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MAY 1-2, 2019: GERRY RISKIN, ATLANTA, GEORGIA-THE MANAGING PARTNER FORUM

By Gerry Riskin

THE MPF 2019 LEADERSHIP CONFERENCE
May 1-2, 2019 will be held at the Capital City Club in Atlanta. Registration will open soon.

Further particulars to follow.

More Info

INNOVATION IN LEGAL PROJECT MANAGEMENT

By Aileen Leventon

Innovation is a hot topic, and when I was recently asked to edit and contribute to a book to be titled *Innovations in Legal Project Management*, I was challenged to find a useful definition. As a lawyer, consultant, expert on legal project management ("LPM") and as an author, I needed something more useful than "I know it when I see it." I began by developing a baseline understanding of LPM practices that are the norm, in order to be able to identify those that are different – and possibly innovative.

The current state: In the past ten years, client needs and expectations for the delivery of valuable legal services have created significant pricing pressure and competition among law firms and other service providers. Law departments, inside counsel, and other professional staff numbers have also grown. Demand in meeting the needs of the business (internal clients of in-house counsel) in a cost-effective manner has accelerated. Legal project management, process improvement methodologies, data analytics, knowledge management, the increased stature of legal operations professionals (previously referred to as "non-lawyers"), and technology are all included in the portfolio of resources that are available to meet the challenges of providing cost-effective and valuable legal services. During this time, LPM has gone from being perceived as another management fad to broad acceptance and increasing usage. In many organizations, lawyers rely on a support role so that LPM also involves a stand-alone or well-integrated and respected function. In some law firms, LPM collaborates with pricing professionals, or reports to those with titles like "chief value officer."

A baseline of LPM practices at law firms has developed; a cadre of LPM professionals have self-organized in trade groups and networks; and training programs for lawyers and paralegals that build awareness abound. Corporate law departments have

adopted LPM practices through their systematic approach to intake of (or declining) client requests, and allocation of work internally and to external counsel. Both the Association of Corporate Counsel and the Corporate Legal Operations Consortium have developed frameworks and playbooks for LPM. All provide useful tactics.

With this baseline, I believed that a book on innovation needed a different lens. I sought examples of the difficult work of harnessing the relevant aspects of LPM as a strategy that is explicitly aligned to a law firm's or legal department's business objectives and culture. My search was rewarded. I found law firms with communication strategies and techniques to train, coach and mentor those acquiring the skills to implement LPM practices as a core aspect of the firm's business strategy, operations, and commitment to delivering quality legal services. Others integrate LPM in the firm's essential focus on the client experience. I invited the International Institute of Legal Project Management to contribute a chapter, since it has the most comprehensive approach to professional development and government-approved accreditation in LPM in the world.

Innovators in LPM see around corners to improve the legal profession. They create value for their firms, clients, and organizations. I found examples in both domestic US and global organizations, with case studies from both practicing lawyers and other industry experts. There is a common denominator that may be used as a working definition of innovation in LPM. Innovators systematically and continuously:

1. Use deep insights about particular clients to create new services and ways of doing things that impact the client's business goals;
2. Incrementally improve the speed, value (cost/margin), and quality/benefits of the product or service they deliver; and/or
3. Rely on technology that is home grown or highly customized to meet users' needs.

The first is the most difficult to achieve and appears to be the least prevalent in LPM today. Support from technology and service-delivery professionals are part of the baseline of LPM practices. But how many lawyers and supporting professionals thoroughly understand what it is really like to be the client unless they have been a client?

Innovators in LPM incorporate these techniques – for example, during the scoping of a matter – by asking such questions as:

1. What is the business background and context for the situation that requires legal advice, services or other counsel?
2. What is the definition of a successful outcome from a legal perspective? Is it the same as the business perspective? Are there stakeholders with conflicting views? How will this be reconciled?
3. What are the metrics and the process for capturing them in evaluating the performance at the matter and organizational level for all stakeholders in the matter?

Effective use of LPM will assess whether the answers to these questions at the outset continue to hold true over the course of handling a matter. Finally, innovators will go beyond a basic after-action review to actively engage with the client to capture a deep understanding of the client's needs, business and the extent to which the lawyer's legal services made it easier for the client to do his or her job.

Where to start? Other disciplines provide a path: the design thinking methodology requires empathy with the customer; lean and process improvement frameworks require hearing the voice of the customer; and marketing and business development provide opportunities to convey differentiation in client-service delivery.

Yes, I do know innovation when I see it. We have just begun to understand how to unpack the buzzword of 2018 to make it concrete and practical for those seeking to maintain their edge.

THE ROLE OF THE LAW IN THE GROWTH OF AN ECONOMY, WITH A SPECIAL FOCUS ON DEVELOPING ECONOMIES

By Bithika Anand

Law and Business are not mutually exclusive sub-sets. Neither of them can be practiced in isolation. However, the interplay of law and economic growth has always been an intriguing subject for legal researchers and those associated with the legal sector. With an increase in the number of opportunities available for growth, especially in developing economies, businesses look to explore the latest dynamics and trends that have a positive impact on them. They also need to examine these and other issues within the limits of what the law permits.

We* will examine this issue from two perspectives. The first one is the interaction and interdependence between the legal and industry sectors. The second is the role of the judiciary in shaping the growing economy.

INTERACTION AND INTERDEPENDENCE BETWEEN THE LAW AND INDUSTRY SECTORS

Integration of the legal fraternity with other industry sectors facilitates knowledge exchange for the mutual benefit of both. Knowledge-sharing amongst various sectors, including the legal sector, benefits all of them, as they are able to embrace the best practices followed by each other. This is especially true for developing and dynamic economies, which are on one side witnessing rapid commercial development, but on the other must manage uncertainties concerning the dynamic regulatory environments they face. In such economies, the legal sector is usually in a state of metamorphosis and is constantly reinvigorating itself. Knowledge of legal implications enables the top executives to design commercial aspects within the four walls of legal permissibility. Similarly, a strong understanding of the business side lends quality and finesse to the advice given by lawyers.

A constant interaction between business and legal fraternities facilitates discussion of the issues and challenges they face in order to find probable solutions. With the inexorable shift of the economic fulcrum toward developing countries, a constant interaction with legal professionals will allow industry sectors to brainstorm over how to accelerate growth and how to steer businesses into clear waters, away from any potential storms.

The technical knowledge of lawyers, and their ability to practically apply legal knowledge to draw an outline of what is legally permissible, makes a robust contribution to the range of the skills that are needed to augment development of commercial activities. In emerging markets, technological advancements are coupled with possible regulatory developments, which usually creates a lot of uncertainty in the commercial business environment.

It is vital to understand that lawyers contribute every single day not only to making businesses sustainable, but to helping them flourish. By completing business and contractual obligations and commercial transactions, resolving disputes, facilitating the flow of funds and investments, encouraging innovation through the protection of intellectual property rights, and advising entrepreneurs on viable business solutions, lawyers are able to positively impact the growth of the economy. In a developing economy with competitive businesses, lawyers also help their clients to address and even avoid pockets of market concentration through competition-law enforcement.

THE ROLE OF THE JUDICIARY IN SHAPING THE GROWING ECONOMY

Another key factor that needs to be outlined here is the role of judiciary. While political machinery is at the forefront in driving an economy, the uncertainties surrounding new and upcoming laws in growing economies are often settled through the judiciary. The judiciary also plays a key role in determining how emerging laws are implemented, and how to pave the way for archaic laws to be replaced over a period of time. Political machinery determines the structure of the legal system of an economy, and the judiciary sets out how the laws that are enacted are implemented and applied. However, in everyday business, lawyers also play a significant role in this area as well. An economy with an evolved legal system and 'state of the art' laws will still be struggling to find its feet if the quality of the lawyers and others who hold primary responsibility for implementation of the laws (general counsels, senior advocates, judges, etc.) are not up to the mark.

The legal sector has wide-ranging economic impacts, as it has close connections with the institutional architecture of trade and commerce. Economic performance and the functioning of a commercial institutional architecture are closely interdependent. A stable institutional set-up, backed by the legal sector, is the key facilitator of economic development through the promotion of more sophisticated economic activity.

*(*This article was written by Edge International Principal* Bithika Anand *and Edge International Affiliate Consultant* Nipun Bhatia*)*

ASK GERRY RISKIN: SHOULD CORPORATE AND OTHER TRANSACTIONAL GROUPS SPIN WORK OFF TO LITIGATION TEAMS?

By Gerry Riskin

*Question from a Client**

While it seems to be a commonly held assumption that corporate and other transactional groups in firms spin work off to litigation teams (and that this is and should be the primary source of clients for litigators/trial attorneys), we aren't finding any literature or research that supports this premise. Our numbers indicate the inverse – that our litigation team gets little work from other groups, but seems to make referrals internally with some frequency. So we are trying to determine if this is a problem that needs fixing, or if it's just a shift in the way things are? Or (as is most likely the case), is it a bit of both?

Do you know of any trend data or best-practices articles that discuss the right model for referrals between practice areas – particularly litigation and trial? Any thoughts will be greatly appreciated!

Gerry Riskin Responds

The elegant study you are looking for does not exist, likely because no firm can provide accurate data that would support its findings. What kind of data are your business lawyers obtaining anecdotally from their clients to determine the extent to which they are seeking litigation assistance elsewhere and, if so, the magnitude and nature of that assistance?

You are exploring a major and timely topic.

1. We are seeing the trend to avoid litigation in favor of more affordable alternative dispute resolution (ADR), and artificial intelligence (AI) is growing in relevance in the dispute-resolution world.
2. A number of our clients have focused entire retreats on sensitizing their lawyers to the huge revenue potential of effective cross-selling. As I have told many clients during in-person consultations, cross-selling is highly correlated with internal marketing that sees firm constituencies garnering trust from other firm constituencies, such as: **practice areas**, **industry groups** and, of course, **office locations** throughout the firm.
3. I am not a huge fan of motivating with a check book, but the topic also does require a peek at the compensation system to ensure that it is not creating barriers to the very behaviors you are trying to encourage.

(**Permission has been sought and received from my client to publish this question in Communiqué.)*

DO YOU UNDERSTAND YOUR FIRM'S DNA? WHAT ARE THE GOOD AND THE BAD BITS?

By Sean Larkan

The DNA acronym is sometimes used with reference to the inherent characteristics of a firm or a part of the firm. Unlike the originating definition of DNA – an organic chemical of complex molecular structure which codes genetic information for transmission of inherited traits – which is fixed, the important thing about this loose use of the term "DNA" to describe firms is that it can, with effort, be adapted.

I find this quite a handy concept and tool in discussions with clients, particularly where I am trying to persuade them to adopt certain principles, systems or practices – or make them part of their DNA. A handy off-shoot is that people invariably "get it" right away. It seems to gel.

I use "DNA" quite loosely to describe the intrinsic workings of the heart and soul of an organisation – i.e., what really makes it tick or, perhaps, not tick; what helps it succeed or not.

When something good truly becomes part of your DNA, it happens virtually automatically and becomes the way things are done with little or no leadership or management intervention. In this sense it is closely linked to culture ("how we do things around here") but I like to distinguish between them, as culture, coupled with leadership, really determines whether some things become part of your DNA or not.

This DNA concept is important and has significant ramifications for every law firm. This is because what comprises your DNA will determine your success, failure or mediocrity.

Bearing mind that a firm's DNA can comprise good and bad bits, let us consider briefly some of the advantages of making certain principles, structures, practices and so on positive parts of your DNA:

- People who come into the firm become quickly inducted into the way things are done;
- People see existing people doing things in a particular way and follow suit;
- This saves on leadership and management time, cuts back on training, and avoids micromanagement or the need to follow up;
- In some respects, these things become a type of ritual, therefore automatic and requiring little or no discipline to get them done;
- It saves time, which is a precious commodity;
- It means these principles, concepts or systems walk around in the heads of everyone in the firm;
- This sets semiformal but very powerful guidelines and standards;
- As noted above, it is an easy way to discuss such concepts and inculcate them in a firm, as people almost immediately "get it".

On the other side of the coin, what are some of the disadvantages of having *less* good things as part of your firm's DNA? Every firm has these "bad bits":

- It is very difficult (if not, at times, impossible) to get rid of negative attributes, particularly if your culture is not conducive and leadership is not forceful. Getting rid of them takes some guidance, structure, possibly new systems, good leadership and management, and the right culture, and these are not always easy to source at the same time;
- Because they are part of your firm's DNA, the downsides are not always obvious because the firm has "always done things this way." This can be dangerous. An obvious example would be an unconscious bias towards hiring from a particular ethnic group or gender, or even a range of schools;
- Invariably, when steps are taken to address negative attributes regarding how you conduct business, there will be pushback from some partners who may be loathe to change how things have always been done. This is particularly true where the change may be uncomfortable for them.

What are some of the really important things you should try to make part of your firm's DNA? Obviously, this will differ from firm to firm and jurisdiction to jurisdiction, but here are some examples that should apply to most firms:

- Every person in the firm, whether fee earner or support staff, has a particular person who is responsible and accountable for their personal well-being and professional development and success. It is astonishing how few firms achieve this in practice and, as a result, too many people "fall through the cracks" and never reach their full potential, or perform to their potential for the firm;
- Everyone in the firm has a common and correct understanding of "brand," and the role they can play in strengthening it. "Brand", after all, is why people want to work at the firm, why clients want to use the firm, and why others want to refer people to the firm;
- Self-management, responsibility-taking and accountability are *sine qua non* for all firm personnel, from the most junior to the most senior;
- Every partner is responsible to build the *capital fabric* of the firm – i.e., contribute to what I call the foundational, long-term, fundamental and intrinsic strength and value of the firm. This is a massive challenge for most partners, who tend to think short-term and only about their practices and clients, without paying too much attention to the firm's future or to leaving something of value behind when they one day leave;
- No compromise on ethical standards and practices;
- Cultural diversity in the workplace is, in the widest sense, the norm, so that the firm hires people from all sorts of different backgrounds regardless of race, religion, personal preferences and culture;
- Being strict about hiring the right people, putting them in the correct roles, and moving on the management of people who are not well situated;
- Everyone in the firm accepting the three key principles: accessibility, responsiveness and reliability. It is surprising how powerful these obvious attributes can be when they become part of the DNA in the way everyone conducts themselves in an organisation. It also makes for a much happier workplace;
- Outstanding support services and operations. Some may be surprised to see this one on the list, as these back-office functions are not normally given priority status or attention. However, every successful organisation today recognises the importance of ensuring that such services and operations form an integral part of their service or product offerings to clients and customers. How a law firm delivers in these areas is as important as the complex legal work done by fee earners.

What are the things you don't want as part of your DNA?

- Avoidance – that is, not addressing important or damaging aspects of the firm's operations or practices. Unfortunately,

this a common trait amongst law firms, even successful ones;
- Poor working capital and data management. How many times do firms do analysis around cash flow or working capital management, report on this and get partner agreement around the need to “tackle debtors” – only to find that six months later matters are not only not improved but may be even worse?
- Lack of diversity;
- Lack of genuine interest in the firm’s most important asset: its people – or in the success of others in the firm;
- A primary focus on money.

I hope this article prompts you to do an exercise whereby you try to identify the DNA of your firm. Be brutally honest about the good things and also about the not-so-good things. This exercise can form a powerful starting point to planning the future you want for your firm.

CHARACTERISTICS OF WINNING SMALL FIRMS

By Neil Oakes

It was my recent pleasure to attend the annual conference of a group of affiliated small firms that I have known for about 25 years. Every now and then they ask me to look at their financial performance and we discuss a range of contemporary issues.

I haven’t attended for about eight years or so, and the 2018 conference fascinated me. This group is made up of 25 regional, suburban and a couple of city firms, all relatively small. Average net profit per partner is $700,000. Average profit margin is 39.77%. I know that many large firm partners wouldn’t be impressed by this, but don’t forget that these people go home at 5:30 pm (if not before) and usually holiday for about six weeks each year.

This is what all of these firms have in common. It has been developed collaboratively, through their network, for 27 years or so. All of these firms do the following:

They value management.

Outside large, national and international firms, where most of the profession live, operational management often takes a back seat. In fact, truth be told many partners don’t see management as ‘real work’, certainly not as important as substantive legal work.

By contrast, all of the successful smaller firms that I encounter have at least one management enthusiast in the partnership. These partners are encouraged to develop their interest, to source and disseminate innovative strategies, and are often delegated the role of managing partner.

I am often asked, “How big do we need to be to afford a general manager or managing partner? Surely we’re too small for

that?" I suggest that those asking this question consider the event of a client asking them, "I have this business that turns over a few million and employs 20 of us. Do you think it's a good idea for it to be managed properly?"

Therefore, if you haven't yet done so, appoint a partner to the role of managing partner. Note that this is not a promotional position with lofty status. It's a job.

They plan and execute.

Good firms are planning regularly. They have a clear vision, widely understood values and a real sense of purpose.

Partners agree on a direction and a number of annual objectives. They may even commit to a five-year strategy. These objectives effectively form the managing partner's job description.

I recommend that firms of all shapes and sizes share their plans with all staff, measure progress and celebrate success.

They are open to change.

I've met too many law firm partners who operate with the "That won't work because…" default position. Good firms are full of partners that don't do this. Instead, they grab hold of ideas, often half-baked, and work out how they can make them work.

They have invested in systems.

Good businesses are organised. Successful firms implement operational systems that are consistently observed throughout the practice: they don't have individual partners or associates doing things 'their way'.

Successful small firms invest in centralised precedent and document management, legal project management, integrated client management and billing systems, and workflow optimisation systems. They understand that file velocity (how quickly the job gets done) contributes significantly to profitability and that file volume (number of files per lawyer) does not.

They take away the issue of pay.

Highly successful firms are usually generous with salary and staff conditions. Staff don't sit around feeling undervalued; they put 'pay' out of their minds and concentrate on client outcomes.

They are focussed on the client experience.

Good firms understand the purpose of their existence: constant, incremental improvement to the client experience is at their core. It is central to all that they do.

They pay for advice and listen to it.

(Perhaps a little self-serving but nonetheless significant.) Good firms know when to buy advice. Be it big-picture strategy or day-to-day operational advice, management professionals have the benefit of seeing many firms each year, and they usually know what works when.

They tackle one thing at a time.

One of the things that I have observed over the years is that the best firms that I have worked with achieved what they have through a sedimentary approach, layer upon layer. They have managed change incrementally, not through a radical re-engineering process.

At every conference that you attend, with each new management book that you read or webinar in which you participate, just pick one thing to implement. Don't try to do it all or it will become too difficult, and you'll become another firm held back by 'failure to implement syndrome'.

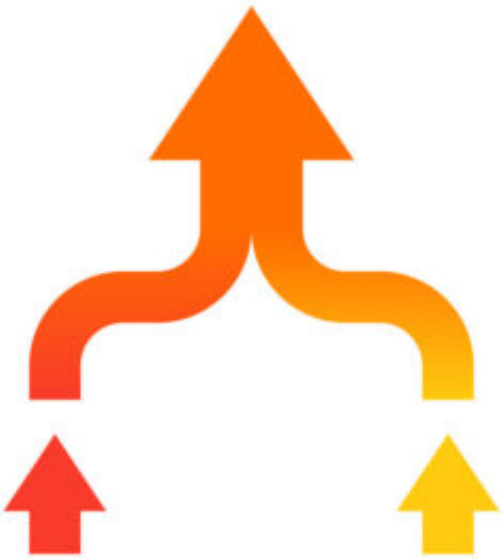
They share with like-minded peers

The group of firms that I spent two midweek days with (firms this good don't meet on weekends: they have lives to live) have all helped each other to develop and grow great businesses. Over the years they have also become close friends.

It's a great model.

LAW FIRM MERGERS: WHY AND HOW?

By Sam Coupland



In March this year, I wrote an article citing the large number of mergers in the Australian and New Zealand market. Some of these mergers were quite public but most flew under the radar – or out of the gaze of the legal media.

Reasons for mergers are many and varied and often go beyond the usual financial benefits of economies of scale. Common rationale for mergers are:

Financial Pressures or Opportunity

Law firm performance and profitability is trending upward for the first time in a long while, regardless of firm size. What makes this somewhat newsworthy is not the financial buoyancy of the profession but how these profits have been made. The market for legal services is enduring price sensitivity (which likely won't abate for a long time), and growth in fees is limited. What is driving the improvement in profit is that firms are right-sizing and operating with leaner structures. It is this low-growth environment, where organic growth is difficult, which makes the proposition of a merger an attractive option for many firms.

On the positive side, firms with an expansion mindset see acquiring a firm or practice group as the fastest and cheapest way to grow their business. They will usually have a support structure that can accommodate – both physically and managerially – an additional practice or two, which provides economies of scale.

At the other end, an acquisition or merger can provide a firm with a circuit breaker for some of their managerial challenges or deadlocks. This could be anything – ranging from succession, to disparity in contribution, or a hollowing out of market share.

Succession

It is often the case that a smaller firm that has been successful over a number of decades has a relatively small number of partners of about the same age. They have worked together for years, and they realise it is this collegiality and camaraderie that has been the 'secret sauce' for their success. With retirement on the horizon (and their personal financial positions well looked after) the idea of starting again with a new set of partners is not that appealing.

I have seen this happen with a number of firms where the development of internal successors has not been effective, and in some cases is not desirable in order to keep the equity tightly held. These practices are usually very profitable with a solid and transferable client base. In these instances rolling the firm into a larger organisation is a win-win for both parties. The larger acquiring firm picks up a solid parcel of fees and, _____

The smaller firm that is being tucked in achieves longevity with clients and a home for the staff. Depending on how it is managed, this may also be a one-off opportunity for the partners in the smaller firm to realise the value of their balance sheet (predominantly work-in-progress and debtors).

Client Demand and Geographical Reach

Single-city firms with a national client base are often faced with pressure (real or imagined) to have a footprint that matches that of the client. Opening a Greenfield office in another city brings with it a lot of risk, such as convincing a partner or team to relocate. A merger may provide a ready-made solution as well as some benefits of economies of scale.

Making Your Firm More Attractive

With any merger, a range of cultural considerations and other issues need to be taken into account and would form part of any due diligence. Making your practice more attractive to potential purchasers relies heavily on the ease of transferability, or integration, of the practice.

A history of high performance is key. Firms where the merger is successful are ones that have been operating effectively for a long period of time and are not seeking the merger as the panacea for their operational shortcomings. To get your practice into shape consider the following checklist:

Actions to Improve Profitability

Leverage / Staffing

- Delegate anything that more junior people can do
- Implement a robust internal training program
- All junior lawyers to be ‘allocated’ to a partner who meets with them daily or weekly to discuss their file load and performance
- Support-staff-to-fee-earner ratio of less than 0.7

Price

- Ensure rates in the upper 25% of what would be considered ‘market rates’
- Discuss fees regularly with clients and train all fee earners about how to do this

Time utilisation

- Minimum performance levels – recorded 5.5 per day (most firms would thrive if all solicitors billed 5.0 hours per day)
- Hold people accountable to minimum acceptable performance
- Daily review for juniors; weekly review for seniors
- Look at hours leverage (number of chargeable hours per fee-earner for each hour generated by an equity principal) – it should be greater than headcount leverage. This step: 1) measures the effectiveness of delegation, and 2) requires management to be more focused on the fees generated by employees than the personal billings of equity principals

Actions to improve Cash Flow

Managing Work in Progress

- Record all time
- Set maximum file limits for each fee earner
- Regularly monitor activity (and non-activity) on each file
- Bill fortnightly
- Hold quarterly client-free billing days

Managing Debtors

- Discuss price in the initial interview. Be the first to raise the issue of fees. Draw matter trees

- Bill clients the way they want to be billed – hourly rate, fixed fee, capped, etc.
- Implement a 'no surprises' policy to ensure all clients are expecting an invoice and anticipate the amount of that invoice
- Have the responsible fee earner phone delinquent clients after 30 days
- Be open to payment plans

Client Management and Transition

- Have a documented approach to seeking and receiving client feedback
- Conduct end-of-matter reviews
- Detailed client data base – ideally with a ranking
- As many touch points between clients and firm as possible
- With trusted repeat clients and referral sources, discuss your succession with them. They may be more willing to help than you imagined.

Discrepancies in gross fees and profitability between merger parties can be worked through to ensure the merger doesn't fall apart. If you tick the boxes in the above checklist then you are putting your firm in a strong negotiating position for how things will operate post merger.

As I mentioned in March, the appetite for exploring opportunities is high. Almost everyone I call to discuss a merger or acquisition wants to find out more, so the fear of rejection (in the first instance) should be put to one side.

NOVEMBER 5TH, BRISBANE, QLD, NOVERMBER 7TH SYDNEY, NSW AND NOVEMBER 9TH MELBOURNE, VIC 2018- FMRC WORKSHOPS ON LEGAL PROJECT MANAGEMENT- AILEEN LEVENTON

By Gerry Riskin

Sign up at: https://www.fmrc.com.au/events/category/legal-project-management/

EDGE INTERNATIONAL TO OFFER LPM WORKSHOPS IN AUSTRALIA

By Aileen Leventon

Of the thousands of effective lawyers who use legal project management (LPM) to improve their practices, many have adopted the simple approach I developed on the basis of my 20 years of law practice in New York.

I am pleased to present an LPM programme for barristers and solicitors in Brisbane, Sydney and Melbourne in November, 2018

with my colleagues, Sam Coupland and Dr. Neil Oakes.

More information

Sign up

WHEN THE MONKEYS RUN THE ZOO

By Nick Jarrett-Kerr

In running any business, reaching wise and sensible decisions is never easy. And in competitive markets, many who are charged with managing professional-service firms can suffer sleepless nights attempting to get decision-making right. But trying to get the right outcome can become a 'worst nightmare' in firms without a clear governance structure or with a mismatch between authority and responsibility.

Many professional service firms remain acutely political organizations, with much of the firm's decision-making having to run the gamut of opinion-seeking, back-scratching and adroit manoeuvring before the management team can make significant progress. In an increasingly competitive market, the extreme consensus model (in which every major decision gets delayed until the achievement of positive ratification) is rapidly becoming not only a luxury but a risky way of running a business.

I heard about a law firm recently where a sensible redundancy program got delayed by several months because of the need to get the reluctant partnership in line. In another case, the managing partner told me that the partners just did not seem aware (or had forgotten) that the governance structure of his firm in fact granted the managing partner and the management committee some fairly explicit powers and authorities to get on and manage the firm, and were resisting all his attempts to implement decisions by demanding endless discussion on every issue – the way things have always been done. This is a firm where the unwritten rules of the organization would seem to be trumping the well-documented governance arrangements.

In contrast, I can think of several other firms where the managing partners and the management boards or committees are attempting to manage the firm by force of personality and the goodwill of the partnership, but without any explicit rules, provisions or authorities. I remember attending the management committee of one such firm a few years back. There was no management committee constitution in place and in general it seemed a fairly indecisive talking shop. With my help, some good decisions were reached at the meeting I attended, only to be overturned the very next day by the partners when they didn't like the decisions that had been reached. In all these cases, problems arise because the monkeys rather than the zoo-keepers seem to be running the zoo.

Please don't think from what I have said that I am all in favour of a command-and-control style of management, or that I would extol leadership by fear! Indeed, I am a fervent promoter of appropriate and timely consultation between those charged with managing the firm and their partners or members. But it seems to me that law firms tend to suffer more from indecisive management than from over-decisive management.

A balance is needed, and in achieving the right checks and balances between the two extremes of management anarchy and despotic rule, I suggest three checks.

1. The first check is to ensure that the firm's constitutional documents reflect the actuality. It has often been said that every firm has two organisational structures – the formal one codified in the constitution and the unwritten version in practice. The governance framework of many firms often starts with some initial provisions in the partnership deed or members' agreement, and then develops through working practices, resolutions and protocols agreed or simply emerging over the years. Sometimes, the provisions in force vary greatly from actual working practices, and at times the written provisions contradict each other. Regular updating and consolidation reduces muddle and helps to identify gaps and outmoded provisions.
2. Reviewing and updating the framework is, however, only a start. The second check is to diagnose if the governance framework is 'fit for purpose', both to ensure an effective and efficient operation and to enable the management team to lead the firm through the difficult decisions which may be necessary both during a recession and after it. Does the governance framework operate well in promoting performance, building value and protecting against risk? Does it allow an appropriate amount of decision-making authority? Does it give the management team the power to make merger approaches, for instance? More contentiously, is the management team empowered to make partner redundancies as well as staff redundancies and, if not, should it be able to achieve this? Firms should also make some attempt to ensure that their management structures accord with best-practice principles. If an insurer, bank or external investor were to look at the firm, would the governance framework look sensible and well-ordered – would an external party be able to form a view from the constitution whether or not the firm has a chance of being sensibly run? As part of this check, it is wise to examine how the firm's governance compares with 'best-practice' models or with peers.
3. The third check is to make sure that everyone in the firm understands and accepts the various management roles and responsibilities. All partners need to know where they stand, what is expected of them, and what they might expect from the management structure. It is difficult to hold partners and managers to account at the best of times, and well-nigh impossible if the rules of engagement are vague or wishy-washy.

Reliance on the goodwill and compliant nature of partners is not enough to guarantee a high-performing firm. Firms with no enforceable rules or discipline and no system of accountability will not fare well in difficult times.

To paraphrase Eric Fromm[i], true freedom is not the absence of structure but rather a clear structure which enables partners to work within established parameters in an autonomous and creative way.

The monkeys need to understand who is running the zoo and what the zoo rules are.

[i] *Escape from Freedom* Rinehart 1941