Associates adjusting attitude in downturn

LORRAINE MALLINDER

YURI ARCURS / DREAMSTIME.COM

Tough economic times could spark an overdue attitude adjustment among young employees at law firms, say experts.

With the economy in the toilet fresh-faced associates are in for a reality check.

The days of big demands, enormous perks and multiple job offers seem to be over. These days many young lawyers are starting to be more grateful, and less demanding, than they have been over the past few years.

Building a career in law used to be so straightforward. Back in the old days, wide-eyed youngsters filed out of law school with dreams of partnership or appointment to the bench. After years of assiduous toil they would eventually acquire the gravitas needed to make their mark. The world was a steadier, more predictable place.

Today's breed tends to emerge from college more accomplished and knowledgeable about the world, with a far more exotic range of ambitions. Possessed with a steely pragmatism unknown in their predecessors, they are prepared to keep their heads down only for as long as it suits them. Or so the theory goes...

Sylvain Lussier, a veteran litigator at Osler, Hoskin and Harcourt LLP, who recently celebrated 30 years in the business, has been bemused with the new generation of rookie lawyers in recent years.

"They've learned to say no. They tell us they don't have the time when we hand them a file," he says.

"I would have been out of the door. In the old days, you didn't have the choice."

His reminiscences are, to a certain extent, shared by Cameron Rusaw, a long-time corporate lawyer at Davies, Ward, Phillips and Vineberg LLP. Rusaw only started out in the eighties, yet his account of his early days as a slightly awe-struck ingenue is redolent of a bygone age.

He remembers feeling "fortunate" when he first arrived at the firm. In recent, financially flush, years he saw a change in the young associates entering the field — as the economy grew so did their egos and expectations.

"Back in my day, you joined the firm and wanted to be a partner. You put your head down and eventually you would be rewarded," he says.

"If there was an obstacle in the way, you worked through it, stuck it out."

To a certain extent, the deepening recession may herald a return to earlier attitudes. John Childers, a legal consultant at global professional services consulting firm Hildebrandt International, says that "associates with decent jobs nowadays will be more thankful.

"Two years ago the vast majority of departures were voluntary. Now a lot of people leaving aren't doing so by choice," he says

Childers has carried out extensive research on drivers of associate satisfaction in the U.S. and Canada, identifying four different categories of associate: The "flexibility seekers" seeking satisfying work and work-life balance; the 'called lawyers' who value *pro bono* work; the 'willing workers' who aspire to "work hard, play hard, retire early"; and the 'career practitioners' aiming for partnership.

> "Two years ago the vast majority of departures were voluntary. Now a lot of people leaving aren't doing so by choice.

While the signs are that these groups will continue to exist, Childers foresees growing unease among the more driven as opportunities dry up.

"There's a bunch of associates out there who want a full plate of work. You will see more frustration in that group as less work goes around," he says.

François Paradis, an associate at Osler, Hoskin and Harcourt, rates "adaptability" and "entrepreneurial skills" as the must-haves for any lawyer looking to succeed in the business in these unpredictable times. Adaptability, in particular, will be essential to remain relevant in a global market that is in constant flux, he says.

While the headhunting industry is still touting an impressive range of postings in far-flung locations such as Dubai — surely a major temptation for any young lawyer on a bad day — there is a sense that the opportunities at home are thinning. Paradis says that the recession has been something of a "reality check" for young lawyers who, until now, may have been under the impression that they had the world at their feet.

Some associates are happy to take things as they come. Natalie Renner, an associate at Davies, Ward, Phillips and Vineberg, speaks of taking things "year by year.

"It's really important not to overwhelm yourself," she says.

Her approach nonetheless has a very deliberate thrust. Focus and determination are the principal qualities needed to forge a successful career, she says — "a lot of the other things will flow from that."

Career plans, says Paradis, "crystallize with time."

Success for many associates is, as Renner puts it, a "very personal thing."

One of the most noticeable side effects of associates taking their careers in to their own hands has been the increased emphasis on work-life balance at many firms. It is a trend that looks set to survive the economic downturn. With single-income households a thing of the past, male and female associates are finding that they have to juggle their professional lives with personal demands.

Rusaw sees the changes as being hugely positive.

"It's an idea that career is important but that there are other

See **Associates** Page 26

Canadian law schools infected with terminal niceness

ALLAN BONNER

There's an epidemic of niceness infecting our law schools.

The virus originated at the Harvard-MIT program in the early 1980s on negotiation and has spread to alternative dispute resolution (ADR) programs everywhere. There's even a course in some law schools called "lawyer as negotiator" and this curriculum is buckling under terminal niceness too.

Here's how I defined the problem when I first heard of the Harvard program about 15 years ago. My clients and colleagues with First Nations' land claims files went to Harvard, came back and asked my opinion. Capitalizing on the title of the famous *Getting to Yes: Negotiating Agreement Without Giving In* reference text, I told my colleagues that many people I know don't want to get to yes, they don't want to get past maybe and they are very happy at no. My colleagues agreed.

To be reasonable, the curriculum has some good core values. These include: respect, listening, questioning, creative approaches and making the pie bigger by getting more elements on the table to sweeten the deal. These are all good in principle.

But here's what happened to me recently that caused me to question the preoccupation with coming to a friendly settlement with every negotiating partner or adversary whose path crosses ours.

Every now and then a law school asks me to adjudicate or assist in a simulation or practice moot or mock negotiating session. In a classroom recently, the parties and facts were as follows:

Former sports and movie star turned right-wing state governor.

Artist who uses governor's likeness in art, now on display in a public gallery.

The art is causing offence to the governor.

The issues included intellectual property, freedom of expression, reproduction rights on the art and so on.

Opposing teams of students played the roles of artist, governor and lawyers for each side. I was asked to judge the effectiveness of the negotiating, counsel the students, assign a mark and report to the professor.

The students did a great job of executing the curriculum on niceness. They met the other side, respectfully probed for areas of mutual interest, suggested various approaches and eventually came to some kind of potential settlement. The various suggestions included donations to charity in lieu of royalties, a joint, bland press release expressing mutual respect and the governor's attendance at a show of the art in question.

I fulfilled my obligation by coaching students and then had a private conversation with the professor. I pointed out that in real political life, especially in America, there was no effective reason for either party to settle.

I cited two cases that came to mind. The first was the J.D. Salinger case in which the reclusive

See **Niceness** Page 24

Lawyers can guide clients through IFRS

IFRS
Continued From Page 23

any underlying system. Although auditors will still provide an opinion on whether the financial statements are fairly presented in accordance with the standards, lawyers may be more motivated to think through the "what could go wrong" scenarios. This also intersects with any advice provided on certification obligations under NI 52-109, including disclosure obligations relating to the design and effectiveness of controls, and to disclosing material weaknesses.

Companies will rightly be motivated to maximize the conversion process's benefits, relative to its cost. The exercise provides an opportunity to take a constructive "fresh look" at many aspects of financial reporting, underlying processes and related functions, but this opportunity could easily be crowded out by inadequate planning or by time and resource constraints. Certainly, the conversion opens up new risks and may in some ways sharpen investor perception of existing risks. Securities lawyers can help immeasurably to guide their clients through this, by anticipating where and how changes to the numbers might have consequences: agreements, covenants, disclosure implications, compliance challenges. Of course, lawyers will usually need the input of accountants to pin those consequences down. Still, the more their advice is based in a specific feel for IFRS' distinct challenges, the more valuable it will be. ■

John Hughes, CA, is an associate partner in the national assurance and advisory group at Deloitte & Touche LLP, dealing with a wide range of securities- and financial reporting-related matters. He is co-editor of the book *iGAAP 2008: IFRS for Canada.*

Range of negotiating tactics should be taught

Niceness
Continued From Page 22

author sued to prevent publication of personal letters. The letters and other documents were submitted in evidence and thus became public documents, available to all. I feared the governor's efforts might make the art that offended him more well known.

The next case that came to mind was the famous show in the Brooklyn Museum of Art featuring a work by Chris Ofili. His work depicted a Black Mary surrounded by elephant dung, pornographic pictures and excerpts from blaxploitation movies. The mayor of New York City at the time was Rudy Giuliani. He attacked the exhibit, made it more famous and probably increased attendance.

I've worked for a lot of politicians and a few museums and galleries. I wracked my brain for any thought or experience I've had that would make me think some kind of joint press release or the right-wing governor milling around with lefties at a gallery was a realistic expectation. I couldn't.

In fact, no settlement was the very best outcome for both sides. If the governor denounced the art, he would curry favor with his core constituency on the right. The opposite would happen if he rubbed friendly shoulders with them at a show. Meanwhile, the artist would be more famous after denunciation and would probably make more money. Doing a deal with the governor would be seen as selling out.

I asked the professor what would happen if a student chewed up the allotted 30 minutes of negotiating time with obfuscation and then announced that s/he did so to derail negotiations because a settlement was not in the client's interests.

The professor curtly said the students had to demonstrate mastery of the curriculum. I quickly followed up by asking what would happen if a student demonstrated all such mastery and then derailed the final settlement in the last three minutes of allotted time, announcing that settlement was not in the client's interest.

"Top marks" was the professor's reply.

Well, way over here in the real world, where I sit, I figure that writing a fact case that requires a student to demonstrate technique that is irrelevant is, well, irrelevant. Training lawyers to chew up billable time advancing a case that doesn't help the client is a whole other ethical issue I didn't want to burden the professor with. Finally, thinking that students might know they could reject the curriculum and get full marks is not a realistic assumption.

Niceness is fine and there should be more of it. But perhaps it is inappropriate to zealously seek niceness on billable time or to try building bridges that nobody wants to cross. ■