

By Kevin Marron | Publication Date: February 2010

Now that several U.S. law firms have run away from the lockstep model for associate compensation, many Canadian firms are looking to move in the same direction, though not at the same pace.

"It's something that firms need to do," says Herb Isherwood, managing partner at Vancouver-based Bull Houser & Tupper LLP. He is investigating issues involved in associate compensation in preparation for a conference of managing partners he is helping to organize later this year. The key question he and his peers will confront is whether to abandon the traditional lockstep model whereby all associates called to the bar in the same year receive the same base pay. His preliminary conclusion is: "Every firm will probably move in this direction, some faster and more radically than others."



The reasons for making this shift are compelling, according to Samuel Schwartz, managing partner at the Toronto office of Davis LLP. His own opinion — not necessarily that of his firm — is that lockstep is a valuable model for compensating associates in their first and second year, since it starts everyone off on a level playing field and encourages collaboration at an early stage. But after the first two years, he says, "I think lockstep is going to go by the wayside."

That is because law is a business, and lockstep "mitigates against the entrepreneurial spirit," says Schwartz. Rather than having associates locked into a certain pay level irrespective of how much initiative they show, he maintains that it makes sense to measure and reward performance, thus motivating associates to understand and help develop the firm's business. "And, in my discussions with other managing partners, they are seeing that too — the necessity of changing the metrics to promote certain behaviours."

For some firms, particularly in the United States where the recession has hit harder and large corporate clients are more demanding, this has become an urgent necessity. Global law firm DLA Piper, the second largest in the U.S. and one of a half-dozen prominent firms to abandon lockstep, announced in December that it would base associates' pay on "value delivered to clients and the firm, not tenure or hours." The firm's memo to associates also stated that the move would improve associate development and align talent management with the needs of clients.

In Canada, too, the recession has "brought into question everything to do with associates' salaries," says Warren Bongard, vice president and co-founder of Toronto-based ZSA Legal Recruitment. He maintains the current economic situation will result in "continued and deeper scrutiny" of law firm overheads and law firms will find ways "to compensate associate lawyers on merit, rather than year of call."

But Canadian firms are not ready to move that quickly. A major challenge, according to consultant Karen MacKay, president of Toronto-based Phoenix Legal Inc., is the need to develop a new set of metrics and define the competencies required to support a pay scale based on performance and competence. She says this is difficult because it involves finding new ways of evaluating behaviour. Many U.S. firms are more advanced in this regard, according to MacKay, as they operate in a highly competitive marketplace where major clients demand performance data. "They really want to know who's on the team and how effective they are, and they're quite demanding about that."

While some Canadian firms still have a pure lockstep compensation model, many have adapted this system by including room within each year's compensation package for bonuses that could be used as performance-based incentives. Nevertheless these salary bands (which typically allow for about \$20,000 in potential bonuses) don't provide for the kind of flexibility that could reward an exceptional associate who makes huge strides in building his or her practice.

It's easier for small or mid-sized firms than large firms to revamp their compensation systems to reward this kind of entrepreneurial behaviour, says Jonathan Veale, division director of Robert Half Legal in Toronto. He cites the example of smaller firms that offer associates a lower base salary with increases tied to the percentage of money billed and collected. But, he adds, this would be hard to do in a large firm with large institutionalized clients, because it would be challenging for an associate to build his or her own book of business.

Burnet Duckworth & Palmer LLP in Calgary is an example of a mid-sized firm that has abandoned lockstep for associates beyond their first two years of practice. Managing partner Gary Bugeaud says each associate is evaluated on the basis of billable hours, non-billable hours, and interviews with partners. Associates appreciate this system, he says, because it allows them to choose "their own personal balance" in deciding how much time and energy they want to devote to generating more business for the firm.

At WeirFoulds LLP in Toronto, managing partner Lisa Borsook says her firm has already dropped the lockstep model for more senior associates. "Certainly, by the fourth year, we're looking at their productivity and the things they bring to the table as they head towards partnership."

However, Borsook, like many other law firm leaders, believes the lockstep model works well for associates in their early years. They're on a learning curve, she says. It would "send the wrong message" to differentiate between them and it would put an unnecessary burden on them to tell them they will receive more compensation if they do more.

Isherwood notes that moving to a new performance-based compensation scheme could raise some thorny issues about the value and revenue-producing capacity of certain areas of practice. There is a danger, he says, that lawyers will shy away from practices that offer less opportunity for entrepreneurial skills and the morale of those in such practices will suffer because the metrics suggest they are not as valuable to the firm.

"Law firms don't move quickly," observes Schwartz. "We're all grappling with this," he says, referring to the complex issues involved in moving away from lockstep. He notes that each firm has a different culture and faces the challenge of designing a new compensation system that will fit with that culture. A crucial first step away from lockstep, he says, is to ensure associates understand what the new process is, what will be expected of them, and how the firm will help them achieve these goals.

So how is Davis handling these issues? Schwartz says his firm is "looking at lockstep, and developing and promoting business development mentorship programs for its young lawyers."

As big law firms continue to evaluate new compensation models, it will likely be business as usual this year, says Veale. "In 2010, the national law firms will stick with the lockstep salary increases," he says.

And will associates embrace the changes that are in the air? "I can't see a lot of buy-in," says Veale. What would it take to get that buy-in? "The whole street would have to move that way," he says.

So, when the big firms finally decide to adopt new compensation models, you can expect a flurry of activity. As they move away from lockstep, they will likely move in lockstep with one another.

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