

Law v business—breaking down the wall

BUSINESS AND THE LAW ARE INEXTRICABLY LINKED. GOOD LAWYERS LEARN BUSINESS PRINCIPLES AND USE THEM.

Though it may often seem that our legal work is just a tiny cog, the reality is that the commercial law machine exists only because of one thing: business.

The law is a complex field. For many of us, a large part of our personal development and learning is coming to grips with the realities and intricacies of practice.

The imperative is to put ourselves in our clients' shoes and understand the commercial environment in which our clients operate. Sometimes this is going to mean considering the bigger picture, sometimes the nitty gritty detail.

The tradition

As young lawyers we are, whether we like it or not, part of a tradition. Many of the

conventions that are part and parcel of the daily doings of a practitioner today are habits that have been formed over many years. Lawyers, perhaps more than any other professionals, respect and adhere to tradition. It is no exaggeration to say that we follow precedents relatively unchanged for hundreds of years.

The law evolves, but it often does so at a slow rate (especially during times when the courts do the evolving). Lawyers have always relied on the consistency and predictability of the profession. We're here to provide legal advice. Tell us your legal problem and we'll give you the legal solutions. X, Y and/or Z. That is how we are trained and how we practise, and that is what we have always done.

The rub

The knock, of course, is that we just don't get business. It's the same old story. For lawyers working in-house, at the coalface if you like, the rub between business and legal teams is most acutely felt. As the story goes, marketing comes up with a business idea, sends it upstairs to legal to be signed off; legal considers the legal ramifications and sends it back. With comments. Downstairs, upstairs, back down again, and on it goes until something so overcooked that it barely resembles the original idea is cast aside by irate "doers" as not worth the trouble.

No, this isn't new. And yes, in-house lawyers do provide necessary legal advice for this business to operate. Advice to further the business, to ensure the business is compliant with endless technical webs of regulatory tape. Advice, without which a business could ultimately fail. Aren't these lawyers just doing their job?

This may be true. But it's no wonder that these same lawyers are regarded as the frustrating nannies and grinchies that get in the way of business – an unfortunate but necessary cost. And from a bottom-line perspective, all the backwards and forwards is about as profitable as the table-tennis table in the lunchroom.

The shift

When times were good, there was no real impetus for change. The rub was an accepted part of corporate life. But the global economy isn't quite as peachy as it was in, say, the sweet '90s. Businesses are not just looking at the bottom line now, they are madly analysing it. Cost reduction is the focus of today.

So, understandably, there has been a shift in thinking. In-house lawyers in the big banks are now finding themselves working alongside and among business teams instead of on a different floor. They are being trained in the technical aspects of the systems that drive a business; trained to align themselves with business needs and strategic goals. Some larger firms are even enrolling their lawyers in project management courses. Many lawyers are being seconded out to workplaces to provide a better service to their clients, in recognition of the importance of understanding the business from the inside.

Despite this progression, legal tradition is not a tapestry easily unwoven, and equally, a well-worn perception can take a long time to overturn. The message is: you can wait

for your firm or company to improve your commercial skills (which may or may not occur anytime soon) or you can be proactive about it.

How user friendly is your advice?

A piece of legal advice we generate may have incorporated all the relevant legal implications, risks and outcomes, and may have taken a lot of considered time to produce. Yet there is very little purpose to the advice if the client doesn't understand it or cannot implement it at a business level.

A client won't be particularly impressed if you provide them with a 50-page set of terms and conditions that covers every risk under the sun for that client to provide to its customers, when in reality all they needed was a straightforward, concise document.

Simplicity and plain language is often what clients want.

Different clients, different needs

While our focus has been on the commercial context, it is important to remember that the organisations or entities that we provide advice for can be many and varied, including:

- corporations
- individuals
- associations and trusts
- not for profits
- community and government bodies.

Some of your clients may have fiscal benefit as one of their primary objectives, but not all these types of organisations have the almighty dollar as their end goal.

Who is your client?

What drives them?

What are they seeking to achieve?

Your client might be seeking protection from different and variable future risks, or if it is involved in a difficult and protracted dispute, mitigation of loss and damage.

The better you know your client, its drivers and needs, the better your advice will be. You will be in a position to anticipate the new issues, which can generate new work in itself.

Awakening your business brain

Not feeling commercially capable? Here are some ideas for getting your business brain into gear:

- read the financial press, thoroughly and regularly;
- go online and follow up on things that you hear about;
- attend industry seminars and take up memberships in industry bodies;
- learn more about the industries you service, especially where your clients fit;
- seek out mentors who have specific business experience;
- and there is always the option of going back to the books!

The opportunities are out there. Rebrand yourself as a commercially savvy lawyer. Who knows, perceptions about lawyers may even start to change.

Put simply

Commercial awareness is about understanding not just the basics of corporate entities and business models, but the wider business environment factors that influence success or failure in your client's core business (whether it's cleaning office buildings, growing trees for paper mills or raising money for charity).

Let's face it, it's faster for lawyers to learn about businesses and see the world through corporate eyes than the other way around. This is a significant competitive advantage just waiting to be used.

It's a feather in the proverbial cap to be able to demonstrate a healthy awareness of the commercial environment in which your clients operate, and that awareness will stand you in good stead in your current career in the law or any future employment. ■

SERGE MENDIS is a lawyer with Hunt & Hunt and
MATTHEW GARDNER is a law graduate with Herbert Geer.