

# TO BE OR NOT TO B-CORP?



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LAW, JUSTICE AND HUMAN RIGHTS

*What if a law firm were legally prohibited from making too much money? What if there were a fixed profit ceiling for equity partners, and any profit exceeding that amount had to be distributed to others? What if a firm explicitly placed social and environmental goals ahead of revenue goals — what would change about a firm’s culture, structure and position in the marketplace?[1]*

If you’ve read ‘Hell has Harbour Views’ by former Australian lawyer, Richard Beasley, or you remember the TV series, you could be forgiven for thinking that using the words ‘ethical’ and ‘law firm’ in the same sentence is an oxymoron. In the book, Beasley tells a tale about a large corrupt law firm and a young lawyer who is so enticed by the Sydney Harbour views that he turns a blind eye to unscrupulous business practices. In contrast to this grim story, a few Australian legal firms are demonstrating that it is possible to practice with an ethical backbone – by getting B-Corp (Benefit Corporation) certified. More on that later, but first, let’s look at what’s not working and why it needs changing.

## **The problem**

Most Australian law firms operate on a standard partnership model, generating profits to their partners through the billing of clients on the basis of hourly charge-out rates in six minutes increments. Michael Bradley, founding and managing partner of Marque Lawyers, states that there are three things fundamentally wrong and broken with these conventional law firm models.[2]

Firstly, they charge for their services by time, not the value they actually offer to their clients nor how much they understand the client or their industry.

Secondly, they think they are special and behave accordingly – rather than appreciating the service nature of the business, lawyers are ‘stuck up’ and no fun.

Finally, they fail to reward outcomes, focusing on generating financial success through intense competition between lawyers to spend more time on client matters. All of these, says Bradley, drive their customers' nuts and are the reason the industry is in 'terminal decline'.

### **The solution**

In response to this allegedly outdated model, Damian Sturzaker, a partner at Marque Lawyers says his firm is taking a new approach. Marque Lawyers negotiates appropriate retainers, which are often upfront monthly fees for legal solutions regardless of the number of 'six minutes blocks' spent by the lawyers. By doing away with billing timesheets, behaviours that encourage feet dragging are replaced by efficiencies and the focus becomes simply achieving pragmatic legal solutions for the client. For its staff this means full transparency on firm financials (i.e. how well the firm is tracking from month to month) and the sharing of rewards equitably across the firm, for both support staff and lawyers.

Australia's Clearpoint Counsel has gone one step further and become the only Australian law firm that is B-Corp certified. Clearpoint's director Joel Cranshaw admits to being slightly sceptical about B-Corp certification at first. B-Corp describes itself as a 'new type of company that uses the power of business to solve social and environmental problems.'<sup>[3]</sup> The Economist<sup>[4]</sup> explains it like this:

To qualify as a B Corp, a firm must have an explicit social or environmental mission, and a legally binding fiduciary responsibility to take into account the interests of workers, the community and the environment as well as its shareholders. It must also publish independently verified reports on its social and environmental impact alongside its financial results. Other than that, it can go about business as usual.

### **Some problems with the solution**

There are, however, critics.<sup>[5]</sup> Placing social goals ahead of revenue goals – and perhaps more alarmingly for law firms, ahead of their obligations to the legal profession's ethical rules to the court – may present philosophical and indeed legal conflicts. The Statement of Ethics of the Law Society of New South Wales<sup>[6]</sup> makes it clear that the duty of the legal profession is to 'serve the interests of justice' and to 'advance the interests of the client above [their] own'. In circumstances where a client's interests in the settlement of a case or negotiation of a commercial outcome are good for the client, but have questionable social and environmental impacts, there may be a direct conflict between the law firm's duty to serve the client and fulfil fiduciary duties in accordance with B-Corp certification.

An example of this may be where a mining client settles a Native Title claim with an indigenous community that allows for ongoing environmental degradation of the land, despite some financial compensation. In such a case, while the lawyer's duty to the client is satisfied because they have adequately advanced the interests of the client above their own, from a B-Corp perspective, the negative environmental impact of the settlement undermines the lawyer's commitment to broader social and environmental goals.

Furlong<sup>[7]</sup> argues that it may be worth considering different approaches to overcome this potential conflict. He cites the initial prospectus of Australian law firm Slater & Gordon which succinctly stated in the context of floating on the Australian Stock Exchange that:<sup>[8]</sup>

Lawyers have a primary duty to the courts and a secondary duty to their clients. These duties are paramount given the nature of the Company's business as an Incorporated Legal Practice. There could be circumstances in which the lawyers of Slater & Gordon are required to act in accordance with these duties and contrary to other corporate responsibilities and against the interests of Shareholders or the short-term profitability of the Company.

So, perhaps if a law firm makes clear that there is a tiered hierarchical approach to ethical obligations to the court, clients and social and environmental issues, B-Corp certification may start to catch on.

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[1] Furlong, J, "The Limited Profit Law Firm", *Law 21*, 9 March 2012 available at <http://www.law21.ca/2012/03/the-limited-profit-law-firm/> (accessed 3 February 2015).

[2] Bradley's speech at Conscious Capitalism Australia, *Walk The Talk*, 2013 available at <http://vimeo.com/78121980> (accessed 9 February 2015).

[3] B-Corp, *What are B-Corps?* available at <http://bcorporation.com.au/> (accessed 7 November 2014).

[4] 'Firms with Benefits', *The Economist*, 7 January 2012, available at <http://www.economist.com/node/21542432> (accessed 3 February 2015).

[5] Furlong, J, "The Limited Profit Law Firm", *Law 21*, 9 March 2012 available at <http://www.law21.ca/2012/03/the-limited-profit-law-firm/> (accessed 3 February 2015).

[6] Proclaimed on 28 May 2009 available at [https://www.lawsociety.com.au/ForSolicitors/professionalstandards/Ethics/state ment of ethics/index.htm](https://www.lawsociety.com.au/ForSolicitors/professionalstandards/Ethics/state%20ment%20of%20ethics/index.htm) (accessed 3 February 2015).

[7] Ibid footnote 7.

[8] Referred to at Riskin, G, 'First Law Firm Goes Public – shares up 40% on first day of trading' *Amazing Firms, Amazing Practises*, 22 May 2007, available at <http://www.gerryriskin.com/first-law-firm-goes-public-shares-up-40-on-first-day-of-trading/> (accessed 3 February 2015).

Image Credit: [bcorporation.net](http://bcorporation.net)