PRO BONO WORK AND OTHER NONSENSE

Pro Bono work sends a very positive message.
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For those readers that have followed the editorial line developed over the two years this publication has been widely circulated, few will have missed the opinion that the profession can be very adept at shooting itself in the foot from time to time, especially when it comes to developing and fostering improved relationships with the public. I will focus on three particular areas in this issue: The attitude of the profession's policy-making leaders in failing to come to grips with the core business principles/values of professional practice; the failure to let clients and the wider public know something (anything?) about their own performance and the lack of widespread provision of *pro bono publico* or free work for the public good.

Pro bono

Like any charitable gesture there are always a zillion reasons for not participating, including: it's tedious, too hard, not enough free time, not important, etc etc. On the other side of the coin are firms claiming to do it but when exposed to the light of day, it's little more than the giving of a 'freebie' to a partner (or their spouse) who runs a charity.

When looking at who fares well in the *pro bono* stakes we need go no further than the US, where this type of work is virtually endemic, especially among the larger commercial practices who report participation levels in their annual reports and in surveys – Oh, I nearly forgot, NZ firms don't do the former and only do the latter when exchanging confidential information, or to impress some overseas-based gazetteer.

For those of you still reading it may be of interest to learn that in most of the top 200 US firms ALL lawyers are expected to do at least 20 hours of otherwise billable time in *pro bono* work every year (amounting to nearly 3.5M hours a year). The American Bar Association's professional conduct rule (6.1) requests all members to provide **50 hours** of public service work EVERY year. To put this in context locally, if half of all lawyers in NZ gave away 10 hours a year to an average value of only $150 p.h. the value would come out at $7.5M. The way to make it happen is to build the time into the time budget and create a code for it. That way it avoids slipping into the chasm of the unbillable. At present there appear to be few firms who take this seriously and consider *pro bono* work an admirable social responsibility. Given that many staff lawyers in the top US firms manage to bill over 2000 hours per annum and do pro *bono work* there are not many valid excuses.

Business principles and values

This moves neatly onto core values of the profession and I would like to thank the lawyer who provided a report on the so called 'great and the good' and their rather different 'take' on the profession and its place in commercial life. Apparently a senior (very senior) member of the profession has been bruiting it about that a law firm has no value and cannot reasonably be expected to have any. The reason? A professional practice is somehow 'different' and any value reposes in the intellect of the individual partner and his/her personal clients. What this says about that person's utter failure to understand and comprehend the modern commercial dynamic is nearly beyond belief. A law partnership can be a collection of independent lawyers who nominally trade collectively, sharing the same letterhead and offices whilst retaining their own private clientele. This is what I would describe as a franchise, or if I were in England a 'set' of barristers' chambers. These franchise practices even have management structures, including marketing departments, though most lack any centralised client database. How they can undertake proper conflict avoidance strategies when taking on new work I cannot imagine; PI insurers take note!

Alternatively, a law firm can be a thriving commercial business where partners cooperate to deliver a range of legal services designed to satisfy the needs of a common client base. In this model value is created that could become a fully tradable commodity delivering high incomes and wealth for the owners. It is these 'real' or true partnerships that are characterised by:

- Low partner attrition rates
- Steadily growing partner incomes
- Loyal clients
- High rates of cross selling
- Low staff turnover
- An ability to leverage new work from existing when cyclical economic fluctuations cause reductions in certain types of instructions

- A conspicuous lack of an 'eat what you kill' arrangement driving profit distribution

Fortunately I am regularly exposed to what is happening in other jurisdictions and can report that the franchise firms have had their day and the commercial tradable model is coming. It is my guess it will arrive here sooner rather than later. Most Common Law jurisdictions already have limited liability partnerships and soon, very soon, the English will have full public ownership (with relevant controls) of law firms. Once exposed to market dynamics it will be interesting to see how things pan out. My money is on an increase in commoditised services for 'Joe Public', more sophisticated specialist services delivered by teams with client service as the primary focus and wealth creation for the owners. Whatever happens, change is inevitable and for some of us it can't come soon enough.

Law Firm Performance

This may be beginning to sound like a broken record but why is the performance of a law firm still considered to be a secret? Yes, I have heard all the nonsense about private businesses having no requirement to disclose performance and how this information is somehow 'sensitive' BUT what planet are we living on, planet NewZild? Moves are afoot to require even private businesses to disclose certain fiscal data if size thresholds are reached. Are professional partnerships to be exempt – if so why? Furthermore, what does the lack of current performance disclosure say about client relationships? Most clients buy legal services as a 'distress purchase' or because lawyers have a monopoly supply agreement enshrined in the Law Practitioners Act 1982. Whichever it is clients' detailed understanding of the mechanics of the service is very low; therefore how are they able to judge the quality of service delivery or reasonableness of price? No data are published nor offered and the engagement process often makes a mockery of 'the invitation to treat' mechanism we all learnt as students. This only leaves commercial measures and that oddball reference point, reputation, when selecting a practitioner. Personally I am not particularly interested to learn how much a particular partner earns (it is easy enough for me to accurately work out after 30 years in the business) but it may help to foster better customer relations if some more prosaic performance measures were published. Set out below are some key measures which, when displayed as a time series, are strongly indicative of management skill and hence may provide 'comfort' to the client:

- Use of client engagement disengagement protocols
- Firm wide 'lock-up' levels (This does not have to be in $s)
- Fixed/variable costs as a % of fees (property, salaries/wages, IT investment, etc)
- Average annual hours of professional development training per lawyer
- Staff turnover levels
- PI claims rate
- Annual fee income growth/decline per fee earner expressed as a %
- The % of fees earned from each major service area (residential conveyancing, family law etc)

The combination of performance indicators above will, as a time series, indicate a law firm's level of commercial competence to manage a client's affairs and give them some understandable measures and a basis for choice. It is data like these that build or destroy reputations. This is a huge marketing opportunity to identify your firm as a top performer. Claims to be the 'leading, biggest, best and brightest' on web sites are just hokum and offer no qualitative or quantitative basis for client choice.