

Untangling Web 2.0 – A Survival Guide For (Modern) Legal Professionals

By Garry J. Wise

It might have been more appropriate to title this paper, *A Funny Thing Happened on the Way to My Website – Reflections of a (so-called) Web 2.0 Lawyer*. Because, when I first launched my Toronto law firm's website, I had little idea where an online professional existence might lead me, or the profession.

Today, it would be difficult to imagine working without the internet and without an online presence.

Back in 1999, in the midst of a dot-com frenzy that was enveloping Wall Street and to a lesser degree, Bay Street, it did seem to me like a good idea to have a website.

I cannot attribute this judgment to any profound visionary gift.

To the contrary, the internet's true potential for professionals was largely unimagined.

At that time, Google was not yet on anyone's radar, and few had any real idea as to the profound impact the ongoing digital revolution was to have on our personal and professional lives.

Now, just ten years later, the internet has become the world's irreplaceable communications backbone. With this progress, lawyers and other professionals have access to a veritable menu of online selections to assist in our professional work and practice development.

These tools are extremely effective, and as an added plus, particularly *cost-effective* relative to other alternatives. Their use, in the context of a well-executed online presence, allows lawyers to:

- provide legal information and education to the public;
- build knowledge base;
- stay current on legislative and judicial developments and trends in the legal marketplace;
- build reputations for expertise;
- build law firm brands and develop brand awareness in the public mind;
- communicate with clients and colleagues about firm news and developments;
- gain media exposure and enhance professional profile;
- generate new client referrals;
- remain top-of-mind with existing clients;
- build collaborative professional networks with peers and other professionals, world wide;
- meet human resources requirements;
- Participate in *the dialogue*.

For the firm that is not yet online, selecting from that menu of current options will seem a daunting challenge.

For those with one foot already in the web's proverbial door, defining you're a firm's next-generation web presence will represent a vital strategic decision that will deeply impact its future – perhaps in ways not yet even foreseen.

It's Not Just *Social Media*

The phrase *Social Media* is often used interchangeably with *Web 2.0* to define the current generation of interactive sites and features that have emerged online.

It is a most unfortunate moniker.

It implies a merely recreational or extra-professional focus to these new tools, rather than evoking the frequently “serious” professional work that is genuinely ongoing at many Web 2.0 sites.

In fact, this next generation of Web wonders is already widely used by professionals; it is inevitable that legal professionals will become increasingly engaged with them.

And even if our profession is not widely reputed for being early adopters of new technologies, a brief tour of the internet will reveal endless examples of lawyers using Web 2.0 tools to engage in their marketplaces, often with considerable sophistication and savvy.

Most first-time visitors will happen upon a law firm’s website – its virtual store-front - while searching for legal information via Google and other search engines. Through Google, a vast audience of existing clients, prospective clients, information-seekers, job-seekers, colleagues and content-seeking media awaits.

The internet is the great equalizer for small and medium-sized law firms. In fact, with limited investment, even a fledgling law firm is able to showcase its professionals and services in the legal marketplace, and to compete worldwide on a relatively even playing field with large, well-oiled megafirms.

It is indeed a new world for professionals. Approached with appropriate caution and care, its potential benefits are many.

Our professional regulators are also necessarily interested in the conduct of practitioners who engage online. Our Codes of Professional Conduct establish clear parameters around the manner in which we may project ourselves and conduct ourselves online. In utilizing these new online platforms, it is thus incumbent upon practitioners to be mindful of the ethical requirements established by our governing bodies.

Beyond that, as our communications and commerce increasingly become *digital*, courts and tribunals worldwide have begun to speak on the implications of Web 2.0 in litigation, politics, the workplace and the home.

Lawyers must be ready to advise our clients on these issues. Not surprisingly, many of the answers to this new digital generation of legal questions can already be found online - on websites and law blogs, in online versions of legislation, judgments and opinions, and on information portals maintained by governments, private industry and advocacy organizations alike.

Is your firm ready to join the dialogue?

A Practical Model for Mastering Web 2.0

I would like to suggest the following general model for lawyers and other professionals seeking to participate online and to reap the benefits of Web 2.0.

Let's begin with the basics.

Step 1 - Every firm must have a website. That means *now*.

Those who do not will ultimately be left behind.

I do not intend to focus on websites in this article. Suffice to say the website is a firm's online business card, and at minimum, should include professional biographies, areas of practise, contact information, and information resources for the public.

It is a necessity.

Period.

Step 2 - Beyond the mandatory firm website, any combination of the following Web 2.0 sites and services can easily be utilized to create a customized, integrated web presence that will help your firm establish itself as an online force.

- Law Blog
- Facebook
- Linked In
- You Tube
- Twitter
- Blog Aggregators, Digg, Delicio.us, Reddit and Stumble It
- Technorati, SiteMeter, Feedburner and Google's Toolbar
- Constant Contact and other newsletter and contact-management services.

No firm needs to build in every one of these places. Finding the right fit is essentially a matter of interest and inclination.

Having said that, participation in at least one of these Web 2.0 sites or services is becoming necessary as a supplement to the law firm website, however elaborate such site may be. A presence on these sites is increasingly essential to bring visitors your website, build on your firm's profile, and publicize your existing web initiatives.

So... choose at least one.

Experiment and discover how to maximize the opportunity.

To facilitate this, let's look briefly at each of these Web 2.0 options.

The Law Blog (Blawg)

Of all the Web 2.0 options available, the blog currently has the greatest potential to enable your firm to plant its roots most deeply online.

As a possible Web 2.0 undertaking, the blawg is ideally suited to those who truly enjoy writing as a pastime. As an ever-updating supplement to a firm's website, it can be an extremely effective secondary flagship for any firm's internet presence.

Canada's blawger community remains reasonably small, and there is much room for new additions.

A weblog, or blog, is an online publication that is typically self-published using free and extremely simple drafting tools, such as Google's *Blogger*. Law blogs, or *blawgs* in the colloquial, focus on legal matters and issues of specific concern to the legal community.

Their ambit varies. I touched upon this in an article at our own *Wise Law Blog* in January 2009:

It's increasingly tough to consider Canada's legal 'blawgosphere' as a monolithic entity, as there are now so many different types of offerings.

There are practitioner blogs, such as our own, written primarily by practicing lawyers. There are academics' blogs and law student blogs.

There are those written by journalists, and those by professionals who provide important support services to the legal profession.

Our common thread is simply that all sites' discussions focus largely on trends in the law and developments in the legal marketplace, as a whole.

Cumulatively, there is a lot of good reading out there. And it keeps getting better.

Our blog articles often focus on emerging case law, legislative changes and other matters relevant to our firm's areas of practice. As a practitioner, blogging has been an invaluable tool for staying current and for storing information on topics I will likely need to reference again.

People really do read blogs. Some readers are "regulars," who visit and comment often. Others happen upon blogs via search engines, while researching specific questions and topics. Beyond that, typical readers include other bloggers and traditional journalists, who often write about topics addressed by law blogs, with credit and link-backs typically provided.

The result of this exchange is more readers and higher online profile.

And of course, better *page rank* – the ultimate currency for those seeking to make an impact online.

What is *page rank*? In assessing a site's relative importance, Google and other search engines place great importance on the number of sites that link back to a site. As other blogs and websites vote for your blog by linking back to it, search engines similarly assume that you must have something valuable to offer.

At the risk of oversimplifying (and to be clear, the niceties of web *optimizing* are not simple, indeed), generally speaking, higher page rank will mean that your website or blog will appear higher in search engine results on searches related to your content.

Further, as Google values new content above older content in determining its search result positioning, a new blog entry, particularly one posted on a site Google already recognizes as "important -" will likely appear prominently on search result listings.

The net result – if you write a blog article on a recent Supreme Court of Canada employment law decision, chances are good your article will appear very high in the results on a Google search of the phrase "*Supreme Court of Canada employment law decision*," if that *exact* text is prominently featured in your article.

If the Google search terms are more specific – for example, “*Honda and Keays Supreme Court of Canada decision*,” your article on *Honda and Keays* is not unlikely to appear in the top results for searches on that phrase, particularly if others have linked to it.

One particular joy of blawging is getting the “scoop -” or being the blawger to “break” a story of a new, important case online.

Therefore, if you write on employment law regularly at your blog, you will be extremely likely to read a *Honda and Keays* decision the day it is released, in order to write about it. For law bloggers, being current in one’s areas of practice becomes part of the fun.

Writing a blog has led me to believe in the law of unintended, mostly positive consequences.

For example, a fairly innocuous article on protections afforded freedom of speech in Canada leads to an unanticipated interview by the *Washington Times*. The article, now publicized, incurs the wrath of certain prominent American conservative journalists, who express considerable disdain for our nation’s human rights tribunals. This ensuing online debate leads the blawger to further dialogue and research, and subsequent, comprehensive articles demonstrating the inherent safeguards for freedom of expression in Canada to that audience.

Similarly, a blog article might promote a ongoing discussion among readers in a comments section on a topic of personal interest to them. For example, an informal community of “second spouses” organically began a lengthy comments thread at a *Wise Law Blog* post regarding Canada’s *Child Support Guidelines*, with commenters highlighting the specific financial stresses our child support system creates for “second families.” As I understand it, this dialogue led to the establishment of an independent site, featuring an online petition seeking amendment to our law to recognize these concerns.

Those comments also educated other readers – and me – on implications of the *Guidelines* that had not previously been a central focus.

One need not be web-savvy or technically proficient to maintain a blawg. Google’s *Blogger* templates are free, simple to use, and quite easily mastered. Content is king, and well-written articles will eventually be noticed, particularly if a site is regularly refreshed with new and current postings.

Blogging is not without its responsibilities. A weblog is subject to the same legal standards as is any other journalistic endeavour, including laws regarding defamation. While lawyers may be better equipped than some to be careful with language, that those who leave comments on your site may not be.

Thus, a few notes on risk management for bloggers:

- Blog postings must be carefully vetted for accuracy
- Readers’ comments must be moderated to ensure no offending allegations or statements are published at your blog.
- When in doubt – don’t publish it.
- Be alert regarding the credentials and credibility of individuals or publications quoted.
- Seek multiple sources on potentially contentious issues, wherever possible.
- Be original, and respect the copyright laws of your jurisdiction

Finally, publish a “comments policy” and make it clear your blog is not intended to provide legal advice. By way of example, *Wise Law Blog* posts the following *Terms of Use*:

The articles and comments on Wise Law Blog are intended to provide general information on current issues and developments in the law. They are not intended to provide legal advice. Readers should not rely upon or act on information in this, or any blog without seeking legal advice as to any matters of specific concern to them.

Wise Law Blog is not responsible for and does not necessarily agree with the contents of comments posted by readers of this blog. Such comments represent the personal views of the commenters only, and are included on this blog in the interest of promoting public discourse and a free exchange of ideas. We reserve the right to delete any comment posted on this site which we, in our sole and absolute discretion, deem inappropriate for publication on this site.

As a flagship for a firm’s social media endeavours, the blog is easily integrated with sites such as Facebook, You Tube, and Twitter, thus exponentially multiplying a writer’s potential reach.

Facebook

Given the “not-at-work” tone of this social media phenomenon, one might reasonably ask, “how can a law firm use *Facebook* effectively?”

Consider that if you do not already have a significant online presence, your Facebook page is likely to rank extremely high – or at the top - of Google results for searches querying your specific name.

Who will be searching for your name?

Most likely, it will be your clients, potential clients, opposing counsel, and other professional colleagues.

A Facebook profile, thus, can be a quick point of entry to Web 2.0.

At its most basic, your public Facebook profile can provide professional, contact and firm information. It will help people to find you and to know what your areas of expertise are.

Should you choose to venture beyond, the development of a firm *Facebook* strategy may be simpler than it at first glance seems, provided that it is guided by a few basic guiding principles.

- Be personable, but professional in tone.
- Showing one’s human side is not always incompatible with maintaining an appropriate professional demeanour. Maintaining boundaries between the public and the private could become a challenge in the Web 2.0 universe, but opportunities also present with this rather dramatic sociological change.
- Treat Facebook as an ongoing digital golf afternoon with your professional contacts, one at which you may demonstrate your ample professional acumen, but also may loosen your figurative tie to engage on a more personal basis.

These principles will, of course, mean different things to different practitioners, as they should.

Facebook provides enormous, if imperfect, flexibility in establishing customized privacy levels and in restricting content that is publicly accessible. Each individual retains control over the content that is posted.

As a caveat, however, what *Facebook* does not do is restrict the use of your content by those who have your permission to access it - they may copy, save or republish your content. As a result, considerable care must be exercised in determining who you will “friend,” what content you will include, and what access levels will be permitted.

Your *Facebook* page can most effectively be used for professional purposes to publicize and republish your blog postings, make professional announcements, announce upcoming speaking engagements and similar activities, announce employment opportunities, and to generally expand your professional and personal networks in real terms.

For the generation now growing up with Web 2.0, friends accumulated in each phase of development will remain with them on Facebook, throughout life, like a digital baseball card collection of all the people known and once known.

For starting practitioners five and ten years from now, professional marketing is likely to begin with that significant list of contacts.

Imagine the possibilities. It may not be too late for veteran practitioners to reap similar benefit.

Facebook has been much in the news, and much in the courts, of late. Practitioners need to be aware of legal developments regarding Facebook and other social networking sites. For example,

- Courts in Ontario and British Columbia held in unrelated 2009 cases that *Facebook* content and private user information may be discoverable in personal injury actions;
- The unlawful publication of accused *Young Offenders*’ names on high school students’ Facebook pages led to police action on at least two occasions in January 2008;
- An Australian court permitted substituted service of pleadings via Facebook in December 2008;
- Various wrongful dismissal cases have centered on allegedly objectionable Facebook content posted online;
- A Facebook “study group” at a Canadian university led to academic misconduct charges and threat of expulsion for a 19 year old student in March 2008;
- A 26 year old man faced threatening charges in Newmarket, Ontario in February 2008 over statements allegedly posted on Facebook;

Increasingly, our clients, who *are* using these sites, will be seeking advice in this regard. And for better or for worse, they may ask for that advice on Facebook.

The client who wishes to communicate on *Facebook* poses specific problems for counsel, both in terms of record-keeping and confidentiality.

Facebook does not currently offer adequate archiving systems to ensure that all communications are saved and retrievable by users. As a consequence, maintaining comprehensive and complete records of all client communications via Facebook can be cumbersome and difficult.

The client who wishes to communicate publicly with you on Facebook via openly visible “wall-posts” is even more problematic, for readily apparent reasons.

Facebook is simply inadequate for solicitor and client communications on case-related matters, and such contact ought to be wholly avoided and discouraged, where possible.

Of course, a contented client may well use a Facebook “wall post” to let the entire world know how excellent your firm’s services have proved to be, with links to your website and blog included.

Like blogs, Facebook brings its unanticipated positives.

LinkedIn

Often described as the Facebook for professionals, LinkedIn boasts that “over 35 million professionals use LinkedIn to exchange information, ideas and opportunities.”

The site’s primary functions allow users to:

- Publish and update a detailed, professional profile, including links to users’ websites and blogs;
- Add and monitor contacts who may be appropriate for potential business collaborations;
- Expand one’s contact list by inviting the contacts of one’s contacts to join one’s network;
- Provide “expert” perspectives or your own web and blog links in response to topical questions posed by other site users;
- Add to one’s personal network by participation in specified discussion groups on topics of mutual concern;
- Build an appropriate referral list of other professionals with complementary professional services;
- Leverage the knowledge and expertise of other professionals, consultants and businesspersons in their networks;
- Import and automatically republish their blog articles on the site.

LinkedIn also provides email updates to users as to their contacts’ recent activity.

LinkedIn features at least 120 separate groups of lawyers, worldwide. Its *Solo Attorney Practitioner’s Forum* lists 871 members. The ABA Young Lawyers Division Group lists 904 members. More locally, the Toronto Business Lawyer Network lists 47 members.

Few lawyers, however, will wish to participate at the level of Toronto businessman and LinkedIn legend, Frank Feather.

Mr. Feather has posted an astonishing 5500+ answers to questions posed in the site’s *Focus on Change Management and Organizational Development* Category, thereby earning a spot as a Top-7 LinkedIn Q+A contributor.

For those practitioners who do enjoy networking, however, LinkedIn may well provide the right Web 2.0 home base to supplement your firm’s website.

Twitter

To tweet or not to tweet. That is the question most on the minds of Web 2.0 aficionados, today.

I confess to being a doubter who is less than impressed by Twitter's lopsided signal to noise ratio, whereby only the occasional "tweet" is of any interest, and most of the content delivered on this high-profile microblogging site could easily be confused with email spam.

Twitter has been the target of much parody. Consider this April Fool's gem from the U.K.'s *Guardian* newspaper:

Consolidating its position at the cutting edge of new media technology, the Guardian today announces that it will become the first newspaper in the world to be published exclusively via Twitter, the sensationally popular social networking service that has transformed online communication.

...The move, described as "epochal" by media commentators, will see all Guardian content tailored to fit the format of Twitter's brief text messages, known as "tweets", which are limited to 140 characters each... Skeptics have expressed concerns that 140 characters may be insufficient to capture the full breadth of meaningful human activity, but social media experts say the spread of Twitter encourages brevity, and that it ought to be possible to convey the gist of any message in a tweet.

It was much to my surprise, then, while conducting research for a blog article on Spanish Judge, Baltazar Garzon, that I came upon this result on the first page of my Google search:

Twitter / ExpressoOnline: Juiz Baltazar Garzón apont ...
Twitter is a free social messaging utility for staying connected in real-time.
twitter.com/ExpressoOnline/status/1248866546 - 11k -

Judge Garzon is currently pursuing an investigation into six Bush administration lawyers who wrote legal memoranda authorizing the use of harsh interrogation tactics, such as waterboarding, on captured, high-value detainees.

Notwithstanding the enormous news coverage this investigation has garnered, it is remarkable that a single "tweet" on the topic has risen so grandly in the ranks of search results.

Twitter entries, like blogs, are afforded considerable, perhaps disproportionate importance by Google's fabled algorithms. Search engines index these many "tweets" and as a result, a Twitter reference to a blog post or a website article may well appear prominently in search results, and generate both traffic and increased profile for the original writer.

Thus, at 140 characters or less, Twitter represents Web 2.0 paradise for those with much to say, and very little time to spare.

For the rare practitioner of few words, then, Twitter might be a good fit.

YouTube

Several law firms and law blogs now offer educational podcasts (downloadable MP3 recordings), featuring high-level topical discussions on their areas of expertise.

YouTube takes it to the next, logical level, by enabling the free distribution online of similarly themed, informational video segments, for consumption by colleagues, clients and prospective clients.

Such leveraging of YouTube by legal professionals is in its infancy, but remains as a significant and untapped opportunity.

Less tasteful, however, are the shamelessly self-promotional videos offered on the site by many American lawyers, often utilizing hyperbole such as this infamous line from a video posted on YouTube by a self-described, “true Texas lawyer:”

*“Once in a generation, a trial lawyer of the stature of **** comes along.”*

(We do not recommend that Ontario lawyers produce these sorts of videos)

However, for lawyers with a creative streak, video represents a powerful and valuable communications tool that may easily be integrated as original content in multimedia blogs and websites.

Further, YouTube content is easily shared online, and video from the site may easily be embedded and republished by other writers on their websites and blogs. YouTube video may also be imported directly to Facebook, representing another easy means for wide distribution of original legal video content.

As a result, one day your video dissertation on the niceties of Canadian Tax Law could go *viral...*

With Web 2.0. one never knows.

Blog Aggregators, Digg, Delici.us, Reddit and Stumble It

Users employ these sites to post links and summaries of blog posts and other online content of interest.

Their readers then ‘vote’ for the most interesting content, with the articles that gain the most accolades in turn promoted to receive prominent placement on the sites’ main pages, where page views are maximized.

The resulting link on these sites to the original writer’s site promotes readership and sends web traffic back to the original post.

A post from a new blog or website may not rank particularly well with search engines. That same article, however, if referenced on Digg, as an example, will have much-enhanced Google currency.

Thus, these sites are particularly effective at assisting new blogs and websites to obtain quick notice by Google and other search engines.

They can be a shortcut to enhanced page rank, and are a valuable secondary tool for publicizing web and blog content.

Statistics and Metrics

Among the charms of Web 2.0 are the various free services that provide statistics and data that enable websites and blogs to track their performance.

These sites provide extremely useful information, including statistics on:

- how many visits a website, web page, or blog post receives;
- which sites have linked back to your articles;
- how many readers are subscribing to your site's RSS feeds;
- what sites or search engines referred – or sent – readers to your site;
- what search phrases did a user employ that resulted in a visit to your site;
- the geographic locations of your visitors;
- the peak hours of your site's traffic.

I will mention only a few:

- Techorati, which tracks links between blogs, and assigns an "Authority" ranking, based on the number of other sites that link back to a site;
- Site Meter, which monitors and provides traffic statistics on your website
- Feedburner, which tracks blogs' RSS subscriptions;
- Google Toolbar, which includes a feature that discloses the Page Rank of any site you visit.

This data allows you to monitor and objectively evaluate your sites' traffic, trends, progress and performance.

Online and Email Newsletters

The newsletter has long been an effective tool utilized by legal professionals to communicate with clients and peers about firm news and developments in the law affecting them.

The production and delivery of newsletters has been greatly simplified by various web services that now facilitate the layout, production and delivery of digital newsletters.

These sites allow users to compile and update subscriber lists and contact information, as well as providing templates for the actual production of firm newsletters. They also provide for automated, scheduled delivery of newsletters via email.

Finally, they facilitate permanent publication of your newsletter on your firm website or blog.

Leaders among these sites are Constant Contact, DaDa Mail and iContact.

RSS Readers

RSS, or "really simple syndication," brings the internet to you, using an RSS reader, such as Google Reader.

No tool has emerged in my professional lifetime that better facilitates continuing legal education and allows lawyers to remain current than the RSS Reader.

Simply described, each blog and many web sites produce an RSS feed that allows content to be syndicated, or to make it simpler, republished elsewhere. An RSS reader is a tool that allows you to subscribe for delivery of a blog, newspaper or other website's RSS content.

Once you have subscribed to sites' RSS feeds, new content from the selected sites will automatically be "fetched" and delivered to your RSS reader, where this content may be accessed and read, in one, convenient online location.

By going to one site – your RSS Reader - you are able to avoid the time-consuming necessity of navigating through dozens of sites a day for your legal news and developments. With RSS, the news is automatically delivered to you.

Further, Google News may be utilized to create RSS feeds for customized, specific Google searches – for example “Supreme Court of Canada,” “Ontario employment law,” or “Toronto judge.”

Once such searches are set, new blog and news articles containing those customized phrases will automatically be directed to your RSS reader. This new content will then be available to you when you next open your RSS reader.

The RSS reader has become an indispensable tool, ranking equally with QuickLaw in its terms of importance to maintaining a lawyer’s knowledge base.

Many Canadian Courts and Tribunals also offer RSS feeds of their published Reasons for Judgment.

Given these tools, knowledge is rarely more than a click away, and it has become significantly easier to “stay current.”

Participation

For those who have little inclination to engage in any of the options described to this point, there remains one, easy option.

If you do not wish to write a blog, Tweet, participate on Facebook or LinkedIn, or become a “talking head” in topical YouTube video, there is still a path for you:

Read other law blogs and regularly leave informative comments at them.

In other words, participate in the dialogue.

Blogs permit you to post a link to your own website, as part of the text or signature of your comment. If you have something of note to add, simply make your point at someone else’s blog.

The blogger will be more than glad to hear from you. Readers of the blogs at which you have commented will also view your content and may click through to your site. Search engines will index your contributions.

Further, your own website will benefit from the link-back you have created.

It can’t get much easier than that, can it?

Ontario Rules of Professional Conduct for the Web 2.0 lawyer

While an exhaustive review of the *Rules of Professional Conduct* is beyond the scope of this paper, it is appropriate to take a top-line look at the Rules most likely to impact the online publications and contributions of Ontario’s legal professionals.

In most cases, their relevance to online communications and postings is self-apparent.

Accordingly, I will set out the most plainly applicable provisions, with short comments following each of the Rules considered:

Confidential Information

2.03 (1) A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless expressly or impliedly authorized by the client or required by law to do so.

Literary Works

2.03 (6) If a lawyer engages in literary works, such as a memoir or an autobiography, the lawyer shall not disclose confidential information without the client's or former client's consent.

Comment: A lawyer should never make any reference on a blog or on any Web 2.0 publication that could directly or indirectly reveal confidential information related to any undertaking on behalf of a client or otherwise compromise the client or the lawyer's carriage of a matter.

In other words, be very wary of telling "war stories" online, even if they are presented in an educational context.

3.02 MARKETING

Marketing Legal Services

3.02 (1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

3.02 (2) A lawyer may market legal services if the marketing

- (a) is demonstrably true, accurate and verifiable,
- (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
- (c) is in the best interests of the public and is consistent with a high standard of professionalism.

Commentary
Examples of marketing that may contravene this rule include: a. stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases; b. suggesting qualitative superiority to other lawyers; c. raising expectations unjustifiably; d. suggesting or implying the lawyer is aggressive; e. disparaging or demeaning other persons, groups, organizations or institutions; f. taking advantage of a vulnerable person or group; g. using testimonials or endorsements which contain emotional appeals.

Comment: Not every Web 2.0 publication will be an “advertisement” or have marketing as its primary function. Nonetheless, from the perspective of members of the public, many such publications may be seen to have at least a secondary marketing purpose.

Rule 3.02 has considerable implication for the contents of online publications and the manner in which they are presented.

Thus, accuracy, good taste, and the maintenance of professional dignity are good rules of thumb to follow in the development and publication of online content by lawyers.

4.06 THE LAWYER AND THE ADMINISTRATION OF JUSTICE

Encouraging Respect for the Administration of Justice

4.06 (1) A lawyer shall encourage public respect for and try to improve the administration of justice.

Commentary
<p>The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet for the same reason, a lawyer should not hesitate to speak out against an injustice.</p> <p>... Criticizing Tribunals - Although proceedings and decisions of tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate, or unsupported by a <i>bona fide</i> belief in its real merit, bearing in mind that in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, where a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to and should support the tribunal, both because its members cannot defend themselves and because in doing so the lawyer is contributing to greater public understanding of and therefore respect for the legal system.</p> <p>A lawyer, by training, opportunity, and experience is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions, and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be <i>bona fide</i> and reasoned.</p>

Comment: The blogger often analyzes and comments upon decisions of Ontario's courts and Tribunals. A temperate tone in such commentary is appropriate and mandated by this Rule.

While a law blogger may disagree with a particular Court's ruling, I would suggest he or she has a professional obligation to present a well-reasoned and dignified argument in support of the view taken that expressly avoids any overt or oblique disparagement of the Courts or otherwise undermines the administration of justice.

In raising these points, I am cognizant of a particular Western Canadian writer, whose repeated blog references to certain provincial and federal tribunals as “kangaroo courts” have previously brought these rules to mind.

6.04 (1) A lawyer who engages in another profession, business, or occupation concurrently with the practice of law shall not allow such outside interest to jeopardize the lawyer's professional integrity, independence, or competence.

6.06 PUBLIC APPEARANCES AND PUBLIC STATEMENTS

Communication with the Public

6.06 (1) Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary

Lawyers in their public appearances and public statements should conduct themselves in the same manner as with their clients, their fellow licensees, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal, or the lawyer's office does not excuse conduct that would otherwise be considered improper.

A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that the lawyer's real purpose is self-promotion or self-aggrandizement.

....A lawyer is often called upon to comment publicly on the effectiveness of existing statutory or legal remedies, on the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[Amended - June 2007]

A lawyer is often involved as advocate for interest groups whose objective is to bring about changes in legislation, governmental policy, or even a heightened public awareness about certain issues. This is also an important role that the lawyer can be called upon to play.

Lawyers should be aware that when they make a public appearance or give a statement they will ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used, or under what headline it may appear.

Comment: In a Web 2.0 world, the line between traditional media and newer modes of publishing legal content, such as blogs, is rapidly blurring.

A lawyer writing about legal affairs on a blog may well be acting equally in the capacity of legal professional and journalist.

Rule 6.04(1) makes it plain that a lawyer's professional obligations are not secondary in such circumstances.

Particular importance may also attach to this commentary to Rule 6.06(1)

Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal, or the lawyer's office does not excuse conduct that would otherwise be considered improper.

It is suggested that in interpreting this commentary, blogging and similar Web 2.0 contributions are to be considered "dealings with the media." These activities, thus, may properly be seen as an extension of "a lawyer's conduct in a professional capacity."

Conclusion:

Web 2.0 provides incredibly versatile, easily used tools that allow legal professionals to create significant online footprints, with resulting benefits in professional development, practice-building, and enhanced knowledge base.

The next generation of Web tools, doubtless to emerge in the near future, will inevitably render much of the specific direction in this paper obsolete.

The core thesis herein, however, will likely retain its relevance. Law firms must use these tools, and we must use them effectively.

A new generation of lawyers and clients has come of age. They have grown up with the internet, and see its implications and possibilities with great clarity.

They navigate our new digital technologies with natural ease and expect the legal profession as a whole to be on “their page”.

The digital revolution has brought about numerous, unforeseen changes, all of which have paradoxically made the lives of legal professionals easier, while also exponentially increasing the challenges and obligations upon us.

One fact remains, however.

Those who most effectively utilize this current battery of Web 2.0 tools will reap genuine, ongoing benefit. They will also be best positioned to leverage the unimaginably revolutionary new tools that will follow when Web 3.0 arrives.

That will likely be sooner than we think.