EXPLORING A LAW FIRM BUSINESS MODEL TO IMPROVE ACCESS TO JUSTICE AND DECREASE LAWYER DISSATISFACTION - A SYNOPSIS

Andrew Pilliar

[NB: This is a synopsis of my recently-completed LLM thesis at UBC's Faculty of Law, under the supervision of Professor Mary Liston. The entire thesis is available through the UBC library system at http://hdl.handle.net/2429/43478.]

This thesis tells the story of a small group of lawyers and staff who tried to practice law in an innovative way. It is a call to lawyers and law students to recognize that there may be better ways to deliver legal services to the large segments of the Canadian public who currently, and too often, do without those services.

The thesis focuses on two problems that beset the legal profession. First, a significant percentage of the general public experiences a very real problem of access to civil legal services: a recent estimate suggests that 44.6 per cent of Canadians over the age of 18 – approximately 11.6 million people – have experienced a civil legal problem over the last three years, but also that less than 10 per cent of those individuals obtained legal assistance for that problem. Second, lawyers exhibit levels of career dissatisfaction and attrition from the profession that should be cause for concern.

I suggest a corrective for both these problems: a type of law firm that breaks from pervasive ideas of how law firms should be structured, and aims instead to provide accessible civil legal services while also providing an attractive work environment for lawyers. Through a case study of Pivot Legal LLP, a small law office in Vancouver, I examine whether it is possible to run a sustainable legal practice that includes providing legal services to low- and middle-income individuals.

UNMET LEGAL NEED

Anecdotal reports about access to justice frequently capture headlines because of the prominent people making those reports. But since the mid-1990s, largely in the wake of Dame Hazel Genn’s pioneering work in England and Wales, empirical research on legal need has proliferated, and today includes 23 national surveys, spanning 13 countries. Recently, that research has expanded from trying to understand the scope of need to also trying to understand how need is related to other socio-economic factors. In Canada, there has been growing interest on unmet legal need among those whose income is too high to qualify for what legal aid may be available, but too low to afford legal services. This population, the middle class, has been described as “staggering”. The legal needs of this population, I suggest, should help drive how legal services are provided.

A recent international comparative study suggests that access to civil justice is the most pressing problem facing the Canadian justice system. Canada ranked 16th out of 23 high income countries for access to civil justice, and ninth out of 12 high income countries in North America and Western Europe.

Central to the unmet legal need research is the idea of a “justiciable event”, which Genn defines as “a matter experienced by a respondent which raised legal issues whether or not it was

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4 Trebilcock, Duggan & Sossin, *supra* note 24 at 4.

recognized by the respondent as being ‘legal’ and whether any action taken by the respondent to deal with the even involved the use of any part of the civil justice system.”

Recent research has highlighted the ubiquity of justiciable problems throughout Canadian society, though there is some suggestion that “exposure to disputes can be expected to increase along with greater participation in social and economic life, and overall participation in social and economic life tends to increase with income.” Indeed, the trend in research on unmet legal need appears to be toward closer investigation of the relationship among socio-economic factors, incidence rates, and response types for various types of justiciable problems.

**LAWYER CAREER SATISFACTION AND ATTRITION**

Over the past several decades, a large number of reports have emerged which suggests pervasive malaise and disenchantment among practicing lawyers. According to these reports, the legal profession itself is broken.

This leads to an interesting question: if unmet legal need constitutes a “pull” from outside the legal profession to change how legal services are delivered, does lawyer discontent constitute a “push” from within the profession to similarly drive change?

The idea that lawyers might drive change in the legal profession in response to dissatisfaction with dominant models of lawyers’ work has been mooted in the context of legal ethics and

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7 Pleasence and Balmer, *supra* note 2 at 33, citing B. Van Velthoven and M. Ter Voert, Paths to Justice in the Netherlands, paper presented at the International Legal Aid Group conference, Killarney, Ireland, 8-10 June 2005.
8 Baxter, Trebilcock & Yoon, *supra* note 3 at 56.
professional responsibility. It has not, as far as I am aware, been explicitly applied to access to justice problems.

Despite the popular perception of the unhappy lawyer, there is academic debate about whether lawyers experience significantly more career dissatisfaction than others.

Jean E. Wallace, a sociologist at the University of Calgary, has described two streams of literature regarding lawyer job satisfaction: one “journalistic” stream suggests that significant numbers of lawyers are dissatisfied and are leaving the profession, while another “more academic” stream suggests that most lawyers are generally satisfied with their careers. The first stream often consists of “journalistic reports and biographical accounts,… articles in lawyer trade publications” and studies that “typically rely on lawyers’ first-hand reports of their personal experiences practicing law or interviews with a small number of lawyers.” The second stream is usually characterized by “larger, representative samples and more structured data collection techniques”, sometimes including sophisticated statistical methods. While the first stream is valuable, as Wallace notes, for theory-building and identifying potential reasons for lawyer dissatisfaction, the second stream is valuable to understand how widespread career dissatisfaction is within the profession.

In this thesis, I highlight and briefly discuss the role of the following nine factors in lawyer career satisfaction, either because they have been well-studied, or because they appear to be emerging areas of research interest: gender; family status; work demands; extrinsic rewards;

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intrinsic rewards; ethnicity; personal characteristics and psychological make-up; organization type and size; and mentorship.

The rate at which lawyers leave the profession is also important for several reasons. First, loss of lawyers from the profession may represent a loss of invested time and money, both for the lawyers themselves and for their employers. A recent study has suggested that the loss of an associate lawyer from a large Canadian firm translates to a $315,000 loss for the firm – approximately twice the average associate salary at such a firm.12 Second, if this attrition rate is not uniform across demographics and practice areas, this has significant implications for attempts to increase diversity in the profession.

Interestingly, although women appear to be as satisfied with their legal careers as men, they leave the profession at a greater rate than men.13 In British Columbia, approximately one-third of women who were called to the bar in 2003 had left practice within five years, compared to only 17% of male lawyers.14

Although lawyers do not appear to be as unhappy as they are often depicted in media reports, there are reasons to believe that conditions within the legal profession may constitute a “push” to improve how legal services are delivered. These reasons are rooted both in career satisfaction factors and in the uneven rate of attrition within the profession that sees women and minorities leaving at elevated rates. These factors and the previous discussion of unmet legal need set the stage for new approaches to the practice of law, such as that of Pivot Legal LLP.

13 Wallace, supra note 11 at 140.
PIVOT LEGAL LLP

The thesis then turns to an empirical case study of Pivot Legal LLP, drawing largely on interviews with former lawyers and staff. Originally, the law firm was intended to act as a fundraising tool for Pivot Legal Society, a well-known legal advocacy society located in Vancouver’s Downtown Eastside neighbourhood.\(^{15}\) By selling a broad range of legal services, the LLP was to provide a steady source of funding for Pivot Legal Society that was independent of government and also independent of other funding bodies.

As the LLP grew, its goals also seemed to shift slightly; as one partner described it, the LLP “accumulated associated goals”.\(^ {16}\) Other goals identified by the partners included:

1. developing legal expertise among lawyers who could provide that expertise to Pivot Legal Society;\(^ {17}\)
2. providing a supportive workplace for employees, including adopting a flattened and consultative decision-making model;\(^ {18}\)
3. completely re-working how legal services are delivered;\(^ {19}\) and
4. providing affordable legal services.\(^ {20}\)

The thesis then proceeds to explore the LLP’s sources of revenue, staffing, and overhead, before exploring some possible explanations for the LLP’s ultimate demise.

\(^ {15}\) Interview of Partner 4 (June 5, 2012).
\(^ {16}\) Ibid.
\(^ {17}\) Ibid; Interview of Partner 3 (March 30, 2012).
\(^ {18}\) Interview of Partner 1 (May 16, 2012); Partner 3, supra note 17; Interview of Partner 2 (May 4, 2012).
\(^ {19}\) Partner 1, supra note 18; Partner 3, supra note 17.
\(^ {20}\) Partner 3, supra note 17.
Reflecting on problems identified by lawyers and staff, several general problems were evident. While this case study cannot ground conclusions about causal relationships between the LLP’s apparent problems and its ultimate downfall, it is possible to speculate about possible relationships based on analysis of the interviews and the LLP’s business records.

A TOOLBOX FOR LEGAL ENTREPRENEURS

The story of Pivot Legal LLP could be read as a daunting cautionary tale for anyone hoping to start a legal services business dedicated to improving access to legal services. The LLP was built by very intelligent and dedicated lawyers, some of whom had already created a successful legal advocacy not-for-profit organization. It received significant early access to credit from well-established funders in Vancouver that were committed to ensuring the long-term success of the organization. It was able to leverage the existing investments of a sibling organization for operating necessities, particularly office space and office equipment. Its principals were well-known within the Vancouver legal community and also to key funders. The organization won an award as a promising social enterprise, having been evaluated by some key business minds in Vancouver. It had excellent access to business planning resources, and made use of these resources on a number of occasions.

If an organization like this ultimately failed, what hope is there for others?

In fact, there is reason for considerable hope. First, every single interview participant was asked if they thought that Pivot Legal LLP, or a similar business, could work if a few key changes were made based on the LLP’s experiences. All answered in the affirmative. Second, some of the
apparent advantages enjoyed by the LLP may actually have been hindrances, and understanding this could help future law firms avoid the same mistakes.

This suggests that it is possible to create a successful law firm that focuses on social justice lawyering or improving access to legal services. These examples also suggest, however, that lawyers who create these firms will have to make strategic and perhaps difficult choices about how to be financially viable: for example, choosing to embrace low fee legal services instead of hoping to fund an organization like PLS, or vice-versa.

Lawyers in such firms may also have to define “success” differently than lawyers in most law firms or businesses. Success for those lawyers will be measured by whether the firm improves access to legal services, rather than by the firm’s profitability for its partners. But as discussed in this thesis, research suggests that the extrinsic motivator of monetary compensation does not lead to satisfied lawyers. Instead, by paying more modest salaries but creating an enviable work environment built around a mandate to improve access to legal services, law firms might lower their overhead costs, thereby allowing them to provide legal services at reduced rates. Other firms might choose a different balance, such as higher salaries but less focus on improving access. Creating law firms which explore how such business models could work could be an important component of innovation in delivering legal services to improve access to justice.

All of this suggests not only that the LLP model is viable, with some modifications, but also suggests how that model could improve lawyer motivation and career satisfaction. A law firm focussed on developing a collegial workplace, doing socially-meaningful work to improve access to legal services, providing lawyers with some work autonomy and time flexibility, and
providing good mentorship opportunities to young lawyers might be able to attract and retain lawyers without promising them an industry-leading salary.

The thesis then sets out some “tools” for legal entrepreneurs to employ to achieve these ends, based on the experience of the LLP.

**CONCLUSION**

This thesis suggests that a law firm that is designed not around maximizing profits for partners, but around providing legal services to priced-out citizens, or to advance social justice causes, might hold promise alongside other projects to improve access. By taking steps to improve career satisfaction, law firms could improve retention rates while lowering their personnel costs, thereby enabling them to provide legal services at reduced rates.

The research in this thesis does not offer definitive proof that innovative law firms which address unmet legal need will succeed, but the case study of Pivot Legal LLP is suggestive. This research sets out two problems which might drive change in legal service delivery, and outlines some lessons from the experience of Pivot Legal LLP to show how that change could happen. Unmet civil legal need is pervasive in British Columbia, as it is across Canada. Lawyers – and young lawyers in particular – appear ready for innovative approaches to the practice of law.

Pivot Legal LLP was on to something when they started in Vancouver’s Downtown Eastside in 2006. Although the firm lasted only four years, those involved remain optimistic about the long-term viability of a similarly-structured firm. The Pivot Legal LLP experience provided valuable lessons to the staff and lawyers involved about how to run a successful law firm. In this thesis, I
have tried to uncover some of those key lessons and share them with a wide audience.

Hopefully, some will take these lessons and use them to create new and sustainable law firms dedicated to improving access to legal services.

Though Pivot Legal LLP is no longer in operation, it did not fail in demonstrating that there are innovative and exciting ways to practice law. In the words of one advisor: “Something not working is not failure. Failure of imagination, failure of values, failure of integrity – those are failure. But failure of an innovative, bold business idea?”21 This is a call for lawyers to engage their imaginations.

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21 Interview of Advisor 2 (April 30, 2012).