



Ward Bower

Managing Lawyers

By Ward Bower

Law firms in 2003 face a competitive challenge that rivals the marketplace common in other businesses and industries. The regulatory environment and professional mystique that previously shielded law firms from the harsh realities of competitive business practice have eroded. Today's law firm leaders must navigate stormy waters that often require in-course adjustments under uncertain conditions with the best crew they can assemble and manage. This crew comes from a diverse demographic of demanding, independent professionals, many of whom would jump ship, even mid-course, for a better offer from another captain. And sometimes the ultimate route and destination of the other ship makes little difference if the short-term rewards are better.

This is also an environment where some ships will perish in hostile waters of a rocky economic shoal, while others will drift aimlessly in the doldrums of recession and its lingering impact, losing out to better navigated competitors.

New Legal Economy

Overall law firm economics are not so healthy as they were just a few years ago. Part of the difficulty comes from the uncertain ties arising from the lingering effects of the 2001 recession combined with a new world order in which liberal democracies are vulnerable to sabotage by terror and the economic costs associated therewith.

The micro-economics of both US and Canadian law firms are subjected to a classic "profit squeeze" as costs escalate while revenues increasingly are constrained by price competition, client fee resistance and bill scrutiny. Expense line items subject to greatest increase include support staff and lawyer employment costs, marketing costs, and expenditures on information technology.

Dual Marketplace

Lawyer employment costs are inflated by recognition that law firms operate simultaneously in two marketplaces — one for legal services [where the law firm is a seller], and one for legal talent [where the law firm is a buyer]. Ultimately, all a firm has to sell in the marketplace for legal services is the talent it is able to attract in the marketplace for legal talent. This creates intense competition for the best, most qualified lawyers, be they new law graduates or experienced partners. The traditional taboos against lateral mobility have disappeared as partners move between firms in response to relative earnings potential and as firms recruit on the basis of compensation and economic potential. In Canada, this "war" for legal talent is exacerbated by the lure of employment opportunities for new law graduates in more profitable US and UK firms that also pay their lawyers in stronger currencies.

This means law firms have to avail themselves of every opportunity to improve their economic performance so they can compete for the best lawyers, and then retain those lawyers for the duration of their careers. This requires presentation of opportunities for professional development and career progression. It requires economic stability and constantly improving profitability. It also requires client and market segment diversification to avoid economic disaster in the inevitable event of client loss due to business failure, acquisition by another firm, change in management or company policy, or segment contraction as in the recent case of the dot.coms. The importance of diversification is underscored by two phenomena — results of the 2003 *Altman Weil/ACCA Survey* that shows that over 50% of corporate counsel in large US corporations are planning to change one or more outside counsel in 2003¹, and the simple fact that at a 30% profit margin [typical], the loss of, say, a

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5% client produces an immediate 16.5% reduction in profit per partner.²

Female Lawyers

One law firm management challenge in the 21st Century is the ability to effectively attract, retain and develop top-credentialed female lawyers. This is important because 50% or more of law students in training in developed countries are female, and because females comprise over 30% of the lawyer population in North America. However, the percentage of female partners in major law firms is considerably less. This presents problems not only from the standpoint of employment law, but also from the perspective of marketing to corporate clients. The ratio of female lawyers in corporate law departments in North America is considerably higher than among partner ranks in law firms. Since corporate counsel select, engage and manage outside counsel working for corporations, there is great benefit to law firms in improving their ratio of female partners. Access to top clients demands law firm employment and advancement practices that are attractive to women. Firms which are attractive to women of varied interests also enjoy access to a cohort that represents disproportionately, in many cases, law students of highest academic standing.

The challenge in providing compensation and advancement opportunities to female lawyers in law firms is one that needs to be addressed directly in today's marketplace. Specific consideration must be given to policies on issues such as flex time, maternity, emergency child care, alternative career paths and part-time lawyering.

Diversity

A significant development of the late 1990's was the adoption by ACCA [the American Corporate Counsel Association] of a policy

which has been subscribed to by a strong majority of North American corporate law departments that would require them, in the selection of "suppliers" [including outside law firms], to afford preference to those demonstrating the same commitment to diversity that is exhibited in that corporation's own policies. Increasingly, this means that law firms must adopt diversity initiatives

unfunded retirement obligations to former partners, set forth in their partnership agreement. Tax deferred retirement funding is available under various schemes in the US and Canada. Generally speaking, articulation of a retirement policy makes it clear that lawyers and firms need to plan for retirement, and that the expectation of retirement will create advancement opportunity for younger lawyers,

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comparable to those of corporations, which in turn presents special problems given the disparate demographics of the profession in relation to the population at large [i.e., smaller proportion of minority lawyers than the proportion of minority population in relation to the population at large]. Increasingly, law firms are pursuing diversity initiatives and training on a formalized basis. Those that lead in this effort will benefit disproportionately.

Lawyer Retirement

Recent survey data indicates that fewer than one-third of law firms have documented policies regarding retirement of partners.³ Of those with such policies, over half have provisions for normal retirement, typically age 65. However, fewer than half provide for mandatory retirement.⁴ One of the problems with mandatory retirement is that of retirement funding. Many firms have

facilitating their long-term retention.

Underproductive Partners

There are all kinds of reasons why partners might not produce in accordance with expectations of the firm. They vary from mental or physical health reasons to lifestyle considerations, changes in marital status, and the like. Solutions often depend upon the underlying reasons. Increasingly firms are implementing performance thresholds and expectations, combined with individual annual planning for partner productivity, which make expectations clear and introduce an element of personal accountability. Partners failing to meet expectations can expect changes in compensation or status. Chronic underperformance frequently will result in compensation reduction, possible de-equitization, relegation to a second class of partner, or removal of partner status altogether. In some cases, conversion to of counsel

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or other non-partner status with continued affiliation with the firm is possible. In others, expulsion is the answer, with voluntary resignation or, if appropriate, early retirement as an alternative.

Applicability of employment discrimination laws to lawyers is a consideration in the development and implementation of law firm policies on underproductive partners. Specialized assistance on these important subjects is available through consultants and employment lawyers with law firm-specific expertise in both the US and Canada.

Ongoing Evaluation

Not every lawyer hired by a firm will make the quality and quantity contribution necessary for growth, improving profitability and success. Some will even actively interfere with the opportunity for top talent to succeed. In many cases, this requires culling lawyers who inhibit law firm growth and continuing success, in some cases “trading up” to more desirable assets. It also requires special effort to make the firm attractive to the widest variety of the best, brightest and most committed lawyers it can find. Policies attractive to women, diversity initiatives, retirement policies and dealing with underproductive partners or uncooperative lawyers are ways to accomplish this goal. ♦

- 1 Appendix 1, Altman Weil/ ACCA press release on *Survey*.
- 2 “What’s Your Firm’s Survivability,” Altman Weil *Report to Legal Management*, March 2002.
- 3 *2002 Retirement and Withdrawal Survey for Private Law Firms*, Altman Weil Publications, Inc., Newtown Square, PA 2002
- 4 *2002 Retirement and Withdrawal Survey for Private Law Firms*, Altman Weil Publications, Inc., Newtown Square, PA 2002

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