

**CBA - BC Business of Law Committee
REPORT OF THE SUB-COMMITTEE
ON
LAWYER RETENTION**

Introduction

The **Business of Law Committee** of the BC Branch, CBA, struck this Subcommittee to address challenges facing law firms with the attrition rate amongst lawyers due to dissatisfaction with the culture of the firm or the profession itself¹. Our report will highlight the necessity for these challenges to be further investigated by the CBA so that it may assist the profession with identifying these issues and adopting viable business solutions to minimize the negative impact on the business of law.

Summary

The Sub-Committee referred primarily to four Canadian Studies:

1. Touchstones for Change: Equality, Diversity and Accountability – The Report on Gender Equality in the Legal Profession- August 1993, The Canadian Bar Association Ottawa, ON;
2. Beyond a Reasonable Doubt: Building the Business Case for Flexibility, Toronto 2005;
3. Linda Duxbury’s 2004 study *Work-Life Balance in Canada, Making the Case for Change* sponsored by Health Canada; and
4. Crystal Clear: New Perspectives for the Canadian Bar Association – The Report of the CBA Futures Committee.

These studies confirm that a healthy and happy workforce produces more and better quality work. For lawyers or any other worker, no one can address quality of life issues or maintain a balanced life without the support of their employer, co-workers, family, and community. From a firm’s perspective, quality of life issues form part of and are integral to a firm’s success. Why? Quality of life issues transect areas like recruitment, retention of talent, client development. Quality of life issues may very well be extensions of occupational health & safety concerns as firms adopt specific programs as preventative rather than corrective measures.

Regarding lawyer retention, law firm management must recognize that the old ways and the old culture will no longer work for new generations practicing law. It is a new workplace and there are new demands that must be met to ensure the perpetuity of the firm. The new generation of lawyers has an internal commitment to and values that support having a life and a career. Law firms must be proactive and respond to this global trend in order to retain their valued resources,

¹ Crystal Clear: New Perspectives for the Canadian Bar Association

avoid wasting their training dollars and attract qualified lawyers. The changes necessary to meet the needs of retention of women also serve to meet the needs of men, especially men in Generations X and Y, and to serve the goal of diversity by creating a welcoming environment for the disabled and world-majority lawyers.

LAWYER RETENTION

1) Lawyer Attrition

The dissatisfaction of lawyers with either their current law firm or the profession itself is not necessarily gender specific or limited to just those early in their career. Time demands, workload and the lack of personal life are seen as key stressors by all lawyers.²

For example, many first and second year lawyers frustrated with being “out of the loop for stimulating work or lack of work, instead finding themselves relegated to a form of “hazing” (long hours, high volumes of routine work, relatively low pay). Time demands, workload and the lack of personal life are seen as key stressors by all lawyers. In fact, even among lawyers with seven to eight years of practice, almost 70% are still thinking of leaving the profession. In a recent study of 10 large firms conducted by Catalyst Canada, a majority (62% of the women, 50% of the men) planned to change jobs within five years. Not surprisingly, lawyers with at least 15 years of practice were less likely to leave the profession but, even in this group, a majority had considered changing their area of practice (Ipsos-Reid)³

With respect to women lawyers, gender factors do enter the process. 50% of graduates from law today are female. As recruiters, we see it as an established fact that women are leaving the profession sooner, whether going in-house, to non-traditional organizations or taking a temporary or permanent leave to have children. This fact alone accounts for a 25-50% reduction in the size of candidate pools.⁴

Further, the ongoing US study: *After the JD* is following the career paths of 5000 lawyers called in 2000. So far, they have learned that women record lower levels of satisfaction relating to their job setting, social interaction, and the "power track". They report more discriminatory treatment than do men.

The new Canadian workforce is older, ethnically diverse and includes proportionately more women, working mothers, dual-income families, and fathers with responsibility for dependent care, workers with dependent parents, and workers in the sandwich generation with responsibilities toward parents and children.

Men are also increasingly unhappy in the practice of law. The tremendous changes in the business world and the tremendous changes in society and family life have put greater pressure on both men and women in the business world and the legal profession. Men are starting to look

² Ibid.

³ Ibid.

⁴ Recruiting & Retaining Top Talent in Today's Legal Marketplace, Sean Dunnigan, Q.C – Originally presented at the CBA Canadian Legal Conference, August 2003.

for change in the profession or are less inclined to join it. So this is no longer a “woman’s issue” but a “professional issue” of importance to the perpetuation of the law firm.

Lack of mentoring also leads to dissatisfaction with both the law firm and the profession. Associates may feel they receive no assistance from the firm to climb the ladder of success; there may be no formal advancement program within the firm; and there may be no support for their professional development. They may also feel that the existing legal culture excludes them or their personal vision of success. They may fear they must abandon their own values to succeed and prefer to find work in alignment with their values.

Generation X (whose oldest members are now turning 40) saw workaholism produce divorce, fatigue, illness, substance abuse and one-track lives. That might explain the results of a study the Families and Work Institute recently released that shows workers ages 18 to 37 are more likely to view family as an equal or higher priority than work. And other studies suggest that Generation Y (the Millennial) attach the same or more importance to family.

The very nature of the legal culture creates difficulties within the work life of lawyers. A recent **Mayo Health Clinic** newsletter article identifies causes of employee burnout that personnel managers must address and this could describe the practice of law as experienced by many lawyers.

- *Lack of control* -- from an inability to influence decisions that affect the job, such as which hours are worked or how assignments are distributed or lack of control over the amount of work that comes in.
- *Unclear job expectations* -- uncertainty over degree of authority or not having the necessary resources to do the work or unclear job descriptions.
- *Dysfunctional workplace dynamics* -- working with an office bully, being undermined by colleagues or having a boss who micromanages the work.
- *Mismatch in values* - an individual's values or ethics differ from how the company appears to do business or handle grievances or practice law.
- *Extremes of activity* - extended periods of overwork or long lulls punctuated by frantic emergencies

An ABA survey in 2000 of the Young Lawyers Division showed 65 percent would consider switching jobs within the next two years. The reasons included the inability to contribute to social good through the practice of law, too much time spent doing administrative work instead of practising, limited advancement potential, the desire for more family time, and the feeling that they have no control over their lives.

2) Business of Law

a) Costs – the Dollars and Sense

Catalyst Canada research show that it costs \$315,000 in training and administrative costs every time an associate leaves.⁵ The costs reflect a firm's investment in recruiting, training, and time spent by more senior lawyers helping associates gain experience. There are also separation costs when a lawyer decides to leave, including lost time and productivity.

The cost of losing an associate was pegged at \$315,000 which may seem high, particularly for smaller firms that do not put a large investment into associate training, but there is absolutely no doubt that a firm loses out when a lawyer it wishes would stay leaves. Law is an experience-based profession and it takes time for a new lawyer to learn how to turn the knowledge gained in law school into the practical solutions clients need.

Besides the loss of dollar investment, firms lose as the attrition of lawyers from a firm can negatively impact the culture and mood of the firm. Other lawyers and staff of the firm may feel the effects of an associate or partner of a firm leaving, especially if that person shows compatibility with the firm and those who work there. Also, if a firm experiences frequent attrition, members of the firm, lawyers and staff can begin to question their own involvement and participation with the firm. Is this a downward spiral? Why should I stay? Is it time to move on?

Other negative consequences a firm may experience because of attrition include:

- Poor morale and decreasing loyalty of lawyers to the firm
- Reduced output due to decreased focus and motivation
- Inability to retain lawyers
- Higher turnover of lawyers and staff
- Decreased income for the firm
- Increased expenses
- Higher levels of stress-related illness
- Increased health care costs
- Increased absenteeism
- Decreased client development and retention
- Decrease in service of existing clients

Attrition may also affect one's participation in the profession. Why try and make a living for you and your family in a profession that fails to support its members.

b) What Lawyers Seek

The new generation of lawyers is committed to and values having a life and a career. Law firms must be proactive and respond to this global trend in order to retain their valued resources, avoid wasting their training dollars, and attract qualified lawyers. The cost of replacing lawyers outstrips the cost of measures that must be taken to retain them.

⁵ Beyond a Reasonable Doubt: Building the Business Case for Flexibility – puts a dollar value on associates who leave their firms.

The future lies in building a high-value, highly skilled firm that recognizes the value of skills and knowledge and treats staff as a valuable asset. Recruitment and retention of valued staff require that the law firm provide and improve work-lifestyle benefits and services, leave benefits, supportive work environments, and alternative work arrangements and schedules. Law firms must now accept alternatives to the 60-hour workweek and rigid schedules and place constraints.

The 2005 Catalyst report noted that an environment more supportive of family and personal commitments and more control over work schedules are at odds with typical retention strategies used by law firms: competitive compensation and the opportunity for advancement. While these more traditional factors continue to be important and were cited by one-third of the associates, they are losing ground as competitive weapons in the war for talent.

Many lawyers of all years of call and particularly young associates are not willing to commit to 2200 annual work hours and are rejecting the path to equity partnerships. They want more quality of life-which usually translates into fewer billable hours-and more perks.⁶ In fact, surveys show salary is no longer a prime motivator.

Factors lawyers consider when making career decisions, where they work and how they work, include the following:

- Does the firm have good work?
- Does it have fair compensation?
- Do they have an effective orientation/mentor program?
- Is the firm sensitive to people issues?
- Am I going to flourish as a lawyer there?⁷

Regarding lawyers choosing to work at another law firm, men and women associates, both junior and senior, cite work-life balance factors as more important in choosing to work at another firm than other factors. In particular, they cite an environment more supportive of family and personal commitments and more control over work schedules.

The following is a summary of those factors considered by both men and women lawyers in choosing whether or not to work at another firm:

Factors	Women (%)	Men (%)
An environment more supportive of my family and personal commitments	84	66
More control over work schedule	81	67
To work fewer hours	66	54
An environment more supportive of women	63	16
Better “fit” with firm values	45	39
Greater advancement opportunities	44	55

⁶ How to Attract (and Keep) the Best and Brightest Legal Talent by Ann Macaulay

⁷ Recruiting & Retaining Top Talent in Today’s Legal Marketplace, Supra.

Factors (cont'd)	Women (%)	Men (%)
More intellectually challenging work	31	39
Increased Compensation	25	44
To do different type of legal work	19	17

4) Resolution

Creating a healthy, welcoming workplace culture is key to employee satisfaction. Creating an atmosphere that is pleasant and stimulating contributes to productivity. Proper support can produce workers who are responsive, focused, efficient, and resilient.

In the legal environment in which pay and advancement opportunities vary marginally between one firm and another, firms that support lawyer's personal commitments and offer more control over their work are more likely to retain top talent.

Linda Duxbury's study *Work-Life Balance in Canada, Making the Case for Change* sets out the situation in Canada today and makes the case that requires businesses to alter their expectations, work time and place requirements, and benefits to meet the needs of all Canadians. Making the necessary changes will benefit the employee, the family, the employer and the employee's colleagues.

a) In other words:

i) Focus on Output Rather than Hours

Lawyers want more control over their work lives - more autonomy and independence in determining how to carry out their work. Getting the work done and keeping clients happy should be the goal - not putting in face time or being at one's desk for interminable hours. Lawyers want to be awarded or acknowledged for time spent on practice management and client development.

ii) Partners And Managers Must Walk The Talk

In the European experience, managers are not aware of the significance of work/life balance to employees. In one study, nine out of ten employees said achieving a good work-life balance was important to them, whereas they believe that fewer than two thirds of managers recognize this. Meanwhile, managers consider factors such as recognition, salary and management style are more critical contributors to job satisfaction.

To create the necessary change in the firm culture, the law firm partnership needs to articulate a vision for a healthy and resilient staff, a productive and successful firm, and satisfied clients. Managers need to model healthy habits and "balance behaviours" not merely manage them for others. Staff needs to take responsibility for their own choices.

iii) Accommodation For Flextime Lawyers

Firms must create a supportive environment for those who take advantage of alternate work arrangements. Efforts should focus on making the people feel valued by the firm and included in its life and culture. To empower lawyers who work a flexible or reduced schedule, firms can:

1. Facilitate networking
2. Provide support and career guidance
3. Effect change thoughtfully.

Managers and partners and any supervisory staff must have the necessary training to be able to cope with the challenges of managing the new workplace. They must not only tolerate but they must practice it or the employees beneath will not believe that the alternatives are truly available without loss of future advancement.

The United Kingdom has the **Flexible Working Regulations 2002** requiring employers to accommodate staff who request arrangements that will facilitate work-life balance. Even when a firm establishes such arrangements, the management level employees do not avail themselves of the benefits. By continuing to overwork and burnout they send a message that employees who do use the benefits do not have management potential.

iv) Ask the Lawyers of your Firm

Lawyers themselves are usually aware of their unmet needs concerning their health and well being, their lack of time or stress-management tools or skills, their interpersonal relationship needs, career development, and personal and professional development.

Lawyers often will use services that are made available only if there is implicit and explicit support in the organization. No one wants to take advantage of these opportunities if doing so has a negative effect on their career advancement. For good effect, employees must know what is negotiable and what is not, what are core expectations and what is negotiable, and that they need not fear reprisals for negotiating work responsibilities.

v) Address Associate Concerns

Phyllis Weiss Haserot, a consultant in inter-generational issues at [Professional Development Counsel](#) suggests these efforts to manage younger lawyers:

- Make sure regular associates get the same opportunities and attention as summer associates.

- Focus also on "real life/quality of life" and what life will be like as a regular associate living in that city/region (economic, social, cultural factors) - Give briefings.
- Do mid-point surveys/interviews and exit interview to enable adjustments, show caring. Involve attorneys as well as professional development staff.
- Recognize that what the young people want from their lives will make the firm a stronger, more successful institution and is worth the investment.

5) Challenge: What Law Firms Must Do To Be Successful With Lawyer Retention at all Levels

To create the necessary change in the firm culture, the law firm partnership needs to articulate a vision for a healthy and resilient culture at the firm, a productive and successful firm, and satisfied clients. Partners need to model healthy habits and *balance behaviours* not merely manage them for others. As well lawyers need to take responsibility for their own choices.

The study of US law firms by Catalyst explored the experience of several major law firms that have been successful in retaining women lawyers. It found that the firms made efforts at encouraging career development in the firm and adopted these strategies:

- Provide mentors
- Provide control over an individual's work load and schedule
- Offer development and advancement opportunities
- Award for time spent on practice management contributions as well as billing hour
- Permit part-time commitments

Partners and managers should review their performance in these areas:

- Adjustments to programs and policies to eliminate overt or covert discrimination and harassment of women and others
- Adopting practice expectations that address quality of life concerns for all lawyers, both women and men
- Developing and maintaining internal training and mentoring programs
- Designing and accommodating work structures that allow for alternate work arrangements, reduced hours, and flexible work schedules
- Strategies for respecting generational differences
- Managing, motivating and maintaining culturally and racially diverse professionals

This sort of cultural change takes work, but the place to start is information and training. The Education Committee of the BC Women Lawyers Forum has identified these areas of training that would be useful for law firm partners and managers:

- Alternate Work Arrangements/Flexible Work Schedules
- Strategies for Retention of Lawyers: diagnostics, culture, mentors, networks, quality of life, generational differences
- Performance Management: tools and resources
- Managing and Motivating and Maintaining Diverse Professionals
- Building a Practice that Values and Supports Change (while ensuring consistency of client care)
- Designing and accommodating works structures to allow for alternate work arrangements/flexible work schedules

Suggested Process to Follow to Meet the Challenge:

1. Define the Firm's Core Values

State firm values and include in those values teamwork, diversity, work/life balance, accountability respect, balance, integrity, openness, customer focus, diversity, innovation, speed, and learning.

Values are the set of beliefs, attitudes, and behaviors that describe "the way we do things around here." If corporate values and the resultant culture do not align with the mission and strategy, individuals experience cognitive dissonance and the firm eventually collapses. Values are a tool to create value; applied/experienced values are a tool to create longevity. Policies ("the way we do things around here") should be developed on the foundation of the stated values.

2. Ensure Equitable Distribution Of Work And Opportunity

Workloads must be reasonable, goals attainable, resources adequate, and timelines realistic. Professional and other skills training must be provided. Offer development and advancement opportunities. Provide opportunities for young lawyers to enhance their communication skills and build their resiliency and leadership abilities.

Maintain programs to ensure that lawyers who opt for alternative schedules remain "in the loop" and integral to the corporate family.

3. Provide A Healthy Workplace With A Welcoming Culture

The culture must support fairness and just treatment and recognize work/life balance and family-centric values. Firm leaders and managers must model balanced behaviours. The criteria for hiring and career advancement require a demonstrated commitment to work-life and well being.

Provide mentoring programs in general and coaching services for career development and marketing. Provide services to facilitate work life and consider incorporating one or more of the benefits suggested Schedule A.

4. Develop And Implement A Work-Life Strategy And Flexible Work Schedules

It is imperative that firms facilitate opportunities for lawyers to harmonize their personal and family lives with their work commitments and ambitions. Permanent balance is an oxymoron, but equilibrium can be built that permits all individual obligations to be met.

Individuals define work-life and well being for themselves; solutions must be customized; and no solutions are prescriptive. Making changes without first surveying employees is a mistake. A variety of forms of flexible schedules and alternative work arrangements are set out in Schedule B.

7) Conclusion

- This subcommittee has tried to highlight some of the issues that need addressing by law firms and provide possible and realistic business solutions for law firms and the profession. It is our view the CBA should make a committed effort to gather and share information, policies, business models and strategies for firms of all sizes. These issues are central and fundamental to the future and sustainability of our profession. Most of the solutions are not new and are already used effectively by other public and private organizations. Refusal to recognize the importance of these issues and to adopt viable solutions will inevitably lead to a continuation of current high attrition rates in some law firms and the inability for others to recruit successful lawyers for growth or for retirement planning. For most, small or large, the proof will show in the health of the bottom line today and the future financial well being of the firm tomorrow.

Schedule A

“Benefits”

- A limited number of days paid leave each year for childcare, elder care, or personal problems
- Short-term and long-term leaves (paid or unpaid) beyond the statutory provisions for sick leave and vacation
 - Personal leave
 - Parental or Family leave
- Emergency child care and back-up care for sick children
- Child care and elder care arrangements with extended hours
- Referrals to qualified care givers for the elderly
- More autonomy in planning work projects by focusing on output not hours
- Unpaid leave for things like compassionate leave, study leave, to go traveling
- Stress and time-management training
- Nutrition and wellness programs
- Peer support networks
- Weekly session with a personal trainer and negotiated group discount on personal trainers
- Breakfast or lunch service or facilities
- Financial management coaching and consulting services
- Use of the boardroom for after-hours association activities

Schedule B

“Flexibility And Alternate Work Arrangements”

Alternative work arrangements include:

- Telework, telecommuting and flex place: working from home or satellite offices during regular business hours
- Flexible schedules, liberalizing the time/location demands of work
- Job-sharing, compressed work weeks, telework and part-time work
- Schedule modifications: Day to day, Long term, or Temporary
- Flexible start and stop times: core mid-day hours surrounded by flexbands
- Part time work, voluntary and with full or prorated benefit coverage
- Job sharing with pro-rated salary and full or prorated benefits
- Compressed work week such as four 8 1/2-hour days