
Legal practice insights for banking lawyers — the competitive advantage

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In the banking sector, the credit functions are constantly refining credit models to discern populations that provide a disproportionate outcome to the general population, in either a positive or a negative sense. This is a skill set that the financial services sector has been honing for a number of decades. It is seen as a source of clear competitive advantage and is therefore important to banking professionals as well as their legal advisers.

The hundreds of million dollars that the sector is prepared to spend each year on this capability is a measure of the value they believe is available. Other industries have developed, or are developing, an analytical capability for their respective sectors, but there is a universal acknowledgment across most industries that, with the growing availability of commercial data, there remains huge potential to gain further competitive advantage by converting the data into insight, in a way that is quicker and more informative than that of the competition.

This is the strategic reality for any organisation — banks and law firms alike. If a competitor is able to gain these valuable insights into its business, the marketplace or customer behaviour first, then it gains the competitive advantage. As advisers to the banking and finance industry, banking lawyers not only need to be in tune with the objectives of their clients, they should also be keeping an eye out for what commercial information they or their competitors may have access to for a competitive advantage within their own market.

Having worked in the banking sector for more than 40 years, and more recently providing expert assistance with debt and equity capital raising, enterprise risk and corporate restructuring, I have seen different drivers change the banking landscape significantly over this time. Today, I believe the following are some of the key drivers of value that are necessary to provide competitive advantage.

The first driver is to have the ability to extract and analyse the data that can potentially convert into insightful information. The second is to present this insight in a format that enables decision-makers within the firm (or client) to act — for example, mining the Personal Property Securities Register (an ever-growing source of

commercial data) in order to provide advice based on detailed analysis of the security position of the client and other stakeholders involved. In other words, being able to analyse the data, draw insight quickly, and ultimately prepare it in a client-friendly format to help explain the advice could be the competitive difference that wins your firm repeat business with the bank. The clearer and more simple the communication across lines of business and management silos firm-wide, or even across professions, the greater the uptake — in summary, the ability to analyse, communicate and act. So, what's new in that? Well, some do it better than others.

The firms that demonstrate a strong analytical capability are those that combine the following skills in a collaborative and seamless manner:

- They use the wisdom and experience of business leaders from within the firm.
- They know the business drivers — what makes the firm successful in the marketplace.
- They combine this knowledge with analytical skills — skills that can detect trends and anomalies.
- They incorporate modelling skills — skills that can build predictive models.

In combination, these skills work together on a continuous and iterative basis, allowing firms to join the dots and extract the insights that lead to competitive advantage. This dynamic is particularly important to banking lawyers, whether they operate in-house or work as part of the banking team in a law firm, because small increases in efficiency can have huge impacts on profit, while missing even a single piece of information can lead to significant loss.

A collaborative working environment is another characteristic that appears to pervade the more successful firms. Over my career, I have worked in very collaborative environments and in not-so-collaborative environments. It is without question, in my experience, that a group of diverse skills working collaboratively will deliver higher quality outcomes. What assists this environment is to have common objectives and the ability to have a fact-based discussion. Any tools and processes that enable the facts to be brought to the one place for discussion and consideration will enhance the outcome.

By successfully combining the above skill sets from within a firm and, better still, within a team — such as the banking practice of a firm — the ability to apply the insights and communicate the outcomes is enhanced. Beyond this, it is the use of judgment and science that provides the added value. Arguably, this is a balance in which banking lawyers are already well practised — applying the letter of the law to “real-life” business situations. In the case of leveraging commercial information, judgment is the experience and wisdom applied to decision-making, and science is the modelling capability. In addition, there are existing and emerging visualisation technologies that can complement a lawyer’s capability and assist with communication by enabling the audience to see the complete picture fast.

The other business reality of today that cannot be left unmentioned is that new technologies are dramatically shortening business cycles. Legal practices are not exempt here, and banking lawyers will find that their clients are among the fastest to innovate. Business models that have held up for decades across a range of industries are now being disrupted within months by new and innovative technologies. The examples are numerous and well documented. The legal profession, which is rich in tradition, is not isolated from these changes — whether it be new legal-specific software, alternative pricing models or new market entrants. I’m sure that with a five-minute brainstorming session, the whiteboard would be full of examples and most of the participants would be resentful that their fine contributions were surplus, with the point being comprehensively demonstrated.

Legal technology advancement is very evident, and a simple time series graph that recorded legal software supplier calls to your firm over the recent past would demonstrate the point. The issue is which of the new applications will have a profound impact on the banking and legal industries, as undoubtedly technology developments will. I believe that this area does need to be monitored closely and new applications need to be

carefully evaluated for productivity, control of the process and business disruption potential. If correctly evaluated, early adopters and their clients will benefit.

In the early stages of my career in banking, the ledgers were maintained in the branch. The by-product of this process was that the manager knew in detail the financial transactions of each customer and could respond accordingly. He literally saw each cheque written and each deposit made. With the removal of the ledgers from the branch, the manager lost in substance much of this knowledge of the customers’ financial transactions. What we are witnessing now is the use of technology to bring this level of customer understanding back to decision-makers. The difference today is that there are many more customers and infinitely more transactions — and all of the related data is at the fingertips of those bankers and their advisers who have the capability to convert it to a competitive advantage. Will this include you?

In conclusion, I believe that the development in legal knowledge management via the use of technology is developing at such a rate that it should be one item on all risk registers because its ability to disrupt existing business models is high. At the same time, it can provide substantial opportunities for competitive advantage. Therefore, the strategic significance of commercial information management practices in firms and banking and finance organisations cannot be overlooked.



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