

# Business Planning for Law Firms

PAUL GILBERT



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WISE COUNSEL

## Business Planning for Law Firms

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## Foreword

MANY DECENT businesses have already been ruined by this current sweeping recession, and who knows when it will end? As very few businesses are entirely safe from the far-reaching downturn in economic activity, complacency or smugness would be daft at this time. Facing up to the reality and tackling it in a straightforward, enterprising manner is probably the only sane course of action. Paul Gilbert, author of this report entitled *Business Planning for Law Firms* singles out this need to face the actuality of the situation to lawyers. As the legal profession oils the wheels of business, Gilbert argues that it is incumbent on legal practitioners to be in the forefront of commercial change, creativity and innovation.

The principles of dealing with difficult and complex situations are largely universal and transferable across most professional disciplines. Certainly, I believe this holds true in the case of soldiers like myself and lawyers like Paul Gilbert. The starting point for tackling thorny problems is always the recognition that new thinking and approaches may be needed. Sometimes, this can be quite difficult for those used to the security and comfort of history, precedent or previous successes.

I accept the general assumption that the military is, by nature, conservative and tends to depend on standard operating procedures because they are familiar, well-practised and proved to be effective. Gilbert argues that the same charge can be made at some in the legal profession who just might prefer

the lesser hassle and risk of continuing to do things as they have always been done whilst hoping for the best.

Yet, going out of comfort zones is precisely what real leaders do purposely in their search to increase their professionalism, service and efficiency. Military officers are appointed above the rank to examine existing practices and assess whether they can be better done. They are there to make things happen and challenge methods that are outdated or of questionable relevance. Obviously laws, rules and regulations have been put in place for good reason, but that does not mean they should necessarily remain omnipotent or unquestioned forever. They must fit current circumstances and, if they don't, they should be challenged. After all, there would be no need for lawyers if the law was simply a matter of rote, requiring no explanation or interpretation.

Gilbert believes that new times and circumstances can occasionally make the law redundant. While he clearly has a deep respect for the legal profession, he calls for it to be more alive and adaptable – like a motor car, the legal profession and the law need to be serviced periodically. In this respect, lawyers can be seen as mechanics – their job is to respect and care for what exists already, but also to make sure the machinery of the legal system continues to work properly, and remains a relevant and useful tool.

Faced by altered circumstances, the immediate challenge is always to determine

exactly what has changed and what may now be required. Getting this right is the crucial starting point on which everything else will hang – and is the essence of this report. It is always worthwhile putting considerable time and effort into assessing the new situation, so as to determine what is really required. This may seem clear-cut or straightforward, but too often, missions, objectives or tasks are vague, unclear, misunderstood or very occasionally non-existent.

In late summer 1992 I was briefed to lead British troops into Bosnia in 'Historic Room 79' at the Ministry of Defence. The session lasted over an hour and a half, but not once during that time was I told what I was expected to achieve. Yet, this is fundamental to any plan – military or otherwise. In straightforward terms, I was given no specific mission, objectives nor tasks. In the middle of the briefing, a general was so appalled by this lack of direction that he passed me a note on which he had hand-scrawled, 'Bob, You have just been handed the biggest crock of s\*\*\* I have ever seen.'

In the absence of a proper aim, I used what the Army calls mission analysis to help me ascertain how I should act. Mission analysis seeks answers to three questions:

- Firstly, what am I really expected to achieve?
- Secondly, what supporting tasks are crucial to achieve such an aim? and
- Thirdly, what resources are available and what constraints must I operate under?

Under my particular circumstances, ascertaining answers to these three questions was vital. Using mission analysis, I decided that my aim would be simple – to save lives. Once determined, I used this directive as my personal guide to all pre-tour training and as a yardstick for how to operate on the

ground. Three months after I was deployed to Bosnia, the Ministry of Defence sent me a signal message: 'To save lives' was endorsed as my official mission. Perhaps I was a little too pleased that I had determined this at the outset and that my decision had finally been formally endorsed by the great and the good, albeit a trifle late.

My command period in Bosnia was the most challenging period of my life – so far at least. It was a huge privilege, but had great responsibilities. The situation clearly demanded that I also be creative and innovative. From my first reconnaissance, I realised that the situation I faced was like a Kafka novel – anarchic, complex and well beyond my personal experiences in the Army. I had to find or make practical, different ways in which to function. The whole enterprise was risky and yet, somewhat strangely, a great opportunity to demonstrate that I could rise to the occasion.

Gilbert strongly urges lawyers to rise to the occasion of this currently tough recession. A forward-thinking, legal entrepreneur, his report throws down a gauntlet to lawyers to accept the challenge presented by current circumstances. He profoundly believes the legal profession to be vital in the drive to recover economically. To him, difficult conditions should simply act as a spur or catalyst for lawyers to find new ways to assist their respective businesses. He is clear too that members of the legal profession should be in commercial frontlines as businesses adapt to prosper in changed circumstances.

The full integration of lawyers into business activities most definitely implies physical involvement and presence. For example, Gilbert mentions that in-house legal departments should simply be considered another part of the company, not just some form of exclusive sanctum into

which only the chosen few tread. Lawyers being seen, being known, being available is very much a part of Gilbert's suggested approach to their full involvement in future business activities.

But Gilbert evokes that in the drive for change, lawyers have to lead by providing principled advice to colleagues. This remains their special duty and responsibility. In the past, lawyers have been tempted to subordinate ethics to profit. The role of lawyers is to give clear health warnings to colleagues whose attachment to integrity may not be adhesive enough.

Gilbert's report is a practical manual or guide for lawyers, and aims to prepare them for what lies ahead through sound advice. There are three themes woven throughout the report. It looks at what actions lawyers should be considering in current hard times, what opportunities might arise during change and how relationships with clients might evolve. Above all, Gilbert seeks to encourage the legal profession to experiment boldly, pushing boundaries within ethical limits while keeping a good view of commercial profit needs.

All lawyers should strive to ensure that their contributions to business success are widely recognised – their work should count as part of profits, rather than as part of costs. This report is a brave, highly-valuable and, in my view, unique attempt to give no-nonsense advice to commercial lawyers operating today. Yet, I believe the ideas and suggestions herein are also easily applicable well beyond the legal profession.

*Colonel Bob Stewart DSO is former UN Commander in Bosnia and a world renowned expert on leadership and strategy.*



## Executive summary

IN ADVERSITY there is always opportunity, especially when what we are collectively experiencing is probably the most significant recession since the Second World War, possibly ever in the developed industrial world.

The now familiar daily commentary on the collapse of banks and the banking system around the world has given everyone a new vocabulary – words such as ‘crunch’ and ‘trillion’ have entered our everyday conversation – but becoming used to the language does not make us any more likely to cope with the upheaval and change that is now thrust upon us all. No one can be in any doubt that this is fundamentally serious and potentially devastating, and knowing the right vocabulary will not be much help if the right decisions are not made about our businesses and the subsequent actions to immediately follow.

It is also clear now that one of the unintended and unforeseen consequences of globalisation of commercial enterprise is that the complex interconnectivity of businesses, governments and systems (such as creditor insurance, supply chain, logistics, etc.) can mean that one company’s failure in one country can have disastrous consequences for thousands of businesses in many other countries.

In such times as these, the direct negative impact on the legal profession may not be as harsh as in some sectors, where supply-chains are longer, margins thinner and where credit is, in effect, the blood-

supply that oxygenates the vital organs of those industries. Rightly, there will be no government rescues for law practices, but the impact of the recession on lawyers is still very real, and will be long-lasting and significant.

As in all difficult circumstances, it is crucial to avoid sounding glib or superficial – real people are making real sacrifice and are experiencing real uncertainty and discomfort; but if we believe that there is no opportunity, the alternative mindset is to accept that we are all doomed to live forever with the negative consequences of macro-economic systemic and strategic failure – and that surely cannot be right?

In this environment the legal profession and the legal services industry generally have no alternative but to take significant and far-reaching steps, not just to manage the harsh economic realities of today (in terms of business structures, products and services), but also to drive for innovation, to be entrepreneurial and, I think fundamentally, to define and work with a new emphasis on business ethics.

Lawyers changing the way they work, in order to be able to cut costs, and adapt to new markets and new client expectations has an obvious resonance now, but the consequences of a new era of compliance, oversight and ethical trading have yet to be fully explored. I believe, however, that this will be front and centre in government policy, in the new remit to regulators everywhere and inevitably, in the boardroom as well – and lawyers, therefore, will have a major role to fulfil.

No longer will there be room for the testosterone-fuelled, single-minded pursuit of the 'can-do', 'make-it-happen' attitude, but perhaps space for a more reflective 'should we do this', 'should we do it this way' approach based on a broad-based professional integrity and on ensuring lawyers act in the client's best and wider interests.

Additionally, and fundamentally, the profession in the UK must also address a second and potentially even more significant horizon – that of the Legal Services Act 2007 and the implications of a new competitive age.

Some will say that the Legal Service Act 2007 brings about unwelcome change, a dilution of professionalism and new entrants of doubtful credibility working to dubious standards, where the pursuit of profit is a stronger driver than doing the 'right thing'. Others will say that the legal profession helped to prop up our credit-riddled economies, did nothing to act as a check or balance on boardroom excess, and actually participated in that excess for everyone else's good.

In reality, of course, while it is always convenient for commentators to polarise debate, the Legal Services Act 2007 is neither a Trojan horse full of malcontented chancers nor a panacea for the consumer – but it is most certainly a reality. And because it is a reality, the profession must work with it, develop it and make the best of it.

In doing so, there is more to achieve than to lose, and in not doing so, the converse will be true as well. These are, therefore, very significant times, perhaps times like we have never seen before and, as a result, it is incumbent on us all to consider our response and to act.

For those unfamiliar with the implications of the Legal Services Act 2007 – either because they are not immediately affected by it or not in practice in the UK – do not be fooled into a false sense of security. When

the genie is out of this particular bottle, it will never go back in.

I don't think there is a king Canute (the Danish king of England 1017-35, who was remembered for his inability to stop the rising tide) option, because while some governments may seek to regulate to protect legal services delivered by fully-qualified lawyers, spending just a few minutes trying to define what a legal service is will make you realise that vast swathes of activity undertaken by lawyers are simply administrative and commercial.

Change is coming, be in no doubt. In this report, I therefore want to address three key and interrelated themes:

- What the profession should be doing now to respond to the challenges of the global economic downturn;
- What lawyers should be doing more to consider the opportunities that might emerge the other side of the recession; and
- How much more influential will clients become in the short to medium term as sophisticated/informed purchasers of legal services and in shaping the new models of delivery and new services.

As is obvious, this is a very fast-moving and unstable environment, so writing a report that comments on and critiques what law firms and others are currently doing, might mean that those comments look outdated (even wrong-headed) before the ink is even dry. This report, therefore, is more observational in tone than judgmental, and it does not seek to criticise, save in one respect – and that is where the response observed is of a profession that wants simply to 'wait and see', because to do nothing is almost certainly a response doomed to fail.

Hope, in this environment, is not a strategy. If to do nothing is to risk everything, the challenge for us all is to be able to examine and understand what is going on today, to then frame our responses in the light of what we can learn from others and view the activity in which we engage as an important part of our ability to manage our businesses and our careers in this downturn.

Another reason for not being judgmental is that the legal profession is sometimes much maligned for its lack of strategic endeavour, when in fact, a great many law firms have been successful businesses for many decades, contributing significantly to their economies and to the reputation of commerce. Firms are said, by some commentators, to be conservative, operating outmoded business models and lacking in entrepreneurialism; but is that the reality? I believe there is plenty of evidence to suggest that many firms are being very strategic in their thinking and are certainly being entrepreneurial.

In this report, I want to point to the opportunity and to the hope for the profession, and glean insights from successful law businesses through case studies, as well as consider where future success might lie.

Finally, what of the client? How has the balance of power changed in the relationship between adviser and paying customer? What will characterise successful practice in the years to come? Are there trends that we can discern now and what of the impact of the Legal Services Act 2007?

There now seems to be a genuine client-side push to obtain a better deal and value from lawyers; and while the initiative is undoubtedly driven by cost saving, there is surely much more to play for.

These issues deserve a report in their own right, but there are fascinating insights

to be gained from understanding how the axis of influence is currently shifting and what that might mean for the profession.



## About the author

PAUL GILBERT is the chief executive and founder of LBC Wise Counsel, a specialist management consultancy for law firms and in-house legal teams with a particular focus on change management, relationship management, strategic planning and personal development.

LBC Wise Counsel predominantly acts for in-house teams in the UK and Europe with some activity in North America, too. In addition, Paul regularly works with law firms at partner conferences, training events and in a consulting capacity on issues such as business development and relationship management.

LBC Wise Counsel is the company behind the groundbreaking LBCambridge™ spring and summer schools for in-house lawyers at Queens' College Cambridge.

For six years Paul was a council member of the England & Wales Law Society and was elected to the Society's main management board. He now writes and lectures widely on the changing face of the legal profession, including the threats and the opportunities following the passing of legislation in the UK that will facilitate significant change in the way legal services are organised and delivered.

Previously, Paul was general counsel in two major UK financial services companies, and he has also held positions as chairman and chief executive of the national in-house lawyers Commerce & Industry Group. He is currently a trustee of the UK's national *pro bono* charity LawWorks.

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For more information on LBC Wise Counsel and the Cambridge summer schools, visit <http://www.lbcwisecounsel.com>.



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