

In This Issue

Old Wine, New Bottles? The variety of law firms forming multidisciplinary “financial recovery teams” is rather extraordinary. Regional firms in Western New York no less than brand-name global giants are aggregating workout, securities, compensation, even legislative practitioners to guide institutions, investors, and companies, but is it all just repackaging, or do these reconstituted groups actually provide new value-adds that did not exist before the meltdown?.....**Page 3**

Adroit Diplomacy. This month, the Managing Partner Leadership Advisory Board provides advice to deal with partners—and most firms have a few—who constantly complain about how the practice is being run. The art is in making those lawyers feel valued even as you take practical steps to minimize unproductive venting. Importantly, don’t allow exasperation with their endless carping deafen you to the possibility that they may, in fact, be raising legitimately important problems.....**Page 5**

Twice-Told Tale. Despite social entitlements that might seem to better support work-life flexibility for Canadian professionals, legal employers there face attrition rates among women eerily similar to what we find in the United States, while gender inequities are also comparable. Alana Bassin in Minneapolis and Lisa Ridgedale in Vancouver explore the challenges in both countries, from childcare to generational value shift. It’s a costly problem demanding a multifaceted solution.....**Page 7**

Futile Struggle. Powered by the entertainment lobby, the Pro-IP Act of 1998 and a newly designated IP Czar promise expanded enforcement and increased penalties for violations. Yet even staunch IP rights advocates are dubious. As Wendy Marsh suggests, the aggressive interdictions of the past decade proved less than effective. Clients are better advised to develop new business models that will increase revenue even as the pandemic file-sharing continues apace.....**Page 10**

Rapid Response. When news cycles are measured in minutes, not hours, clients under attack must assemble expert teams and implement brand-protection strategies at the first hint of a crisis. In this second installment of selections from *The Crisis Communications Desktop Reference*, a new resource guide with best practices to safeguard corporate brands online and off, Larry Smith reflects on dealing with whistleblowers, data theft and loss, and investigations by state Attorneys General.....**Page 13**

Crisis Equals Opportunity. While law firms market financial distress teams, at least one marketing consultant now offers a recession-related service package to law firms. David Freeman defines his new initiative in terms of identifying and leveraging the assets that firms already have in place in order to maximize revenue at multiple levels. There are no bells and whistles here. It is, rather, all about refocusing strategy in order to more systematically adapt to current economic realities.....**Back Page**

Sexual Harassment . . .

A Major Client Harasses Your Associate: What Do You Do?

Here’s the scenario: A highly profitable, growing mid-sized law firm assigns a new client file to one of its rising young stars, a fifth-year real estate associate. The client’s general counsel, a 50-year-old well-regarded pro who has helped his company wheel and deal several high-profile commercial property acquisitions, is thrilled at the prospect of pulling off another major transaction.

He’s also pleased to be working with the firm’s associate and her team. It doesn’t hurt that she’s

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Flight of Female Lawyers in Canada Mirrors US Exodus

In the late 1990s, the two authors of this article graduated from the same law school. One settled in Canada and practices for the British Securities Commission, prosecuting Securities Act violations. The other is a partner at the law firm of Bowman and Brooke LLP. From her vantage point in Vancouver, Lisa Ridgedale can observe women lawyers leaving the legal profession en masse. Alana Bassin, viewing things from Minneapolis, sees the same phenomenon: comparable percentages of women in flight for apparently the same reasons.

In the United States, firms have been experiencing what is known as the 50/15/15 conundrum. Fifty percent of the law graduates have been women over the past 15 years, and yet only 15 percent are equity partners. According to a survey sent to the 200 largest US firms as defined by *American Lawyer* in 2005, 45 percent of associates are women, 16 percent are equity partners, and only 5 percent of managing partners were women (Survey from the National Association of Women Lawyers, NAWL, 2006).

Even when limiting the study to newer attorneys who graduated between 1990 and 1995, only 21 percent of the equity partners were women. Compensation was equally skewed, with male equity and non-equity partners making on average \$510,000 and \$239,000, respectively, and female partners making \$429,000 and \$207,400, respectively.

Available numbers in Canada are likewise daunting. Although 60 percent of law school graduates are women, only 26 percent of lawyers in private practice are women. The percentage of women who are partners in law firms is even smaller. A Longitudinal Study of Ontario Lawyers from 1990 to 2002 showed that women leave private practice and the practice of law at remarkably higher rates than their male counterparts. Similarly, a significant gap exists between the earnings of male and female lawyers.

Once upon a time, the lower number of women in law school and the lower number of female associates comprising the pool of lawyers eligible for partnership provided some excuse. But that's ancient history. Even as we celebrate the increase in women training for the profession, we confront the fact that their legal careers are voluntarily preempted in disproportionate numbers.

Different Dynamics, Same Results

Interestingly, although the results are similar, different professional dynamics exist between the two countries. Canadian lawyers must "articulate" for a year before admission to the bar. Articling includes a practical legal training course where, in contrast to most required US legal curricula, grads are immersed in law office management, oral advocacy, client interviewing, real estate transactions, and other practical skills. They must then practice at a law firm, mentored by a principal, the idea being to expose the student to the widest possible range of practice areas. (Canada's universal health care system also allows more job mobility and flexibility than in the United States.)

Employers north of the border have also been significantly more innovative in their workplace policies than their US counterparts. The best case in point is maternal leave and the maternal wall issue. A parental leave policy in Canada exists, making it mandatory for employers to hold jobs (or provide comparable job positions) for one year, with paid leave for childcare. Women on maternity leave also receive a monthly payment from the federal government equivalent to 65 percent of their annual salary. Although the maximum payout is roughly \$1,400 per month, which is nowhere near 65 percent of most Canadian lawyers' annual salaries, some law firms and legal organizations voluntarily supplement this monthly government payment.

Of course, the United States has no federal maternity leave policy to encourage private sector initiatives. We have found that, at most, the typical policy of US law firms allows up to 12 weeks of paid maternity leave, but that is only an average. Many firms give less, and only a rare few give more.

What's missing is a formal study quantifying the extent to which maternity leave policies drive attrition rates for women lawyers. While it would seem that the more liberal allowances in Canada make it easier for women to return to the workforce, anecdotally that just does not seem to be the case.

Many female lawyers in Canada are not, in fact, taking a full year off, and those that do face a seemingly insoluble problem: Upon their return to work, they are still one year behind their male counterparts in pay, partnership advancement, business portfolios, client relationships, and marketing.

Meanwhile, it is evident that law firms feel the pinch from multiple sides in western countries, even beyond North America. For example, a study called *Law Firm of the 21st Century*, conducted in early 2008 by the UK-based law firm Eversheds, found that outside counsel generally say that they cannot expand work/life benefits because of unremitting client demands, while clients blame it on law firms' unremitting focus on billable hours. (See "Change Afoot: New Study Shows Elite Law Firms Less Dominant as Fee Pressures Mount Profession-wide," *Of Counsel*, April 2008.)

In any event, the realities of legal practice still seem to stubbornly undermine even the best-intentioned policies and entitlements.

Generational Issues, Seismic Shifts

As another contributing factor to rising attrition and job-hopping rates in both the United States and Canada, legal employers must now grapple with generational gaps in attitude and expectation between the baby boomers, Generation X, and Generation Y lawyers. A new generation of lawyers, male and female, are already prone to be more open to moving laterally or changing their careers altogether.

Their additional focus on quality-of-life issues naturally feeds this fire.

In 2005, *Canadian Lawyer Magazine* surveyed associates at midsize to large firms and found that young lawyers now place a much higher value on personal goals and commitments. They want more flexibility across the board, and they are typically not hesitant to express their needs and preferences.

In response to the *Canadian Lawyer* survey, 10 of the largest firms in Canada sponsored a study conducted by Catalyst, a not-for-profit group in Canada and the United States that promotes the advancement of women in business. The results were most revealing. Of 850 associates polled from 100 firms, 84 percent of women and 66 percent of men said that they would switch firms for greater work-life balance.

In addition, 62 percent of female associates and 42 percent of male associates expected to leave their current firms within the next five years. Clearly, firms that do not provide their lawyers with the flexibility that they want will lose talented lawyers, and at quite a cost indeed. The Catalyst survey found that the estimated financial loss is \$315,000 per departing associate.

Similar Catalyst studies in the United States show that nearly 50 percent of female law graduates cite work-life balance as their top job attraction. An even greater number of in-house women say that it's the reason that they chose their current employers. Not surprisingly, the financial liability is similar in the United States to what it is in Canada, that is, approximately twice the average associate salary (or \$300,000) to replace a lawyer.

Although the generational gap is felt regardless of gender, the premium that members of Generation Y put on life outside of work, compounded by the maternal wall factor, suggests that the uphill battle in retaining women attorneys will continue.

Best Efforts

On the positive side, both US and Canadian firms continue to pursue initiatives to retain and develop women lawyers. Their best

practices typically include creating marketing opportunities, mentoring, business development training, flexibility in work, and management opportunities, among others. However, these initiatives are found mostly at the large national firms and are not really widespread in either country.

Especially in the United States, law firms are hoping to reduce attrition with benefits beyond traditional maternity leave, such as paid daycare for infants, emergency daycare, and even on-site daycare. Again, however, these perquisites are more common at the larger national firms. Even there, while commendable, such efforts are not enough.

For all the differences in social policy, the statistics regarding women in the legal profession appear to be remarkably similar for both Canada and the United States. Women in both countries do not advance at the same rate as men, they are not paid as much, and their responsibilities are less significant.

To be sure, the problem is multifaceted and complex. The possible solutions are legion and there are professional realities that defy the best-intentioned efforts. As such, the solutions must also be multifaceted with input from a range of lawyers and expert consultants. All the issues that we've discussed need to be seamlessly

addressed: family and childcare needs, generational attitudes, and the economic realities of legal practice (additionally complicated now by a global downturn).

If legal employers can make a genuine commitment to explore less traditional and more flexible work schedules, women lawyers must return the favor by being as flexible on their end as possible. Professional excellence and hard work may not always be fairly rewarded, but they are certainly the necessary pre-conditions for progress. Law firms don't change easily. ■

—Alana Bassin and Lisa Ridgedale

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