

## **Weak economy forces firms to tighten up business practices**

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### **FOCUS ON 2009 YEAR IN REVIEW**

This year's weak economy forced lawyers to make fundamental changes to the business side of their practices.

"Contrary to what the prime minister and the governor of the Bank of Canada said (last) December - that Canada would narrowly escape this recession - the country was seriously impacted by a downturn in the global economy," said Scott Jolliffe, chairman and chief executive officer of Gowling Lafleur Henderson LLP. Law firms coped by "cutting back on their spending and hiring, and dealing with what has been a general downturn in the volume of legal work in Canada."

He explains that Gowlings reduced its discretionary spending. The firm postponed refreshing its computer systems and adding on new office space at its 10 locations across Canada, as well as in London and Moscow. The firm also cut back on the number of conferences its lawyers attend - measures undertaken "to hold onto as many jobs as possible," says Jolliffe.

Still, Gowlings had to reduce its support staff in Toronto by about five percent this year, and didn't add as many articling and summer students to its complement of about 700 lawyers as it has in recent years. "With less work, we wanted to make sure those who had jobs kept them," says Jolliffe.

The trend toward running leaner operations this year has affected other firms, such as Fraser Milner Casgrain LLP (FMC), where the firm's team of more than 500 lawyers across the country have had to adapt to the "new reality of watching the bottom line," mainly in response to a demand from a "more sophisticated" clientele, explains Michel Brunet, chairman and CEO of FMC.

"We're looking at costs more closely than we used to. There's pressure on rates and requests for discounts, so we have had to be more efficient in terms of how we spend money, organize our practice groups and share knowledge across the firm."

FMC offered reduced workweeks, although only a handful of employees out of a total staff of about 1,300 took advantage of the initiative. But the firm didn't have to lay off anyone in 2009 as it did in 2008, when it shaved its support staff by about 40 people - yet still hired 20 new partners that year.

The increasing focus on the business side of practice, spawned by this year's recession, was also a reality at WeirFoulds LLP, where partners and associates were scrutinizing expenses "more closely than ever before," says Lisa Borsook, managing partner of the firm.

"The most dramatic change has been the recognition that all law firms have to be much more competitive. Clients are not going to let them sit back and bill without reference to how much everything costs beforehand."

A mid-sized firm of about 85 lawyers, WeirFoulds only has one office - in Toronto - which has allowed Borsook to be "pretty microscopic" in reviewing expenditures.

For instance, while every lawyer is equipped with a BlackBerry, she looked "very closely" at what different service providers were charging and offering in terms of service before signing a contract with one. Similarly, the firm dropped carrying key person insurance for its partners "because we decided that it wasn't worth insuring for that risk," explains Borsook, who also maintains a commercial leasing practice.

On the practice side, some areas were stronger than others in 2009.

FMC lawyers had a lot of work in the areas of restructuring, labour and tax litigation, and less in capital markets and mergers and acquisitions, says Brunet, whose area of expertise includes corporate and commercial law.

Meanwhile Jolliffe, who maintains an active litigation practice in the areas of intellectual property and technology law, says those two areas, along with litigation, bankruptcy and insolvency, and infrastructure and financial regulation (the latter two, thanks to government-stimulus-spending and scrutiny) kept lawyers busy at Gowlings this year. However, the weaker economy contributed to less activity in the areas of business law, corporate finance and banking.

"Our clients have gone through serious cutbacks themselves, including in their legal spend. So there was a lot less merger activity and transaction-driven legal work," says Jolliffe.

He explains that the trend toward decreased spending has also hit corporate legal departments, which are now increasingly sending out requests for proposals (RFPs) and having law firms submit bids on projects and even to provide basic legal services.

"Many contracts are on a fixed price, or a combination of reduced and/or fixed price, so we've got to be more efficient in delivering legal services than we have been required to in the past," explains Jolliffe, who adds that RFPs are here to stay for law firms hoping to retain or attract major corporate clients and files.

Today, Gowlings has a password-protected extranet for large clients, through which they can check the status of their files and access opinions, documents and billings related to a specific file - a service, Jolliffe points out, that not many Canadian law firms offer.

He says that it's an example of a paradigm shift that's occurred within the legal profession, and the current tough economic times have resulted in others.

For instance, major law firms are relying on existing templates for contracts and agreements rather than creating custom documents, and passing on the related cost savings to clients.

"We're moving to a model where a lot of the work we once billed for we won't be able to in the future," explains Jolliffe.

He says that now lawyers typically negotiate administrative expenses (such as photocopying and faxes) when taking on a new file, and either include the charges in their hourly rate or show them as disbursements.

"Clients generally have more leverage," says Jolliffe. "Where the supply exceeds demand, there is much more competition in terms of pricing."

Borsook says that some institutional clients are requesting across-the-board discounts - and major U.S. clients are even outlining what they will and won't pay for in terms of services and expenses.

"It mandates law firms to provide them with the best possible deal, including cost-cutting, billable rate-reduction, capping hours and providing other services for free, such as continuing legal education through seminars and newsletters," she explains.

"Good clients are more in the driver's seat than they have ever been before and can say, 'Here's your retainer - now tell us what you're going to do for us.'"

Firms are being proactive in reducing costs for clients. For example, Gowlings does some "in-house outsourcing." On some files, it's sometimes more cost-effective to send the work from Toronto to, say, Ottawa or Kitchener, where hourly rates are lower "but the quality of lawyering isn't less," says Jolliffe.

Yet while the recession has forced Canadian law firms to concentrate more on the fiscal side of their operations, he hopes they never follow their U.S. and U.K. counterparts and publish revenue and net income numbers.

"It's been a terrible thing," says Jolliffe. "They're absolutely driven by those reports, which include average income per partner, that they start doing things within their business to drive their numbers up so they look better. But in doing that, they lose what should be their strongest grounding - and that should be their professionalism."

Besides, law firms are not publicly traded corporations or subject to any disclosure obligations and are thus entitled to keep their financial statements confidential, says Borsook.

She points to the recent precedent-setting Ontario Superior Court of Justice case, *LaCalamita v. McCarthy Tetrault LLP*, [2009] O.J. No. 3498, in which the court ordered the firm to provide the

plaintiff (claiming gender-based discrimination after she was terminated by McCarthys) with data on salaries, billing rates, performance reviews and other top-secret information.

"There has been a lot of discussion among lawyers about this, which gives you a sense of how carefully we treat the disclosure of our financial information," says Borsook.

"I don't think there's any trend to change that whatsoever. The business of practising law has already shifted that we think about profitability - and e-mail and technological evolution has made it much more of a business than it ever was before."

"But unlike the United States, where firms have experienced more dramatic changes in the amount of business they're doing, in my view it's been much more focused on smaller initiatives to maintain profitability in Canada. However, the difficulty isn't in finding ways to make our business of practising law more profitable. It's finding ways to balance that against our desire to maintain a professional, collegial atmosphere and provide service to the public."

"It cannot be just about money."