procedural enactments' and 'Court bail'.

When I first started reading this book, I had intended to give it to some of my junior staff as an introduction to criminal procedure because it provides a great and, in many ways, all-encompassing overview of criminal procedure. This is difficult to cover with new practitioners but also impossible to do so in a concise way.

The Criminal Procedure Act 2011 is still in its infancy and so senior practitioners would gain assistance from having a quick reference guide as well. Having learnt a few things, I have concluded that this is a text all criminal practitioners should have in their briefcase, along with other 'must have' texts like Mahoney on *Evidence*. It is a well-written, detailed and succinct resource which I will be keeping, rather than giving my junior staff.

Criminal Procedure in New Zealand, 2nd edition, Thomson Reuters New Zealand Ltd, 978-0-864729-81-1, November 2015, 313 pages, paperback and e-book, $105 (GST and p&h not included). ■

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Partner compensation —

Is your firm getting it 'right'?

By Emily Morrow

This time I am going to write about something really tough. I am going to write about dividing up the financial pie in a law firm.

The issue of partner compensation surfaces in every law firm and it underlies many other issues. It is often not discussed directly, but it can be the gorilla in the closet.

Lawyers ask me which compensation system I recommend because it is the "best". There is no such thing as a "best" compensation system in the abstract. In reality, the best compensation system for a firm will be the one that embeds well over time within that firm by aligning with and reinforcing the best aspects of that firm's unique culture. Full stop.

To determine this, a firm needs to understand its culture – the good, the bad, the ugly and the beautiful. Then, and only then, can it make informed decisions about compensation arrangements among partners.

> “ The best compensation system for a firm will be the one that embeds well over time

Relatively few firms take the time to do this right, and partner compensation arrangements can be problematic. Sometimes the problems are minor but sometimes they can be damaging.

Steve, the rising star

Steve has been an equity partner in a mid-size firm for three years, having previously been a salary partner and solicitor there for seven years. He is exceptionally bright, capable, hard-working, and a gifted business developer and team leader.

His practice is lucrative. Although he is one of seven equity partners, Steve, his team and the work he generates routinely accounts for 20% of the firm's annual gross revenue. The partnership operates as a lockstep parity partnership and Steve, as a third-year equity partner, is now being paid 50% of a full parity share. In three years he will become a full parity partner.

Emily Morrow

I facilitated a strategic planning retreat for the firm and interviewed each of the equity partners individually before the retreat.

Steve was vocal about his financial frustrations when I spoke with him, emphasising he was the most profitable lawyer in the firm whereas several of the full parity partners were barely covering their parity shares. As a relatively young partner in the lockstep parity partnership structure, Steve was feeling frustrated by his inability to benefit personally from his profitability.

He was seriously considering leaving the firm and setting up his own firm or joining another firm in which he would keep a greater portion of what he brought in.

This is not an atypical situation. What should a partnership do? To what extent should it compensate more highly productive partners than others? What are the advantages and disadvantages of doing so? If your firm's current partner compensation arrangement is less than optimal, what can be done to enhance it?

Spectrum of partnership compensation models

A firm can divide the partnership pie in many ways. At one end of the spectrum is the true parity Continued on next page...

model and at the other is the "eat what you kill" model. Let's consider the advantages and disadvantages of each, as well as their permutations.

True parity model

In the true parity model, all equity partners share equally in the firm's profits and new partners immediately receive a full parity share.

Firms that use this model report it encourages everyone to share work and increase the size of the overall pie, rather than focusing on individual profitability. This is sometimes true, especially in firms with an established culture of excellent communication, collaboration, collegiality and trust among partners.

Parity partnerships sometimes have problems accommodating ambitious, highly productive partners like Steve and recognising unusual achievement. At its worst, the structure can result in financial mediocrity and a lack of interest in business development because the personal benefit to individual partners is diluted by the business model.

Lockstep parity model

In a lockstep parity partnership, there is typically a phase in between when an equity partner joins the partnership and when he/she receives a full parity share.

Generally I find that a partner will start in at a level of between 30% and 50% of a full share and the "phase in" time is from three to seven years. This allows a partner to "ramp up" their practice over time to accommodate the reality that it takes some years to develop a partner level practice.

However, as with Steve, it can frustrate/demoralise highly productive equity partners or overcompensate underproductive ones.

Income share model

Some firms assign percentage shares of the firm's annual net revenue to each equity partner based on seniority, productivity, non-financial contributions and so forth.

The shares are in some cases adjusted very gradually over time and, in other cases, are revised significantly each year based on a partner's recent performance. The shares are typically determined by a compensation committee, the managing partner or some combination thereof. If there is a general manager, CEO or firm administrator, that individual usually participates in the process.

The income share model has the advantage of, at least in theory, being more likely to recognise partner productivity (or lack thereof), which can be helpful. However, if the income shares change only at a "glacial" rate, this benefit can be less apparent. It is critical that the process of determining shares be perceived as reasonable, transparent and fair, or else there will be predictable friction.

Sometimes an income share arrangement can increase unhelpful competition among partners. However, if the income share arrangement is viewed as being fair and it explicitly values financial and non-financial contributions, such competition can be moderated.

"Eat what you kill" model

In the "eat what you kill" model, a partner's compensation is tied, in whole or in part, to what they produce for the firm based on individual receipts, new business generated and/or the productivity of their team members or others in the firm who do their work.

Firms using this model typically can more easily align partner compensation with partner productivity. Some firms give greater weight to individual receipts, whereas others focus more on new business development. Some firms quantify individual partner "net profit center" results, taking into account what a partner brings in, minus the pro rata share of overhead allocable to that partner and his/her team members.

If some partners are routinely more profitable than others and everyone agrees this should drive the compensation system, this model can work well. However, it can also be highly divisive, particularly if compensation is tied closely to annual productivity. It can generate a short-term approach to building the firm overall, with partners primarily focusing on their individual bottom line. For this reason, I tend not to be a big proponent of the pure "eat what you kill" model.

Hybrid models

Some firms successfully combine several compensation models. For example, some parity partnerships incorporate the use of a compensation committee, the members of which review the parity shares and, if appropriate, adjust them based on a partner's performance, sometimes through the use of a year-end bonus. Such adjustments tend to be relatively infrequent, but at least the option is there.

Similarly, income share partnerships will sometimes allow for unequal shares, but have a rebuttable presumption in favour of equal shares.

Some firms have different compensation arrangements for different partners. For example, a highly productive partner could have an "eat what they killed" arrangement, while the other partners shared the firm's remaining profits as parity partners.

This is what Steve's firm ended up doing to keep him from leaving the firm. The arrangement continued for several years, after which Steve agreed to reenter the firm's parity system as a full parity partner. This proved to be a good interim arrangement since Steve otherwise liked the firm and its culture, but wanted the income disparity issue addressed.

Again, understanding your firm's culture (by which I mean how things really happen over time within the firm) will be critical in terms of choosing which model(s) will best serve your firm. Remember, culture **always** eats strategy for breakfast. Ignore it at your own peril!

Should your firm revisit its partner compensation arrangement?

If the topic of partner compensation begins to dominate partner discussions with some regularity and emotional reactivity, it may be advisable to revisit your firm's

compensation system.

The frequency and intensity of these discussions will often be exacerbated by a downturn in a firm's overall profitability. If a firm is profitable, partners are less likely to focus on the fairness of the compensation system and the reverse is also true.

However, even if there is relatively little controversy about the firm's partner compensation system, it is often advisable, from time to time, to discuss the topic to confirm the current model is optimal.

Reviewing partner compensation when there is little, if any controversy, can be an ideal time to take a good, hard look at what is happening. Typically the topic will then be less emotionally laden and the discussion will be more dispassionate and generate better results.

Reviewing the partner compensation model

When I am asked to review a firm's partnership compensation structure, here's what I do.

I typically visit the firm and interview each partner individually to understand their practice, work style and perspective on the current compensation system. This also gives me a good sense of the firm's culture and its unique, well entrenched attributes. (For a detailed discussion of law firm culture, please see my 11 September 2015 *LawTalk* article, "Law Firm Culture; What it is and Why it Matters").

The interviews are confidential and allow me to identify common themes and establish rapport with each partner. I also review the firm's financials, meet with the CEO/general manager/firm administrator (if any), and ask some tough questions.

Thereafter, I prepare a report with findings and recommendations. Sometimes the report will alone be sufficient to inform partnership decision-making about what, if any, changes may be appropriate. However, frequently I facilitate follow-up partner discussions about the report, recommendations and next steps. Having got to know each partner in the interview process can be exceedingly helpful in such discussions.

Some partnerships review their compensation arrangement at the instigation of and under the leadership of their managing partner, CEO, general manager and/or firm administrator without an external consultant.

This can work well, but the success of the undertaking will depend on the level of communication and trust between the partners and the skill of management. Engaging an external consultant can generate less wear and tear and better outcomes, but some additional cost.

There is no "silver bullet" as to what will be the optimal partner compensation arrangement for your firm. Like beauty, fairness is in the eye of the beholder.

However, it can be a good idea to take an objective and critical look at this arrangement. If it's not broken, then don't fix it. However, you won't know whether it's broken or not unless you check it out every so often. ■

Emily Morrow was a lawyer and senior partner with a large firm in Vermont, where she built a trusts, estates and tax practice. Having lived and worked in Sydney and Vermont, Emily now resides in Auckland and provides tailored consulting services for lawyers, barristers, in-house counsel, law firms and barristers' chambers focusing on non-technical skills that correlate with professional success; business development, communication, delegation, self-presentation, leadership, team building/management and strategic planning. She can be reached at *www.emilymorrow.com*.