



Business & Commercial



I Can't Stand Lawyers!

"I can't stand lawyers" – or words to that effect – is a refrain I hear all too often from business brokers. This is sometimes just a gentle "rib" at me (which is sort of funny), but it does point to a genuine feeling many brokers have about lawyers. There is a view that lawyers can often frustrate – and sometimes completely derail – transactions. Rather gallingly, this sometimes occurs in circumstances where you have referred them the deal! Is any of this sounding familiar?

I have a confession to make: sometimes *I* can't stand lawyers. Yes, it's true. I say this from the point of view of having to deal with an awful lot of them. I am a lawyer. My partner is a lawyer. Like most other professionals, we are a mixed bunch: some are excellent and consistently add value; others are tedious and difficult; some completely misunderstand their professional obligations; but many strive for excellence in their work.

In my experience, deals will usually progress smoothly when you have got a motivated buyer and seller, a proactive broker, and experienced *commercial* lawyers and accountants on *both* sides of a transaction. The problem, of course, is that all too frequently one of these "ingredients" is missing. Far too often, we are dealing with a client who insists

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on engaging their local lawyer (who acted for them in a family law matter or wrote their Will), who has little understanding of commercial law.

Like many other professions, lawyering has become increasingly complex and specialised. It is perhaps an obvious point, but you wouldn't go to an orthopaedic surgeon if you needed eye surgery. Similarly, you shouldn't go to a criminal lawyer if you need to re-structure your business for sale. However, this is what happens all the time, and it becomes a problem for all of us.

To hold yourself out as a commercial lawyer you need to have an excellent grasp of contract law, corporate law, tax, commercial leasing, franchising and intellectual property. You also need to be able to draft well and have a keen awareness of what is important. In my experience, litigators can make terrible *commercial* lawyers as they become excessively preoccupied with risk. They have little appreciation of the need to 'manage and balance' risk rather than eliminate it. They also typically approach transactions like litigation, where the two sides are frequently antagonistic and trying to win every single point in dispute, regardless of whether that dispute is ultimately important to the deal or to the client's business objectives.

The value of a good commercial lawyer lies in their ability to provide excellent high-level advice to clients and brokers. Rather than being seen as an obstacle to a transaction, a lawyer should be an invaluable source of advice and a *facilitator*. They should have excellent commercial judgement and be active problem solvers. If all a lawyer is doing is identifying problems rather than working to provide solutions, then clients should be encouraged to look elsewhere. A higher standard should be demanded.

It seems to me that it is essential for brokers to have a handful of lawyers around them who they can regularly refer work to. Whilst you will never have the ability to insist on a party using a particular lawyer, there is definitely scope to encourage clients to use preferred lawyers, and to provide them with an understanding of the value of selecting a lawyer with appropriate expertise. The consequences of not doing so will mean that deals will be delayed, clients will be unhappy, and (in a worst-case scenario) deals will be lost. However, if you get the right lawyers on a transaction, you are more likely to get the right result.

And, heaven forbid, you might even begin to like some of the buggers!

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Feel free to give me a call to discuss your
commercial legal matters

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