

## GRS Legal Seminar

### The Lawyers' response to the downturn Opening speech

**Katinka Nicou**

Good evening. It is a pleasure to be speaking with such an accomplished group of professionals tonight.

I have a lot of information to share in a short time, but before I start I would like to invite you to focus your memory on the year 2006, just three years ago. Remember how busy you were. Remember the unprecedented amount of hours billed. Remember the war for talent!

And I invite you to focus your thoughts three years into the future, 2012, and ask yourselves: *What three things would make us more effective in managing transactions, talent and knowledge when we get that busy again?*

There will be no lesser need for legal services or for strong corporate legal teams in the future. On the contrary, as legal matters become more complex and globally intricate, it will be even more important for in-house counsel to partner closely with their outside legal advisors in supporting their business' strategic implementation and mitigating risk. Success will depend on access to and development of the right talent for the job.

I now invite you to take an even larger step back and remember the mid-80's. Now what I will share with you are some developments from this time that have reshaped the legal industry to what it is today, and others that will in all likelihood continue to reshape it, which require reconsideration as to how talent is deployed. This will lead us further into young lawyers' aspirations and needs in the current context. Finally, I will share a limited sample of suggestions with regards to Talent and Leadership Development that combined can have a tremendous effect in fostering the loyalty, advancement and success of your next generation Lawyers.

Now think of the following statements as a snapshot of the legal industry as it evolves.

#### **Changes in business model**

Lawyers frequently cite that their in-house colleagues have become increasingly more savvy consumers of legal advice. Under pressure to reduce their legal budgets, In-house Counsel aim not only to reduce the number of firms they use, but also to increase the predictability of legal costs by demanding alternatives to hourly billing such as fixed fees and success fees. In fact, 82% of In-House Lawyers believe that hourly billing provides no incentive for law firms to be efficient.<sup>1</sup> As a competitive advantage, sparked by the economic crisis, firms are now offering multiple alternatives to hourly billing, which is bound to change the way legal processes are executed.

At the same time, the rise of costs has over the years contributed to an exponential increase in billable hours requirements for Associates, as a measure to maintain profitability. For example, the average billable hour requirement for Associates in US firms in the mid 80's was 1700 hours. Today it has reached 2000, in some firms even 2200 hours. Given that there are only 24 hours in a day, it is hardly surprising that morale has been an ever growing problem in law firms, but how viable is this solution to profitability in the long term and in this new context?

We are also seeing growing efforts by law firms to outsource standard services as another measure to keep costs down and clients loyal. Large corporations such as GE have even started outsourcing parts of their legal processes directly. Legal service outsourcing to India

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<sup>1</sup> The Commerce and Industry Group

grew 40% in 2008, and that growth rate is expected to increase. Moreover, there has been an increase in the use of Freelance Lawyers by both law firms and in-house legal departments.

### **Changes in Structure**

The Legal Services Act, coming into full effect in 2011, is described by some as the Legal Industry's equivalent to Wall Street's "Big Bang" of the 80's, when major investment banks such as Bear Sterns and Morgan Stanley changed their ownership structures from partnership by going public, and others by being acquired by public companies, including Kidder Peabody and Smith Barney. Even the most famous of Wall Street Partnerships, Goldman Sachs, chose to go public in 1999.

The Legal Services Act enables law firms to accept external capital investments through private equity or public offer, and it enables businesses to offer legal services under their own brand through partnerships with qualified lawyers.

Taking advantage of the Legal Services Act, a quarter of leading British firms are expected to leverage external capital to accelerate their growth. Eight of the leading ten global firms already use capital investments for litigation cases. Meanwhile, banks are imposing restrictions for law firm borrowers to avoid cases like the recent dissolution of Heller Ehrman due to the departure of a litigation team. As the recession impacts revenue streams, it is likely that firms who would otherwise not be inclined to take on external capital will be forced to look at options to secure their financial position. Some firms' current efforts to raise capital from their own equity partners to tackle this downturn alone may not suffice.

With regards to attorney loyalty, critics of the Legal Services Act argue that new ownership structures would contribute to further talent turnover as the status of Partnership will change.

### **Changes in size**

The average growth of the top 250 firms since the mid 80's is 300%. This growth includes number of Partners, but even more so the number of Associates hired by firms, which has increased the leverage from one or two Associates per Partner, to today's' average of four to six Associates per Partner. To look at more recent developments, law firms increased their headcount at a faster rate in the first three quarters of 2008 than in any preceding year since 2000, more accurately by 5½ %.<sup>2</sup> This included an unprecedented number of lateral partner recruits. No more than 6 months later, we are seeing layoffs at all levels of more than double that percentage.

### **Changes in complexity of the Partner role**

We have also seen changes in the complexity of the Partner role. A Partner traditionally has at least six sets of responsibilities, including solving legal problems for clients, developing business, managing client relationships, managing cases and transaction teams, developing young Lawyers and contributing to firm administration.

Each of these roles has grown increasingly complex over the last decade. Global clients and scope of legal matters is now the norm. And with regards to business development, what traditionally used to be a simple call from the client to get engaged in a matter has turned to a pitching competition against several other firms. Clients may now be based anywhere in the world and it is more difficult to foster solid relationships with them.

As mentioned, teams have grown larger and initiatives to mentor young lawyers are no longer as common as they were when the ratio allowed and there was time to spare. Finally, as firms have grown global, so have administrative matters.

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<sup>2</sup> The Citi Private Bank Law Watch report

## **Changes in knowledge development**

When I ask Senior Partners in law firms how they developed their expertise, the consistent answer is "I worked for a great Partner who brought me along to client meetings, sat down with me to go through my work, made changes while he explained his reasoning process for each paragraph. And once we had sent the document off in the mail, we sat down and discussed it again while waiting for the client to respond."

What typically happens today is that an Associate may draft a document and email it to the Partner, the Partner will use track changes to make edits and then return it to the Associate. The Associate - likely under pressure to deliver work for other partners - will open the document, accept all changes, and pass it along to the client, without an explanation as to why changes were made or how they affect other parts of the document or the case at large. This modern way of conducting work is not conducive of that Partner-Associate mentor relationship and the legal reasoning skills that developed thereof, which were critical factors in the formative years and success of those partners who make up the senior layer of legal experts in today's firms. As the client landscape and scope of legal matters also grow increasingly global, teams of lawyers may work together from various countries and offices virtually, which further undermines this dynamic.

With the increasing reliance on IT in execution, and fewer meetings and in-person discussions, the very nature of how work is conducted today poses a threat to young Lawyers' learning. They have generally less exposure to stakeholders and the processes of negotiation and legal reasoning that provide foundation for the work they are asked to deliver.

Considering all these developments, one Partner in an international firm recently stated the worst case scenario:

*"Our Associates will advance to become excellent technical Lawyers, but lack the ability to synthesise information and negotiate or solve complex legal matters that is required of our firm's Partners, and which is the core of our firm's value proposition."*

## **Changes in Values**

This may not be new to you: the values of Generation Y. Born in the 1980's, it is the most diverse generation to enter professional services firms as of yet. This includes Gender. Female Lawyers now account for more than 40% of lawyers, and last year more than 60% of trainees were women.

This is also a generation that has grown up appreciating efficiency in the way that technology and services have been available to them to bring rapid results. They therefore place more value in the quality of their results than in the time spent on a work product.

Used to information being available instantly and for free, they know they need to develop expertise to stand out, and this can only develop through strong working relationships with their leaders.

They are motivated by feedback, engagement and personal identification with their organization's values. They want to be part of something bigger that means something to them.

They value interesting assignments and work-life balance over salary, and are hence consistently evaluating their workplace and alternatives.

## **Changes in talent turnover**

Looking back just 2-3 years ago, the most dramatic change in recent years has no doubt been talent turnover. Although we are likely to see fewer Associates leave voluntarily in the current business climate, what we have seen in the years between 2005 through 2007 is a consistent attrition of over 20%. Increasing salaries during such boom years has proven not to reverse

attrition, which confirms numerous research findings that other criteria for a meaningful work experience are not met.

This has obviously led to an increasing need to hire laterally, and shown us that other efforts need to be in place to foster loyalty. And as young lawyers today seek a more varied work experience, we can expect that trend to continue.

Studies show that only 37% of law firm associates aspire to the traditional career milestone of Partnership, while 10% aspire to non-Partner roles such as Counsel. This leaves us with 50+% of young lawyers who plan a career outside their firms at some point in the future. How beneficial would it be for firms if they could influence when? And to where they will go?

### **Planning for recruiting and retention in today's legal industry**

- So my question for law firm representatives is; considering these developments, how is your firm positioning itself in the industry moving forward? And for in-house counsel; considering your business' strategic goals, what will characterise your legal needs in the future?
- How does that guide Recruiting and Professional Development of Lawyers, and where you might find them (if lateral)?
- What aspirations drive your young Lawyers, and what will foster the loyalty, advancement, and success of your next generation of legal experts?
- And most urgently, what development efforts will best serve to replace the naturally occurring learning processes of the past environments?

I propose here a limited sample of efforts that will meet multiple needs simultaneously, and that in combination can provide powerful platforms for individual Lawyers' and your practice's success. These include supporting management of matters and talent, as well as strengthening the critical functions of staffing, Knowledge Management and Client Relationship Management.

### **Performance Management**

A competency framework designed for your specific legal practice offers Lawyers a roadmap for managing their careers and assessing performance against specified standards within their area of expertise, and keeps expectations clear. Additionally, it facilitates performance reviews, allowing both parties to prepare for appraisal with equal guidelines, and helps you identify training and development needs. It should be designed to take into account the unique work experiences and professional development path of each Lawyer. This way, it can also support you in identifying and promoting the top talent to serve your strategic goals.

### **Relationship Management**

Managing relationships in the complexity of the current context is one of the greatest challenges for Lawyers. This includes in-house Counsel needing to build strong relationships with their CEO and business executives and staying informed of their changing directions and decisions. Likewise law firm partners need to maintain an ongoing dialogue with their clients to be able to predict legal issues they might be facing. Tailored Leadership Development can support in-house counsel in establishing and maintaining supportive relationships with their business' executives, as well as support law firm Partners in establishing and building value-oriented and mutually beneficial business relationships with their clients. This can include communication and presentation skills training, management skills training, and business development training. It goes without saying that such efforts will also enhance cross-selling and efficiency of legal services.

Further, when it is time for talent to leave, offering outplacement programmes and maintaining interactive alumni networks is immensely powerful in building future business relationships. Additionally, as marketing budgets have been cut, there is tremendous opportunity in using less costly Public Relations to raise awareness of your core competence and attract relevant talent.

### **Regular case reviews/briefings**

In addressing the lack of mentoring opportunities and direct exposure to key developments, I can't stress enough the impact of regularly briefing young Lawyers from disparate functions on current cases or trends in relevant industries, similar to the Harvard Business School case study model. This will expand participants' practice knowledge base, forge cross-divisional relationships and generate solutions that can be applied in future cases. It further fosters discussion, community and allows managers to share insights and experience from previous cases or circumstances.

### **Round table discussions**

Law firms can also host round table discussions, in which In-house Lawyers engage in dialogue with firm Partners and experts on issues affecting their industry. This helps the firms enhance the relationship with their client and deepen their understanding of the client's legal needs. Further, young in-house lawyers and law firm Associates should attend to build knowledge and foster relationships at every level. Further, inviting business and industry media to document conclusions offers excellent public recognition for both the firm and client.

### **Executive Coaching**

Executive coaching has become a widely used way of facilitating Senior Lawyers' effectiveness in managing their many responsibilities, as well as handling stress and conflict. An effective relationship with a qualified executive Coach can support a Lawyer in enhancing their client relationship skills, communication and presentation skills, team management, and time management. Coaching is also greatly appreciated in the way it can help lawyers create work-life balance and align their personal goals with professional and firm objectives.

Again, this was a limited sample of tactics. As any thoughts or questions come up for you, please connect with my partners Jane Black or Toy Odiakosa or myself for more information or processes to serve your success.

### **Conclusions**

I will conclude with an analogy. We have a little local event going on this weekend, the London Marathon. Imagine that tomorrow morning you are lacing your trainers to get fit to participate in the race. You have three days. Are you capable?

By the time we move into an upturn, your ability to create your context is running out. I hope I have made the case clear for the importance in building strong relationships in the current context as the most influential factor in sustaining a successful legal practice and attracting and retaining talent.

My final conclusion concerns building expertise to handle future scenarios, for which it is critical to identify and implement strategies for Knowledge Development to replace those no longer viable.

In case all this sounds daunting, I will leave you with a piece of inspiration from one of the world's most impactful lawyers of all times, Mohandas Gandhi:

*"A small body of determined spirits fired by an unquenchable faith in their mission can alter the course of history."*

Will you be one of them?

Thank you!