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# KMS ProfitPower Tips for Lawyers™



Issue 33...January 2008

**Increase Your Profit Results Dramatically! Reading Time... only 8 minutes**

## Robservations

Welcome to the January 2008 edition of "KMS ProfitPower Tips for Lawyers"... Issue 33

I trust that you enjoy the read, and find it both thought-provoking and useful to you in your practice. Please feel free to e-mail me any feedback by clicking this link...

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The advent of a larger number of incorporated practices in Australia has brought with it a flurry of organisations seeking to expand by aggregating suitable firms across Australia. Many readers will already have been approached, and a similar pattern will appear in New Zealand once the similar window of opportunity is opened.

I thought it timely to consider some of the potential benefits of selling your firm to a law firm "aggregator". Some of the potential downsides will be considered in a later issue.

- An additional option, and probably smoother process, for extracting some of your capital...allowing you to invest it in something with a better return. The degree to which this is the case will depend on the particular model the aggregator is using...some will free no capital at all up front...simply giving you shares and other rights in the organisation.

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- Superannuation is particularly tax-effective and even more attractive now in Australia than previously, and effectively having a large lump of your "superannuation" tied up in your practice is no longer considered a great option, with difficulties often in demonstrating full value to buyers, difficulty extracting your capital in a timely manner, and generally lower and less tax-effective returns. Getting some of your capital out now, and putting it into Super, while continuing to work hard in the new business to build the value of your initial shares,

may be part of the attraction of selling your firm into a larger aggregation of firms in a corporate structure.

- Better opportunities for building of the size of your investment further if you are so inclined, acquiring more shares, without just making it harder to extract yourself later. If the company is going well selling your shares should be straight-forward enough.
- Access to an improved group brand for more and better work and probably improved employer of choice status.
- Support from the larger organisation in various areas of management and marketing.
- Improved opportunities for profit growth through incentive arrangements specific to you...not shared equally with less energetic or less effective partners.
- Greater ability to react to major shifts in the pricing and delivery of services because the much larger organisation has the resources to develop products and systems that can be employed for the benefit of all.
- Improved capability to provide rounded, attractive, remuneration and benefits packages, including shares and share options etc., to keep employee turnover at highly acceptable levels.

The Editor, Rob Knowsley, is a lawyer, admitted 34 years, who practiced successfully with firms of all sizes – city, suburbs and country...in Australia and New Zealand. As KMS Senior Consultant, his insights are further based on the experience of twenty years of consultancy assignments, and telephone/e-mail support, for lawyers...in all areas of practice management and profit building. Many practices have quickly reaped the monetary benefits and enjoyed the feeling of being in more control of their business through his practical help...as multiple referees attest.

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The model proposed in each case is very important. Recent media coverage has highlighted that most aggregators are wisely seeking firms where the partners are willing to be in it for the long haul, and not simply looking for a quick extraction of capital and early retirement. Such organisations have arrangements in place to reward performers progressively better over the longer term... further encouraging longer term commitment.

The style of the “parent” organisation is very important. You will want to be part of an organisation where all other things being equal, you like the culture and management style, and find it always fair and reasonable without losing the essential forward-looking and sensibly commercial mindset.

There should be a proven determination to focus on delivering the right kinds of quality services to the chosen marketplaces with an excellent return on investment, all the while recognising that in the main this is only achieved by skilful, capable, management of people who are happy in the organisation because of it’s proven culture.... an all-round great place to work.

Here’s to a hugely successful year in 2008... stimulating and highly rewarding.

**Common “Watch-Outs” in Practice Management...**

Many errors made in firms ten years ago are being repeated each month right now... causing much angst for partners and employees... not to say consultants!! I try to deal with one or two each issue as a quick “heads-up”.

**TIP #1...**

**Restraints of Trade on Employees...** the most common mistake I see is firms spending valuable energy trying to stop employees doing various things after they have resigned or actually left, where no formal restraints had been entered into.

I also see many a situation where firms seek to get agreement to impose restraints on employees who seem to have become particularly valuable or strategically important.

Obviously I will steer well clear of purporting to be giving my readership legal advice, but all will be aware of the basic principles...

- u At Common Law restraints of trade may be enforceable if reasonable relevant to the interests of the parties and reasonable in the public interest...it’s considered reasonable in the right circumstances to allow a person to agree to restrict their normal right to carry on their profession freely...
- u Generally courts take a stricter view of restraints of trade between employer and employee than in other situations...such as between a vendor of a business and the purchaser of the business...
- u Because of this tendency it’s important to be very specific about restraints in terms of duration, geographic limits and nature of activities...err on the conservative side, rather than seeking to generally reduce the likelihood of competition by the employee, which is very dangerous territory...
- u Further, because courts tend to be less inclined to sever unreasonable parts of a general restraint, leaving the balance to apply, it is advisable to make the agreement by an employee a series of very specific and precise agreements, and very reasonable in the circumstances. If unfortunately one of those specific agreements is ruled unreasonable, it remains very clear what the remaining parts of the agreements cover, and it is easier for a court to leave them intact after severing the other independent agreement not to do some specific thing...
- u The nature of the consideration for the employee is an important issue

in enforceability...are they getting something which is a proper consideration for the rights they are giving up...and the very best time (both in practice and from a later enforceability angle) to deal with the issue of restraint is in the initial employment contract.

At this time the legitimate, reasonable, business interests of the employer can be spelt out precisely, together with the consideration the employee is going to be getting in terms of remuneration, conditions and opportunity for professional training, to learn marketing and other business systems of the employer, and get introductions to clients of the employer etc...

- u If you don’t have reasonable restraints in place now, the next best time to seek them is when you are offering an employee something particularly attractive to them which otherwise meets the various relevant tests...this may be an offer of Associateship for example.

**An added practical tip...** actually get the Employment agreement signed **before** the employee starts work. I have numerous examples of firms turning to an employee’s personal file for the terms of a restraint only to find an unsigned copy...or none at all.

In my experience, a basic checklist...ticked off by the relevant partner (or HR manager in larger firms) at a meeting first thing on first morning...will cover all the really important things. Include the sighting and photocopying of originals of all qualifications and certificates...faking Degrees and Practising Certificates is just too easy these days!

If an employee turns up to that meeting without all the items on the checklist start to worry a lot!

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### Upcoming KMSSuperProfit™ Seminars...

Keep an eye out for email news of an upcoming powerful KMS Intensive in Feb/March for Sydney, Brisbane, Melbourne, Canberra and Auckland... To pre-record your interest, guarantee a spot and earn additional discounts, click here and drop us your details...

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### KMSProfitPower Tip#1...

#### A sure way to dramatically boost your profits...

is to test continuously whether you are estimating, quoting and charging properly for the services you deliver... and react early to lift your charges where it is clear you are not.

A lot is written these days about a perceived inability to increase hourly charge rates... but it doesn't follow that you must assume that yours are exactly where they potentially could be!

Where there are substantial volumes, increases do not always need to be large on each matter to generate a significant profit boost. If, for example, you open 100 matters a month, 1200 a year, and can achieve an average fee increase of \$95/file... the gross additional return is \$114,000... and almost all of that is profit.

There are very few firms that cannot immediately introduce proper changes which will lift average file values \$95... and in our experience much larger increases are possible.

There are very few firms that are charging full value for all work done currently.

During 2007 I again saw dozens of examples of lawyers undercharging very substantially.

In one example a senior lawyer proposed quoting a new client \$20,000 plus GST for quite a complex piece of work. My advice was taken... and the fee obtained was just under \$50,000.

Remember that specific figures are more acceptable to clients than round numbers in most circumstances... so \$48,885 is a much better figure to give in an Action Plan than \$50,000.

Better to use something like Action Plan rather than "Quote"... as the word "quote" carries a lot of connotations and baggage that limit your ability to charge properly... and it also encourages the seeking of comparatives. You've been approached... provide a solution... don't send the client off to talk to others... to get other quotes.

Be prepared to do some preparatory work on understanding the benefits the client will perceive from your services, and where possible get on the phone and discuss the benefits with the relevant decision-maker. It's worth enormous improvements in your profit to do this simple thing.

Remember too that if your fee is low it does not often translate to a perception of quality in the mind of the client. If you have too many clients who do not understand fully the adage, "You get what you pay for", it's time to start the process of changing many of your clients. Working hard for no real profit margin does not herald much of a future for you!

### ProfitPower Tip#2...

#### The huge benefit to you of properly monitoring the workloads and productive capacity of your team members against actual results...

A number of readers have emailed recently asking for further elaboration of the KMS "Healthy Backlog" concept.

It comes from my experience that people usually over-estimate how close they will get to their KMS WorkPlan™ production goals (in fact any production goals!) if they rely on gut-feel alone.

Recently this was highlighted in a client firm where regular (weekly) team member feedback to management in group meetings suggested most people were "happily busy", but when the numbers were reviewed at month end,

actual recorded activity came nowhere near reflecting this for most team members.

In general terms, "Happily busy" means that the team member can hit the Client Time target average in their KMSWorkPlan™ for at least the short term. This is often harder to do than achieve Firm Time goals, so it follows that "Happily busy" means in all likelihood they can hit Firm Time target as well.

"Healthy backlog" means that the team member feels they have enough on in total to hit both targets on average for the foreseeable future.

For simplicity your firm's "foreseeable future" can for now be regarded as the time between the workload reports!! Over time, the longer you can see the healthy backlog existing the better... provided you keep delegating work, raising fees where appropriate and sacking inappropriate clients to keep things freshened up.

It goes without saying that in either case we expect them to then go on to actually record at least the level of activity commensurate with the verdict they recently pronounced upon themselves.

The above needs to be communicated to all so there are no misunderstandings....

In far too many cases...by far the majority... full results at month end do not reflect a person with a "healthy backlog".

The gap usually reflects basic human frailty... the difference between a gut-feeling and actual performance carefully captured and reviewed. A reminder that the gap only needs to be for example ten 6-minute units a day off WorkPlan™ goal on average at a Realisation Rate of 85% on \$295 hourly rate, to represent an annual shortfall of over \$55,000.

If for example the current achievement is \$320,000 in fees per annum from a typical team member... an extra \$55,000 is a 17% increase at almost no extra overhead cost... perhaps a small amount of consulting/training investment.

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It's mostly pure profit because it's achieved in the "profit zone"...so it's clearly well worth managing your firm so that people have healthy backlogs at all times.

Don't allow the typical situation to prevail... where partners have far too much to do... while team members drawing salaries cannot reach even the most basic of goals because they are not given enough work and properly supervised!

### **KMSProfitPower Tip#3...** **KMSCyclical Billing™ is a sure way to dramatically improve your cashflow and take pressure off working capital availability...**

Each week I find firms in which the timing of billing is left to individual lawyers in all work they are handling.

Naturally this leads to some lawyers failing to bill all work at the earliest possible time that makes sense in terms of the arrangements with the client. Reasons are many and varied (including the perennial, "I'm too busy!") ...but the result is the same... bills go out late and cash comes in later even if the clients do pay promptly after getting their bill.

These days it is crucial for the overall health of any business to bill and collect optimally to keep the cash flowing and working capital needs within reasonable bounds. Firms with cash constraints tend to suffer many flow-on problems.

It follows that for matters which do not have unmoveable event-driven points at which you can bill, there needs to be a good firm-wide system to ensure that work is billed optimally from a velocity point of view. Issues about billing levels, write-downs etc., are not part of this discussion... although of course critically important in themselves.

The essential elements of our system are...

1. For each team or individual, establish a time in the month when all bills not already done must be addressed. It works best if diarised twelve months ahead as a specific day or days(to provide for emergencies) such as the second Tuesday of the month in team

A and the third Tuesday of the month in team B and so on. Keep well away from the last week of the month.

2. Management ensures that each team member has to hand, on the business day prior to billing day, full financial details for every matter and every client where the system indicates that billing is potentially available...fine tune this as you go along so the lists get shorter over time.
3. Each team member must indicate to the person responsible for producing draft bills which matters **cannot** be billed now and why....note this is a complete reversal of what normally happens in firms with a cyclical system. Usually they indicate which matters they intend to bill.
4. **Every** other matter on the list has a draft bill produced immediately for review and fine-tuning by the fee-earner or his/her supervisor...whatever system you find most suitable.
5. There is a period of two business days allocated for the bills to actually go out. Try to avoid putting unnecessary correspondence with the bill as it can too easily hold up dispatch, and cause problems with elapsed times during any necessary follow up collection activity.
6. Management via Accounts Manager etc reviews that the number of bills listed did get processed through the system and dispatched. This is so much easier if bills are dispatched by Accounts personnel after final fee-earner review. How often do we find bills supposedly "owing" by clients sitting on the desk of a practitioner for want of time(allegedly) to simply get them to the post.
7. Supervisor gets the original lists and reviews the reasons for NOT doing bills and discusses anything of interest or concern with the fee-earner concerned and if necessary ensures that further bills are done.

For some readers a system like this will be second nature and you will know the extensive benefits. For too many it will seem all a bit regimented, and I can

already hear some protests that your individual situation is too different from the norm for it to work for you. I can attest to the fact that it works well, has done for twenty years in KMS firms, and can dramatically improve cashflow and reduce working capital needs, interest bills and stress within the firm.

Anecdotally, how many bills do you have, or know other lawyers in your firm have, that have not gone out to clients some time ago when they could have? The longer they sit, the more chance you will not feel comfortable billing full freight!

For a more detailed outline of KMSCyclical Billing™ to be emailed to you please feel free to request it by clicking [here](mailto:KMSCyclicalBilling@lawfirmprofit.com) [KMSCyclicalBilling@lawfirmprofit.com](mailto:KMSCyclicalBilling@lawfirmprofit.com) which will automatically address a completed email to us. We will pop it back to you by return.

### **Feature article...**

#### **Some key practical issues that are often overlooked in Business Development in small-medium law firms...**

In almost all law firms I look at some absolute fundamentals of Business Development are not handled well.

Involvement in 1075 firms in the last 34 years has started to produce some immutables!

Not enough attention is paid to understanding what work is coming into the firm each business day on average, at what average fee values for each work type, where it is coming from, and what sort of activities seem to be creating the present result.

Naturally this makes it quite hard to be clearly focused on what else can be done that is likely to increase work to, at the first level, ensure that everyone has a "healthy backlog" of Client work whatever the individual WorkPlan™ target for Client Time might be, and at the second level, to force growth in the firm.



Rob Knowsley

Keen to see a pet practice management topic of yours addressed in a future issue of ProfitPower Tips?

Feel free to click this link and [Email me](#) your suggestion

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What can we do in greater volume than we are already clearly doing with some success now?

What should we sensibly try that we are not presently doing?

We know (see the discussion elsewhere in this issue) that everyone having a "healthy backlog" of Client work is very, very, important in generating much better levels of genuine commercial profit after partner salaries.

Growth is also important, because it facilitates better flexibility for holidays and sudden uplifts of work, increases career path options, and improves succession options and the value of your investment... to identify just a few key benefits.

Management does not spend enough energy identifying the key differences that exist naturally in individuals' skills, interests, aptitudes etc...and the fit or lack of fit with various Business Development activities that can be selected from the huge menu available.

Insufficient thought is put into the types of Business Development activities that are appropriate for maintaining and increasing the types and values of files needed to keep each team member properly busy with a healthy backlog.

The result is that Business Development activity is often very ad hoc, and results tend to vary enormously... both in file numbers and values, and the cost (in money and time) of getting the work.

WIP production is strong in some areas relative to WorkPlans™, and quite weak in others...falling well below the break-even point for the affected fee-earner or team.

Crucially, individual WorkPlans™ are not often enough adjusted substantially to reflect the different inputs of time needed to generate the right levels of new work and maintain it across different work types.

An obvious example is the huge difference between the sensible Business Development plan of a Business lawyer, and that of someone working exclusively

in Contested Estates matters.

The most significant difference is that in practice the majority of Contested Estates matters will come from well-tested advertising, while most Business work will come from relationships developed with existing clients and a "stable" of referrers, such as Accountants,

On the one hand, much of the Business Development activity will be in efficiently converting the right types of enquirers who have responded to an advertisement, while on the other there will be many hours of patient and thoughtful building and nurturing of relationships.

This is not of course to say that relationship building has no place in a Contested Estates practice...it does... but the balance of the activities will be very, very, different.

It follows that the various skills of team members need to be tailored to the areas where they are most needed. A brilliant lawyer who is abrasive, and poor at converting work on the telephone from new enquirers, should not be handed valuable leads the firm has paid a lot to obtain... and therefore should certainly not be allocated two hours a day of Firm Time for the purpose of converting leads!!

This lawyer may be far more usefully occupied with a much lower Firm Time budget, and a much higher Client time budget, with much of the Business Development component of the Firm Time devoted to sensible activities to which the individual is best suited... writing various information pieces for example, for the Marketing Coordinator to disseminate at times, and to targets, that are most appropriate.

It seems all so obvious, but in my experience, in most firms the adage "Horses for courses," is simply not giving enough prominence when it comes to walking the Business Development talk.

Generally a very broad-brush and far less effective approach is taken.

## SuperQuick ProfitPower™ Tip...

My message for this early part of the year is to make sure all your lawyers address the critical issue of which clients they need to sack...while you are fresh and focussed after the break, with the determination needed to attend to this vital task...

Bad clients soak up a disproportionate amount of energy and other resources, and do not deserve you.

They get in the way of you using part of your valuable time and energy for exciting, stimulating projects... particularly strategic things that you need that maximum energy, enthusiasm, and a clear head for.

They may not assist you properly in getting them a good result, may not take your advice on board and act on it, and may not pay full fees, let alone on time...and they generally will not refer you tomorrow's top clients either...

So... if you haven't already done so, here's the priority project for early 2008... make a list of clients who need to be moved on and start calling them to make arrangements to take their files elsewhere.

Here's to a terrific year in 2008...

Keep well, challenged, stimulated, and amply rewarded with optimal profits for the quality way in which you invest in and operate the practice...