice CS. Practice CS has recently published a mobile app which enables me to access all of our firm's financial data including current WIP, receivables, cash flow, team efficiency, production statistics and many other firm statistics. This enables me to perform practice management tasks at any place at any time thus improving my efficiency. In addition, our firm has recently started using web based project management tools so as to enable each team member access to the status of the current projects that they are working on remotely. Such project management tool is quite simple but very powerful.

<sup>41</sup> Another powerful tool that we use is an app called Evernote (see [www.evernote.com](http://www.evernote.com)) which enables powerful "to-do" lists to be kept which are automatically updated to all the devices that you use.

## 2. **Decide What Business You Are In – Rocket Science or Commodity**

As a small-firm practitioner, it may be difficult to not have a general practice firm since clients often demand that you be a “jack of all trades.” The difficulty with this is that a “jack of all trades” professional practice can often lead to commodity type services being done where price is often the main differentiation amongst peers/competitors. This phenomena is often referred to as “the commodity trap.” Small-firm practitioners should avoid falling into this trap. As Peter Drucker, the renowned writer on management theory and practice stated:

*“In a commodity market, you can only be as good as your dumbest competitor.”*

To illustrate the commodity trap, consider the example of a general practice lawyer who may be pressed to do corporate law, will drafting, litigation, family law, etc. A general practice accountant may be pressed to do financial statements, income tax compliance, GST compliance, and all other forms of accounting and tax advice. Ultimately, the main differentiation may simply be price. Such a practice, while possibly rewarding, may be difficult to grow and make very profitable given price competition.

On the opposite end of the spectrum, there may be the ability to specialize in one area such as tax. For the small-firm tax lawyer, one could focus on a number of different areas of tax law such as tax litigation or trust and estates tax matters. For the small-firm tax accountant, it may be possible to focus their area in tax advisory for the private client, SR&ED, international tax advisory, cross-border tax compliance and many other areas of tax. To the extent that one focuses on one particular area of tax and becomes an expert in such an area, the practitioner may become a “rocket scientist” in their particular area of practice. The ability to charge greater fees may exist as compared to a general practice. However, the danger with becoming a “rocket scientist” tax practitioner is that your skill set may become irrelevant due to changes that are beyond your control. For example, what would happen if new tax legislation changed your practice overnight?<sup>42</sup> Another downside to a “rocket scientist” tax practice is that it may be difficult, if

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<sup>42</sup> For example, in the 1990’s and early 2000’s there were a number of tax practitioners that focused their practices on the use of retirement compensation arrangements and employees profit sharing plan trusts when advising on

not impossible, to eventually sell such a practice. The “rocket science” practice is often focused on transactional services and therefore building a recurring client list may not be possible unlike that in a general practice (especially with accounting). A recurring client list can have real value that may be possible to monetize in the future.

In any event, I think it is critical for the small-firm practitioner accountant or lawyer to have a clear vision of what kind of practice they have. Are they practicing in general practice? Rocket science? What are the risks? Upsides? Develop strategies to deal with these.

### **3. Surround Your Practice with Great Centres of Influences (“COIs”)**

No matter if you are a general practitioner or “rocket scientist” practitioner, I believe it is important to surround your practice with great experts in areas where you do not have rocket science expertise.

I find in some cases that small-firm practitioners are hesitant to surround themselves with experts. Instead, such a practitioner believes that they should be the lead professional for their client in many areas that their client may need expertise. However, my experience is that it is always better to call in the experts to the extent that your client could benefit from such an expert’s knowledge and experience. Ultimately, it will be you that will be viewed in a positive light by calling in the experts. While it is natural for practitioners to be defensive about the possibility of losing their clients by drawing in other experts, I believe careful selection and discussion with the COIs should dispel any fears about losing the client to the expert. For example, to the extent that the small-firm accountant may be reluctant to use a much larger accounting firm for their expertise out of fear of potentially losing their client to the accounting firm for the service they provide, one should perhaps seek alternate sources for the expertise such as law firms or boutique practices. To the extent that the expertise cannot be found elsewhere, then a blunt discussion could be had with the larger accounting firm so that the larger accounting firm will take a “hands off” approach when assisting the practitioner with and his/her client.

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owner-manager remuneration. The 2012 Federal Budget has proposed changes that would dramatically curtail or eliminate these types of strategies thus impacting any professional who focused their practice in these areas.

For the general tax practitioner, I believe it is important for such a practitioner to surround themselves with COIs that include tax litigation experts, trust and estate tax specialists, estate lawyers, good corporate and securities lawyers, GST/HST experts, excise tax specialists, insurance experts, business valuation professionals, bankers and international tax experts and connections so that such COIs can assist them in ensuring that their practice is capable of providing high end services to their clients.

Even if your small-firm practice is not able to be known as a “rocket scientist” or boutique practice, I believe it is important to become known in one or two areas of practice very well. For example, you could become the local expert in trust taxation or perhaps GST. Maybe you are the practice to go to for strategic owner manager remuneration planning that is beyond just the normal salary/dividend planning. Whatever it is, this can provide a strategic advantage as compared to your peers/competition.

I believe it is also important to join organizations that can deliver valuable technical and non-technical information that can assist your practice. In our practice, there are a number of key organizations that our team members are encouraged to join and participate. The key one, of course, is The Canadian Tax Foundation which, by far, is the key deliverer of tax information and leading tax thought in Canada. Other organizations such as The Society of Trust and Estate Practitioners (“STEP”),<sup>43</sup> Canadian Association of Family Enterprise,<sup>44</sup> and Conference for Advance Life Underwriting<sup>45</sup> can be very good sources of information and a great way to find COIs.

#### **4. Practice Management**

One of the difficulties of being a small-firm practitioner accountant or lawyer is that you have the unavoidable task (or joy, if you ask me) of being an entrepreneur. While some may view themselves to be strictly a professional and not an entrepreneur, I would suggest respectfully that that ideal is an old one and if not yet dead will soon be. For example, a recent New York Times article on the decline of the white-shoe law firm Dewey & LeBoeuf had this to say:

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<sup>43</sup>See [www.step.ca](http://www.step.ca) and [www.step.org](http://www.step.org) for more information about this organization.

<sup>44</sup>See [www.cafecanada.ca](http://www.cafecanada.ca) for more information about this organization.

<sup>45</sup>See [www.calu.ca](http://www.calu.ca) for more information about this organization.

*“The circumstances at Dewey may turn out to be extreme. But the firm’s messy decline lays bare the harsh realities of today’s law practice, and shatters the perception, still held by many members of the bar, that however transformed in recent decades by the realities of the market, law is at heart still a guild, a brotherhood (and increasingly a sisterhood) — in short, a profession more than a business.”<sup>46</sup>*

Once the small-firm practitioner embraces the fact that they are also an entrepreneur, it is my belief that they will be mentally free to deal with the fast pace of change.

In the practice management area, I have found coaching to be a very valuable tool - both from a professional and personal standpoint – to assist me with the challenges of being an entrepreneur. I find it rewarding to share challenges with my coaching peers and have them provide advice or comments on current issues that I may be facing in the growth and management of our practice. The coaching forces me to be accountable to people other than just myself. As an example, I have been a participant in the Strategic Coach<sup>47</sup> program for fourteen years. Once a quarter, I travel outside of my city to a location that enables me to focus on our firm’s vision and strategy and work on current and longer term issues that our practice faces. I have the unique opportunity to spend a whole day with like-minded entrepreneurs/professionals to discuss such matters. It is amazing what can come out of a whole day of strategy planning and forward thinking. Instead of advising or working on my clients’ businesses, I am working on our firm’s business. Other organizations such as TEC Canada<sup>48</sup> provide similar coaching strategies for entrepreneurs and executives. Whatever the coaching organization or person is, I would highly suggest the small-firm practitioner seek groups or individuals that they can join or consult with to enable them to discuss their entrepreneurial activities, strategies, challenges and opportunities in a friendly and open environment.

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<sup>46</sup>See [http://www.nytimes.com/2012/05/05/business/deweys-collapse-undercores-a-new-reality-for-law-firms-common-sense.html?\\_r=3&smid=tw-nytimes&seid=auto](http://www.nytimes.com/2012/05/05/business/deweys-collapse-undercores-a-new-reality-for-law-firms-common-sense.html?_r=3&smid=tw-nytimes&seid=auto)

<sup>47</sup> See [www.strategiccoach.com](http://www.strategiccoach.com) for more information about this organization.

<sup>48</sup> See [www.tec-canada.com](http://www.tec-canada.com) for more information about this organization.

## 5. Embrace Branding

For many small-firm practitioners, I find that branding does not resonate with them. The American Marketing Association defines a brand as a “*name, term, sign, symbol or design, or combination of them intended to identify the goods and services of one seller or group of sellers and to differentiate them from those of other sellers.*” Given such, and especially in today’s world where the delivery of professional services is not restricted by geography, it is important to distinguish your professional services from others. Accordingly, it is my belief that branding is a very important matter that the small-firm practitioner must embrace.

In my opinion, one cannot build a brand without first creating a solid vision of their practice. This would include, as discussed earlier in this paper, having a clear understanding of what type of practitioner you are. As an example, when developing the brand for our firm, we worked with branding strategy experts who worked with our team to help formulate a clear vision of what type of firm we wanted to build. The ultimate build-out of our brand contained specific objectives that included:

- Confirming our credibility;
- The delivery of a clear message;
- Ensuring our target prospects can emotionally relate to our brand;
- Ensuring potential users of our services are motivated to use our firm; and
- Create user loyalty.<sup>49</sup>

The branding consultants we hired assisted us in developing our website and all related messaging (including business cards, stationary, templates, etc) that contained our consistent brand messaging.

Speaking of websites, I believe a good website that displays your brand well is a must in today’s professional services environment. While it is easy to simply put up a website that is a glorified business card, it is my opinion that the website should offer much more than simple contact and biography information. It should include user rich content that assists prospective clients in evaluating your

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<sup>49</sup>See [www.marketing.about.com](http://www.marketing.about.com) for more information on this important topic.

credibility. The days of simply “hanging your shingle” and waiting for the work to come is long gone and your website should reflect that. In other words, it should not simply be your “shingle.” If your website is “still under construction,”<sup>50</sup> that speaks volumes about your practice and, trust me...the message is not good.

In today’s mobile environment, does your firm have an app? If not, why not? Is your firm blogging? Again, if not, why not? Blogging can be a very powerful tool to share information (not legal advice) that enhances your credibility and enables you to become the subject matter expert. Your blogs can be shared by social media (such as Twitter, LinkedIn or Facebook) so as to spread the reach of your firm’s message more broadly and quickly as compared to traditional advertising or marketing methods.

Engaging in branding exercises and continuously revisiting such branding messages enables us to engage our team to ensure that our strategy and vision is consistent with all teammates and not just the partners. I believe it is important for the small-firm practitioner’s team to “buy in” to the branding of the firm. Accordingly, engage the entire team so as to help build the brand. I have found that involving the team at all levels of brand building to be very powerful in order to help expand the practice and assist with team loyalty. If your team does not identify with your brand, that needs to be fixed quickly! Finally, document your firm’s marketing strategy and continually review, adjust and revise it.

## **6. Be Very Aware of Your Surroundings, Anticipate Change and Respond Proactively**

Great entrepreneurs are very aware of their surroundings and nimble enough in order to respond proactively to anticipate the changes that may impact their business. In my opinion, small-firm practitioners should do the same. For example:

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<sup>50</sup>I find it shocking that there are still a large number of small-firm practitioners whose websites are “under construction” or are woefully thin or out-of-date.

a) What is Happening in the Profession?

It is my belief that small-firm practitioners should be very cognisant of what is happening in their respective profession. There are continuous changes in the legal community that may have an impact on their practice.<sup>51</sup> The accounting profession is no different.<sup>52</sup> Be aggressive about forecasting change in your profession. Join groups that may be involved in the study and delivery of anticipated change. Anticipating such change and being involved with it gives the small-firm practitioner a strategic advantage as compared to others who may not anticipate or may not have been involved in the anticipated change. In my opinion, it also enhances the small-firm practitioner's credibility.

b) What is Happening Internationally?

There are no shortages of tax changes occurring internationally.<sup>53</sup> Given today's shrinking world, it is not much of a leap of logic to suggest that whatever is happening internationally may ultimately impact the Canadian small-firm practitioner. Accordingly, be aware of such changes and get involved with groups in Canada that ultimately may be impacted by such anticipated change.

c) What Are Your Clients and COIs Demanding?

Clients are often the best gauge as to what area of practice you should be focusing in on. Are your clients getting older? Are they seeking tax efficient will planning? If so, then perhaps your practice should be focusing on that particular area and you should be gaining particular strength either externally or internally in such a topic area. Are your clients looking to move outside Canada? If so, become a subject matter expert in departure tax planning. Listen carefully and respond. Now that you have developed a strong network of COIs and referral sources, listen carefully to what they are demanding. For example,

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<sup>51</sup> For example, there are continuous debates in North America as to law school curriculum, entry level requirements, who should be able to own equity interest in law firms, solicitor-client privilege debates, and other issues that ultimately if change is implemented could have a great impact on the small-firm practitioner.

<sup>52</sup> One need not look any further than the proposed merger between the three different designations – CA, CGA, CMA – in Canada. To the extent that such a merger would occur, how would this impact you? Part of the proposed merger includes the future use of specialized designations which includes tax as a sub-designation. Will this impact you to the extent that a tax sub-designation becomes available?

<sup>53</sup> See for example see [www.oecd.org](http://www.oecd.org) and look for the tax link as an example of what the OECD currently has on its tax agenda. One will quickly see that their agenda is quite full.

are their clients dealing with debt loads that are beyond management? If so, what are the tax issues involving bankruptcy that perhaps you could assist your COIs' clients with? Are your COIs wanting to refer you work that involves purchase and sale of business matters? If so, perhaps you could become a subject matter expert in such an area. I have found over the years that listening carefully to COIs and referral sources is a very powerful way of obtaining good quality work when I have responded in a positive way to such listening. The response usually includes aggressive studying of the subject matter and communicating such knowledge to the COI.

d) Who will be your Competition in the Future?

I find this, as an entrepreneur, to be a very challenging concept to think about. Given the extremely fast pace of change, it may be difficult to anticipate who might be my competition in the future. Some of my competition may not even be "real." For example, as mentioned earlier in this paper, the internet has made content very easy to access. There is no shortage of "internet tax experts" who can simply research their tax issue and form conclusions on their own. This, obviously, could be a threat to our practice since the availability of the information may make our firm's services less necessary than perhaps in the past. How do I compete with the "do it yourself" crowd? Should I help the "do it yourself" crowd? Should I make information more readily available to assist the "do it yourself" crowd? Great questions. No easy answers.

Who is your other competition? Will there be people entering your service space in the near future? If so, what is stopping you from proactively responding to such a threat today? In my opinion, such forward thinking is an important part of being a small-firm practitioner to ensure continued relevance and survival.

e) Be Very Aggressive in the Thirst for Knowledge

As professionals, it is ultimately our technical knowledge and abilities that enable us to practice. While the legal and accounting professions normally have minimum continuing professional education requirements, in my mind such a minimum threshold is just that...the bare minimum and does not enable

the successful small-firm practitioner to stand out and succeed above their peers. In my opinion, the small-firm tax practitioner should be extremely aggressive in their thirst for knowledge in their particular subject area. Today's technology has made it much easier to obtain such information than in recent years past. Accordingly, use technology to your advantage in order to help satisfy your thirst for that knowledge. Set dedicated time aside to study, write, blog and speak on this new knowledge that you have obtained. In today's social media environment, one could also join online study groups that may exist in their particular area of interest. For example, LinkedIn has many different sub-specialty groups that one could join to participate in and learn from the online discussion. I have found this to be a very valuable tool in helping me keep up-to-date in my particular areas of interest.

## **7. Transparency**

It is obvious that clients are becoming more sophisticated and savvy when it comes to selecting their professional advisors. Such clients or prospective clients are continually searching for the "best" advisors but also want to be smart about what they pay for such advice.

Accordingly, I believe it is important to be transparent and up front about all aspects of your firm's ability to service your target market. Consider the pros vs. cons of providing detailed invoices that discloses all the time and methodology of how you bill. Provide up-front estimates/budgets to your client as part of the engagement process and provide information loops as to the current state of the client's project. Clients dislike the "communication pit" where no one communicates with them about the status of their project and then they receive the inevitable "bomb in the mail" (the invoice). Being open, honest and transparent (and not shy) about everything you are doing for your client will serve you well.

## **8. Human Resources**

Most lawyers and accountants are not human resource experts. However, this is probably the most important function that a small-firm practitioner needs to consider. Consider hiring an executive search firm to help you find great talent. Yes...their fees are steep but the good firms are worth it. They will

spend time with you to figure out exactly what your needs are and then perform a strategic search. Candidates should be carefully pre-screened before they are presented to you. If your search firm is simply a “resume finder” that passes CV’s/resumes to you, then seek a better service provider. The search firm that we use is a true partner in our firm given that we feel that they have our best interests in mind. They are on a continuous retainer to help us deal with the prolific talent shortages that exist. Whatever your strategy is to deal with talent shortages, spend the time, invest money and develop your strategy for this critical aspect of your practice.

#### **E. CONCLUDING COMMENTS**

If you subscribe to Alvin Toffler’s theory about future shock, you as a small-firm practitioner will be affected by the accelerated rate of technology and social changes and it will leave you discontented and suffering from shattering stress and disorientation. However, being a small-firm practitioner comes with a significant advantage. Such practitioners usually have very close relationships with their clients. Leveraging these personal relationships and the intimate knowledge of their clients affairs can result in a very rewarding practice. While the strategies discussed herein are by no means exhaustive, I believe that the implementation and utilization of some of the strategies can assist you in dealing with the fast pace of change in today’s environment. It’s an exciting time to be in practice! Embrace it and the change that comes with it!

## Appendix 1 – Apps to Consider

### Tax Apps

1. Thomson Reuters Proview – Available by subscription, this is TR’s e-book platform. Currently, I use this to access the Practitioner’s *Income Tax Act* edited by David Sherman. The notes and search function are very powerful.
2. Black’s Law Dictionary – Available for purchase, this is the standard legal dictionary and often useful in tax research.
3. International Tax Wizard – An ok, not great nor reliable, country comparable tax rate tool. Free.
4. Accounting Today by Thomson Reuters – U.S. based e-magazine and feed for up-to-date information affecting the accounting profession. Free.
5. ABA Journal – Provided by The American Bar Association, provides news feeds for lawyers but often contains articles of broad interest, including tax. Free.
6. Department of Finance – The Department of Finance recently released an app for the 2012 Federal Budget that was very user friendly.

### Productivity Apps

1. Evernote – Very powerful list builder that syncs with all of your devices – see [www.evernote.com](http://www.evernote.com) for more information.
2. Mobile CS – Only available for users of Thomson Reuters’ time and billing software, Practice CS. Enables mobile access to all key firm financial data.
3. Dictamus – Great mobile dictation app that enables my dictation to be sent to my assistant for transcription.
4. DropBox – I almost cannot live without this app. Easily enables documents to be accessible remotely and shared with people to the extent desired.
5. Splashtop – There are numerous remote access apps that enable remote access to your firm’s desktop but I particularly like this one.
6. Annotation Apps – There are numerous annotation apps that enable you to store, annotate and export files but some very good ones are iAnnotate PDF and GoodReader.
7. Note-taking Apps – I am not yet in love with note-taking apps...the software is in its infancy. If you are willing to put up with some frustrations, try NoteTaker HD, Penultimate, Noterize, GoodNotes, Noteshelf and Notability as ok apps.
8. Pages – Apple’s version of Microsoft’s Word...works very well on the iPad
9. KeyNote – Apple’s version of Microsoft’s Power-Point. Works very well on the iPad.
10. Numbers – Apple’s version of Microsoft’s Excel. Works very well on the iPad.