

## PRACTICE

# Succession planning: a strategic approach

BY **EMILY  
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IF YOU ARE A NEW ZEALAND LAWYER READING THIS article, you are part of an inter-generational cohort turnover in the New Zealand legal profession. What does this mean? I am referring to the fact that the generation of baby boomer lawyers are generally reducing their level of practice, becoming consultants (instead of partners) and/or retiring. Simultaneously, the incoming generation of younger lawyers are moving towards or are stepping into partnership and other leadership positions. This is inevitable and predictable. Nevertheless, many lawyers are in denial about this and many law firms are not addressing the issue of succession planning. Denial and inaction are not strategies.

Conversely, some firms are embracing this inter-generational cohort turnover and taking advantage of its opportunities. These firms are responding strategically and proactively. And they are doing so in ways that benefit both the departing and arriving generations. They are doing succession planning right.

Assuming a law firm wants to take a strategic approach to succession planning, what should it do? What will ensure optimal financial, personal and professional outcomes for the firm and its partners?

Thinking and acting strategically involves looking critically at what is going on now, making some well educated guesses about the future and then taking appropriate actions. Law firms will therefore be well advised to focus on the current and future skills, personnel needs and financial issues that are involved in successful succession plan.

## Strategic succession planning retreat discussions

An excellent way to start engaging in succession planning is for the partners or directors (for convenience, I will refer to firm owners as partners rather than directors), to schedule a planning day to consider the topic. The purposes should be to identify succession planning options (both for individual partners and for the firm) and discuss possible next steps.

In terms of options, consider the following spectrum. At one end is the “last one out turn off the lights” and

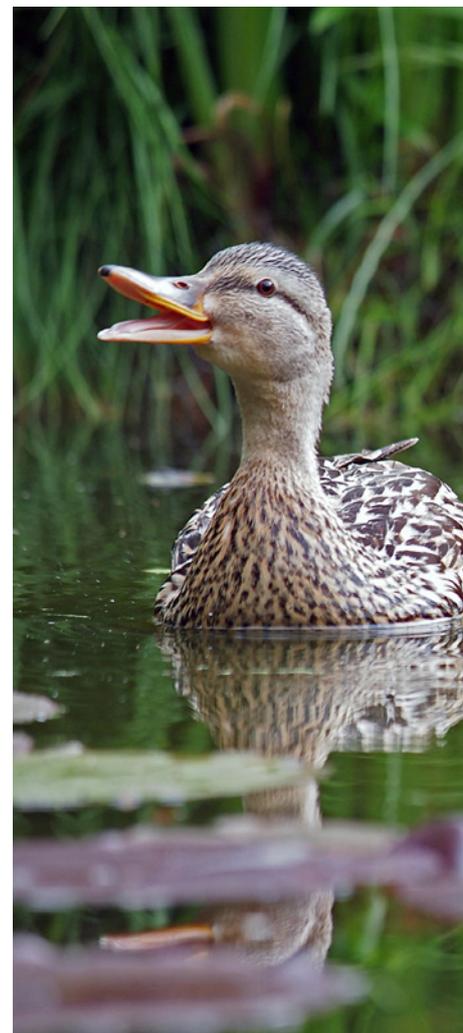
at the other end is passing along a robust and lucrative practice to the next generation in a way that preserves and enhances the present and future economic value of the practice. There are many permutations along the way including mergers, acquisitions and a sale of a portion or all of a practice.

I suggest the following topics should be discussed by the partners during strategic succession planning retreat(s):

### Financial considerations

Financial considerations include the cost of hiring and training younger lawyers, partner buy-outs and buy-ins, re-training lawyers, phasing out partners and the like. In addition, there are, of course, individual financial considerations for a partner who is considering retirement. Does that partner have the financial wherewithal to leave in the foreseeable future?

Although the topic of financial planning for one’s ultimate retirement is beyond the scope of this article, it is relevant in terms of whether a firm has partner buy-ins and buy-outs. Some firms view such arrangements as being a way to finance a departing partner’s retirement. However, increasingly firms are reconsidering this practice as it can make it difficult to attract new partners. Some firms are paying partners (who previously bought in) the present value of their future buy-out well in advance of their retirement and then dismantling the buy-in/buy-out structure going



forward. Thereafter, the expectation is that partners will fund their own retirements through current earnings and the firm will finance capital expenditures through internal or third party debt.

### Personnel considerations

Every law firm has a unique culture based on its history, leadership and lawyers. Although a firm’s culture is flexible, it can only accommodate a certain amount of deviation from the norm by partners and others before problems develop. Firms need to understand their culture to know who will fit in well personally and professionally as part of a succession plan. Although lateral hires can work well, it is often more difficult to integrate such lawyers than those who are “homegrown”. This can often make or break a succession plan.

### Skills considerations

Firms often focus on the practice areas that will need to be covered



when a partner leaves. It's important for a firm to evaluate both the current and potential future practice areas that are available to it. For example, a firm may choose not to replace a departing partner if the future prognosis for his/her practice area is poor, and to bring in a partner with expertise that is more tailored to market opportunities. Firms will need to be astute about identifying and evaluating current and future opportunities.

### Other topics for discussion during a strategic succession planning retreat

#### Individual partner's plans

What are each partner's current thoughts about his or her future in the practice? I typically encourage partners to talk in general terms about their future plans, realising that their thinking may change over time. The thinking of each partner will collectively inform the actions of the whole partnership.

#### Getting the right partner mindset

Some partners get uncomfortable thinking and talking about retirement and worry about the change in status, self image and identity it can entail. Some are concerned they will be marginalised within the firm and amongst their clients if they start planning for retirement. Taking the topic of succession planning and retirement out of the closet, sooner rather than later, can mitigate these concerns. It can be helpful for a neutral third party to ask the tough questions such as: "What are your plans?" "When might you intend to retire?" "Who will take over your practice?" "What resources will you need from the firm to transition your practice to someone else?" and "How will this be communicated to your clients?"

#### Starting early with succession planning

To optimise the many benefits of proactive, strategic succession

planning, I recommend firms start the process no less than five years before a partner's anticipated departure. It takes quite a long time to get the process right and it is often easier to talk about these things when they are not immediate eventualities.

#### Articulate clear outcomes and benchmarks

The succession planning process should include timelines, clear objectives, hiring decisions, plans for cultivating and training new talent, business development considerations and so forth. Having benchmarks and timelines will ensure accountability and success.

#### Communicating a firm's succession plan to clients

Optimal client care during the active phase of a succession plan is critical. For example, if a partner is going to be departing in the next 12 months, I suggest a letter be sent to clients sooner rather than later explaining what will be happening, who will be taking over his/her practice and presenting the change in a very positive and professional way. This will strengthen the firm's relationship with clients.

In some cases, it can be helpful to raise the issue well in advance of a particular partner's departure. For example, if a firm has long time, well-established client relationships, it may be advisable to be relatively transparent about the succession plan to reassure clients that their legal needs will be met, even if something happens unexpectedly to the partner with whom they currently work. This can be a significant marketing opportunity for a firm.

#### What to do if the succession planning process derails

People change their minds, stuff happens and the unexpected occurs. A strategic succession plan needs to be sufficiently detailed and specific to provide guidance but also flexible enough to address the unexpected. The partners' ability to be nimble, communicate effectively and work closely with each other will be critical throughout the whole process.

#### Mind the generational differences

I was speaking with a partner in his mid to late 60s in a mid-sized regional firm who described the firm's efforts to create a succession plan for his practice. He explained the firm had hired a younger, female lawyer and that although she was capable and personable, it had not worked out. When I enquired as to the reasons, he explained that her "work ethic" was not in alignment with that of other older partners in the firm. She had young children, was interested in part-time work and generally wanted more flexibility and a different work/life balance.

This illustrates one of many issues that can arise in this inter-generational cohort turnover. The departing generation consists, in many cases, of primarily male

lawyers who came of age at a time when fewer couples equally shared child rearing and other household duties. The incoming generation is likely to be at least 50% women, in their early to late 30s and very interested in work/life balance issues as part of a sustainable and appropriate work ethic.

These issues need to be discussed candidly so all parties understand their respective objectives and agree on appropriate ways to address everyone's needs. I have found that clients are often very accepting of different work style approaches, especially if these issues are openly discussed. For example, if a new incoming partner is a mother with young children and wants to leave the office regularly at 3pm, clients will typically be okay with that, as long as there is somebody available to address their needs in a timely way.

### Should the retreat be facilitated or not?

This will depend on the extent to which the partners are comfortable discussing the topic of succession planning openly and comprehensively. It can be a loaded issue in some partnerships. In other firms, partners discuss the topic frequently and it is not a challenging issue.

If the topic is likely to be sensitive and/or potentially contentious and/or if the partners are unsure about options that might be available to the firm as best practices, then having the retreat designed by and facilitated by an external consultant can be helpful. In addition, the firm gets the benefit of a neutral, third party perspective.

Going back to the spectrum of succession planning options I mentioned earlier in this article, my starting point in working with firms is that most lawyers spend a major portion of their waking hours building a practice and serving their clients. This is their life's work. Accordingly, it's worth spending some time and effort trying to figure out how to preserve and optimise the benefits of that lifetime of work. It's not a one-size-fits-all process. The trick is to find tailored solutions that will wear well over time and meet everyone's needs. You too can do this. ■

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## PRACTICE

# Are you approaching eDiscovery in the most effective way?

BY **ANDREW KING**

MENTION DISCOVERY TO MOST LAWYERS AND THE FIRST thing they think of is cost, complication and burden – *not a great starting point!*

This is at the same time as the discovery process continues to be an integral part of any litigation or investigation.

The challenges with discovery are not new, although they are compounded by the sheer volume of documents that now exist. With data volumes doubling every 18-24 months, this creates considerable impacts with the document volumes now experienced in most matters.

As a result, it is very easy for the costs associated with the discovery process to quickly spiral out of control.

With so much changing so quickly, it is important to ensure that you are approaching eDiscovery in the most effective way possible.

### Working smarter

It can be easy to lose sight of the true objective of any discovery exercise. This should be to facilitate a method of getting to the most important information quickly, cost effectively and accurately.

Having worked with eDiscovery exercises for the best part of 20 years I realise we need to be a lot smarter in how we approach discovery to meet this objective. Often, practices used in the past will no longer work, or they will only add further cost, time and complexity.

The discovery process today does require more front-loading of work. This work will assist in limiting the scope of discovery to what really matters providing