FAMILY BUSINESS CONSULTING - SOME ISSUES

WORKING WITH FAMILY BUSINESSES as a consultant is a job with immense responsibilities. It demands expertise in issues and concerns related both with the family and the business. In India, such jobs are performed mostly by financial advisors. However, the diversities of issues involved necessitate that either the professional acquires versatile knowledge or he should be open to work with experts in other related fields. Unfortunately, most such advisors fail to collaborate with colleagues, and they begin to operate under what is called as "delusions of adequacy." Quite often, they also indulge in extremely secretive behavior thus depriving the client of the best advice and exposing him or her to exploitation.

The complexity of the family business environment demands that the involved professional is capable of dealing with conflicting interests and ambiguities. A simplistic solution usually doesn't work with family businesses. H. L. Mencken once commented, *"For every complex problem there are a multitude of simple solutions all of which are wrong."*

The effect of choices made by an advisor can have far-reaching effects for both the family and the business for generations. A consultant must be aware of the impact of what he brings to the work and how his actions affect the lives of various family members. He needs to be an *ethical* and *conscientious* person. Otherwise he may do more harm than good.

Presence of many family members with different needs, personalities and levels of understanding often pushes the consultant into uncomfortable situations. He must not become biased in such situations and should avoid relating to the emotions of a particular family member. Otherwise, he may subconsciously start sharing his views about a family member with another member who holds similar views. These triangular situations have potential of causing permanent damage to family relations. He should dissuade family members from talking about others in their absence.

He should also be cautious about biases from his own past, which may or may not have anything to do with the situation; otherwise he may not remain as helpful as he could be. For example, a consultant, who sees his own father as a dictator, may tend to sympathize with the children of the client even though it is the children who are at fault. You cannot change your past, but being aware of your prejudices and biases makes you cautious.

Family members often play the blame game. They usually tend to believe that it is others who need to change while they are perfect. One of the most important principles that govern change is that it is impossible to change another person; you can only change yourself by changing your reaction to the behavior of others. One needs to accept responsibility for one's own behavior instead of all the time blaming others. As long as blaming exists, forgiveness is impossible to achieve. The role of the advisor is to promote forgiveness amongst family members. It is unethical to participate in any act or feeling of vengeance on the part of a particular family member or to fuel such feelings, more so when it serves the interest of the advisor in one form or the other.

Given the emotion-ridden family business environment, it will do tons of good to the advisor if he works as a team with some other advisors. It helps in maintaining objectivity in working with the client, particularly in situations that involve conflict of interests.

"Objectivity" means maintaining the balance, calm and composure despite stress or some obvious temptations. This can usually be understood by the extent to which you are biased to one side of an argument more than another or view one person as a victim or a tyrant. It is necessary to preserve a wide perspective, which allows you to see both sides simultaneously and to entertain two apparently divergent views or ideas at the same time. Objectivity also helps in controlling our selfish behavior.

A family business consultant needs to be a practical optimist. Many consultants tend to call families in which trust and hope are low as dysfunctional and impossible to change. This is more of an excuse and also an effort to justify the failures. The word "dysfunctional" is often misused. Without exception, some problems exist in all families.

Members of relatively old, big and successful family businesses are, in general, well-educated and articulate. They seek advice from the best people, giving little consideration to cost. Cost concerns are often excuses to avoid a person or indicators of denial of the real issues. Experienced owners know that technical expertise in estate planning, taxation, finance and in business management, alone, are not enough for a family business consultant. Relevant experience, exposure, commitment, understanding of psychology, sociology, ethics and inter-personal skills, communication skill, conflict resolution, arbitration and negotiation skill are equally important.

An effective family business advisor has and displays *empathy* for the client and his problems. He needs to be sensitive to complex relationships, ego issues, hidden agendas, communication issues, competition for power and control, or the parental desire to treat all the children equally. Such an advisor has a genuine concern and compassion for the family and its members' well-being, happiness, and success in business. These qualities are not taught in college and need to be cultivated consciously.

Family business consulting is about creating resilience and the ability to bounce back to normalcy. It is about being patient.

SOME THOUGHTS ON PROFESSIONALISM

Professionals enter into an informal contract with the society. They implicitly take a solemn vow of personal dedication to their social responsibility. They are granted the rights of power over other people's lives. They have monopolistic control over the given field of work. In return for this privilege, they promise to abide by and keep sacrosanct certain practices and ideals. They set higher standards for themselves than the society requires of its ordinary citizens.

Why such high standards? Because people can be deeply injured by professionals who exploit them. Thus when professionals abuse their power and position, they not only injure the client and violate society's trust; they also damage their entire profession.

One important characteristic is that a profession promotes a common or public good. Business practices, for example, which aim only to maximize profit, might not be counted as professions in this regard and as such are not held in the same esteem as a profession.

A professional's unique understanding of professional situations and how to deal with them places a set of ethical obligations on him.

The professional relationship represents a fiduciary contract that is, an agreement between unequals in which one person has more power, and therefore more responsibility. Expert knowledge is always considered an important source of power. Clients are presumed at the outset to be vulnerable in the light of the power that the expert commands over a lay dependent. Thus, while both have duties and responsibilities, it is the professional who has greater duties and responsibilities.

Apart from the duty of maintaining confidentiality, there are three basic duties of a professional advisor in a fiduciary relationship with a client:

1. To act in the best interest of the client: In *Special Professional Morality,* Ellin writes : *"In a fiduciary relationship, the professional services the true interests of the client, not the client's immediate wishes or desires."*
2. To give the best advice: The advisor should act objectively and competently and give the best advice based on global best practices keeping in mind the best interest of the client.
3. Not to act in self-interest: An advisor should have no self-interest beyond a legitimate fee. Any undue benefit arising out of such a relationship will put his role to question.

PROFESSIONAL BOUNDARIES

Professionals are supposed to display high degree of self-control and maintain a boundary (*Lakshman-rekha*) in their relationships with their clients. Boundaries make the relationship professional, ensure safety of the client, and set the parameters within which professional services are delivered.

In case of unclear boundaries, the "locus of control" is established outside of a person. Others are allowed to define who a person is, what he or she thinks or should do, or vice versa.

In the professional context, maintaining the boundary means keeping safe distance, not disclosing personal feelings and emotions, not discussing personal family matters, not subordinating an act of vengeance, not accepting unusual gifts, and not gaining disproportionately from such relationships. In many professions, these are written laws; and in others, they are implied.

Ignoring established conventions can also lead to blurring of boundaries. Examples include providing advice in social rather than professional settings, charging unduly high fees or not charging anything for services rendered, undue scheduling of appointments beyond regular hours or when no one else is present in the surrounding, etc. Undue adherence to these soft practices often leads to physical, emotional or financial exploitation of the client.

Following are some situations that signify boundary violations:

1) An advisor should not provide free advice and services for an unduly long period to a client, who is financially sound and is not a relative, as this creates a superfluous feeling of obligation. Often such acts, though seemingly charitable, carry with them a hidden agenda as it can make the client emotionally vulnerable thus creating the possibility of exploitation. An indulgent professional must remember that absence of a formal contractual relationship would not save him from disciplinary actions. Can a doctor providing free medical services absolve himself from responsibility in case a patient suffers due to his mistake?
2) An advisor should not entangle himself in a close relationship and intense friendships with the client in a manner that forces the client to be unnecessarily dependent on him. By doing so, the advisor may lose his objectivity and fail to refer necessary matters to other professionals. He may keep "hanging on" to the client while trying to provide for most of his needs. In the process, he may deprive the client of the best independent advice.
3) Advisors should not present themselves as an alternative to the family. Most of the family problems get resolved in the absence of a choice. By being too much present with the client, the advisor may eventually replace the family by denying the possibility of rejuvenation and strengthening of the feeling of intimacy within the family. This situation may take unwarranted turns in the case of a vulnerable client.

   It is to be understood that unlike a natural relative who may not always be unduly careful about the feelings and emotions of another relative, an unrelated person working with vested interest would ensure that the feelings of the person who is the source of his benefit are never hurt. Members of the natural family are always at a disadvantage in such situations.
4) Advisors are not supposed to express their personal feelings and emotions to their clients,

more so when it may affect the judgment of the client in a manner that benefits the advisor. Self-disclosure on the part of the advisor is a clear no-no in an advisor-client relationship, unless it is for the benefit of the client and does not carry even a remotest possibility of some undue benefit to the advisor.

Can you visualize possible consequences when a counselor starts talking about his own bitter relationship to a client who has come to him to seek an advice on her spoiled marriage? A conversation like this is apparently an effort to influence her in a manipulative way. It tantamounts to solicitation. It shifts the focus from the needs of the client to the advisor's personal needs. Every time when advisors and clients close the door and enter into a one-on-one dialogue away from the outside world, the possibility of such exploitation increases.

5) An advisor should not over-identify himself with a client. If a client starts to unduly and frequently confide in the advisor about various personal issues, such as family problems, he should immediately interrupt the client and tell him or her to resolve these matters at the personal level, or to involve the concerned family member in the dialogue. He should clearly tell the person that the entire family is his client. His loyalty towards a particular family member should not override his loyalty towards other family members.

   It is probable that an advisor may come so close that he may genuinely start identifying himself with the client; that he wants to be instrumental in even carrying out the client's personal wishes. This may be perceived as a nice gesture if the best interest of the client remains in focus, the element of personal gain is avoided and due care is taken that interests of other close people are not compromised in a manner that perception of fairness and independence is lost. Any violation by a trusted advisor is subjected to examination or scrutiny, usually not when it is happening (otherwise the advisor cannot be called a trusted one), but only in hindsight and must stand the test at all times. The advisor should never lose his objectivity or else he may get tempted to physically, mentally or financially exploit an over-dependent unprotected client. As human beings, we fail to understand how the devil creeps in our conscience. Just the one thought 'what's the harm' contaminates our perception and distorts our judgment. We start to rationalize our faulty acts and decisions, keep justifying and defending them, even fight for them; and if such a thing is necessary, kill for them. That's how the devil conquers us.

6) Dual or multiple relationships should be avoided. These occur in situations where the professional is both the advisor and also holds a different significant authority or emotional relationship with the same person. For this reason, doctors avoid treating their family members. However, conflict of interest is a problem primarily for honest people. The dishonest just cheat, lie, distort their judgment, or otherwise knowingly betray the trust put in them.

Each of the aforementioned issues is an example of obvious boundary violations. Such behavior can also produce a positive result, provided it is driven by the intent of welfare of the client and does not result in any undue benefit to the professional. Although it is easy to see a boundary violation from afar, often it is harder to appreciate the boundary issue when one is standing on that fine line, particularly when one's motives are tainted and perception is biased. In such cases, the involved professional should seek advice from fellow professionals in order to gain the necessary objectivity.

The advisor should definitely ask these questions:

— Does this action benefit me rather than the client?

— Should I make a note of my concerns or consult with a colleague?

— How would this be viewed by the client's family or significant others?

— Does this client mean something 'special' to me?

— Am I taking advantage of the client?

A family business advisor should never forget that he is a professional first and most of the services that he renders are of professional nature, no matter what the appearance.

Among many professions, there are provisions that apart from fee, if a client/patient offers unusual gift or informs a professional he is going to be a beneficiary in any form whatsoever, the professional should simply not accept. Any time you find yourself in a client's wallet or cheque-book for anything other than a fee, you've deviated from practicing your profession to doing something questionable. It's just not appropriate to accept money from a client other than a fee. There's always an appearance of something being fishy about it.

The following decision in a disciplinary action against a doctor, who accepted large amounts of gifts voluntarily given by an old patient, captures the essence:

> "The ethical error in this situation was not that you were maleficent in your medical care for this patient apparently, in fact, you showed a great deal of beneficence to her.
>
> The difficulty arose with a blurring of boundaries between a doctor/patient relationship. It is perhaps understandable how this could happen within the context of a somewhat unusual or eccentric, albeit competent, older individual who increasingly relied on you, her physician, as friend and family for emotional and other support.
>
> However, it is ultimately the responsibility of the professional to recognize the vulnerability of such an individual and to establish and maintain boundaries or limits in order to avoid possible emotional, physical or financial harm to that individual.
>
> This responsibility is central to the definition of a professional. Adherence to the boundaries and limits of this responsibility is essential to maintain the trust vested in professionals by the public.

Your error in this regard was that you did not fully recognize that you did have a conflict of interest in your fiduciary relationship with her. Although the exchange of monies was viewed as gift giving and gift receiving between friends and family a view seen to add joy and happiness to both givers and receivers — the sheer value of the gifts should have caused you, as her physician, to reconsider your role and your response to those gifts.

The Code of Ethics endorsed at the time of these events addresses this issue generally by stating that a physician will not take physical, emotional or financial advantage of the patient. The argument has been made that your patient was competent and consented to - even insisted on making large financial gifts to you, her doctor. That narrow view of consent begs the point that you, her physician, made an extraordinary personal financial gain from your patient. Such a narrow view of consent does not address the importance of the power imbalance between a professional and a vulnerable patient.

It is within this wider view of the doctor/patient fiduciary relationship that public trust is grounded and maintained in the integrity of the professional. It is understandable that public trust would be shaken by physicians accepting such large financial gifts from patients."

(Decision of the Disciplinary Council of College of Physicians & Surgeons of Alberta, USA)

It is worth noting that in the case of a professional who is qualified to advise in the matter of finance and estate planning, the responsibility is even greater.

In professional conduct, appearance of propriety, equity, justice, independence, goodwill, care and fairness is as important as the actual conduct itself. After all, credibility exists in perception only.

OWNERS' ROLE

The blame for the misadventure on the part of professionals to some extent lies with the owners too. Two factors emerge very strongly: love for power that promotes factionalism, and vanity that encourages the *Cronies, Chelas* and *Chamchas.*

Family businesses with a long history behind them become vulnerable because they often operate in a static paradigm. The behavior of all the people involved in such businesses becomes so predictable that any willing professional having a long exposure to such family businesses can exploit the situation to his complete advantage. Constant cultural renewal, innovation and infusion of fresh blood can safeguard such businesses from the onslaught of competitors and manipulators.

If a family involves too many members, the decision-making process becomes too slow. People working for such organizations have too many centers of power to attend to. They are often required to meet conflicting demands. Relationship management consumes too much of time and energy. The entire environment becomes politicized. Manipulation becomes the key to survival. The house gets divided into factions. Individual loyalty gets preference over loyalty towards the organization or the family. The final outcome is usually less than optimal.

Unfortunately, despite obvious setbacks, the owners fail to listen to the dissenting voices and divergent views as they are often insulated from the reality. Ego also plays a key role.

Moreover, if a family neglects the relationship amongst various family members, such neglected members easily fall prey to a powerful and trusted advisor on whom these vulnerable family members start depending more and more.

Factionalism is a phenomenon not unique to families with too many members alone. Even in small families, sometimes a family member indulges into some unfair practices in order to grab more control over the group at the cost of other family members. Faults of other family members are highlighted as a justification of the wrong actions. Mistakenly, the involved owner forgets that a wrong cannot be corrected nor can it be justified by another wrong. Both the matters need to be dealt with separately.

CONCLUSION

Owners may be at fault, they may commit mistakes, but an advisor cannot exploit a client on any pretext whatsoever. Society depends heavily on professionals, and duly rewards them for their performance. On their part, professionals must maintain their integrity and should never use their expertise and exposure to personal and family matters in a manner that serves their self-interest. Such acts destroy social trust and malign professional image.

THOUGHTS

Listen to the chatting of men about their affairs; examine into trade practices; read over business correspondence; or get a solicitor to detail his conversation with his clients:- you will find that in most cases conduct depends not upon what is right, but what is legal.
— **Herbert Spencer**

Who profits by crime is guilty of it.
— **Seneca**

Fraud is infinite in variety; some time it is audacious and unblushing; sometime it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same.
— **Lord Macnaghten**
Reddaway v. Banham, [1896]

Successful crime goes by the name of virtue.
— **Seneca**

BOOK ABSTRACTS

"I have come to believe over and over again that what is most important to me must be spoken, made verbal and shared, even at the risk of having it bruised or misunderstood. .....

What are the words you do not yet have? What are the tyrannies you swallow day by day and attempt to make your own, until you will sicken and die of them, still in silence? ....

.... we have been socialised to respect fear more than our own needs for language and definition, and while we wait in silence for that final luxury of fearlessness, the weight of that silence will choke us.

The fact that we are here and that I speak these words is an attempt to break that silence and bridge some of those differences between us, for it is not difference that immobilizes us, but silence. And there are so many silences to be broken....."

(Audre Lorde: Sister Outsider The Crossing Press 1984)