

Robservations

Welcome to Issue 38 of ProfitPower™ Tips For Lawyers, September 2009.

As usual, I trust that you find at least some thoughts herein of interest and value to you in practice.

“Robservations” this issue is not a relatively brief Editorial comment as in other issues, but the main game, because the issues I want to address are so fundamental to the successful operation of most legal firms.

A phenomenon I encounter at least weekly in the Legal Professions in Australia and New Zealand is lawyers clinging on to the concept of fixed formulas for determining employee remuneration.

The “guilty” parties pushing this agenda are not only employees, as one might assume...partners are often as much,if not more, to blame.

In the last few days I also again noticed reference to the ridiculously antiquated remuneration concept of 1:3 in articles by two different commentators on the Legal Profession. Frankly both should have enough experience to know far better, but I have to say I still see “experienced” consultants with both feet firmly stuck in this particular mud.

I also worked recently with a practitioner who was paying employees a bonus of a percentage of their collected fees many times more than she herself was making in profit...not only unwittingly but totally unnecessarily!

As I’ve said many times before, except in the most unusual of circumstances, I have not advocated ever paying employees remuneration, or bonuses, based on a percentage of fees collected.

It’s far too narrow a basis for assessing value of contribution, and it helps to create a counter-productive culture in many firms.

This issue also has a close relationship with the whole boring debate about the so-called “tyranny of the billable hour”.

Let’s look at “The Case of the Disappearing \$97,750” as a simple powerful example of why what so many firms continue to do in regard to both issues is a nonsense.

Assume a young lawyer is paid a total remuneration of \$65,000. In a ridiculous number of firms that means that fee target is set at \$195,000 per annum. (Ironically while some do achieve the target, and so they should because it’s so stupidly low, there are many who do not get there and in fact, do not bill even \$195,000 and some of what they do bill is never collected, written off as bad debt!).

Let’s also assume that our young professional has a charge rate of \$230/hour and is expected to work and accurately record an eight hour day, exclusive of private time...not a big ask for the average young professional...compare for example the hours of the average young doctor!

We need a couple of other important assumptions for the sake of this example.

It is unlikely that a lawyer with a charge rate of \$230 will have enough practical experience to average 100% Realisation of the ClientTime captured, so we’ll build in a minimum goal of 85%.

A young lawyer will not need a lot of time for writing precedents, management, and supervising others, but should use around half an hour every day for Business Development, and fortunately does not need to waste time at Partners’ meetings.

My wide experience says that it is hard to get the average young lawyer to utilise an allocation of more than 1.5 hours a day FirmTime effectively, so we only allocate more resource than that when it’s proven to be advantageous to the firm.

6.5 hours a day of what the firm has bought from the lawyer (WorkPlan™ 8-1.5) is thus available for Client file work, the raison d’être of most young lawyers after all...the way in which they will most quickly gain practical experience and lift both their professional satisfaction and their value to an employer...lifting their potential remuneration in the process.

So here's the calculation...to net collected fees of \$195,000, assuming full collection, our lawyer would have to capture Client file activity of about \$229,500...of which we write off 15% as not representing value to a client, or too high for some fixed fees work involved.

At 6.5 hours a day and \$230/hour it will take a healthy backlog of Client work and just 153 days to generate \$229,500 in Raw WIP.

The average full-time employee works 230 days a year so in this example we have 77 days left during which the lawyer is targeted to produce nothing, or alternatively is offered a very substantial bonus for simply working a basic day!

On the example WorkPlan™, 77 days at 6.5 times \$230 is \$115,000, less 15%, \$97,750, which should all belong to those in the firm providing the work, the support structure, and taking all the risk.

Provided you are paying a remuneration at market or above, there's no need to bonus this young lawyer at all for delivering what was agreed, and certainly no need to shell out, for example, 33% of the \$97,750.

Should you wish to be generous, and this is certainly a good way to operate, you might choose to express your thanks both in words and dollars, but the dollars should not be based on a formula!

Further, there's usually no reason why secretarial support to the lawyer should not also be doing a certain amount of Client file work each day...we're not talking typing here, but paralegal tasks...and the fees thus rendered do not "belong" to the credit of the lawyer.

This issue of remuneration by formulas is still a big part of why the vast bulk of legal practices do not make decent commercial profits, with by far the majority making no real profits at all!

While many employed lawyers are still overpaid to underperform, partners usually work far too hard for what they see as quite good incomes, completely failing to realise that, after salary and other important returns are taken into account, they're not really making much at all, especially for such huge inputs of time and money, and the high levels of both risk and stress.

So why do so many firms keep doing it?

My observation is that there are two key reasons.

Many have not stood back and looked at it closely enough to realise how farcical it is to pay employed lawyers based on such formulas.

Commentators who know little of the realities of legal practices continue to prattle on about “profit margins” of 33%, and thus help the paradigm to remain concreted in.

So basically it's just being naïve, commercially unaware.

In other firms my experience has been that sticking to what they perceive to be tried and true methods is just laziness, a way of avoiding the need to treat individual employees as individuals and work out their market worth with real care.

The partners are just too busy to want to bother, so they go for an easy option. Sadly the easy option just means they have to work harder themselves, and with unsatisfactory results.

Interestingly, many firms have tried to move on from 1:3, as KMS did more than twenty years ago, because they know it just doesn't stack up, but they haven't made any real paradigm shift at all, they've just changed the formulas upwards a little!

A quick look at the published surveys of the Legal Profession clearly confirms this point.

So now we see groups of lawyers with different levels of post-admission experience being categorised by different types of work, firm sizes...large firms through to suburban and rural etc, with various remuneration multiples as fee collection targets, and people still not dealt with as individuals with widely varying skills, interests, aptitudes and ambitions.

Clearly the proof of KMSWorkPlans™ over nearly twenty years is that dealing with people as individuals is more in accord with commonsense and fairness, and produces better short-term and long-term results for firm and employee alike.

Yes, it takes more effort, but so does everything really worthwhile. The dramatically better profit results are obtained without any inherent need for firms to have the toxic “billable hour” cultures so often complained about by commentators, and some employees.

Importantly, the system is inherently flexible, so it has in-built ability to adjust to the work-life balance sought by each individual

at any given point in their career, something which always should have been important, but now becoming even more so.

Flexible work practices (for both women and men!) are fully catered for, and the quality of both inputs and outputs across the full range of individual contribution is infinitely more important, and relevant, than an unhealthy focus on the billable hour.

The billable hour as the main driver needs to be eliminated of course, but a sensible system such as KMSWorkPlans™ needs to be instituted properly instead. A true paradigm shift.

There's no point railing against the billable hour without coming up with little more than indignant hot air as the alternative. In a recent article in a leading legal publication a respected figure in commerce was reported as saying that the alternative answer to "the billable hour" was obvious, but unfortunately that's as far as the illumination got.

Not a single word was apparently breathed on the "obvious" alternative, even by someone with no apparent need to keep such an important truth a secret from a desperately needy Profession!

One of the unfortunate realities of the debates about work/life balance, time-billing, and the alleged pressure of the billable hour, is that often the fact that there is huge room for people to be terribly inefficient, whether they have the lifestyle/income balance they want or not, is completely ignored.

Managing one's time well, and continuously analysing the quality of one's inputs and outputs, does not translate into the horrors of the billable hour in a well-managed firm.

If a person is totally unwilling to be accountable for being effective and pursuing quality, while expecting continuous remuneration improvement, commonsense says that no amount of work/life balance adjustment is going to fix it.

Getting properly associated...

From time to time lawyers ask me about the benefits of belonging to an Association of law firms, often either because they've been approached to consider joining a group or have noticed that a competitor firm has done so.

My advice varies enormously, and depends on my knowledge of the particular firm culture, ambitions, size, location and the association involved.

In research for this article I found a US website which listed dozens and dozens of associations in an alphabetical index, and it's clearly only a small sample as numerous associations I know of in Australasia were not listed at all.

I have tried simply to give a broad overview and apologise up front to readers who may be members of associations who do not get a mention herein.

I have had the opportunity to work closely with client firms who are members of a variety of associations, and have also been a speaker at many association conventions and practice specialty group meetings.

There are definitely benefits of belonging to an association, but the benefits will differ greatly from association to association and there's no doubt that some would not suit some firms at all...and in fact some are very careful about who they ask to join!

On the other hand, from my research and personal experience the process of becoming a member of some organisations appears to consist of merely showing an interest!

Generally there is a mix of purposes within each group, ranging across collecting information, research, pooling resources, building buying power, sponsoring seminars, sourcing and sharing referrals and providing continuing education and conferences.

Some, like AustLaw, and also Lawlink in New Zealand, are very strong on the separation of territories, while others seem to show little concern for this aspect at all.

Some associations appear to try to get greater similarity between members, while others are quite eclectic, and have members ranging from sole Practitioners to quite substantial firms.

Conviviality and fraternity seem to be very high on the agenda in some associations, with some legendary conferences and social occasions.

The number of firms involved in each association varies widely.

Long-established groups in some cases have stayed small due to their emphasis on territoriality issues, while some groups are small because of purpose or because they are very newly established.

Some groups have grown to very large numbers of firms quite quickly, and that may reflect to some extent the difference in approach taken by the respective Boards, with it being much harder to become and remain a member of some associations than others.

For example, Brothers & Sisters InLaw Incorporated ("BASIL") says on its website that is a new and growing cooperative of law firms whose main aim is to maximise its members expertise and efficiency by sharing information, knowledge, resources and providing countless facilities and benefits for its members. In just over 2 years, BASIL has over 380 members and the figure is rising.

Australian Legal Network presently has just six firms compared to Lex Mundi with 160!

Lawlink presently has 18 across New Zealand in 22 locations, Law Australasia has 17, with just one of those firms being in New Zealand.

AustLaw's website indicates that it presently has 12 firms across the Eastern States of Australia, while NZ Law boasts 61 firms covering the length and breadth of the country.

Meritas claims to have over 170 independent commercial law firms in over 60 countries.

ALFA International, the global legal network, is an organisation of 133 independent international law firms, 85 of which are US-based. ALFA says its basic objective, accomplished through its member firms and their activities, is to improve the quality and efficiency of legal services and to provide those services to clients within a reasonable and value oriented cost formula across jurisdictions around the world.

Associations again vary substantially in what they aim to do, some having very modest aims, and thinking quite locally, with others at the opposite end of the spectrum thinking globally and with high ambitions.

AustLaw talks of existing purely to help and support its members through sharing resources and co-operation...and boasts regular Specialty Group meetings, Continuing Education and an Annual Symposium. It has traditionally offered exceptional buying power from a single bank, with clear financial benefits for firms and partners alike.

Lex Mundi holds out its brand as, "The mark of excellence for legal services globally".

Meritas' website proclaims... *"Next door or halfway around the world, Meritas is your assurance of consistent quality and proven value.*

Quality - carefully vetted, continuously monitored and externally validated - is what sets Meritas apart and offers clients proven value. No other global alliance of law firms performs to such consistent or rigorous quality standards as Meritas law firms.

From extensive due diligence in the selection and credentialing of new firms, to regular client assessments and recertification, our client service, Quality Assurance Program and Satisfaction Index ensure that clients receive the same high quality legal work and service - from every Meritas firm worldwide".

Law Australasia talks of being committed to achieving best practice in practice management and client service.

Lawlink selects member firms very carefully and regularly reviews firm performance, and is big on the issue of territories and where member firms have "competing" offices they do not use the Lawlink brand. They "share ideas, resources and business processes...have enhanced buying power (especially in the area of professional indemnity insurance), have an excellent central precedent base, electronic library resources and research services".

In my experience member firms can draw on the network for assistance with legal and other issues and members build strong networks with fellow professionals around New Zealand in the other member firms.

Articles written by lawyers in member firms are published in a magazine 3 times a year, and then also published on the Lawlink website, but are also available for use by all member firms on their own websites. The magazine (Connect) and other publications are all branded with firms' own logos and imagery.

NZ LAW states that the group encourages an exchange of information, technology and ideas, and that it publishes a range of client newsletters and books.

NZ LAW apparently has negotiated excellent contracts with key suppliers for Banking, PI & General Insurance, Office Supplies, and Library. With 61 member firms, NZ LAW is able to facilitate it's own Practice Development Benchmarking and Annual Remuneration Survey, and runs Solicitor Training, Practice Management Meetings, and Special Interest Groups.

The Pacific Legal Network based in Sydney appears to operate as a co-ordinating centre for member firms across Australia, the Pacific Islands and the Western Pacific.

Because of the variety of associations, membership fees are simply too diverse to attempt to usefully discuss here.

As usual it's a case of you get what you pay for, with firms having access to stronger benefits in centralised precedents, research and electronic resources, and substantial client referral naturally expecting to invest more in time and money than those who are more focussed on the networking and social aspects offered by other associations.

My observation after more than 21 years consulting is that too many small-medium firms join an association without thinking through clearly how they expect to benefit, and thus whether the particular association is really the one for them.

Further, having joined, some firms clearly do not take proper advantage of the benefits available, seemingly limiting themselves in the main to paying the fees and attending the Annual Conferences.

Active participation is the key to benefiting to the maximum, and I would advocate identifying a few firms that are clearly very impressive in the Association you join and networking closely with them, learning everything you can about how they do things and why, where necessary trading with them specialist expertise you have they can benefit from in return.

KMSProfitPower™ Tip...Strategic Management Focus...

It goes without saying that the key to successful management of a legal practice is not keeping down the cost of stationery, or arranging cheaper research facilities.

Such endeavours are a part of the mix of course, but not the most important part by a long way, yet usually more management energy is expended in such areas than in the one area which really can make a huge difference.

By far and away the biggest cost in a legal firm is labour, and most other costs are closely associated with providing the labour force with the resources needed to service the needs of clients, for a proper fee that represents good value.

With the biggest cost being intrinsically tied to the firm's greatest ability to generate revenues, why is it that the approach of much law firm management to fee-earner productivity has been so unsophisticated, so lacking in commonsense?

The key area in which management can make a big difference to individual productivity is in ensuring each fee-earner always has a "Healthy Backlog" of Client work, irrespective of their individual WorkPlan™ structure.

Having people properly busy and effective beyond the true break-even point has to be deliberate, positive and dynamic, not merely reactive.

That it is usually purely reactive is demonstrated daily in law firms where fee-earners finally complain of needing work. There is a quick, short, reaction in which a partner throws them a few "bones", often without proper delegation, then returns to their own pile of work.

No real attempt is made in most firms to rearrange resources so the people most likely to be able to bring in more work are freed up to do it, and if necessary, taught how to do it.

The result is that employed fee-earners continue to fail to produce very large amounts of fees they are perfectly capable of producing, and do not have the knowledge or inclination to do the necessary Business Development to fix the problem.

The cycle of poor profitability (tired partners locked into Client work others could often be doing and ignoring strategic thinking) is complete once more.

The key reason is that too many partners (some would argue, most) are not actually good business operators or managers. They do not understand, or wish to accept, that a big, and critically important, part of their role is to arrange for enough work to be coming in to keep the Healthy Backlog in place, and further, to force enough work in to cause the firm to grow, so opportunities are created for the new generation of partners, well before death or retirement create them.

It's even possible that lawyers being mentored properly would learn enough about effective Business Development from capable partners to be able to do some successfully themselves.

Partners must realise that working exceptionally hard themselves is not "Management"...not in the least.

Management is truly understanding the following problems and ensuring the right things are done to fix them.

Employees with WorkPlans™ which allocate excessive FirmTime in each working day...

Employees who despite the previous problem do not have a Healthy Backlog of Client file work...

Employees with poor activity capture discipline...ClientTime and FirmTime. The second is critical...if in doubt refer back to the first point above!

#Exceptionally poor Client engagement management...

Fee-earners with low self-esteem allowed to "manage" Client relationships...

Fee-earners with a lack of billing courage being allowed to write bills (or give fee estimates)...

Poor credit control.

The issues in various combinations often lead to \$100,000/head loss of profit per annum, and still many partners remain asleep at the wheel.

Now here's the painful rub in many firms.

When they do get more focussed on what really matters, giving great service, charging proper value for it, getting paid in full on time, they fall into the most basic trap of all...giving a ridiculous

proportion of the fruits of the improved management to employees, who are finally doing a full day of effective work for their remuneration.

Pay well-performed employees well by all means, very well if you like, this is just plain commonsense, but do not share profits with them where they are not sharing risk.