
FUTURE TRENDS IN THE BANKING INDUSTRY

Impact on Banking Practitioners

Commentary

MICHAEL ORRICK

Carrick Management Group Pty Ltd, Sydney

As a successful management consultant with legal training, I speak to you today as a keen observer of the changing legal industry in this country.

Robert Paterson and I share that interest in common and indeed know each other from prior debates over the nature of continuous improvement for legal consumers and law firms. Consequently, I know that in following Robert today I will be dealing with contentious issues, points worthy of debate and an active, interested audience.

In the 10-15 minutes allotted to me to comment upon Robert's paper and "Future Trends in the Banking Industry", I would like to focus on the changes that the banking industry is going through and the problems and opportunities that this highlights for law firms that want to continue to secure major work in this industry.

Extrapolating Robert's thesis, the forces for change in the banking industry will increasingly cause both referred and direct pressure upon the law firms that service the industry. This pressure will become more and more intense especially among suppliers to the biggest banks and to the more aggressive aspirants among the second tier financial institutions. This pressure may well cause all firms without guaranteed work to count and reassess the costs of competing for the patronage of these once benign clients.

We have all observed that the banking industry is undergoing massive internal change. The Financial Review three weeks ago reported McKinsey & Co observing that:

"If all they (banks) do in the future is what banks have done in the past ... the monolithic bank is not going to survive"

Ultimately, the same will hold for the law firms that service the "monoliths" - if all **they** do is what law firms have done in the past, these once safe business revenues are not going to survive. The McKinsey "solution" proposed for the mega-banks is differentiation. This may well be the same solution for those law firms that want to adapt to win specialised or "larger" chunks of the work emanating from these monoliths.

As noted in Robert's paper, the pressure on the big banks is coming from:

aggressive competition for the "financial services dollar",
 a preoccupation with minimising expenditure and risk, using
 the primary tool of re-engineering and continuous improvement
 and a trend to outsourcing standard or complex legal services, offset by
 increasing client sophistication and supervision of the services provided.

Robert offers a rational business solution: adopt a strategic focus that matches a segment of banking legal work to your firm's capabilities. But let's go behind this solution for a moment.

While, I agree with the Robert that the big impacts emerging and beginning to accelerate are trends such as:

- Competition
- Outsourcing
- Standardisation
- The 90's client

it is my experience that lawyers in partnership alliances change their business behaviour cautiously not quickly, with a firm eye on their bottom line. This will have a significant effect on their view of emerging trends and upon their responsiveness and willingness to respond to such trends of accelerating change.

In my experience, the demands implied by these trends across the industry will spell increased expenditure or greater COST to many law firms, unless they can increase their production efficiencies without incurring larger outlays, because they all call for major change in how law firms service their banking clients.

So, what are the potential revenue opportunities on the other side of the equation that could offset these potential cost increases? What opportunities are created by the velocity of change moving through the banking industry and how should law firms capitalise upon them?

1. COMPETITION

Pricing

This is a difficult opportunity for a law firm to respond to in isolation and without setting precedents. The critical question is at what price do you want the work and are you able to streamline your production methods to offset any discounted margin. In some cases, a firm may be able to re-engineer it's billing structure or the distribution of resources allocated to the account or even find different ways of managing the work with the client.

Conversely, your firm may be in a position to specialise in a segment of the work on offer, making strategic gains by focussing on one or two areas of the work at a reduced cost per matter; especially, if you trade this pricing edge for guaranteed volumes, while allowing other types of work to go to competitors or to be re-absorbed by in-house lawyers. My research over the past two years however indicates that this strategy is more appropriate for routine, process-based work that can be standardised, "productionised" and completed by more junior solicitors under partner supervision.

In the case of more complex work, my experience is that price becomes an issue when the client does not understand or believe that he/she is getting value for their legal dollar. Where this is the case, a totally different problem and opportunity is presented. The problem goes to the credibility of the partner managing the work and/or the client and requires direct investigation and intervention. Many lawyers avoid seeking direct feedback, but this is exactly what you require to focus the concern

on costs. This creates the opportunity to change the way the work is handled or to manage whatever aspect of the work is targeted by the client as deficient.

Review of supplier panels

Another logical corollary of the competitiveness facing client banks, is that they decide to review and enhance their panel by sharpening a lengthy panel, breaking up a monopoly or by creating a new panel. Increasingly, such "enhancements" to legal panels will bring with them new terms and conditions for the work and you should expect this to increase. The ANZ was a pioneer of this aggressive approach to "managing" legal service suppliers, but insurance and financial institutions are increasingly looking to this approach as they review the value of their external versus internal legal resources.

2. OUTSOURCING

The fact that many companies are looking to outsource at least either routine or bulk legal work is a **potential** opportunity, but one of which law firms may overestimate the revenue value. Under any scenario, the question remains how far will you go to secure the work?

Most firms endure "beauty parades" and tenders or capped fee arrangements under duress during lean times and with great reluctance during prosperous times. For this reason, they compare poorly with professional marketeers when they present their credentials and often do themselves and their work a great disservice.

Firms should seriously evaluate every invitation to "pitch" for a banking panel and only enter the competition if they can afford both the time to present a truly professional pitch and the price at which the work will be won. Too many firms approach such opportunities with stereotyped, PC-driven proposals and the mind-set that if they put themselves forward to enough companies, they must win some of them.

Instead they should actively seek out and cull the available opportunities to compete for genuine high value work and prepare a well-researched, client-focused proposal that demonstrates the inherent value of the firm for managing this type of work. As "shy" and untrained marketeers, lawyers typically prefer to respond to invitations to tender for panels or block work and are reluctant to let these rare opportunities pass, but ask yourself first do we want this work at that price?

Niche marketing

Another way of responding to the competitive urge of businesses to outsource non-core functions such as legal services, is to present niche-based legal services to potential major clients. Use niche specialised services to create that competitive edge over other firms and to establish yourself as a credible, high value supplier and then cross-sell selected other services that are also strong within your firm.

Typically, I find that the large firms approach the banks with a smorgasbord of services offered in a one-stop shop fashion, propped up by the supposedly unique credentials of some key partners. Unfortunately, their competitors are offering virtually the same proposition supported by other equally unique partner credentials. The better approach is to identify your firms strengths by investigating objectively what it is that existing clients (not your lawyers) value your firm for and then developing this to satisfy a niche opportunity that you identify in a potential or under-serviced client.

Partnering

One flag for this opportunity is that banks are struggling with the issue of how large their in-house legal force should be. This is an opportunity for the entrepreneurial firm to consider how to become

an indispensable business partner to that bank. For example, the firm could consider the long-term cost effectiveness of offering:

- i) interchange or seconded lawyers for mutual development; you place a capable lawyer into the bank to learn more about their business and what tailored or creative services could be offered to them in future and in turn your lawyer (and their lawyer if they trade) gets valuable exposure and practical experience.
- ii) to work in "partnering" style with in-house lawyers. Companies are starting to evaluate seriously the extent and type of work that should be retained in-house and many would be more open to passing more of the complex and sensitive matters out if they believed that they would be guaranteed of a close working relationship with the external lawyer. This is a matter of both behaviour and attitude. Supervision or "case management" by an in-house lawyer can be valuable in building a closer relationship with the client and also in freeing that lawyer up to handle other work.

3. STANDARDISATION

- **Development of standard documents**
- **Development of standard processes or packaged services**

Robert covered this topic well in his paper, so I will do no more than note the opportunity resident for firms in this trend. As cost to income ratios within banks decline to historic lows, firms need to offer services in a more structured set of levels. At the low cost, high volume end of the market firms need to have "packaged services" on tap for ready consumption by existing and new customers alike.

Standard documentation such as securities documents need to be researched, developed and tested to a high standard initially, so that it can be confidently packaged and reproduced with minimal incremental effort on an ongoing basis. Equally, standard external or internal processes, such as immediate resort to the Commercial Causes list to expedite litigation time, or regular quality assurance checks by an independent partner in the firm must be institutionalised as reflex actions.

Consistency and predictability are great assets in business and, properly applied, standard documentation and standard processes work effectively only when solicitors accept their validity and apply them consistently across the firm. Hamburger production may not be the most palatable analogy for high profile, first tier law firms, but most managing partners would envy McDonalds ability to confidently guarantee the consistency and quality of their "product". The McDonalds story is well known today, but the key which law firms can learn from is the control of firm standards and the capacity to standardise production where appropriate.

4. THE NINETIES CLIENT (WILL BE MORE DEMANDING!)

- more informed/educated
- more pressured
- more intervention
- higher expectations

Today business and consumer pressures, increased controls and a concern for quality assurance are fast changing the way that banks brief work out to law firms. Increasingly, the presenting "client" who briefs out the legal work for the bank will be either an in-house lawyer or a "legally-aware" asset manager, credit or lending manager. The accountability of these managers has been increased dramatically since the provisioning problems of the Eighties. Accordingly, firms need to adapt the way that they respond to this problem or opportunity.

One simple, effective solution is to know your clients by staying close to their business and management concerns. Most professionals trust their own skills and competencies, but are reluctant

to commission independent, specific or omnibus research on their firms perceived capabilities in their actual and potential client markets. Yet understanding the attitudes, perceptions and specific strengths and weaknesses of your firm and of your solicitors through the eyes of your client base is the most powerful weapon in your marketing arsenal. Conversely, your firm can spend a lot of fruitless time marketing to the increasingly demanding clients in the banking sector if it is unaware of the firm's image with those clients.

Not surprisingly, most firms argue that they know their clients and what they think of the firm and its staff. Yet I have never failed to find a gap between the client's expectations and the firms impression of these influential views. The best strategy here is to assume that there is such a gap and to commission independent research to determine whether your clients expectations are being met in the delivery of your services. This will highlight the shape and structure of that gap. Your firm can then use this research as the basis for a directive client relationship program aimed at improving client relations by actively discussing mutually productive means for ongoing improvement in your service delivery.

After a six month investigation in 1994, I reported to the State Rail Authority in NSW on the problems that had arisen when that organisation closed down its 49 person legal function and outsourced its legal work to a "select" panel of 38 firms. The primary findings of the study concerned the quality of the briefing process, the quality and extent of legal services delivered to the Authority and the yawning gap between what the client needed and what was actually being delivered.

The SRA example is illustrative in that they outsourced their legal function in order to secure cheaper and more effective services, but achieved the opposite in good faith by failing to control the client-solicitor interface. As a result of this study many structural and procedural changes were put forward and the reform process has just begun. The re-engineering of processes for engaging and working with external solicitors will include:

- gateways for determining cases that require a degree of case management by an in-house solicitor
- accredited training for lay staff briefing solicitors
- common standards for firms supplying legal services

Ladies and gentleman, I believe that the key to managing the Nineties banking client effectively starts with actively managing client expectations. Bankers, like most clients, are looking for:

- prompt, responsive service
- accurate, relevant information
- clear, unambiguous advice
- an equal relationship
- to be kept informed regularly
- standardised, low cost service

Since the 1980s, bankers have become more urgent and articulate in defining what they want and are prepared to look at the best ways of securing the required service. A good example in the ANZ is the current "experiment" with centralised retail asset management.

In both Sydney and Melbourne, the bank now has a multi-disciplinary team of contracted lawyers and lay asset managers, handling active management and recovery procedures for the higher risk loan portfolios. In this scenario, the lawyers act beyond the scope of traditional lawyers. They are on the spot and are not transaction-driven, so they are sought out regularly and earlier for their verbal opinion. Equally, the asset managers are on hand to provide details, advice and background to the lawyers to sharpen their focus and understanding of the matter.

In closing, I make the point that no longer can firms rely upon the slow-moving monoliths of the banking industry, to be uneducated, loyal consumers that digest the great sea of legal services scattered before them like whales digest krill with little filtration or differentiation. Put more colloquially,

I leave you with one question: Given the degree of change required of firms to meet the escalating demands and expectations of banking clients as we approach the next millennium,

***“Can firms really afford to bank on
the whales for their patronage?”***