

## Lateral hires: the good, the bad and the ugly

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LEGAL RISK

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How often is the lateral hire of a partner or team from another firm judged to have been an unqualified success? Rather less often than might be hoped.

Unless the process is properly managed, the scope for fallout is disproportionately high. This article explores some of the lessons learned by others, many from cases where I have been involved in the clean-up.

Extreme cases have included:

- litigation from the partner's former firm;
- discovering that the partner has no practising certificate;
- large-scale theft of client money;
- mortgage fraud;
- conflicts — legal or commercial, with existing clients who withdraw instructions;
- court orders disqualifying the firm from acting on a valuable current matter, and loss of fees for work already done;
- failure of key clients to follow the lateral hire;
- loss of existing key staff who see outsiders promoted over home-grown talent;
- cashflow problems — new practice areas or jurisdictions bring different client profiles and expectations; and
- massive hikes in insurance premiums.

It has been said that the key differentiator between lateral hires and home-grown partners is that you have not had a chance to discover the faults of the lateral hire. Those who have been willing to leave their last firm may also be less loyal to your own and move on again if they have not been carefully selected. Yet some firms succeed at lateral hiring and use it to fulfil ambitious expansion plans effectively. An example is DLA Piper Rudnick Gray Cary — with 142 partners recruited in Europe and Asia in the past three years, a further 59 in the US in the past year, and expansion into Australia now under way with Phillips Fox. Meanwhile, 67 have been promoted internally over the three years.

### Strategy

The first issue has to be establishing the need and ensuring consistency with the firm's overall strategy. Opportunistic recruitment of a partner who happens to be available regardless of whether his or her specialty and client base has any relevance to the firm's current strategy is unlikely to succeed, though doubtless there are exceptions which prove the rule.

The strategy so far as lateral hiring is concerned is little different from the firm as a whole, encompassing:

- services — what you do;
- clients — who you do it for;
- geography — where you do it; and
- process — how you do it.

The need for more partners should not go unchallenged, particularly in a world where few areas of practice have been untouched by the growth in commoditisation which has extended its unwelcome tentacles beyond mere volume work to the more esoteric areas of commercial practice.

Sometimes the need will be self-evident — too much work and not enough people to do it, or it may address succession issues; in those cases a client following may not be required, and the target partner may already act for the same client at another firm — often the easiest situation to manage. The partner may of course have covenants preventing him or her from acting for the same client, but client pressure may help to overcome that obstacle.

The plan may, however, be to expand into new areas of work, new locations or even new jurisdictions. It is here that the firm needs to be most careful, because it is embarking on a voyage into the unknown. The proposed recruit may be able to help develop the firm's understanding, but it has to be borne in mind that the recruit may have an inherent conflict, fuelled by the desire to leave an unhappy working environment.

## Selection

The target may already be known, but that is not a reason for ignoring best practice in recruitment procedures. It can legitimately be a passport to a first interview, but not to admission into the firm.

Executive headhunters — not necessarily the firm's usual recruitment agents — can help. (As an aside, they may have other uses too — in reverse headhunting to help move on partners who are no longer wanted!)

## Remuneration

People who are moving may not be seeking especially enhanced remuneration packages, because they know that in due course they will cause disenchantment elsewhere in the practice and be susceptible to challenge. An appropriate level of profit per partner is a more likely attraction. Setting targets and matching reward to them will be a key challenge to manage.

## Partnership issues for the departing partner

The lateral hire will usually have to leave his or her existing partnership. This may raise several issues, because the exit may be greeted with hostility. Notice periods in US firms are generally very short, but in UK firms they may be anything between six months and nearly two years (the latter generally arises in firms which require a full year's notice expiring on an accounting year end). Garden leave may also be an issue if there is provision for it in the partnership agreement, though client pressure may sometimes be brought to bear.

Tactically, communications between the departing partner and his or her existing firm should be open and honest. It is important to strive to maintain good faith on both sides.

Restrictive covenants may be a problem outside the US (where the client has the right under the Sixth Amendment to the lawyer of his or her choice). Whether they are enforceable otherwise will generally depend on whether or not they are excessive. In practice, however, firms are usually careful these days not to overstep the mark and risk rendering covenants wholly unenforceable. They can be a powerful tool for negotiation and there may be room for compromise or negotiation in relation to specific clients or work types.

Covenants may prevent departing partners from soliciting staff as well as clients, and this can be a problem if the acquiring firm is seeking to acquire a team.

Above all, the departing partner needs to remember that duties of good faith to existing partners continue with full force. This may inhibit the provision of billing information to the new firm. Giving notice to clients has to be handled carefully, ideally by use of a mutually agreed form of notice. The acquiring firm would do well to avoid advising the lateral hire on partnership issues.

Lawyers traditionally have a close affinity to by 'their precedents' — a technical term for confidential documents generated for, and paid for by, previous clients of the firm, and not just those prepared by the individual partner.

Documents can escape more easily these days than ever before, and departing partners should remember their duties to their existing partners before resorting to misuse of email and portable data storage devices.

Departing partners will also need to consider the financial and taxation aspects of their exit.

## Recruitment procedures

Even the largest firms are surprisingly lax at carrying out normal recruitment due diligence, as was revealed by Legal Risk's *Top 100 UK Law Firm Professional Indemnity and Risk Management Survey* (reproduced in (2006) 5(4) *LPM* 52).

Key points to check include insurance claims record, practising certificate, CV, disciplinary record and references. In some jurisdictions (particularly England and Wales), the insurance implications of successor practice liability also need to be considered. Other insurance issues are dealt with separately below.

## The clients who follow — or not

Client following alone should not be the sole basis for selection. It may not happen for all sorts of reasons. Nobody can guarantee delivery of the goods, except perhaps a sole practitioner or small firm. Experience suggests that more often than not only a third of the fees promised will in fact follow. From the clients' point of view, the move may involve disruption they could do without.

The new clients may have an approach to business with which you are unfamiliar. For example, they may have different expectations on pricing and success-based remuneration. They may want you to share the risk through alternative pricing — but also want you to carry the ultimate risk of liability. Or they may want half a job for half the price without a corresponding reduction in the scope of duty.

Try to take up client references — a small proportion, perhaps one in six, may not be as glowing as the lateral hire expects. Inevitably, you may have to resort to less formal checks. Other members of your firm may have experience in dealing with the target, as

may other professionals with whom you deal. The trade press and legal directories can be a useful source of information, though firms tend to promote more media hype over the transactions and the associated bills than they do over the negligence claims which sometimes ensue.

New clients must go through your client engagement process, including money laundering checks.

## Insurance

Space permits only limited consideration of this issue.

As premiums are rated on matters such as fee income, work type, geography of the firm and the clients (particularly the US), and claims records of the firm and its partners, it means that any *anticipated* change in these dynamics needs to be cleared with insurers before you commit to the hire. Also bear in mind that they may already have previous experience of your target!

Ask the recruit for disclosure of claims and circumstances — and have it signed. Be suspicious of claims where the amount is 'not known' — often a euphemism for 'enormous'.

Remember that your insurers may choose not to cover the type of work or jurisdiction in which the firm is now involved.

Particularly where the firm is acquiring a team or even a whole firm, there will be real opportunities for strategic advantage and cost saving to be gained by taking advice on insurance issues.

Management liability policies may protect against action by the lateral hire's former firm — or even one's own partners who, in one case, were unimpressed by the lack of due diligence undertaken on recruitment.

## Integration

Too often, firms do little more than provide new partners with a secretary and a dictating machine, leaving them to get on with it. They need to be imbued with the culture of the firm and integrated into the team where they will work and into the firm as a whole. Mentoring can make an important contribution here.

Yet the integration process really starts before they arrive, indeed before

the deal is even agreed. If you want the new recruit to embrace aspects of your firm's practice, which for all you know may be wholly alien to them — file audit, sharing clients and passing work over to others being quite basic examples — they need to be told about them upfront and subscribe wholeheartedly to them. They may say it already happens in their existing firm, but we know only too well that even the best run firms say they have procedures which are not fully implemented.

If the lateral hire is to work in a branch office, the need for supervision becomes even more important. Claims records of many professional firms are littered with problems emanating from branch offices, including many of the largest liability claims. One leading American broker commented that a lateral hire in a branch office who was the only person doing that type of work carried a 100 per cent risk of a claim — and it is borne out by my experience.

## Conclusion

Organic growth provides cultural fit, creates loyalty through internal promotion and carries no surprises, but it is difficult in new practice areas and it is hard to develop new strengths. Lateral hiring can provide strength in depth and may bring an instant client base, but it may be at a cost and with a variety of risks which may be hard to fully assess, it may disillusion your existing staff, it may create a problem of cultural fit and, above all, you don't know their faults. Be prepared to allow three years for your investment to mature.

There is no substitute for due diligence, yet lawyers who specialise in advising clients on it have a poor record when acting for themselves, proving the old adage that the lawyer who acts for himself has a fool for a client. ●



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# dear duncan ...

Comment by Duncan Hart

## Learning the leverage game (the next test may be in Mumbai)

Law firms are often criticised unfairly for relying unduly on leverage to generate profits. Visions of Dickensian sweatshops haunt the popular press and the imaginations of young, would-be practitioners. Equally, senior partners are obsessed with improving their partner-to-lawyer ratio because they sense instinctively that such arrangements are more profitable.

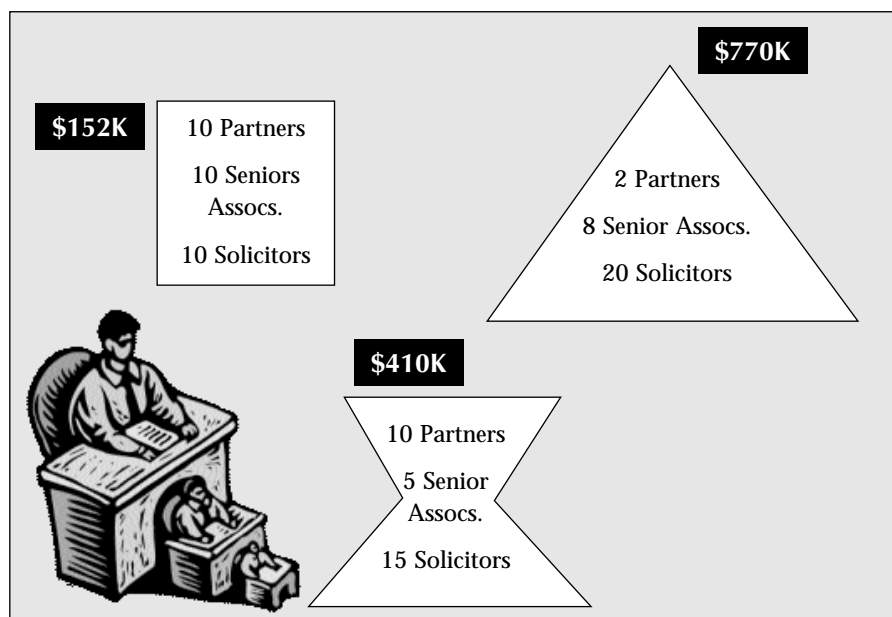
Leverage, however, offers much — not only to the firm but also to its clients and staff.

Firms need to focus acutely on what can be delegated and do it as effectively as possible. Experience in the US is showing how delegation is literally being forced on law firms by inhouse counsel. That is far from the worst of it, however, as companies are beginning to outsource their work to reduce the blended billing costs of their matters.

### Profit and size

There is no doubt that there is a direct correlation between law firm size and profit per partner. In a study conducted in Singapore entitled *Census of the Legal Industry 2001*, published in November 2003 by the Ministry of Law Singapore, the profit per partner in the larger firms (more than 30 lawyers) was about seven times as much as in the smaller firms (less than five lawyers). Scaled up to Australian law firm size, I suspect the figures are not too different.

Interestingly enough, in Australia the partner/lawyer ratio of the largest 30 firms, according to *Australian Legal Business* (ALB) 30, is 1:2.8, and that does not represent an average drawn from a widely diverse sample. Most firms are around that figure. There would undoubtedly be a paralegal



**Diagram 1:** Leverage benefits. Identical assumptions concerning hours, rates and so on have been made in each example.

component which is not counted in this figure, but this would not be large.

It appears to be counter-intuitive, but smaller firms have higher ratios on average — in my experience the ratio is much closer to 1:4. This is not surprising when the nature of their work is considered, but more about the work later.

## What are the benefits of leverage?

From a financial point of view, the benefits of spreading the infrastructure cost across more heads is clear, as is the benefit from having more employees whose margin performing the work is greater.

Per-partner profit changes dramatically as leverage increases when three different firms are compared in Diagram 1.

The comparative result from pursuing different policies with respect to leverage is perhaps best demonstrated in this diagram. Three firms with the same number of lawyers drive out very different profits per partner, depending on the extent of leverage.

## The 'perfect pyramid'

So why doesn't everyone structure their firm in the form of the pyramid firm in Diagram 1?

Most importantly, the ability to structure in that fashion is highly dependent on the:

- nature of the work the firm is doing; and
- partner's ability to manage such a structure.

These critical factors are often overlooked in the rush to build leverage. It is widely thought that only 'commodity' style work can be leveraged in the pyramid style, and thus the concept has little applicability elsewhere. This is simply not the case. Studies I have seen coming out of the US show that most partners should be able to delegate up to about 50 per cent of the work they commonly perform. This not only enables better leverage, it also gives the partner time to properly supervise the group and, importantly, to find additional work.

Again, my experience in the US

indicates inhouse counsel are dictating that for much of their work partners shall not bill more than, say, 20 per cent of the total fee for any matter. They are dictating the leverage! Their motive is to keep the bills to a minimum; but from the partner's perspective, unless they delegate ruthlessly they simply will not be able to maintain their hourly rates. It is not a discipline most of us would enjoy, but it is already a reality in some sectors in Australia.

The days of the 'Rumpole' style practitioner have all but passed. For any firm with more than a handful of lawyers, the question of leverage and the disciplines that go with it need to be squarely addressed.

Care must be taken, therefore, to carefully review the work the firm is doing and match the skills of the staff to what is required. In some cases the work will be required to be audited and broken down into a series of steps to ensure appropriate delegation. Again, such breakdowns are common in the US.

It is but a small step to see how arguments in favour of outsourcing are being made by companies — it is 'delegation by direction' to overseas practitioners where there is no chance of the local firm making any profit at all.

## Essential skills

The skills to delegate and supervise are therefore vital. They have the added value of reducing costs for clients and freeing up the partner to get more, and hopefully more complex, work. It gives junior solicitors a chance to do responsible work and quickly introduces them to the skills they need to develop to mentor and instruct their juniors in turn.

Many partners who do not benefit from leverage are often very reluctant to delegate 'their' work and are only

too aware that once delegated they are expected to head out to find more work. The latter is not always seen as an attractive option. Furthermore, many partners lack even the most basic mentoring and supervisory skills and even avoid becoming involved in hiring appropriate juniors.

Without appropriate leverage, therefore:

- partners are tied to their desks;
- clients are charged partner rates instead of a lower blended rate;

- lawyers are 'starved' of responsible work;
- lawyers get scant supervision;
- matters are handled inefficiently;
- new complex work is not sourced by partners;
- margins remain low and profits are depressed; and
- clients may react by constraining partner involvement or, worse still, outsourcing the work altogether.

The days of the 'Rumpole' style practitioner have all but passed. For any firm with more than a handful of lawyers, the question of leverage and the disciplines that go with it need to be squarely addressed. Leverage has much to offer clients, partners and practitioners alike if applied with appropriate skill. It is not so much a question of the size of the firm, but the nature of the work and the attitude and training of its practitioners. ●

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# Letter from London

COORDINATED BY

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## 'Business partners': delivering strategically aligned internal service excellence and enhanced performance in a climate of change

**Amanda Rose**

ADDLESHAW GODDARD

*In order to fully support the achievement of the firm's strategic agenda, the HR team at Addleshaw Goddard has worked with the business to ensure that the infrastructure areas of the firm are as well structured, developed and focused on the delivery of excellent client service as the fee earning areas. A comprehensive infrastructure review process commenced in early 2005 and a key element of this is the modular management development program for senior support managers which is centred around the development of business partnering skills.*

### **Context for the infrastructure review**

As a result of the firm's growth since the 2003 merger, it became evident that its infrastructure had to change and develop in order to deliver the higher and more sophisticated levels of support increasingly required by the evolving firm. The infrastructure review program was therefore instigated because it was recognised that optimising infrastructure performance was a key element in the achievement of the firm's growth agenda.

The infrastructure areas in Addleshaw Goddard include HR, learning and development, facilities, marketing and business development, IT, central operations, information

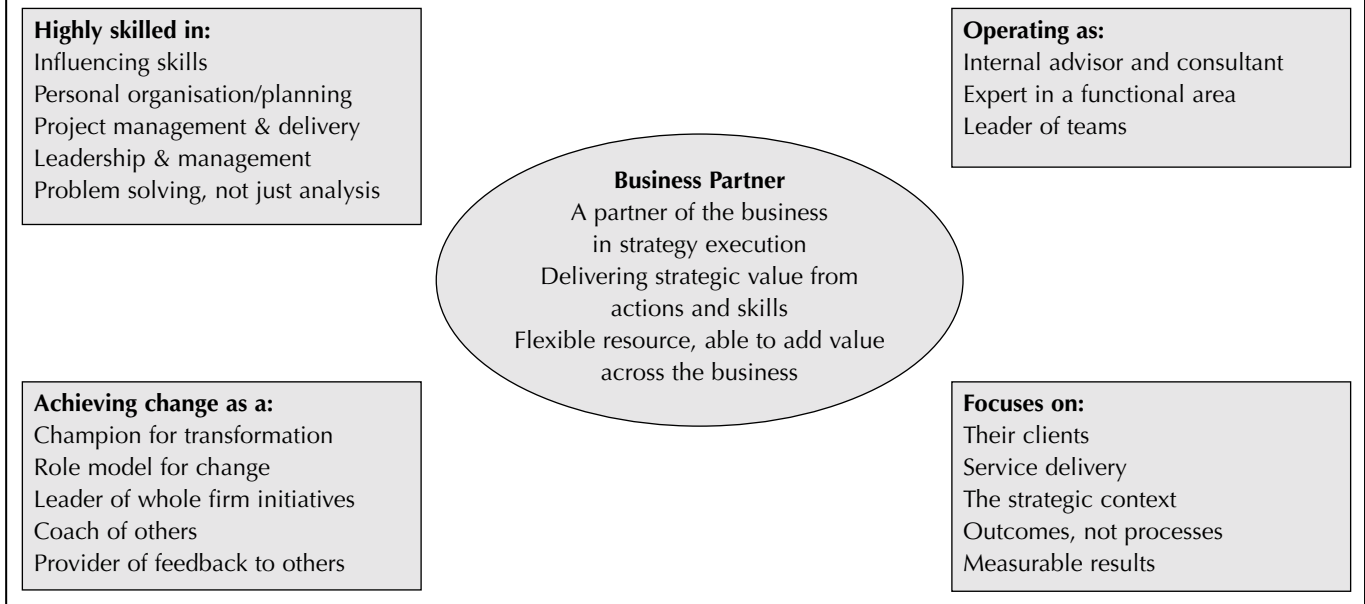
services and finance (collectively the business services directorates).

Feedback from new lateral hire partners and fee earner teams, and also our own external benchmarking data, provided information about the infrastructure changes that needed to be implemented.

In addition, the HR review team recognised (from anecdotal and performance review feedback, and also from data coming back from the firm's first opinion survey) that in some business services areas there was a difference in understanding between the directors and their management teams in terms of the new service delivery expectations and requirements, and also an intuitive understanding of how their roles should be supporting the business best. This resulted in the directors sometimes being sucked into too much of the day-to-day operational and transactional delivery and thereby having less time to focus on the strategic development of their functions.

The HR review team also felt that the senior managers (and also the managers and supervisors in their teams) would benefit from an enhanced awareness of their own preferred influencing, communication and learning styles, and ways to develop these in line with the strategic business needs. Some management

**Diagram 1: Qualities of a business partner**



tools and skills updating were also required to aid them in managing the performance of their teams more effectively. Most importantly, this group needed to clearly see why their roles/functions and technical expertise are important and add real value to the achievement of the business strategy.

**Objectives of the infrastructure review**

The infrastructure review commenced in early 2005. In working on the review, what has become apparent is the need for HR to sit alongside the business at all times and throughout all stages in order to be able to identify and address the people issues arising from the strategic need to effect change.

The objectives of the review process were:

- to significantly improve the level of client focus and service delivery capability of the support directorates; and
- for the directorate teams to be led smoothly through the change process required, and also for them to be able to accept and buy into the necessary developments in order to achieve the changes as quickly as possible and thereby support the business strategy.

It became apparent as the review progressed that we also needed to:

- enhance the management and leadership capabilities of the senior and middle management teams — as this group is critical to effecting the necessary changes within the operational teams and creating the required high-performance culture; and
- spend some time on teambuilding initiatives in order to support the management teams in bringing the directorates through the change process smoothly — as common goals and vision are essential, as is a sense of shared ownership and mutual support.

The infrastructure review plan for the directorates was developed with the following five key strands of activity:

- define excellent client service (the ‘vision’ for all areas);
- identify and rectify service gaps (structural review);
- develop existing staff and recruit new staff (management development program);
- launch support competency framework and key performance indicators (KPIs) (performance management); and
- launch and embed ‘the AG way’<sup>1</sup> (firm-wide supporting values program).

The focus for year one of the program was ‘to lay the foundation for the creation and acceptance of an environment of high performance,

continual growth, development and change that is aligned to the firm’s strategic aims’. Demonstrable service delivery improvement can only logically follow once the appropriate culture and values have been embedded and, importantly, the business has ‘the right people on the bus’ to effect the change. Another core aspect for year one, therefore, was to recruit some new management staff and to exit some others.

We also needed to work on changing some mindsets within the directorates, where there was a perceived inequality with the fee-earning part of the business and, in some cases, a lack of professional confidence resulting in little challenge or looking to add further value to what the business asked them to deliver.

**What is ‘business partnering’ at Addleshaw Goddard?**

A modular management development program for senior and middle managers within the directorates was developed with integral consultancy support from Portland International, and run for the first time. It was as a core element of this program that ‘business partnering’ within Addleshaw Goddard was launched. The management development program aims to support managers through the ongoing change process — extending their management skills, giving them

regular opportunities to network and share ideas, and providing them with a 'tool kit' and common language through which they can better support and lead their teams.

It also challenges managers to review their activities on a continual basis. Are they spending time on the right things — supporting the achievement of the business strategy — or are they drowning on the operational treadmill? Are they focused on improving their team's performance and capabilities — do they accept that this responsibility for people is a critical part of their role as a manager?

A business partner is:

- a true partner of the business in strategy execution who increasingly is able to derive strategic value from their skills and actions; and
- a fully flexible resource that is commercially aware, proactive and responsive towards change, and able to increasingly add value across the business irrespective of original technical specialism.

See Diagram 1 for a fuller definition.

The business partner module of the management development program starts by looking to improve participants' emotional intelligence, initially through a better knowledge of themselves (using the Thomas International DISC profiling methodology). Through understanding more of their own preferences in terms of working and communication styles, managers can then begin to spot others' styles and preferences more effectively. The basic premise is that through a better understanding of yourself you can better manage your relationships and interactions with others so as to remove some of the interpersonal barriers — thus freeing up people to focus more closely on the business activities that add real value and support the achievement of the strategy.

The business partner module is centred around extending and improving the participants' emotional intelligence. To expand on this:

- it aims to enhance their self-awareness and thereby self-management, social awareness and empathy;

- it helps them to define a stronger vision of themselves and how they would like to be; and
- they also gain an improved understanding of their development needs and preferred methods of learning — much of this comes from acquiring more feedback from others.

## Course structure

The overall format for the business partner development module was to increase delegates' knowledge of the business; to improve their management skills and resources; and for individuals to establish clear and strategically aligned action plans to work to. The core business partner module was 1.5 days in duration and was held off site — to avoid everyday distractions. All directorate senior managers were invited to attend and the attendee list for each module was deliberately multi-directorate to facilitate networking and the sharing of ideas.

In advance of the module, DISC profiling of all delegates is followed up by one-to-one feedback with a course tutor. This was done to raise self-knowledge and awareness. Following the feedback, delegates were asked to begin to construct personal action plans with initial objectives for their self-development.

- The managing partner 'opened' the core module, which delivered a clear explanation of the firm's strategy and how the directorate functions can best support and contribute to its achievement. The importance of the role the directorates have to play was also made clear, as was the value they can add if they are performing well.
- This was followed by an opportunity to ask questions, and then to reflect in groups on what it meant for them individually and as a senior management team. The aim here was to start to reduce the 'silo' mentality that can exist between different directorates and to start to derive more cross-functional and commercial benefit for the business.
- The skills areas covered in the first module include 'influencing' styles

and 'communication' styles — how to recognise the different types and then how to vary their own style in order to get the best out of their interpersonal work relationships and improve a team's operational performance. Some work was also done on introducing basic coaching skills.

- An overview of the skills concepts was introduced, followed by a discussion of these in practice, and then the opportunity to start to use them in group work — discussing real-life scenarios and coaching each other. The added value of this approach was that the participants had an opportunity to reflect, debate and share ideas.
- All participants were then asked to finalise their initial personal action plans and deliver a 'stump speech' to the rest of the group. These speeches had to outline the key messages and tools they were going to put into practice in the office, and what they were going to do differently in order to operate as a better business partner.
- The module was followed six weeks later by facilitated video conference sessions for all attendees (held over lunchtime). This provided the opportunity for the senior managers to report on their progress and share further ideas about how to continue to develop the business partner approach.
- Some further workshops on short skills development have also been run in order to keep extending the management 'tool kit' and to keep reinforcing the concepts. The first module was on 'situational leadership', followed by one on 'time mastery'.
- Further development modules are planned. The business partner philosophy will continue to underpin this important development program.

## Benefits to the business

Clearly, the introduction of business partnering to Addleshaw Goddard has been a fascinating journey and has provided the HR and learning and development (L&D) teams with an ideal opportunity to put the skills and

concepts into practice. But what about the benefits to the bottom line?

Have we achieved what we set out to achieve in terms of the original objectives for the infrastructure review? Have service delivery and client focus demonstrably improved? Is the business partner approach really helping us to achieve this?

The early indications and results are positive.

- The business partner concepts and the development program in general have been enthusiastically received with attendance on all the modules and follow-up sessions being good.
  - There is an appetite among senior managers to do things differently — to think about how they manage and spend their time. (Is everything they do clearly aligned to supporting the strategy?) This is evidenced from the follow-up sessions to the original business partner module and from some feedback from directors.
  - There is evidence of greater inter-directorate networking between senior managers in order to deliver enhanced processes and service to the business in a more 'joined up' and integrated way (for example, IT and facilities teams communicating more closely on projects that require input from both disciplines).
  - There is evidence of managers thinking more carefully about how they manage and lead their teams, and also of their putting some of the management tools covered within the development program into practice. There are some examples of improved influencing and communication skills being demonstrated, which is clearly positive.
- Measurable improvements to individual and team performance, and enhanced service delivery to the business, are clearly the acid test. This has not, as yet, been qualitatively tested — with the exception of anecdotal feedback which does indicate levels of improvement in several areas. The firm conducted its second firm-wide opinion survey in May 2006, and the results from this, together with some further specific

analysis, are eagerly awaited<sup>2</sup> in terms of what they will tell us about the full impact of the business partner program on directorate performance.

What is clear from our experience is that a high degree of focus on how best to lead, manage, develop and engage the infrastructure teams within an aspirational and continually changing business is essential if the required improvements to internal customer focus and service delivery levels are going to be met.

## HR as strategic business partners

HR and L&D worked as business partners on this project to facilitate a key organisational change linked to the strategy of the firm. This has led to an ongoing program of change that is focused on continual development of the capabilities of the directorates.

In doing this we learnt how to put into practice ourselves the core business partnering skills and concepts, and also some of the challenges in doing this consistently (most notably time) that the other directorate managers are also facing. We believe that this mutual learning process will provide clear benefits to HR, the directorates and the wider firm. ●



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## Endnotes

1. Addleshaw Goddard's (AG's) 'the AG way' is our firm-wide values program which is a key initiative for the firm. The firm's defined values govern and guide the way that we do things (required behaviours). Our performance management programs and reward systems all recognise and measure staff behaviours that support the AG way.

2. We are still awaiting the outputs from the second firm-wide opinion survey. These are due to be published and communicated across the firm in the third quarter.



## An effective partnership agreement

Graeme McFadyen TRILBY MISSO LAWYERS  
and Peter Lynch DCI LYNCON

That partnership agreements are important is now largely undisputed. Certainly, in our experience, this has translated into the vast majority of new firms having written agreements. However, while relatively standard templates combined with the default provisions of the *Partnership Act 1891* (Qld), as amended, provide a general legal safety net, there is no guarantee that they will properly capture the idiosyncrasies and intentions of each individual arrangement. The imperative of agreements is largely generated by the changing nature of professional practice. The default model of *decisions by consensus* may well have been appropriate in a time when partnerships were relatively small, when the relationships between partners were strongly established at a personal level and when the practice's commercial goals were often not as prominent as the simple professional desire to do good work and provide a service to the community for reasonable reward.

Today, particularly in large partnerships, it is highly likely that the principal bonds that link partners are a shared acceptance of required return-on-investment and other commercial imperatives, combined with a similar shared acceptance of appropriate professional standards. High levels of collegiality and the personal intimacy of older styled practices are more likely to be a bonus than a minimum condition. Moreover, partnerships inevitably take on the characteristics of marriage — notwithstanding the sincerity of original intentions, partners change, as do their personal needs and behaviours over time, often in ways that are not even on the radar screen at the point of formation. These potential

changes, combined with the legendary autonomy-seeking behaviour of professionals, create major challenges for managing partners. Accordingly, good partnership agreements need to be paralleled by good leadership. An agreement will not displace the need for leadership but it should provide a good indication of the partnership attitudes in terms of the values of the practice, the behaviour and performance expected of partners and the consequences of non-compliance.<sup>1</sup> These issues can cause significant angst. Their inclusion in the agreement can legitimise a managing partner's or executive committee's application of appropriate rules and sanctions at a time when they are under pressure responding to specific partnership tensions. Effectively, the partnership agreement needs to define the commitment of the partners to the practice and to each other. The rules must be clear. They should cover, as a minimum, the following areas:

- a succinct statement as to the agreed values of the firm;
- a statement of obligations of partners, including an explicit commitment to partnership values;
- details of the partnership management structure and authority of managing partner or executive committee;
- conditions of admission of new partners;
- conditions of retirement of partners;
- provisions for dealing with breaches of partnership agreement and recalcitrant behaviour;
- performance criteria for partners;
- performance assessment procedures;
- consequences of non-performance;
- partnership capital;
- compensation structure;

- definition of partnership profits for the purposes of compensation;
- rules regarding meetings;
- dispute resolution process;
- partnership agreement amendment provisions; and
- matters falling under general and special resolutions and related voting rules.

We now examine some of the more important areas of partnership agreements. We concentrate our comments on the broader issues rather than on procedural ones, in particular focusing on the linkage between agreement provisions and actual behaviour.

## Vision and values

The partnership agreement should articulate the partnership vision and values. Unfortunately, most do not. This is a legacy of a historically narrow, legalistic approach to drafting. Vision and values represent the philosophical glue that binds a team together. They provide better guidance in the interpretation of behaviours, because it is almost impossible for any set of rules to anticipate all the specific behaviours that might arise. Partners must work together for common goals over long periods of time. It is critical that they substantially share a view as to where and how the firm should operate. Vision and values are reflected in the:

- philosophy of the firm;
- quality of leadership;
- quality of staff recruited;
- investment in staff training;
- interaction between partners, staff and clients;
- powerful client orientation; and
- ethical behaviour of partners and staff.

Congruent vision and values require an alignment of personal and organisational modes of behaviour. The firm is its individuals and vice versa.

Vision is largely about strategy. It identifies the areas of practice where the firm will or will not practice and the types of clients it proposes to service. It also addresses the style of the firm and the quality of staff required to satisfy the vision.

Values are the more personal aspects of a practice. They define the attitudes

and beliefs of a firm. In our view, agreed values are so overwhelmingly important to the long-term health of the firm that invitations to join the partnership should only be extended to those whose personal values are closely aligned to the firm's values — regardless of how well the potential invitee may perform on one dimension, such as billing capacity.

## Partner behaviour

There is significant literature on the autonomy-seeking behaviour of professionals and many of its unsavoury consequences. In terms of basic human behaviour and treatment of others, professional roles can bring out the very best and the very worst. McKenna and Maister argue that it is necessary to have a standard of behaviour that all partners must observe. 'It can be very disruptive to your entire group when one person is being difficult. Indulging that individual can diminish standards and foster resentment.'<sup>2</sup> Partners, by virtue of their authority in a firm, must be held more accountable than other staff lest their behaviour add legitimacy to undesirable practices. At the highest levels, there must be zero tolerance of aberrant behaviour. In our view, every partnership agreement needs a provision in which a partner's tenure can be terminated by a special resolution of the partners where that partner's behaviour is deemed inconsistent with partnership values. But such provisions are useless unless, having set their standards of behaviour, the partnership collectively has the courage to demand that those standards are upheld. Behaviours and outcomes that should sound alarm bells, either individually or collectively, include:

- persistently high staff turnover in one practice area;
- treating staff instrumentally;
- a reluctance to participate in whole-of-firm initiatives, whether CLE, social functions or simple issues like agreed presentation standards;
- a permanently closed office door;
- poor delegation practices;
- a marked tendency to assess all firm business proposals in terms of 'How does it affect me?';

- an assertiveness tantamount to bullying; and
- a reluctance to learn new skills (sometimes evidenced by poor computer literacy).

In our view, agreed values (not just lip service after the annual retreat) and a willingness to monitor partner behaviour are likely to generate genuinely transparent, internally accountable and civilised firms — and as a consequence these are likely to convert into external reputation benefits.

## Partnership capital

Two alternative approaches have developed in the capitalisation of practices. Traditionally, partners have purchased their partnership entitlements with their capital contribution distributed to existing partners and with all partners entitled to a proportion of net partnership assets. This traditional approach has the disadvantage of being (1) messy in that partnership valuations are required whenever a partner is admitted or a merger is contemplated; and (2) inflexible in that it does not contemplate the termination of capital partners or variable partner compensation schemes. We acknowledge that performance monitoring, compensation schemes and termination processes should be discrete provisions of the partnership agreement exclusive of capital, but also that such provisions are philosophically inconsistent with the notion of partners having a permanent and predictable share of the firm.

A relatively recent development is the 'fixed goodwill or no goodwill' approach in which partners contribute a working capital loan to the practice, and nothing more. No partner has an explicit entitlement to any proportion of the assets of the practice. On retirement or resignation, the working capital loan is repaid and the relationship between firm and partner is over. The argument is that the profits of the firm are optimised and distributed in full each year, and so each partner has a direct interest in maximising each year's performance. At the same time, voting patterns on major expenditure issues important to

the firm as a whole are less likely to be skewed by people nearing retirement and wishing to maximise cash at exit.

While this approach has much to commend it, it is really only suitable for relatively large firms where the momentum of the firm as a whole is significantly stronger than the influences of individuals or small groups of partners. Smaller practices obviously favour capital payments to existing partners as a reward for their practice development endeavours over many years. Indeed, long-established and *founding* partners often view their eventual sale of their shares as an integral part of retirement financial planning. Rationalisation of both capital schemes and entitlements to partnership assets has been complicating factors in the push towards national integration of partnerships which started some years ago.

## Compensation scheme

Historically, partner compensation has taken one of two paths, varying directly in proportion to the percentage of capital held or following a lock-step model in which partners' rewards are largely to be a function of seniority, sometimes embellished with a bonus top-up scheme. In recent years, with the tight focus on firm profitability, the compensation schemes have tended to follow suit. In 2003, of the top 20 national law firms, only six were found to retain a traditional lock-step remuneration scheme with no performance component.<sup>3</sup> Supporters of the lock-step arrangements argue that such systems promote equality, loyalty and the firm's long-term health rather than the individual. Performance supporters argue in favour of the need to anchor star performers and to retain flexibility in reward distribution to keep all partners focused on financial outcomes. Lock-step and performance-based remuneration can exist in parallel.

George Beaton of Beaton Consulting, a Melbourne-based professional services consultancy, argues that the remuneration system adopted really does not matter too much: 'The most important thing under either system is that the firm has the social contract

with its partners right. The rules are clear, they know what the firm expects of them and the value system is explicit and actively managed. The real danger is where cabals of partners run the system for their own advantage.'<sup>4</sup>

Although many firms these days purport to measure partner performance across a range of criteria which may include the 'soft touchy-feely stuff' like collegiate behaviour, staff empathy, participation in internal training programs and firm values promotion, it is our experience that financial performance still accounts for at least 90 per cent of compensation schemes.

It is important that you measure what you honour and pay due regard to values in compensation determination processes. In all of this, the drafting of the partnership agreement needs to run a fine line between being sufficiently general so as to capture the intentions of the partners, but not so specific so as to hamstring attempts to introduce productive variations of partner assessment and reward schemes. This is usually achieved through a combination of the agreement per se, and policies arising. Not surprisingly, nothing has quite the same capacity to arouse partner passions as compensation schemes and any suggestion to alter them.

## Entry, exit, special resolutions and delegated powers

It is highly desirable that the agreement draw a distinction between matters of major importance requiring special resolution of a clear majority of the partners (say, 70 or 80 per cent), and those of an operating nature which either can be delegated to a managing partner or decided by simple majority.

Issues involving the direction of the firm, major capital expenditure or partner entry have a capacity to divide the firm into factions if decided on a simple majority. Those factions can endure, creating an unhealthy practice environment. Firms originally formed following the 'decisions by consensus' approach, and later seeking to amend their agreement to provide for a more performance-based environment, often

have difficulty with this. An approach of 'we all agree or we do nothing' can provide reassurance to poorer performing partners. The problem is that it can also institutionalise under-achievement and non-accountability.

Termination of partners is never easy. Many of the larger firms cover admission of new partners by special resolution but termination by the firm's elected board or management committee as a counterbalance against the natural inclination of partners to treat friends and colleagues as 'special cases'. Where delegated powers exist, it is essential that the partnership at large has the character (assisted usually by the senior partner or chair) to support those delegated decisions. At the same time, agreements should provide the machinery for the partners to vote periodically on the delegates, where their past performances will be brought to account.

These are not simple issues though, and even with a well-drafted agreement, firms can still choose through their voting patterns to refuse to accept delegated authority. These are the times when natural leaders rise to the top, and the firm gives thanks for the special powers which allow it to alter the partner membership.

### Conclusion

Clearly, we have only scratched the surface, and in an article allegedly about partnership agreements we seem to have focused more on vision, values and partner behaviour than anything else. This is because other than in relatively sophisticated firms, these issues appear to be not on the agenda. The partnership agreement is approached legalistically without an obvious linkage between it and where the firm wants to go. It becomes a vehicle for not much more than preservation of rights in dissolution.

In summary, a partnership agreement provides an important framework which, if properly constructed, can go well beyond sorting out claims in a dissolution. It can legitimise the way the firm chooses to govern itself, and how the firm governs itself will reflect in both staff and client perceptions. It will never fully substitute for elements of leadership, but it should certainly spell out the rules and make otherwise difficult decision-making considerably easier. But then, as some of the better operators in the profession will attest, 'it never really gets any easier'! ●



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### Endnotes

1. In most cases, the arguments in this article relate equally to partnerships and to incorporated legal practices now permitted under the *Legal Profession Act 2003* (Qld). By way of example, in consulting engineering and architectural practices where incorporation is a well-established part of the operating landscape, the professional management issues and related tensions remain very similar to those found in conventional professional partnerships.

2. See McKenna P J and Maister D H *First Among Equals* Free Press, New York 2002.

3. Schmidt L 'Law in the partner jungle' *Business Review Weekly* 25 September 2003 pp 35-41.

4. Above p 40.

## INSIGHTS FROM ALPMA CONTINUED

# How to handle a difficult conversation

Candy Tymson CSP

How many times have you found yourself in the situation where you knew you should talk to someone about something they did that annoyed you — but your concern about how they may react stopped you from speaking up?

You know that if you try to avoid the issue there's a good chance you'll feel frustrated. On the other hand, if you do confront them, will it turn into a major argument? Will your intentions be misunderstood?

It's a common problem and a difficult one to handle. That's why I was so delighted to read a book by Douglas Stone, Bruce Patton and Sheila Heen of the Harvard

Negotiation Project team called *Difficult Conversations — How to Discuss What Matters Most* (Viking 1999).

According to the authors, 'delivering a difficult message is like throwing a hand grenade. Coated with sugar, thrown hard or soft, a hand grenade is still going to do damage. But choosing not to deliver a difficult message is like hanging on to a hand grenade once you've pulled the pin'

### More than meets the ear

The secret to being successful in handling difficult conversations is understanding that there is a lot more to the conversation than what is being

said — we need to consider what the other person is thinking and feeling, but not actually saying, to get to the root of the problem.

Difficult conversations are usually about conflicting perceptions, interpretations and values, *not* what is being said. They do not just involve feelings, they are about feelings.

So rather than focusing on wanting to persuade and get your own way:

- understand what has happened from the other person's point of view;
- explain your point of view;
- share and understand feelings; and

- work together to come up with a way to move the problem forward.

This approach makes it more likely that the other person will be open to being persuaded, and that you will learn something that changes the way you understand the problem. The Harvard team refers to this approach as a 'learning conversation'.

### Learning conversations

The Harvard team says that: 'In difficult conversations, too often we trade only conclusions back and forth, without stepping down to where most of the real action is: the information and interpretations that lead each of us to see the world as we do.'

What is typical during a difficult conversation is that we assume the collision is because of how the other person is; while they assume it's because of how we are! But the collision is really a result of our 'stories' simply being different, with neither of us realising it.

The first mistake we often make during difficult conversations is to assume we know the other person's intentions. The only problem is, these assumptions are often wrong.

This is a common communication problem in relationships where you know the person well. Often there is a tendency to believe you already know what they are going to say. In other words, you assume you know where they are coming from based on previous encounters.

By focusing on understanding where the other person is really coming from (before you assume you know that you are right and they are wrong), difficult conversations will no longer be as difficult.

## Words that work

How often have you been put-off by something that someone said to you? It may have made you decide not to buy from that person, or perhaps you were left feeling insulted or put down.

Using the correct words can play a major role in building rapport with your customers or clients, fellow team members or business associates.

### Persuasive words

If you're the type who is driven by results and success, then the words 'results' and 'success' will really work for you. If, however, you need to see evidence that a product or service is for you, then words like 'results' and 'save' may seem superficial, while 'guaranteed' and 'proven' will make you feel more comfortable.

The key is simply to establish what is important to the person you are negotiating with and focus on it (not what you think they want).

How often are we guilty of giving our team members or customers what we think they need, rather than finding out what they actually want?

### Avoiding conflict

Another powerful communication skill is the ability to give your opinion without causing conflict or appearing to put others down — again, this is a simple technique once you know how to use it.

When someone says something like 'I agree, *but* ...', the message you get as soon as you hear 'but' is 'You're wrong' (and usually you are left feeling frustrated and negated).

Rather than negating what the other person has said (as the word 'but' certainly does), use the word 'and' to link what they have said to express your point of view. For example, 'I appreciate what you're saying and ...', or 'That's a good point and ...'. This is an effective way to express an opinion without creating resistance or conflict.

By being more aware of the words that you use you can build rapport with the other person, acknowledging their point of view and creating an environment of mutual respect. ●



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# Devouring feedback

Karen MacKay EDGE INTERNATIONAL

In our recent research we asked associates and partners a number of questions about feedback. Associates told us that feedback that is informal, oral and timely helps them develop most as professionals. This seems simple enough — but not quite.

Partners tell me that associates don't really want feedback — they want to be stroked. They also tell me that when they want to give constructive feedback they don't feel confident in these types of conversations and they struggle with associates who get defensive.

My previous article ((2006) 5(8) *LPM* 115) was about giving feedback. This article is about receiving it, being open to it — indeed devouring it. Why? Because your skills are the things that will secure your future and the best way to build skill is to take full advantage of the experience and wisdom of those with whom you work. Lawyers learn before the job, in the job, on the job and sometimes in spite of the job, so take every advantage to learn from those around you.

## Suggestions for receiving feedback

Here are my top 10 suggestions for devouring feedback.

### *Seek it out*

Ask for feedback from those with whom you work. You are giving a signal that you are open to information and open to their feedback, and that it is important to you. You are also saying that you value the opinion of those you admire.

### *Listen carefully*

Listen actively and carefully to the information being shared. Make good eye contact, ask for examples to clarify things you don't understand and take a genuine interest in the information being shared.

### *Manage your emotions*

Sometimes, informal, oral and timely feedback also comes with a healthy

dose of emotion (even anger).

Sometimes the best pearls of wisdom happen in the heat of the moment, if you have the courage and the composure to listen. Breathe, remain calm, make good eye contact and listen. (This does not mean that abuse should be tolerated.) The best feedback might come in the middle of a transaction when something has been screwed up. You and your colleagues might be in a situation that looks a bit like a fire station during a three-alarm blaze — there is no time for the niceties, but there is still time for mutual respect.

### *Remain open and engaged*

In order to learn from feedback you have to be open to it. When you are open you listen without interrupting;

There is nothing worse than passing on the blame ... but if you are on the receiving end of some serious feedback, own it.

you ask questions to clarify and are sincere in your questions.

### *Don't react immediately*

Give yourself some time to digest the information. If the colleague asks for a reaction, you might say something like: 'You have shared a lot of information and I need a little time to respond. I'll have a much better response if I can come back to you in a few minutes. In the meantime I'll get onto fixing ...'

### *Validate*

If you can understand the perspective of your colleague at the outset, say so: 'I can understand your perspective ...' Acknowledging the other person's emotional state and validating their perspective will defuse the situation.

### *Ask good questions*

Giving and receiving feedback is a collaborative process. Ask for suggestions so that you can improve the current situation, but also learn

from it. For example, ask: 'How would you have done this differently?' 'I'm here to learn and I don't want to fall into this hole again ... can we talk after we get through this so I can learn from this situation?'

### *Focus on the issue*

The feedback may be on a substantive issue — something that you got wrong or something that you missed in your research or drafting. Alternatively, the feedback may be behavioural.

### *Own it*

There is nothing worse than passing on the blame: 'My secretary screwed up ...' or 'The student let us down...'. The buck stops with you. Yes, it really stops with the partner, but if you are on the receiving end of some serious feedback,

own it. If it was not your mistake it will likely find its rightful owner in the future, but passing on the blame in the heat of the moment is simply not on.

### *Say thank you*

As noted in my previous article, when partners lose confidence in you the work dries up — they stop making eye contact and it's over. So acknowledge the feedback and say thanks. Ask more questions, show confidence and do everything in your power to learn from the experience. More importantly, thank them for taking the time to draw the issue to your attention.

You say you want feedback. Show that you have the maturity to accept it, learn from it and take action on it. ●



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## calendar

### The Australian Legal Practice Management Association (NSW)

#### 2006 Annual Partners' Luncheon

*Teambuilding – Rugby or law, it's all the same*

**Speaker: Mr Nick Farr-Jones**

This event presents members with the opportunity to showcase to the partners of their firm their own involvement with the industry's peak body for law firm managers. Our guest speaker this year is Nick Farr-Jones, celebrated former rugby player and captain representing Australia and now lawyer. Farr-Jones is a natural leader whose ability to motivate was clearly demonstrated in the Wallabies' proven success record.

*Friday, 13 October 2006,*

*12.30 for 1.00 pm*

*Tattersalls Club*

*181 Elizabeth Street, Sydney*

*For more details, visit*

*<[www.alpma.com.au](http://www.alpma.com.au)> or email Renee Kovalskis at <[alpma@primus.com.au](mailto:alpma@primus.com.au)>.*

#### Depression is currently the leading cause of non-fatal disability in Australia

On Friday, 13 October, we're asking all Australian law firms to 'Wear Blue for Mental Health'. Last year, ALPMA assisted by donating almost \$3000 to *beyondblue*. We believe in this worthy cause and are committed to tackling this debilitating illness.

#### *beyondblue's five priorities*

1. Increasing community awareness of depression, anxiety and related substance-misuse disorders and addressing associated stigma.
2. Providing people living with depression and their carers with information on the illness and effective treatment options, and promoting their needs and experiences with policy makers and health-care service providers.
3. Developing depression prevention and early intervention programs.
4. Improving training and support for GPs and other health-care professionals on depression.
5. Initiating and supporting depression-related research.

#### *Interested in helping?*

##### *Want to know how?*

- Email Kerrie Billings at <[k.billings@alpma.com.au](mailto:k.billings@alpma.com.au)> and advise the quantity of blue wristbands you require for distribution in your law firm.
- Download a colour poster from <[www.alpma.com.au/whats\\_new.html](http://www.alpma.com.au/whats_new.html)> and place on your bulletin boards and intranets.
- Promote 'Wear Blue' on Friday, 13 October.
- Our priority is awareness, but our aim is to make a significant donation to this worthy cause. Please encourage your colleagues to make a donation on the day. Contact Kerrie at 03 9432 0335 for direct deposit details. ●

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# practice



## DEVELOPMENT COUNSEL

Linda Julian JULIAN MIDWINTER & ASSOCIATES PTY LTD

### Listening for those unspoken questions

Many professionals are good listeners. Some are not. Just about every lawyer or other professional would do well to hone their listening skills, and to listen ultra-carefully for all those important — but unspoken — questions.

Nearly everyone likes a good listener. In the professional services arena, clients want more than listening — they want action — but careful listening is a great start.

#### Suggestions for honing your listening skills

Here are a few pointers to help you hone your listening skills and leverage the benefits which can follow.

##### Hearing

If you're in even the slightest doubt, get your hearing checked out. Don't expect to be a great listener unless you can hear well.

Beyond the age of 40, most of us have some measure of hearing loss, sufficient to diminish our ability to hear well within normal conversation ranges.

So, if you do have hearing loss, either become adept at compensating, or if it's significant loss, get some help from today's great technology. Let's be clear, it's far better to be pigeonholed as someone needing hearing help than as someone who just doesn't get the message!

##### Mindset

Good listening depends on a mindset of truly wanting to listen to another's story, opinion or experience.

Many professionals have been too strongly acculturated to spend any silent time preparing the next argument, piece of information or advice to be superb listeners.

##### Mood

Patience is integral to good listening. Allow time for the full story to be told.

That may mean resisting the temptation to interrupt.

Calm acceptance that stories take time, and that storytellers may 'wander' around a subject is a good first step.

If there isn't time to really listen, consider rescheduling the conversation for a time when there is.

##### Mirroring and pacing

A good listener will mirror — to a reasonable extent — the posture and body language of the storyteller. This increases personal rapport and comfort in the listening process.

Extreme mirroring won't help — be careful not to caricature or parody by crassly copying the exact gestures or poses you see across the table.

An effective listener will also carefully 'pace' a conversation to manage emotion and energy levels. Picking up the pace to 'energise' a storyteller often proves effective.

##### Probing

Gently asking questions which probe out more information signals your understanding, comprehension and acceptance of the listener's story. This is a technique worth refining.

##### Support and rapport

Gentle nods indicating that you are listening and focusing, small interjections in agreement (like 'yes, I see') will help you support their storytelling and confirm that you are actively listening.

##### Note making

In business settings, note making is a useful way of indicating that you are truly listening, concentrating and doing your best to understand.

Plus, note making will help you recall what you've heard!

##### Summarising

Retaining and summarising confirms you've listened and heard.

By honing your listening skills, you'll go a long way to developing trust, instilling confidence and confirming yourself as the right choice expert.

##### Unspoken questions

Before a client selects a new lawyer or other expert professional, they need answers to several questions.

While it might be easier if these questions were clearly articulated, you'll score high marks for anticipation by dealing effectively with 'unspoken questions'.

#### Questions on the minds of prospective clients

From our research, here are the general questions which almost every prospective client has on their mind.

- Do you really know about the field in which I need help?
- Are you the right lawyer to work with me and my team?
- Will you give my work the attention I want?
- Is your firm good to deal with — reliable, stable, safe and reputable?
- Will my reputation be enhanced (or might it be damaged) by dealing with you?
- Will you do my work at a price I can afford?
- Will I get value for the money I spend with you?
- Will you be easy and comfortable for me to deal with?

For each new client, take a few minutes to work through these unspoken questions until your answers are short, clear and truly persuasive.

Then, listen ultra-carefully for the answers. ●



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# Risk management in the legal profession: does the UK experience translate well to the Australian scene?

Ronwyn North

STREETON CONSULTING PTY LTD

There are very few books devoted to managing risk in the law firm context, so the UK publication *Risk Management in the Legal Profession* is a welcome addition to the practice management literature.

The book is a collection of articles on various aspects of managing the risks facing today's firms.

The first five chapters are contributed by lead author Frank Maher, whose law firm specialises in professional indemnity and risk management for the legal profession. The remaining 10 chapters are so-called 'master classes' and case studies contributed by risk partners and directors of leading UK firms.

While the large regional firms (50-plus partners) may not be known to local readers, some firms, such as Clifford Chance and CMS Cameron McKenna, are well known. Two chapters are contributed by DLA Piper Rudnick Gray Cary — a UK-US firm which now has Australian connections to Phillips Fox.

The position titles of the contributing authors signal the importance of dedicated risk roles in their firms — director of risk, partnership secretary, risk partner and best practice partner. Such roles continue to develop, and since the book was written DLA Piper's UK director of risk now uses the title of chief risk officer.

Indeed, the case for firms to take risk management more seriously is well presented. The central message is that risk management has come of age and has emerged as a field of management in its own right.

This material is a good orientation for people new to law firm risk management. While it may not be new to the old hands who have been

practising risk management for years as part of 'good management', they may find it a handy resource for converting others to the cause and raising the profile of risk management in their firms.

The 'Why manage risk?' and 'Risk framework' material is complemented by chapters on specific risks, such as people risk, client risk, business continuity, e-business risk and risk culture.

Most risks know no geographic boundaries, so much of the content is directly relevant to the Australian scene.

A couple of chapters cover quality and compliance processes. One of these is by Giles Watson, Lexcel Manager for the Law Society of England and Wales who is currently on assignment 'down under' with the Queensland Law Society.

Most risks know no geographic boundaries, so much of the content is directly relevant to the Australian scene. However, it must be said that some content is UK specific, such as references to UK professional conduct rules, cases about solicitors' duties, indemnity insurance arrangements and limited liability partnerships.

Personally, I found the UK content both reassuring and interesting — reassuring because of how well the best Australian firms compare with what their UK counterparts are doing to manage risk; and interesting because of the issues that local firms may well face in the near future, such as compliance with anti-money laundering regulations. That said, another reader with whom I compared notes found the UK content distracting and wished for more local guidance.

However, the book does not pretend to cover all risks, nor to be a 'how to'

manual. For that kind of guidance you need to look elsewhere. If you want a book, then an Australian resource about the causes of professional negligence claims is *Managing Client Expectations and Professional Risk*, co authored by myself and Peter North (\$25 from Streeton Consulting), and an American resource that is checklist oriented is *Risk Management Survival Tools for Law Firms* by Anthony E Davis, published by

the American Bar Association (US\$79.95 via <[www.abanet.org](http://www.abanet.org)>).

If you are willing to do your own leg work, then the internet might be the place to go. An interesting snippet of information from *Risk Management in the Legal Profession* is that five years ago a Google search of 'law firm risk management' produced fewer than 200,000 results, but it now returns more than four million!

*Risk Management in the Legal Profession* comes with the price tag of A\$490. However, if you don't want to waste time trawling through four million internet items, or if you had the chance you would happily pay a consultation fee to chat with leading risk managers, then the price may well be worthwhile. It is published by the ARK Group: contact <[lsully@ark-group.com](mailto:lsully@ark-group.com)>.

Safe practice! ●



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**Alston A** 'Lawyers and doctors entitlement to breach confidentiality' (2006) 9 *Flinders Journal of Law Reform* 63–77. Examines the occasions where both doctors and lawyers may make exceptions to their duty of confidentiality.

**Bagaric M** 'The Victorian Bill of Rights — a culture of randomness' (2006) Issue 304 *Lawyers Weekly* 19. Argues that a Victorian bill of rights would have dire consequences.

**Bennett S** 'Corporate duties below board level' (2006) Issue 304 *Lawyers Weekly* 20–21. The 'Corporate duties below board level' report provides a chance for corporations to consider what their indemnities and directors and officers (D&O) insurance policies actually cover.

**Blyth A** 'Making people count' (2006) Issue 295 *Lawyers Weekly* 24–25. Notes the first UK law firm to produce a people report and how the firm has benefited.

**Boxsell A** 'Adventures in PLT' (2006) Issue 300 *Lawyers Weekly* 32–33. Reveals that for many law students practical legal training may be the last great academic hurdle prior to career success; but for others the experience may drive them further away from the law.

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**Burton A** 'Flexible working' (2006) Issue 295 *Lawyers Weekly* 33. Mentions various stretches you can do at your desk to alleviate all that tightness and tension.

**Clarke A** 'Claims against professionals: negligence, dishonesty and fraud' (2006) 22 *Tottel's Journal of Professional Negligence* 70–85. Focuses on the nature of dishonest knowing assistance in the breach of trust.

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**Gibbs K** 'The ugly face of gender inequity' (2006) Issue 305 *Lawyers Weekly* 13. Acknowledges that few women have speaking parts in the courts, according to the *Gender Appearance Survey 2006*.

**Gibbs K** 'Firm's own superhero' (2006) Issue 305 *Lawyers Weekly* 33. Notes a lawyer with a superhuman memory and his claim that with practice anyone can do it.

**Girgis M** 'Critical mass needed for financial services' (2006) Issue 303 *Lawyers Weekly* 16–17. Argues that consolidation in the superannuation industry requires increased specialisation in the legal teams that service it.

**Harpley K** 'Greater expectations' (2006) Issue 295 *Lawyers Weekly* 19–21. Notes the growth of inhouse legal departments and whether law firms are living up to heightened expectations.

**Harpley K** 'An Australian in Shanghai' (2006) Issue 300 *Lawyers Weekly* 13. Profiles an Australian lawyer now working in Shanghai.

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**Hudson A** 'The free trade challenge for Australian lawyers' (2006) Issue 304 *Lawyers Weekly* 29. Notes the role of lawyers in the aftermath of the collapse of the Doha Round of the World Trade Organization.

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**Levine J** 'Staying Australian in New York' (2006) Issue 303 *Lawyers Weekly* 33. Explains why there is much to savour in work and play in the city that never sleeps.

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**Moran S** 'Survey shows gender gap alive and well' *Australian Financial Review* 18 August 2006 p 57. Announcing the results from a national survey, women are significantly under-represented when it comes to appearing in courts across Australia.

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**Priest M** 'Family Court under threat' *Australian Financial Review* 11 August 2006 p 62. Reveals the Family Court may be reduced to a small number of judges hearing mostly appeals and complex cases, as family lawyers go to the Federal Magistrates Court to start proceedings.

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**Priest M** 'Resourceful approach wins in long term' *Australian Financial Review* 18 August 2006 p 59. Outlines the strategy a Brisbane firm used to emerge from crisis.

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**Schmidt L** 'Salaried senior bulge hinders juniors' *Australian Financial Review* 11 August 2006 p 62. Reveals the trend in both the US and Australia of the appointment of salaried partners, general counsel and other senior non-equity roles instead of equity partners.

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- **Burger E S and Langford C M** 'The future of legal ethics: some potential effects of globalization and technological change on law practice management in the 21st century'
- **Lee R** 'Nineteenth century visions of a twenty-first century bar: were Dickens's *Expectations* for lawyers too *Great?*'

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