

A conflict of interest... designed by lawyers?

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Our commercial legal system was designed to protect and enforce the rights of people and businesses - a service which is vital to the healthy functioning of any economy and society. But perhaps it's time to ask whether the commercial legal sector has remained aligned with its purpose - to help, solve and build. Some say that traditional legal practice has evolved to be in service of itself, its own academic and intellectual follies, and driven by the desire to fill its own pockets.



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This is an uncomfortable question but one which must be asked because until fairly recently, there hasn't been much choice for organisations seeking commercial legal counsel. Over decades of incumbency, large firms have shaped the sector which the market was expected to follow. Legal services were provided on lawyers' terms, at their offices, and in their own time.

Another example is the practice of firms setting fee targets: The way traditional law firms grow is by placing fee targets on their lawyers. Essentially, this means that in order to be retained and promoted, the lawyers are required to work and bill a certain number of hours to bring in a defined amount of revenue each month and year.

This means the lawyers are incentivised to make each brief bigger and more complex, and by extension more expensive, rather than to serve clients in the quickest and most commercially viable ways possible. Of course, many lawyers in the system don't unnecessarily make mountains of molehills, but unfortunately many do.

This misalignment of incentives can create an environment where the interests of the lawyer are pitted directly against those of the client, which is arguably a conflict of interest – one that is built into the very fabric of daily legal practice. This practice isn't unique to South Africa. It is the norm within traditional firms across the globe, despite the industry being so heavily regulated. It's been accepted as the norm for so long that the regulators – there to uphold the integrity of the profession and protect the public – don't seem to notice it.

Of course, clients who suspect that their legal work has been unnecessarily inflated have the choice to brief different lawyers next time, but until recently the choice has been between lawyers working under the same incentives and pressures. Choice for consumers is the basis of competition, which is essential to any functional economy, but choice between similarly incentivised alternatives means consumers could end up being the losers more often than not.

While many large firms are still in denial, their ability to dictate to the market has been eroded. Buyers of legal services are no longer price takers, but actively shaping the types of services they need and the terms on which they will procure them. But even though they've been forced to scale back their hiring and promotions, the big guns still believe they'll shape the industry.



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Listen to the market

All the industry needs to do is listen to its market. Ten years ago, we asked the market what it wanted, and the response was loud and clear: It wanted excellent legal work provided quickly and without bulk or fanfare. So we did just this, and have seen exponential growth since. The growth is relevant because it's been driven organically without capital investment and without expecting our lawyers to bring in clients or work towards fee targets. This is right. Right for the profession and right for the market it serves. It gets us back to why we're here – to help, solve and build.

With this in mind and to test assumptions, we also asked our lawyer peers what they wanted: For the most part, they wanted to be able to do the work they love in a way that fits in with the rest of their lives and without responsibilities they

were never inclined towards or sought out.

Don't incentivise lawyers to grow firms – as with any service business, this is the job of management and its marketing and sales initiatives. We are clear that the business model for lawyers of the future simply connects talented lawyers with clients to develop commercially viable legal solutions quickly, devoid of the pressure on lawyers to cover large overheads and meet targets, or participate in marketing, team management and other corporate clutter. That's it. It's tragic that going back to the basics, to the core of why we're here, should be considered innovative.

The idea was to find a way of doing business that benefits everyone, without any losers. It really is possible, and we prove it daily. Change is in our hands. We encourage bold movers to be deliberate and discerning when choosing between legal service providers. Ask the questions, and get the information you need before briefing.

You now have real choice, and by exercising it deliberately you can force the change you want to see.

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