

Definitely Mabey

Just saying . . . some things about the profession

This month's column touches on a few topics, some new and some not so new.



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PPP v. NIPR

I recently had a discussion (OK an argument) over which was the better benchmark for firms to manage by, profits per equity partner versus net income as a percentage of revenue. While the fascination with PPP has crept above the 49th parallel, it is still predominately a fixation of U.S. law firms.

First let me define the terms:

- PPP is the net income before any distributions to equity partners divided by the number of equity partners
- NIPR is the net income before any distributions to equity partners divided by the total fee billings of all time keepers

At its simplest level, to maintain or even grow PPP you simply reduce the number of equity partners you are dividing the “profit pie” among through de-equitizing or termination. You do not have to take any steps to address increasing profitability (which in many firms is the tougher challenge than letting a few of your partners go).

On the other hand to maintain or enhance NIPR you either have to grow the revenue line or decrease expenses. It is a given that more often than not the expenses will increase year over year and so to keep the same NIPR you have to focus on revenue growth or reducing expenses. To my limited knowledge, no one has been able to over the medium- to long-term cut their way to profitability.

Just saying, if I were a partner I know which indicator I would want my management focused on to protect my long-term financial viability.

The future of the profession in Canada

A couple of columns ago—[A Plea for Action](#)—I sent out a call for action by the profession to begin actually dealing with the systemic problems it was facing and stop the infatuation with identifying the problem but not acting on it. I received a comment back about the efforts of the Canadian Bar Association’s Legal Futures Initiative and how it was in the process of tackling these issues and would be releasing a report shortly. Of course hopes abounded: but with a certain degree of caution given the history of such efforts.

[The Future of Legal Services in Canada: Trends and Issues report](#) was released June 12 and

while well-meaning the caution was warranted. The end of the second paragraph of the executive summary states:

"This paper, based on original research commissioned by the CBA, provides an overview of major impacting trends and issues both inside and outside the legal profession in Canada. It does not contain any recommendations, but instead provides a starting point for consultations and discussions."

Nonetheless, I downloaded the 39-page report plus endnotes and two annexes and started to work my way through. I was pleased to read that one of the purposes of the Legal Futures Initiative was: "To canvass and reflect a wide range of views both from within and outside the legal profession." I was then somewhat surprised when in annex B, it listed the members of the CBA Legal Futures Initiative team and all have a direct relationship with the legal profession.

OK so let's shift focus for a second and look at some of the trends it identifies, or actually doesn't identify. In the second paragraph of page 14 the report states: "There appears to be an excess capacity in certain areas of specialty, but there is no clear data supporting a conclusion that the general market in Canada is oversupplied." In fact, the report goes on to say, "There may also be some undersupply in certain geographical areas such as northern and rural Canada."

Spring ahead to page 25 where under the heading General Demographic Trends the report includes the following two bullets:

- "Currently, admissions to law school are increasing more quickly than the growth in the number of practicing lawyers (ed. Has anybody mentioned the shortage of articling positions and how LSUC intends to deal with it?)
- Since 2000, the number of practicing lawyers has increased by five times the rate of increase in the general population"

Now I am just one of the "non-lawyers" who works in a law firm but my experience has been if it quacks like a duck; looks like a duck; and flies like a duck, the odds are fairly high it is a duck. But I will leave it up to the reader to decide if there is an oversupply of lawyers.

I will also leave it up to you to decide the merits of the report but there was one other observation that may serve to undermine the purpose of the report. On page 17, perhaps to inspire hope or the validity of rose-colored glasses, the report states: "One theory worth examining is that the market for legal services in Canada is actually growing, but that the lawyers' share of this market is declining relative to non-lawyer providers."

Conversely some of us might put forth the theory the market has shrunk and that, yes, the lawyers' share has shrunk too. Anecdotally, larger firms going after mid-size files; mid-size firms going after smaller files; etc. is not a phenomena associated with a growing market place.

"...the market for legal services in Canada is actually growing, but that the lawyers' share of this market is declining relative to non-lawyer providers..."

Just saying despite the above and a number of other questionable assertions/comments in the report, I would encourage everyone to read it with an open mind as there are some good summaries of some of the obvious challenges facing the profession and it will give you context for any eventual recommendations.

Generational differences

I have a different attitude towards work and my career than my deceased father had towards his and my kids have towards theirs and likely my grandchildren will have towards theirs. So I accept the concept generational differences do exist. But I am not certain this different attitude is the

sole culprit for the decline in the average billable hours being work by young lawyers.

Earlier this year, I attended a session where a representative of Peer Monitor (another Thomson Reuters company guiding the legal market think) provided a legal industry update on the first quarter of 2013. The insights shared were based upon the data submitted directly by all the firms participating in this benchmarking service.

One particular chart that drew my attention was a graph of the average hours per associate and partners on a quarterly basis from the first quarter of 2004 through to the first quarter of 2013. The graph, if you drew a line that connects the dots, shows a steady decrease of approximately 20 hours per lawyer. Given the timeline, a number of these lawyers are partners and would have been for some time so I am uncertain why the "work ethic" issue is just laid at the doorsteps of just generations X and Y?

For greater certainty, he included a chart that broke out average billable hours for associates and partners over the same time frame and the drop in average time per quarter per associate (15-16 hours) is lower than the drop in the same stat for partners (20-24 hours).

While there are generational issues and they can contribute to a reduced willingness to let their firm life overcome their personal life, I would say the bigger reason for the decline is both a shrinking of the legal market as well as less transactional files where being involved on one made it easier to record time in large blocks.

Just saying, maybe you need to look at indicators of workload available for young lawyers to do in your respective firms before assuming it is a work ethic issue of the younger generation.

Until next month, as Douglas Coupland is reported as having said remember:

"Blame is just a lazy person's way of making sense of chaos."

Comments or Questions?

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