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TOO MANY LAWYERS?

BUSINESS PLANNING AND THE FUTURE OF LAW
The title of this article may seem provocative, yet the question mark is important. As with the provision of any goods or services in a market economy, the ‘right’ number of service providers is ultimately determined by supply and demand. As demand for legal services increases, more lawyers will be attracted to and earn a reasonable living delivering legal services; and as demand contracts, intelligent professionals will seek to exercise their talents elsewhere.

Yet for medium- and long-term planning purposes, projecting future demographics of the profession can prove useful. Asking the question “what might the future hold?” helps keep leaders’ eyes on the future development of their businesses.

For example, world-leading photographic company Kodak might no longer exist if it had maintained its initial view that digital cameras – with their lesser quality than film – were a passing fad. A more rigorous analysis of future trends, unshackled from the burden of existing ‘market leadership’ and ‘quality’ mindsets eventually caused Kodak to embrace the new technology.

Interestingly, in my discussions with legal market leaders, the need to maintain ‘quality’ – including the bespoke one-to-one service traditionally offered by lawyers – is a common theme, particularly when online and other ‘lesser quality’ legal services options are mentioned.

Re-focusing on the consumer rather than the company’s own mindset as a producer, however, caused Kodak to recognise the reality that consumers were perfectly willing to take photos with ‘lesser quality’ cameras more convenient than film cameras; not even only with cameras, but also with mobile phones and other consumer devices with even less photographic quality.

The vastly different legal services business models currently being developed – particularly those involving emerging technologies – will almost certainly have a fundamental impact on the business of law. An appreciation of the growth of the legal profession can provide a useful basis from which to consider the future direction of the legal profession.

This article’s analysis of historical demographic data is not predictive of future trends. That is a separate exercise, for which there is a wealth of information from a myriad disparate sources for those firms seriously undertaking that exercise. Historical numbers data is simply one of the early building blocks from which to observe the present and future from a slightly different vantage point; it is particularly useful if it allows us to gaze into the future with greater clarity than we might otherwise from the basis of our own assumptions about the status quo.

A CENTURY OF STEADY GROWTH
Figure 1 illustrates the growth of New Zealand’s legal profession over a 100-year period from 1858 to 1957, based on practicing certificate numbers available annually since 1916¹ and earlier information mostly taken from census data.²

1 Practicing certificate numbers do not necessarily reflect the numbers actually working as lawyers. Although sometimes understated (some lawyers may not require a practicing certificate for certain roles), practicing certificate numbers tend to mostly overstate the number of lawyers actually practicing. This is because when lawyers go overseas, retire or otherwise leave the profession during the year, the statistics are not adjusted to reflect the number of lawyers actually practicing. Practising certificate numbers are however more readily available, and provide the most consistent trend measure over long periods.

A simple linear extrapolation from the first 100 years of data suggests that with similar growth rates over the next 50 years there might have been as much as a 50% increase over that time, from just over 2000 lawyers in 1957 to a projection of a little over 3000 lawyers by 2007, illustrated in figure 2.

The reality was, however, vastly different, with almost ten times the growth rate than the previous 100 years might suggest. With markedly more rapid growth over the past 50 years, lawyer numbers increased by nearly 500%, with almost five times as many practicing certificates issued in 2007 (10,523) as in 1957 (2,056). Figure 3 illustrates the actual growth in lawyer numbers in the 150 years between 1858 and 2007.
“From the mid 1970s the growth in lawyer numbers, measured by the number of practicing certificates issued, far outstripped population growth.”

**Too Many Lawyers? Continued...**

**Lawyer Numbers and Population Growth**

The post war period, however, also experienced rapid population growth, so the explosive growth in the legal profession is not necessarily indicative of ‘too many’ lawyers. It is therefore necessary to examine the rate of growth of lawyer numbers within the context of the general population growth.

Figure 4 and figure 5 illustrate the growth in lawyer numbers relative to the population, for years in which lawyer numbers and population numbers were available. Figure 4 shows that in 1858 there were around 6 lawyers for every 10,000 people, rising to 12 in 1926 and dropping again to 8 in 1943 before settling at around 9 lawyers per 10,000 people in 1957 based on the number of practising certificates issued in that year.

There was also a long stable period between 1953 and 1968 (9 lawyers per 10,000 people) when the rise in lawyer numbers matched general population growth, but from the mid 1970s the growth in lawyer numbers, measured by the number of practicing certificates issued, far outstripped population growth, and in 2007 New Zealand’s 14 district law societies issued practicing certificates to 25 lawyers for every 10,000 people.

Figure 5 illustrates these results from a different perspective. In 1858 there were nearly 1600 people for each lawyer, falling to 833 in 1926 and peaking at 1271 in 1943 before settling at around 1084 people per lawyer in 1957. This remained reasonably constant during the stable period between 1953 and 1968 when the rise in lawyer numbers matched the general population growth, but from the mid 1970s the growth in lawyer numbers began significantly to exceed population growth, and by 2006 and 2007 there was one lawyer for every 402 people.
POST WAR GROWTH MATCHED BY POPULATION GROWTH UNTIL 1970S

Within the context of the first 100 years for which figures are available, a closer examination specifically of the last 60 years, after World War II, illustrates the growth of the modern profession.

Figure 6 charts the steady growth in practicing certificate numbers after World War II, from around 1700 practicing certificates in 1948 to nearly 3000 in 1972, an increase of nearly 70% in just 25 years.

With more than 60% general population growth in the same period, however, the increase in lawyer numbers broadly matched the general populace, illustrated by reasonably flat graphs in figure 7 and figure 8 during this period.

The next 35 years, however, from 1973 to 2007, are illustrated in figure 6 as a steep climb, reflecting more than 240% growth in the number of practicing certificates issued to lawyers. With population growth in the same period little more than 40%, figure 7 shows a sharp and sustained increase; from 10 practicing certificates issued for every 10,000 people to 25 lawyers for every 10,000 people in 2007.

Viewed from the perspective of the number of people in the general populace per lawyer, after reaching a peak of around 1100 people for every lawyer in 1963, figure 8 illustrates that the number of people per lawyer later fell dramatically, and in 2007 there were only about 400 people for each practicing certificate issued to New Zealand lawyers.
“Over the past four decades, ever increasing lawyer numbers have been readily absorbed into the economy. We cannot assume that this trend will continue.”

TOO MANY LAWYERS? CONTINUED ...

TOO MANY LAWYERS?
Throughout the 1940s, 1950s and 1960s population figures per lawyer remained reasonably consistent – between about 1000–1200 people per lawyer; not falling below 1000 until 1972.

If this rate had remained steady at around 1000 people per lawyer (or the equivalent of about 10 lawyers for every 10,000 people in the general population), by 2007 there would have been around 4200 lawyers. However, with lawyer numbers having grown far more rapidly than general population growth since the 1970s, in 2007 the law societies issued more than 10,000 practicing certificates.

Although it is possible to objectively extrapolate numbers and observe a phenomenal increase in lawyer numbers over the past few decades, it is not possible to use objective data to infer a subjective assertion that this means there are ‘too many’ lawyers.

Nonetheless, some additional observations may help readers draw their own conclusions:

1. Lawyer numbers have dramatically increased over the past four decades, with growth rates considerably higher than the growth rates of the general population.
2. Sophisticated organisational clients are increasingly facing pressures to reduce mounting legal costs, and have begun to take a series of measures to reduce their use of law firms. (See “The Silent Revolution” at page 98.)
3. The so-called ‘credit crunch’ may run a different course to other economic downturns. Over the past few decades a reduction in transactional work during economic downturns was typically offset by an expanding litigation practice, particularly restructuring and insolvency. Overseas reports indicate, however, that in economies in which the impact has already started to affect legal practices, the anticipated increase in other types of work has not occurred, resulting in high-profile layoffs in the litigation teams of a number of firms.

The timing of the latest book by futurist commentator Professor Richard Susskind, The End of Lawyers?, prepared before the credit crunch and released at the end of 2008, seems increasingly uncanny.

The dynamics this time may well prove different than we have previously experienced. Over the past four decades, ever increasing lawyer numbers have been readily absorbed into the economy. We cannot assume that this trend will continue.

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