

**MILLENNIUM BEST PRACTICE  
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The question posed for this conference is: How can we do better? In particular, is the partnership structure an impediment to career development or progression? Is it adaptable or archaic?

Let me go straight to my view. I consider that the partnership structure is archaic. It does have serious negative implications for career development. It is capable of adapting.

I would find it hard to believe that anyone would argue to the contrary. In fact I would argue it is a poor structure in which to carry on business particularly once partner numbers get to double figures and more. There may have been good sense behind the old restriction on the number of people in a partnership being fixed at 20. Do not forget that large partnerships are relatively new for Australia: I can remember writing submissions to the AG to get the number lifted. Not so long ago.

For the purposes of tonight's discussion I have confined my comments to careers for solicitors. That is not to disregard the large body of professionals whose efforts keep the firms running and who also have career aspirations. Arguably this group is more negatively affected by the partnership structure than the solicitor body.

Having reached the broad conclusion I must say that I do not have a smart alternative. Options such as incorporation of practices, going in-house etc have the potential advantage of making the granting of equity easier which would be good but would only change the situation marginally because the underlying issues will remain.

The structure is not ideal and the reason is that the whole enterprise is in the hands of the partners. It is they who set the tone or the culture of the firm. With this in mind I have decided to give my views on issues facing partners. I think we need to understand the many factors applying to a partner in order to start addressing where changes should be made to enable best practice models to be adopted.

I do think the partnership can be made to work well in the interests of partners and solicitors alike. Hence the appropriateness of the conference. As we have heard tonight from Rob Woolley, the application of sound HR practices, realistic management of expectations and allowing personal development can be effected in a partnership with great results. There are ways to make it work but it is difficult and needs full support from each partner.

An examination of the partnership structure is relevant because the elements of a person's career are each influenced by the partners. I repeat: the partners. Not only the firm of which they are partners.

The elements of a career, which are significant, include:

- good work
- continuous development; personal growth
- appropriate remuneration
- being part of an organization which has a sense of its destiny

Now these elements can be satisfied without being a partner in theory but in practice the position of partner is seen as the mantle of success and hence is what is sought after. So that position is significant. Each of the elements can be and are heavily influenced by the partners in a firm despite whatever firm policies may decree.

So what are the problems and why do they exist.

I propose to discuss the issues, which I see to be relevant under 4 broad groupings:

- The need for Change
- The Partner Mind Set
- Pressures Applying to Partners/Firms
- The Politics of the Partnership Structure

There exists a complex matrix of history, attitudes, business pressures and politics which must be understood, at least in part if the issues are to be constructively approached. There is no silver bullet to solve the problems. These factors must be analyzed and understood before a way through can be planned.

#### Need for Change

We have heard tonight of some of the problems confronting young lawyers and those in the work force generally. The generic problems faced in many industries apply with equal force to the legal profession.

The case for change is well documented and I am not going into detailed reasons now.

Answers can be given. I venture to suggest that every person here can think of at least 10 things that could be done in your work place which on any analysis would be improvements. The same can be said of every person in your organization. This is true whether it be a firm, a company or your personal life.

If you cannot think of improvements your organization can make you can engage many who can do that for you.

But even the experts are unable to come up with significant sustainable continuous change in firms.

Why?

Is it the partnership structure, which leads to these unsatisfactory outcomes? In part it is. But firms are comprised of individuals and we must ask why those individuals don't move for change and continuous improvement. Surely if the partners of a firm put their minds to something it will happen.

My preparation for these remarks tonight confirmed my long held view that a partnership is a very poor structure to select as the vehicle to achieve the outcomes desired.

If a practitioner simply wants to engage in the mind tingling activity of the study and practice of the law then let he or she go to the bar or university. For once you join with others in partnership, start employing people and undertaking on going client work the nature of the activity has changed. A business is being conducted and with that come obligations and duties not only to banks etc but also to staff and to one another as partners.

The game is not about incremental improvement. It is about survival. The competition is not on the doorstep. It is in every room of the house. Your client's house!

The competition is there in the form of in-house counsel – just think, only 10% of accounting functions are done by accounting firms: what would the legal profession look like with similar figures applied to it in its industry—accounting firms, foreign law firms, government, banks, investment banks etc

As firms and as a profession there is no room for complacency as to the security of the future and our place in the emerging economy. Any place in the new world economy will have to won and continually justified. That can only be done successfully if it can consistently deliver value. At this point I feel the profession has yet to successfully justify its position. On the demand side clients are putting increasing pressure on fees, timeliness of service, relevance of service, and in some cases the need at all for lawyers to be involved.

We have gone down the scale of importance to many in the consumer base. On the supply side the new entrants to the profession are telling us that they are not happy. Preceding speakers have given the figures to show the magnitude of this problem.

A key element to survival I argue is to constantly bring on new young talent for its ideas, energy and succession.

### The Partner Mind Set

I want to look at just three aspects of the mind set of a large group of the partner body.

First: The firms, generally speaking, are controlled by baby boomers. We are getting older. Generalizing further, this group has had as its model for success: a job and the “Protestant” work ethic. Work hard and get a good degree, enter a profession, get a job and work hard and the fruits of your labors will come.

Has it worked? If it had we would probably be discussing far more significant issues tonight. There are all views to be considered in answering the question, yes/ no/ maybe.

Ask our kids. Look at the record which includes higher than average family break-ups, higher than average substance abuse and a range of health issues. This group is not considered generally to be great role models. This is not a group of people who easily give time to simply sit and listen. This group is not high on empathy. How many firms have successful coaching programs; I suggest they would fail should they even be attempted for want of good coaches among the partner group. As people age they tend to be more conservative. So change does not come easily.

Secondly. The profession has done well financially in recent years. Seven figure incomes have been achieved. Average per partner profits range in the \$600k to \$800k in large firms, middle ranking firms \$500k and on down. Starting salaries for ACs are a good indicator. They have risen consistently over the past decade. So we have a profession controlled largely by aging men who are well remunerated.

Not only well paid but in large measure without significant wealth. Many partners have a large house in a good location. Probably paid off in large part had it not been leveraged up to buy something else. They probably have a beach house or farm and two European cars. A few failed tax schemes to pay off and the end of school fees in sight.

You see, the profession by and large has spent all the profits and all the bank borrowings for lifestyle. Now they are waking up to the fact they are going to have a poor retirement. They suddenly realize the big home cannot be sold to provide an adequate retirement income because the scaled down housing option is no longer that much cheaper to buy leaving a very much-diminished surplus for investment. Then the realisation comes that \$1m is needed to invest to produce \$50k after tax income

. Hadn't they better stay on the good income and do some saving! Remember there was and is no compulsory super for this group. So: no change please until we get this sorted.

Thirdly. There is a strong reluctance to be different

I call it match racing; to borrow a term from the sailing world. I'm told the small and medium firms think that because a big firm does something its OK to do it also.

If that is the benchmark and the standard, we are in more trouble than the early settler's ever imagined. The big firms don't have the answers. Often they to are

bumping about in the dark and ask the question. "Which firm in the US or UK has done this?"

No one breaks out. Every move is covered. Why should they embrace change? Refer to my earlier comments.

#### Pressures Applying to Partners

Additional pressures must be understood in endeavoring to assess the role of the partnership in the career prospects of people. There are serious regulations to be complied with e.g. trust accounts; law institute practicing rules, insider trading rules, conflict of interest. Further there are obligations attaching arising from the fact we are officers of the court.

Then there are duties and obligations to clients.

Against these pressures are the demands of running a business. The need to generate profits, attract and retain clients, attract and retain staff, deal with significant management issues and the need to make the whole business sustainable.

There are competitive pressures to be faced

A partner is in an unusual position in the work force. At the same time he/she is a proprietor, executive, manager and worker. The partner switches from role to role many times per day. The change can occur with each phone call. This multiple role makes the implementation of change difficult: if you try to change the worker it may not suit the proprietor and so on.

Then we cannot ignore the pressure each partner is under personally. These include billing pressure, administrative demands such as time sheets, quality control, generation of work and managing staff in his/her immediate control. The underlying concern is the need to maintain a good performance relative to partner peers because there is no security of tenure for partners. Older partners are constantly under competitive pressure from younger partners.

These pressures are huge and require determined efforts by firms to address these if change is to be made. The challenge is to find a way to enable partners to deal with all the pressures and have capacity to implement sound HR policies at the grass roots.

#### The Politics of the Partnership Structure

This environment means there are serious problems in getting career fulfillment for many solicitors. Some of the issues, which confront the career seeker, are

- The defacto or announced up or out policy. If someone does not satisfy the criteria for partnership admission after an appropriate period then they should leave to make way for the new younger

ones coming through who may have a better chance of satisfying the criteria

- The practice of law at a high level is not of itself enough to ensure partnership advancement. The successful career requires the ability to generate new work, and in quantities which will keep that person plus 2 solicitors busy
- Often there is a need for the solicitor to have a sponsor in the firm who will promote them to the partnership. I make a general observation that the development of an appropriate mentor relationship can be more easily achieved between male partners and male solicitors. This is because of the natural rapport which arises between men and the concern on the part of male partners to get too close to female solicitors that arises through the application of discrimination and harassment laws
- in a competitive environment there is a concern that the admission of new partners will dilute the profit pool
- There remains an attitude with many partners that there is something very special about a partnership. Coming together of like people; a club. Together forever and there to look out for one another. On this model only those "like us" get in
- partners can make a defacto selection of future partners by directing quality work to their chosen person who thereby looks better than his/her peers
- there is little room in the model I am describing to accommodate individual requirements such as part time etc
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As if this not enough usually all partners get to vote on the admission of new partners.

Further, in the larger firms, which are run by boards of partners, the partners vote on the membership of those boards and the CEO. Often not making space for outside involvement in the management of the firm. In the large firms which are structured on practice groups there little external involvement in the running of the group. This makes the implementation of change all the more challenging.

So there is my quick overview of the issues faced by partners which have to be confronted in management generally and particularly in the change process.

. Notwithstanding this assessment there are good aspects of the partnership structure which should not be over looked. These items include:

- the firms practice at very high standards; world class
- they are successful; we are talking about making them better
- despite all the problems our Australian firms are in many instances much more advanced than many of their counterparts in the USA or the UK

- the firms operate on the basis of merit assessment atleast as a starting point in their advancement of people

Much can be done to improve the state of things by adopting change to a state of best practice. A number of things that can be done come to mind:

- Develop and articulate clear strategy and direction for the partnership. Not hard but not often done well with wide spread buy-in
- Adopt a policy of getting close to clients. Anticipate their needs and supply appropriate services. The aim being to become integral to their business.
- critically review the functionality of each partner to develop a best practice model for each partner to work to. The aim is to relieve the partner of duties etc which it is not essential for him or her to perform. Maybe they can better be done by other partners or by solicitors or members of the support team. I think an exercise of this nature is at the heart of changing partner behaviour because it can remove a lot of the issues he/she have to deal with
- Look to implement alternative billing methods to the billable hour. This is not easy but is worth the effort
- look to engage the partnership in non legal practice activities which have a prospect of generating revenue which are not based on the selling of time
- manage partner expectations as to what is a realistic sustainable level of profit for the firm
- encourage outside involvement in the management of the partnership
- Encourage openness within the firm generally. Staff can pick up a lot about partnership matters if they wish to and most business is not that "secret" anyway. Remember my match racing point
- Give all the people in the firm plenty of space. If necessary make space. The young people entering the firms have energy, good ideas and diverse interests that can add to the richness of the firm and help maintain the health of the firm
- Finally, I say be bold. Take the challenge and try the change. Test things. Many analogies have been drawn for business from the military, which I now think, is out dated thinking but one observation has stayed with me. Remember no general ever crossed a ditch by taking half a step.

My conclusion is that the partnership structure is not ideal but is capable of adapting to enable the application of best practice and particularly with respect to career development With the right policy settings and supporting cultural change

the structure is capable of adapting at a sufficiently fast rate to make the firms sufficiently competitive and attractive to staff to ensure their place in the new world.

The firm which makes the quantum leap will be the big winner