

The ideal external lawyer

THIS article is the first in a new occasional series considering the interaction between corporate counsel and lawyers in private practice. A better understanding of their respective needs may serve to facilitate more effective practice for lawyers in both areas. LawTalk invited Telecom's Group Litigation Solicitor Ron Pol to open discussion by highlighting what qualities the corporate client looks for in a lawyer. New Zealand's largest company by market capitalisation, Telecom faces a raft of aggressive competitors, including multinationals Telstra, Vodafone and BT. Competitive pressures have combined to involve Telecom in some of New Zealand's most significant corporate litigation. Mr Pol, responsible for managing litigation across the Telecom group of companies, identifies seven key characteristics sought by corporate counsel in selecting external lawyers.

Bills are queried and discounts "keep the client happy". So, low fees are vital. Wrong. Most corporate counsel are happy to pay top dollar for star performers. Really. Cost is important, but value is paramount.

But there's the rub. You may be a recognised expert. You may genuinely believe that you meet client needs. But if your perception differs from that of your client, you have two options. Maintain a practice of self-delusion or pull your head from the sand and examine it. Closely. If you truly understand what your client really wants and then deliver, you will deserve top dollar - and you won't create the impression of having forcefully extracted it.

1 Recognised expertise

You attend, or deliver, seminars. You read widely to update and refine your knowledge. Your writing and work both demonstrate your expertise. Recognised expertise is a fundamental prerequisite; without it you will be excluded from consideration. Technical legal expertise is, however, readily available. In assuring a steady flow of instructions it secures only a ticket to the game; other characteristics are vital.

2 Pro-active problem solver

Any competent lawyer can (exhaustively) outline legal risks and incorporate a battery of qualifications to create a legal purist's (or insurer's) dream. Whatever the outcome, an opinion liberally peppered with variations of "if", "however" and "our opinion" can never be wrong. But, if filed under "what does this mean?" or "neatly typed but oddly worded", it will hardly help the client make commercial decisions. The client actually *wants* you to help it make decisions. So do it.

First, actually *advise*. Discard qualifications. Give a direct answer. Does the client really want a 20-page opinion? Consider a single page, in bullet or schedule form - outline the

question, issues, risks, advice and conclusion. Still do the research, but deliver in a manner the *client* finds useful. Stick your neck out. Yes, it might present a target. But it might also add some value.

Second, don't just say it, but *become* a problem-solver. Discard condescending naysaying. Identify risks and help avoid pitfalls, but also identify opportunities. Temper an overly legalistic approach.

The best solution might not be the most

conservative legal position so you need to demonstrate how to achieve a desired business objective, even if that will involve a different legal route to reach it safely.

Third, think like a businessperson (as well as a lawyer). Legal issues are, at best, secondary - identify how best to utilise legal expertise to achieve a client's commercial objectives. Lawyers often seek to minimise or avoid risk, to leave no stone unturned. But business is all about risk. Apply legal expertise within a cost-benefit context; assess strengths, weaknesses and risks, decide what to focus on and which stones to leave unturned. If your assessment is right, the same end result may be achieved, but faster, cheaper and more effectively.

3 Creative, strategic thinker

View transactions more widely than the traditional linear sense (eg dispute, proceedings, discovery, interlocutorys, possible settlement, trial, appeal). Legal problems are primarily not legal but *business* problems. So, what business problem caused the legal work? What would be the best outcome from a business perspective?

Lawyers often consider the objective of litigation is to secure judgment in the

client's favour - a legal win. But the client's objective is always to secure a commercial win. This might require a legal win or it might involve something different - such as no publicity, rapid resolution or avoiding asserting a particular argument which might adversely affect another part of the client's business. Help the client to identify, and help deliver, the real objective.

Creativity and strategic thinking that advance your client's business objectives are highly valued. Deploy them in practice, not just in glossy brochures.

4 Result-focused

Results *do* matter. Winning a case *is* different from losing it. Negotiating a deal which adds to the bottom line differs from not. Most lawyers agree. So why do clients sometimes consider that their lawyers don't much care about and are hardly affected by results? More to the point, why do *you* give them the basis for doubt?

Lawyers say they too are strongly result-focused. They're invariably genuine. Professionally, even personally, they want to win as much as the client. But the entire business structure of most legal practices is designed on a foundation directly to the contrary. The billable hour rewards inefficiency and incompetence. It encourages the maintenance of traditional practices in which lawyers' involvement coincides with transactions becoming complex and disputes taking years to resolve.

The most valued lawyers embrace alternative methods which measure and reward results, not just effort.

5 Timely, and available

You might offer sage, pro-active, business-focused advice. But you must also be available to do so. There is some truth in the adage that clients should seek busy lawyers. But if the client is not prepared to wait their turn, or the lawyer is not prepared to prioritise the work, the relationship will fail.

Having accepted the instruction, provide your advice in a timely fashion. Late advice is often worthless.

With multiple instructions, project-manage the provision of advice. A common frustration is having to follow up on advice sought, promised, but not delivered.



Ron Pol

from page 11 It is no excuse to say "you hire me because I'm a brilliant lawyer; you can't expect me to do project management stuff too". Clients can, and do. If you want to be a valued adviser rather than simply a legal technician, you will too.

6 Understand the client's business

You have clients in different industries. You recognise the importance of knowing something of their businesses. Yet, ultimately, the market in which you are truly an insider is that for legal services. But the ideal lawyer will also be a key part of the *client's* industry. Any competent lawyer can tell a client what the law is, but the most valued lawyer will also know, from a deep understanding of the client's business, how to utilise legal expertise actively to help grow the client's own business.

Accounting firms which now offer legal services in New Zealand have yet to demonstrate their potential and there are several reasons for this in the New Zealand context. But their international counterparts are having a real impact. In part, this is because the cultural difference between accountants and lawyers seems to favour the accountants. If they better understand the client's

business, effectively utilise industry expertise, are attuned to the way the business operates and offer practical proactive advice which facilitates growing the client's business, they may well be able to meet their objective of delivering legal services better than most law firms.

You may consider this a threat (and rail against multi-disciplinary practices and related abominations), or an opportunity (and seek actively to demonstrate how you add greater value).

Ultimately, it comes down to a simple proposition: understand the client's business as well as your own, become a key participant in the client's own industry and you will assure your place at the table reserved for the client's most valued advisers. Don't, and be content to pick up the scraps thrown to those aspiring to remain solely legal technicians.

7 Effective communicator

Lawyers are busy professionals, with competing demands for their time. You listen attentively, you analyse what you are told, and identify legal issues and a course of action.

If the case later falls apart, you pick up the pieces, redefine the strategy and get it back on track. Back at the office, remarks at

your client's expense – maybe about something you weren't told – reveal where you place blame. Sometimes you'd be right. Mostly not. *You* are the professional responsible for managing the case, for identifying relevant facts and helping advance the client's business objectives. In a rush to find the right answer, lawyers sometimes fail to get to the underlying issues, or to open their minds to an outcome outside the traditional legal framework. Partly, this requires creative, pro-active, result-focussed thinking. Mostly, it requires strong communication skills.

The greatest barrier to effective client communication is that most lawyers who don't possess such skills think they do. Ironically, those who think they might not and make the effort, often best understand (and meet) their clients' needs.

Effective communication, with a deep understanding of the client's business objectives, can reveal opportunities to apply innovative strategies which more rapidly and effectively resolve the real business issues. Effective communication also provides the foundation for creating and maintaining strong relationships which, together with consistent application of key characteristics, aids clients' identification of a legal professional who adds considerable value and is highly valued – the ideal external lawyer.

The opinions expressed by the author are not necessarily those of Telecom. **L**