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THE POWER OF “HOW”

By Gerry Riskin

I propose that you join the most effective law firm leaders in the world and start asking “how,“ rather than “whether.”

Let us start with an illustration. Here are two questions that a managing partner might ask a practice group leader. Which do you think will lead to better results?

1. How do you think you and your team could enhance the quality of the clients we serve in your practice area in the coming year?
2. I would like your take on whether you think you and your team could enhance the quality of the clients we serve in your practice area in the coming year.

Question 1 makes a strong assumption that the mission is to enhance the quality of the clients in the practice area. The practice group leader is being asked to suggest an action or a set of alternate actions that would accomplish that mission.

Question 2 invites a debate as to whether attempting to enhance the quality of the clients is a good idea or not (let alone how that enhancement might be accomplished). This question is more likely to draw a defensive response from the practice group leader that relates to the partner’s assumption that client quality should be – or could be – enhanced in the first place.

I have written elsewhere about the propensity of lawyers to be critical and analytical. We are trained to detect the fragrance of risk and to eliminate it. Therefore, a binary question which invites a debate about whether something is worth doing will spawn arguments and counterarguments, likely including reasons why the status quo is just fine or the contemplated change is beyond the control of those being asked.

If what you are looking for is a robust open discussion – including a dash of defensiveness for the status quo – which does not necessarily lead to action, then go ahead and ask “whether.” If you want to harness the cerebral horsepower of the person or team to whom you’re putting the question, ask “how.”

To further illustrate the point, here are some sample good and not-so-good questions:

Good: How can our law firm make more effective use of social media?

Not So Good: Do you think our law firm could make more effective use of social media?

Good: How can we raise the profile and street recognition of our law firm for the benefit of those of our lawyers who are trying to attract more work?

Not So Good: Do you think we could raise the profile and street recognition of our law firm for the benefit of those of our lawyers who are trying to attract more work?

The takeaway from this article is not complex… in fact, it's insanely simple. The issue is not whether you comprehend or understand. The issue purely devolves to whether you have the discipline to pose your questions in this fashion.

Don't take my word for it… *try it*. I hope you experience its power.

Founding principal and chairman of Edge International, Gerry Riskin has a global reputation as an author, management consultant and pioneer in the field of professional firm economics and marketing.

WHY OPERATIONAL REVIEWS IN LAW FIRMS ARE A MUST

By Yarman J Vachha

Written on the basis of my two decades of work as a manager and consultant with international and local law firms across APAC and the Middle East, this article provides insights into operational reviews (ORs) – explaining what they are, and why all firms should consider embarking on them periodically.

What Is an Operational Review?

An OR is a full scope "audit" of a law firm's operations and its operational strategy, and an examination of how they interact with the firm's overall strategy. The purpose of an OR is to determine if a firm's operations are "fit for purpose" for the existing business, and to provide a stress test to determine if the operations are fit to support future growth – or, in some cases, future contraction.

Why Is It Important to Perform an OR?

An independent and full-scope OR provides a law firm with a "report card" showing where its operations currently stand and what is required in terms of investment and resources to ensure it "future-proofs" itself.

Should the OR Be Performed Internally or Externally?

My answer to this question is that it depends – on the circumstances of the business, and on the motive for performing the OR. The key to an effective OR is independence.

That said, in my view there is much more benefit for the OR to be performed externally, to avoid preconceived notions about the business operations, and to mitigate the influence of underlying politics or individual agendas.

If a firm decides that the OR is to be done internally, the review should be undertaken by someone independent within the business – preferably from another office or region – so that there is an element of independence in the findings and in the recommendations.

The critical factor is that the review be independent and the findings and recommendations reported on are done without fear or fever, so as to achieve the desired effect of assessing the operational health of the firm and recommending practical remedies.

What Are the Most Common Issues in Getting "Buy-In" for an OR to Be Commissioned?

The most common issues surrounding the decision to undertake an OR are: costs; the changes in management and investment that may be required as a result of the review; the risk of pushing people out of their comfort zones or exposing "skeletons in cupboards"; apathy; and the existence of "no burning platform."

Whilst these are all reasonable and understandable reactions, it is my view that a well-performed OR without limitation of scope is very much like a "health check" of the operations of the business. Unless you perform this health check periodically, a firm can never be sure if its operations are efficient, set up adequately for its existing business, and able to support future growth.

However, it must be noted that ORs are not only beneficial in times of growth or boom markets. They are also very useful when the firm is considering rationalisation or downsizing. An OR under these circumstances will provide the firm with an independent view and strategy as to how best to downsize the business, the potential knock-on effect of this strategy, and how best to mitigate any potential fallout. Without an OR, I have often seen firms experience a "knee-jerk" response to worsening market conditions. In my view this is a dangerous and possible a costly strategy in the long run.

What Are the Most Common Findings Arising out of ORs?

Having performed 25 to 30 ORs internally and externally of firms and offices in many jurisdictions t_____

Particularly small firms and small offices within larger firms that have grown rapidly often find that they have invested vast amounts in the revenue side of the business in terms of hiring lawyers. Whilst this is an understandable strategy, there is more often than not an inadequate corresponding investment in support and IT infrastructure and hiring of quality professional support to advise the firm as to how its operations can be made "fit for purpose" and help drive it to the next level. In a majority of cases this investment in infrastructure and people is viewed as an unnecessary cost, rather than as an investment that is much needed to protect the quality of the firm and to sustain growth.

Quite often this lack of investment in operational infrastructure will come to the surface when the firm can no longer manage the growth of the business effectively. The consequence of this is that over time, client service starts to suffer and staff retention and morale deteriorate. In an attempt to rectify this, firms often need to make immediate large-cash-investment decisions to respond to the situation. This puts a strain on the partnership finances and it impacts directly on the pockets of the equity partners. More often than not, the consequence of this pressure is that the required investments are "half baked" and at times, are costly and ineffective. Firms can avoid this situation if they periodically invest in the support infrastructure at the same rate as the growth of the revenue of the business.

I often get my clients to visualise the building of a house, in which a solid roof (revenue) is built before a strong foundation (support infrastructure) has been constructed. Without sufficient investment in infrastructure and support, the house is likely to collapse. Bottom line is that the investment in support infrastructure needs to keep pace with the growth of the business.

What Are Some of the Pitfalls in Implementing the Recommendations of an OR?

The most common challenge in implementing the recommendations of an OR is to find champions to assist in promoting the change that is required, and to deal with the necessary change-management issues.

As we all know, human beings are very averse to change, and this is especially true in law firms. It is therefore important to have a well-designed change-management strategy to implement the changes.

To successfully move forward with the implementation, firms must also differentiate between "cost" and "investment." Strong arguments need to be made as to the reasons why the investments are required, and how the return on investment is going to be measured. To do this, a roadmap needs to be designed and milestones need to be articulated and measured.

Throughout the process of the OR, it is important that regular, transparent communications are made to the appropriate stakeholders, informing them as to the progress of the review, the resulting recommendations, and how they are to be implemented. Lawyers and staff want to know what the impact of such a review will be on their daily working lives. A lack of open communication is often problematic when it comes to the implementation of recommendations, as it means that many of the staff who will be impacted have been in the dark during the OR. In my view, it is very important to take the affected people on the journey of change to ensure that the change takes place smoothly.

Conclusion

It is never easy to decide when or whether an OR should be conducted. In my estimation, however, firms that do not perform these periodically are missing a trick. No matter how big, small or sophisticated the firms, I would encourage them to review their operations on a periodic basis. The industry and markets continuously change, and it is important that the operational infrastructure changes in step with the business so as to help support it, to mitigate risks and to maximise efficiency and profitability.

Yarman J. Vac_____

PARTNERS IN CONFLICT

By David Cruickshank

No matter how strong a firm's culture seems to be, there will be periods when some partners are in conflict. The conflict may not be material – perhaps a shouting match in a meeting that later calms down, or it may be a brief outbreak of longstanding animosities that are normally avoided by keeping the partners apart. However, some conflicts grow to a level that causes one or more partners to leave the firm, perhaps ultimately leading to a dissolution.

Law firm leaders need to be aware of both latent and open conflict between partners, but they also have to be ready to act quickly when serious or lasting disputes emerge. We have the resources to deal with conflict in our profession, but leaders often fail to call them up soon enough.

A firm can strengthen its culture by using conflict-resolution resources and developing better skills in formal leaders and supervisors. Assuming that leaders have their ears to the ground and are aware of partner-conflict situations, there are at least four resources to draw upon.

The Neutral Friend

Sometimes the intervention of a leader will seem heavy-handed. One or both parties may deny that conflict even exists (despite all the evidence you've received). If the leader can find a respected partner who can talk to both and remind them of the firm's

mission and culture, that partner can achieve a near-term solution. This quiet approach may be appreciated by partners who want to put the dispute behind them.

The Internal Mediator

Every firm that has a litigation team may have a partner who is a trained mediator. Many litigators have taken certification programs (often 40 hours or more), not to become mediators, but to understand how mediators tackle disputes between clients. A leader might approach that mediator/partner to intervene in a partner dispute. A trained mediator is always going to make it clear to the parties that: (1) they have no ability to "rule "on the issues: (2) the parties own the solutions: and (3) the mediator's neutrality and confidentiality are guaranteed before and after the process. Because the internal mediator knows the firm well, he or she may be able to align the interests of the disputants with the firm and each other.

The External Mediator

At Edge, we have been asked a few times to act as an external mediator in a partner dispute. Two situations often lead to this outside referral. First, the partnership may be small and no one may be seen as sufficiently neutral or skilled to mediate the issues. Second, the dispute may be fairly high-stakes, and other internal attempts may have failed. While there are many available mediators in your community, you will want to do what we do for our clients – engage a mediator who understands the law firm business. A mediator, after advance preparation, typically takes one to three days to tackle serious disputes. Lawyers, conscious of lost time, may work harder to get to "yes" sooner than later. The cost to the firm is substantially less than ongoing conflict or litigation would be.

Develop Basic Conflict Resolution Skills for More Leaders and Senior Partners

Many leaders and senior partners have a reservoir of respect and trust throughout the firm. Their status has been earned. Those leaders can be front-line conflict resolvers if they have some training in mediation skills (without taking on certification). In my experience, such leaders are building on some communication skills they already have. For example, in a recent course that I designed for legal-services organizations and public-interest law firms, the leaders practiced:

- identifying and adjusting their preferred conflict-resolution style,
- structuring a "difficult conversation,"
- active listening,
- re-framing negative statements, and
- generating options for parties to consider.

To add some conflict resolution skills to a leader's toolkit is to recognize reality. We dislike conflict. We'd rather avoid it. We hope that our culture will overcome the conflict. Yet conflict happens, and it can disrupt client service, partner harmony and the firm's future. Leaders have to act rapidly to intervene with a third party or their own skill set.

In addition to being a lawyer with a master's from Harvard Law School and an LLB from the University of Western Ontario, David Cruickshank is a trained mediator who has taught at the Straus Institute for Dispute Resolution at Pepperdine Law School.

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.

Register Here

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'.

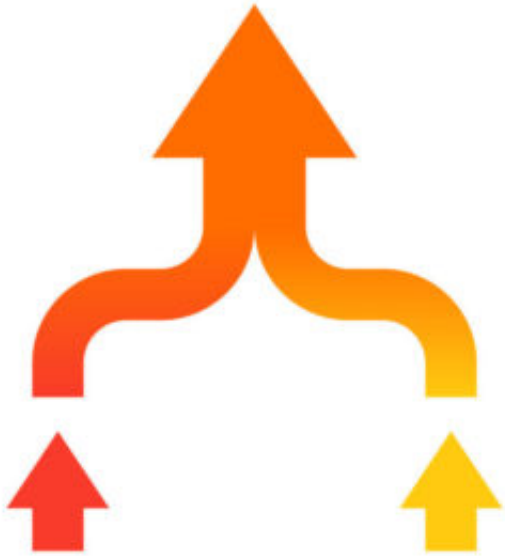
They share with like-minded peers

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.