

Partner Retirement—The Challenges for Canadian Law Firms

Overview

The concept of retirement is changing very quickly in society in general; it is also beginning to change the legal profession's view of how to help lawyers make the transition.

There will still be some holdouts who feel that lawyers understand "the way things are" from the time they left law school and that they should be left to their own devices. This is a throwback to corporate cultures of bygone eras and not limited strictly to the legal profession.

Retirement is hitting us very quickly and the concept of retirement as we know it today will be forever changed as the boomer population puts its own stamp on the term. The legal profession will not be immune to this move and will inevitably move towards supporting lawyers transitioning into retirement by changing the culture where need be, educating lawyers at all stages of their career and finding ways to help ease the psychological transition.

The law firm and the retiring lawyer

The response by Canadian law firms to the issue of retirement is certainly not uniform and is often more dependent on the firm culture over business or human resources issues.

Some firms have a mandatory retirement age and programs in place to help lawyers make the transition while others have not recognized the need to focus on personnel issues concerning their professional workforce.

Yet, within the next two decades close to 75% of today's law firm partners will reach retirement age and one-third of those partners are already over 50. If retirement planning isn't an issue for law firms today, it soon will be.

From a business perspective, retirement is seen as both an opportunity for the firm as well as a potential threat. Larger firms who actively recruit younger, fresh lawyers with new ideas and energy often view retirement of senior partners as a way to continually remake themselves.

"A lot our younger partners don't want us to look after those retiring lawyers", said one Managing Director. "Their view is that this is an entrepreneurial business and older lawyers knew that when they got in. In tough times it is going to be hard to get the management committee to commit any resources to helping retiring older lawyers."

As a result of this firm's view on partner retirement, there is no set policy on retirement nor does the firm provide any support to those lawyers who are moving towards the windup of their practice.

There is a view in the Canadian legal profession that 65 is a watershed age that defines whether a lawyer can continue to make a meaningful contribution to the firm. This idea fits in well with the traditional view in society that also accepts 65 as a demarcation point that signals the beginning of "old age".

However, the sometimes not-so-subtle pressure to retire in a large firm can actually start when a lawyer is in his or her mid-fifties. "I am already feeling that I am not seen as an active vital partner", one Toronto lawyer told me. "It isn't something that is overt, but around here when you get to be 55 you know that you are now on the fast track to leave the firm."

Most firms who have a mandatory retirement policy have set anywhere from 65-75 as the end of equity association with the firm, with the average settling somewhere around 70. Several large Canadian firms are set on age 65 and will only allow a senior lawyer to maintain an association with the firm "in exceptional circumstances".

However, an increasing number of Canadian law firms realize the value of relationships and experience and are finding new ways to maintain their association with older lawyers.

"Things have changed in our profession", said one Managing Partner in a large Western Canadian firm. "We are starting to see a shortage of talented lawyers to replace lawyers who are now ready to leave. This hasn't been a major issue before, but in my own firm we have five or six senior partners who will leave us within the next two years."

It is estimated that close to 70% of law firm partners are baby boomers. If the profession has been slow to treat retirement as a major firm issue, boomer lawyers will help it redefine retirement and how to plan for it.

Understanding the needs of retiring lawyers

If a firm is going to create a retirement transition strategy as well as an overall philosophy on partner retirement, it has to balance its own financial, business and corporate culture needs with the needs of its senior lawyers.

From the firm's perspective, issues such as financial settlement of the partnership, client transition and the need to recruit younger lawyers will no doubt have an impact on its retirement policy. However, those considerations can no longer be the only criteria for deciding how to treat retirement.

The legal profession has made a serious effort in the past decade to address the human resources needs of its workforce through initiatives such as Work/Life balance programs and flexible work arrangements. Retirement planning is as much a human resources issue as it is a business issue.

Lawyers moving into retirement have many similarities to other professions. Family size, divorce rates and health issues are not much different than the medical profession for example. However, the very nature of professional retirement will affect how a lawyer plans for retirement and the kinds of services and support that the firm can provide.

Why do lawyers retire? The answers are not as simple as the profession might think. In fact, most lawyers are not anxious to walk away from their life's work at age 65 and move into retirement grudgingly. Statistics Canada's General Social Survey supports other studies that suggest that if given the opportunity, most would prefer to continue practicing for as long as possible.

In many major Canadian law firms, there is an inherent 'redundancy' that has resulted in ageism and sometimes even age discrimination. The assumption in the legal community is that most lawyers not only *want* to retire but should retire unless it is in the best interests of the firm. Its inevitability is at the foundation of the culture that says that from the time you start to practice law you are working to retire.

In fact, most lawyers want to find a way to balance their love of the practice of law with the life that law should have earned them. Retirement looks attractive because it is seen as deliverance from the stress of billable hours, no family life and overall stress.

For example, a U.S. study on lawyers south of the border found that 11% do not plan to ever retire, only 18% of lawyers plan to retire completely at 65 and 40% plan to work at least part time past 70. We would expect similar numbers here.

One senior counsel told me "I have no desire to quit. I love the law and my practice, but I also wanted to spend time with my grandchildren and wife. I basically had to take retirement and then find a way to come back part-time on my terms."

Most lawyers who are not yet retired would say that their retirement decision will come as the result of reaching "financial security"; in fact, a recent study of Quebec lawyers found that three-out-of-four lawyers over age 50 had linked their retirement to financial capacity.

The relationship between financial security and readiness to retire is common across all segments of Canadian society. A study conducted by The Retirement Lifestyle Center in its workshops across the country found that over 75% of pre-retirees thought that financial success would be the key to retirement success.

A better question to ask lawyers approaching retirement is “what does retirement mean to you?” This gets at the heart of where they see themselves after they leave their partnership or practice. A U.S. study asked that question and found that 71% of retiring lawyers felt that retirement represents an opportunity to begin a new phase of life and to take up new challenges.

That survey also found that just 29% looked at retirement as prolonged leisure. While we don’t have a similar study on the Canadian legal community, we do have data from other professions here that reflect the same sentiment: retirement is an opportunity for most to enter a new phase of life and challenge, rather than the beginning of a thirty-year long weekend.

The challenges facing aging lawyers as they approach retirement

Here are five issues that retiring lawyers could face as they make their transition into retirement that firms should recognize as they create support programs:

Issue one: the need for the lawyer to self-actualize in retirement

Maslow had it right—at the apex of the human needs pyramid is the need to self-actualize. Professionals who practice law, medicine, dentistry etc. have had to strive to succeed from the time they first thought about their calling.

Think about a successful partner’s path to retirement. The undergraduate degree, the LSAT score, the application to get into law school, the competition in each year to rise to the top of the class and gain an articling position at a good firm, the need to make partner and to develop a reputation in his or her chosen field are all examples of the tremendous competitive nature that drives most lawyers.

Lawyers derive their self-image from reaching and achieving goals, and self-actualizing through their ability to succeed in their practice.

In psychology, the principle of “continuity theory” says that we tend to fall back on those previous behaviors and personalities that made us successful when we were younger. Simply put: we are who we are. Continuity theory is a good descriptor for what happens to many high-performers who come to the end of their work careers.

The drivers that make a successful lawyer will still be there when the lawyer retires. The challenge in retirement is to find replacements for some of those drivers when full-time practice ends.

For those senior lawyers that do not see any options to self-actualize through their association with law when they leave the firm, retirement is not a welcome relief but more like a prison sentence. This can lead to depression and a loss of self-worth.

A comment on early retirement for lawyers: This decision should be more than a financial issue. There are many good reasons to take early retirement, as long as the retiree is actually retiring to something else.

Instead, lawyers and their firms should be open to consider a sabbatical that may provide a much-needed break from the practice and give the lawyer the opportunity to recharge his or her batteries.

Issue two: A lack of a clear vision of retirement

Most Canadians entering retirement tend to think of this period of life as the start of an extended long-weekend. According to Statistics Canada's General Social Survey in 2007, professionals are more likely to have a clear view of their retirement plans than any other segment of the labor force. However, experience in counseling lawyers on retirement tells me that their retirement expectations often are in odds with reality.

Given the comments above on continuity theory as it relates to high-performers, a lawyer's retirement plan has to go beyond a simple leisure or vacation plan.

One of the first steps is for lawyers to focus on the values that shape their lives and think about ways that they can use retirement as a way to further incorporate those values into their next phase of life. This will also help them identify those activities that will promote self-actualization.

Next, a retirement plan should consider what the retiring lawyer would like to accomplish in the various areas of his or her life. Here are the life arenas that I suggest will help focus the planning discussion:

- ⇒ Health
- ⇒ Work (including volunteering)
- ⇒ Family and Social relationships
- ⇒ Leisure
- ⇒ Home
- ⇒ Financial comfort

This structure works well for individuals planning for retirement, but it is really a foundation that works at all stages of life. Most retirement coaches will introduce a similar concept as part of the process.

The retirement transition plan doesn't just start in the year prior to retirement, but should be introduced at least five years out. The life arena approach is a great, non-threatening way for the lawyer to organize his or her plans and is not directly tied to leaving the practice. It also provides topics for lunch-and-learn sessions.

Issue three: Achieving work/life balance prior to retirement

One of the issues that most retiring professionals take for granted is how to make the best use of leisure and create a life balance.

The practice of law can create demands on a lawyer's time that gives them an unrealistic view of the role that leisure plays in their life. Long hours, punctuated by all-too-short weekends and then hurried blackberry vacations make retirement seem like deliverance.

A recent study published by Catalyst on work/life balance in Canadian law firms found that "nearly two-thirds of all lawyers report difficulty managing the demands of work and personal/family life."

While the study found that most in the survey recognized the importance of work/life balance, "more than half of partners and two-thirds of associates said they "often" or "very often" put work before personal/family life."

That fits into the overall culture in most large law firms in Canada: Lawyers are often more committed to the firm than they are to their personal lives, including their families and personal needs.

While the idea of prolonged leisure may sound appealing, it is important to consider the paradox of leisure—it has value and meaning when it serves as a break from routine or workplace stress. When this new life is entirely focused on 'leisure', what would then provide the break?

Issue four: Strengthening spousal, familial and personal relationships

The primary issue here for retiring lawyers will be how well they are able to achieve work/life balance when it comes to their personal relationships and how they "reinsert" themselves into their families when they have more free time.

The culture in most large firms is that lawyers are expected to *sacrifice* their lives to the firm rather than to dedicate their lives. The payback for this often comes in retirement when the retired lawyer is trying to rebuild a life and requires the support of a spouse or partner to do so.

In retirement, that can cause serious relationship issues for couples. In general, the practice of law is not kind to spousal relationships: for example, a U.S. study found that lawyers are three times more likely to go through divorce than non-lawyers who share their same socio-economic traits.

There is a big difference between the family situations of male versus female lawyers. Profession numbers suggest that one out of three men lawyers has a spouse or partner who does not work outside the home (versus one out of 13 women lawyers).” In other words, there is more likelihood that a retiring male lawyer will be coming home to a spouse or partner who is not working than his female counterpart.

The three key relationship issues in retirement are:

- Couples dealing with “role identity” issues where the retired lawyer is coming to grips with whom he or she is now that the law career is at an end. This is more applicable to male lawyers than female lawyers who are retiring.
- Lack of agreement between spouses or partners on the retirement plan. This isn’t limited to the legal profession—most couples don’t talk about their plans or goals with regard to retirement. However, couples are more likely to discuss future plans if both are active participants in family life.
- Financial issues that may cause family discord, including decisions on how money is spent, the emotional spending that comes in the first few years of retirement and the overall need to maintain lifestyle.

One other retirement element that can’t be overlooked is the strength of the social network that the retiring lawyer will take into this next stage of life. Many in the profession derive their entire social network from the legal community. Often, retirement means moving away from those relationships. A key to retirement success is the quality of social relationships and retired lawyers have to find ways to maintain their contacts when they leave the firm.

Issue five: Achieving financial security or comfort in retirement

There is a perception that a successful legal career automatically translates into financial security in retirement. Entrepreneurial spirit is part of the culture of many Canadian law firms. Most lawyers are well-paid for their services and it is assumed that they will handle the financial planning issues on their own.

In fact, in a recent discussion with a managing partner of a major Canadian law firm, I was told that “lawyers have made good money during their careers and they should be able to figure out how to move into retirement.”

Unfortunately, many lawyers have sacrificed financial security for lifestyle over the course of their careers. Rather than create a retirement nest egg early, make maximum contributions to their RRSPs and invest in assets that will sustain them in retirement, they have “back-end loaded” their financial strategies for the future.

As one younger lawyer told me, "Look, I have a family and a lifestyle that I have earned now that I am a partner in my firm. I have plenty of time to build a nest egg for the future."

Lawyers will generally pay for their retirement out of the investments they have made, the RRSPs they hold and ongoing income they may be able to generate after they leave their practice. Normally, the capital payout they receive will not be enough on its own to sustain their lifestyle

A number of studies on Canadian retirees suggest that an individual will require approximately 75% of their last year's income in their first year of retirement to maintain lifestyle. If the lawyer has been diligent in managing his or her money, funding retirement will be a lot easier.

Obviously, families with just one income may have a harder time making the transition to retirement than families with two incomes. As I mentioned above, most female lawyers have a working spouse or partner than do their male counterparts. This should make their transition into retirement easier from a cash flow standpoint.

The good news is that entrepreneurs and professionals generally have a higher contribution to their RRSPs than the overall population. However, unused contribution room for this group continues to rise for both groups.

The financial challenges that many lawyers will face in retirement come from the following drivers:

- 1. Need for regular income to pay for lifestyle.** This is one of the key factors in achieving financial comfort and dictates a change in thinking for a retired lawyer. Prior to retirement, income was derived from the practice of law and partnership distributions. In retirement, income flows from investments. That switch necessitates an investment and tax strategy that will replicate the concept of regular income payouts.
- 2. Maintaining lifestyle without corresponding financial resources.** This gap is not restricted to lawyers, but will be a problem for those lawyers who have become used to a lifestyle that came as the result of their success. One issue to guard against in retirement is the emotional spending that often comes when the retiree uses his or her ability to spend as an emotional salve to handle the stress of retirement. Another issue that some will face is family obligations that come from multiple marriages, blended families, children in university etc.
- 3. Market meltdown and economic recession.** Hopefully this will be short-lived, but the current economic pullback has caused many Canadians to rethink their retirements. Those retirees who are over-weighted in the equity or real estate markets have a retirement nestegg that is likely less than it was six months ago. It is ironic, but

those conservative and less informed investors who were more 'savers' than investors have fared better. As a group, lawyers have generally been more informed investors who are often risk takers and make investments in many different areas. As a result, their financial security for retirement may have taken a bigger hit than more conservative investors.

- 4. Lack of a long-term financial plan for retirement.** Professionals and entrepreneurs in general are not as open to financial planning as salaried workers. Whether this is the result of ego, lack of urgency or lack of time can be debated; however, many lawyers will enter retirement without a financial plan in place or have solidified their financial plan recently due to the urgency of impending retirement.

The economic reasons for law firms to rethink their views on retirement

There is a growing trend in North American business to place a greater value on human capital and to embrace a culture that understands and supports the needs of its employees. Each year, business magazines in both Canada and the U.S. laud those companies that are "the best places to work", and use this recognition in their hiring or recruiting efforts.

The law profession is not immune from this trend, even if it is not yet part of the culture of many firms. For example, Heenan Blaikie was named one of the top one-hundred best places to work in 2007 by Canadian Business Magazine.

Initiatives such as work/life balance are important in creating a collegial atmosphere and to promote a sense of family. However, there are many in the legal profession who don't believe that the firm should expend resources on work/life programs, particularly during hard times.

One such critic of work/life balance who says that work/life balance is shorthand for "I don't want to work as hard" notes:

"Those lawyers crying out for work-life balance are about to get a taste of what it feels like. However, it might come with a pink slip. Law firms will start sharpening their knives and weeding out the under-performers and those who aren't putting in their time."

While the author was referring to the concept of a more humanistic workplace within the firm for associates at all stages, his view is typical of that held by law firms who do not want to address the retirement issue and implement programs to help.

This view is shortsighted. Law is one of the few professions that doesn't always recognize intellectual and human capital inherent in older lawyers.

Rather than create programs and a culture that promotes productivity among older lawyers, the profession often encourages them to “wind down” so that the partnership can bring in fresh, excited lawyers.

Increasing productivity in older lawyers

Human nature is such that if you are told that you have less value because of your age, you will begin to believe it. Also, if you are made to feel that you are at the end of your reasonable usefulness your enthusiasm for your profession declines.

If work/life programs are extended to cover retirement transition issues, the older lawyer will be encouraged to remain productive and feel valued by the firm. One of the world’s foremost researchers on people’s happiness and well-being John Helliwell writes:

“The well-being and satisfaction of people in the workplace, the real currency of human capital, are directly linked to the efficiency and productivity of individuals in their personal lives and the organizations where they work.”

Helliwell’s work suggests that if the firm can help the lawyer understand the positive contribution that can be made to the overall health of the firm during the retirement transition, the firm can actually increase the productivity from that lawyer and add to its bottom line. In other words, the maturing lawyer can become more valuable to the firm rather than less.

What can firms do?

The Catalyst Canada study in 2005 showed how law firms can positively impact the work-life balance experiences for lawyers through “tangible and achievable steps” to address lawyers’ difficulties managing work and personal/family responsibilities.

The thought of retirement is one of those “difficulties” that affect an increasing number of Canadian lawyers. Here are some tangible steps that the firm can undertake to help lawyers make the transition and to take advantage of their knowledge, leadership skills, mentoring ability or client relationships skills to benefit the firm at the same time.

1. Recognize that retirement is a firm problem as much as the individual’s.

Retirement isn’t as easy as “lawyers are bright people, they have enough money and should be able to figure it out.”

Yet, the response from some firms is to leave the entire transition process to the lawyer. One of the new trends in the profession is actually an extension of work/life balance; creating a culture within the firm that recognizes the human value of maturing lawyers and to view them as people rather than as profit centers.

Changing the firm culture is difficult today, because the firm often has a long history of treating retirement as a personal issue rather than a firm problem. There is a light at the end of the tunnel. With so many boomer lawyers focusing on their own retirement and becoming aware that the retirement transition is not solved by financial success, the firm's view of it will likely change.

The profession has already witnessed a change in culture simply due to the influx of female lawyers over the past decade. Work/life balance was not considered mainstream ten years ago and now firms who have embraced it are considered models for human resources initiatives.

2. Create a clear-cut written policy on retirement. This should include a target retirement date, a plan for phase-out that covers the financial issues, client issues and personal issues, and an after-retirement program to find ways to keep senior lawyers involved in the firm after they leave the partnership.

One of the advantages of a written policy as well as a target retirement date is that it protects the firm in the case of those partners who wish to stay well past the time when they can be considered competent. That also allows the firm to enter into post-retirement discussions with partners on a case-by-case basis.

Most large firms have very restrictive terms regarding retired partners continuing as counsel. While the case is easily made for a lawyer to be retained by the firm if the economic benefit to the firm is obvious, often this is done on an exception basis only.

An increasing number of firms are finding ways to keep retired lawyers involved by looking to them for leadership, mentorship, client audits or relationship building etc. While it is difficult to spell out these arrangements in a written policy, the firm should be open to flexible arrangements for retired partners rather than cutting them loose when they leave the partnership.

3. Provide education and coaching for lawyers making the transition

Many firms are making professional coaching services available to those transitioning lawyers to help them make the shift. Other firms conduct "lunch-and-learns" for retiring lawyers, bringing in outside experts to talk about various issues that may arise when they leave the firm.

The challenge in providing coaching or education comes directly from continuity theory. It is often difficult to convince a retiring lawyer that simply having enough money is the key to a stress-free retirement. After all, they already know how to be successful lawyer—how hard can retirement be?

For that reason, firms should be proactive in providing regular education sessions that will establish issues that retiring partners should be aware of.

Education programs should start from the time that a lawyer first joins the firm rather than on the eve of retirement. For example, proper financial planning is crucial to both life and retirement success; experts should be introduced into the firm to touch lawyers at all stages of their career.

4. Be open to Flexible Work Arrangements (FWAs) , sabbaticals and graduated retirement. Financial arrangements can always be worked out to support the transition into retirement, but in some cases these options are not open within the firm. Some examples of FWAs that would work well for transitioning lawyers are compressed work-weeks, flex-time approaches which free up more leisure time, and the use of remote offices if possible.

5. Consider retirement allowances and continuation of benefits as part of the retirement transition program.

Since income replacement is an important issue for retiring lawyers, the firm should find ways to help the retired lawyer create retirement income. One easy way actually works well for the firm: extend the length of the payout of the partnership distribution rather than paying out a lump sum over a shorter period of time.

Firms need to take a new look at the benefits packages that are made available to partners and associates. Some firms are now offered continued benefits for retired partners either for the remainder of their retirement or for a set period of time.

In addition, several firms are now adding a retirement protector to its benefits package to allow money to be paid into a retirement account in the event of a disability.

This is an aging profession and a changing world...

There are some trends that are already apparent in the Canadian legal profession that will ultimately change how firms provide their services to clients, how they market themselves and how they treat their human capital.

In difficult times, firms have to be responsive to changing market conditions and competition. The assumptions that firms make about how to charge for services, how they treat the human resources issues they face and the programs they provide for their partners and employees will all come into question.

Aging lawyers are not a diminishing asset, but a very important instrument of firm growth as long as they are engaged and understand their future in the legal profession. The legal profession has to find ways to use the retirement transition process to get the most out of the scores of lawyers

who will soon walk away from their practice and take their intellectual capital with them.

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