

Shall We Dance?

Associates and the Law Firm Negotiation Process: What They Want and What You Need

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The Dance

Closed door meetings; whispered conversations; glances across the room; lunch meetings; impromptu “coffee” sessions. These are some of the sensory indicators that signal that the annual reviews for associate lawyers have begun.

Some associates will be aware of the process of their review and the scope of negotiations in advance. Others will have no idea what to expect in terms of the process, how they will be assessed or what they should ask for regarding salaries, bonuses or other financial and non-financial incentives.

The desire to do a survey and research for this paper emerged from many anecdotal conversations with associate lawyers regarding their negotiation processes, a review of research in this area, and from previous research conducted by the writer on the challenges of retention and succession planning for law firms, specifically in family law.

Why associates leave or continue to stay in a firm is very connected to their experience of not only the day-to-day reality of their work environment but also how they are assessed and valued by their firm on many fronts, including during their formal reviews.

The survey conducted provides only a small snapshot of feedback from associates on the negotiation process. However, the picture parallels much of the dominant research and dialogue on negotiation, retention and succession challenges for law firms.

The generational shift in the workforce and the increased representation of the millennial demographic has, will and is altering the face and culture of law firm practice and the business models for law firms.

In the companion piece to my paper, “Courting the Millennials: A Firm’s Guide to Understanding and Adapting to the New Generation” my colleague Krysta Ostwald provides a comprehensive background review of the generational shift in law firm culture, along with a specific review of the millennial demographic and their engagement with such generations as the Boomers and Gen-Xers. In addition, Ms. Ostwald captures the role partners and firm management can play in establishing law firms that are more attuned to different generations working together and meeting the needs of increasingly creative, fluid and non-conventional law firm associates.

If the culture and longevity of law firms are to continue, associates will be required to fill the infrastructure of such models. Determining how to retain associates will be essential to ensure that partners, support staff, management and administrators of the firm actually benefit from their

investment of time, money and energy provided to training, resourcing, promoting and maintaining those associates.

The Research: What We Know About Associates, Legal Culture and the New Generation of Lawyers

Money is Not the Main Issue (Always)

All associates, but in particular millennials, want to be valued in other ways beyond monetary compensation. This may include more control or input into decision-making on their files, the firm's direction or their work environment.

But Money is Still Important (Mostly)

Associates want to know how they will be compensated. Will it be fair? Will it be comparative to others inside and outside the firm? Will it reflect their call, contributions, and merit? These considerations are important for associates. Many associates are leaving law school with considerable student debt. Salaries that are not reflective or a failure to provide bonuses or increases in a structured manner will leave many associates reconsidering their ability to stay in the firm.

Negotiating in Silence

Law school does not provide any skills for the business of law or how to navigate the negotiation process with law firms. For many lawyers, the first time they experience the negotiation process in any professional work environment may be in their first law firm position as an associate.

The research indicates that for women, racialized women and other groups disproportionately represented at partnership and management tables of law firms and in some cases law firms in general, the negotiation process is even further hindered.

Associates are not encouraged to speak to one another about the negotiation process and many associates identify feeling isolated and ill-prepared to advocate for themselves when they have to engage in financial discussions. Lack of transparency and a sense that such financial matters are confidential breed a silo mentality about associate negotiation processes.

Work-Life Balance: Not a Cliché

The concept of work-life balance may seem like a cliché to many lawyers, but the new generation of lawyers, whether millennials or not, do not want to wait for retirement to live their lives. In the mindful, conscious, environmental, yoga, meditation, self-awareness, Oprah and Deepak Chopra infused culture of the moment that is about "now" not tomorrow or ten years from now, associates are engaged in value and goal decision making about their lives in very present ways.

The millennials are one example of the generation of associates that has emerged that is living in the most "real time" of any other group of associates. The self-reflective, meaning-induced associate does not want to delay the purpose of their life; associates are one tweet, blog post, Instagram photo, or YouTube video away from being in the life they want. Associates who feel their values are not being reflected or encouraged won't waste time waiting for the firm culture to change; they will simply leave.

This new generation is public, with their lives on display on Facebook and in the public domain; if they are dissatisfied, firms will know.

Associates want to work and play. They don't want to be bound by unnecessary requirements for face time in the office, wearing suits, and spending 9 to 5 days in the office that restrict their ability to have flexible work schedules and allow for more diverse opportunities and experiences.

Associates, regardless of gender, although still more disproportionately represented by female associates assuming these roles, want to have and take care of their children. They want to see them grow up and not be limited to maternity and parental leaves that force them back to work in some cases when their children are only a few months old.

Associates and Their Peers

Associates are smart. They have learned good research skills and they will know what their peers are earning and what incentives they are obtaining. They can find out what they should be making and where they should be headed at different stages of their career. If they do not see themselves moving forward or being compensated or valued they will not waste time. Many will launch their own practices or move on to firms that are more aligned with their values/compensation goals.

Partnerships: Not the End Goal (For Most)

The status of partnership has lost its meaning for many associates. This is most evident in the millennial generation, but is also evidenced as a general trend amongst all associates. Partnership does mean the same thing anymore for many associates.

Associates are seeking satisfaction from their work environment on many fronts which may include other opportunities for leadership, educational pursuits, or pro bono work. At the same time, many associates have become disillusioned about firm partnership. Partnership is thought to be more work for less benefit with the addition of having to engage in office politics and navigate politics between other partners. In addition, associates also believe there is less fairness about who is selected to become a partner; politics and the view that there is an unchanging firm culture are reinforced in partner selections.

Many firms also have a greater number of associates and limited partners thereby concentrating the resources and power of the firm in the partners. Associates also recognize that firms structured in this way may focus on restricting entry to the partnership; therefore, the only option for associates seeking partnership may be to pursue these goals at a different firm. In addition, firms structured in this manner may prioritize and protect the partnership culture at the cost of fostering and retaining associates. What can emerge is a merry-go-round of associates coming and going in a firm with little consistency between associates.

Lawyering as a Career: A Different Perspective

Being a practising lawyer for 10, 20 or 30 years plus may become increasingly rare. A lawyer practising at the same firm for that long will be even less likely. It is increasingly more common to see associates leave the firm they articulated at within five years from the date they started working there.

The wider job market is also shifting so that the notion of a long-term career is diminishing; people may have several “careers” in their lifetime.

Retention issues and the limited numbers of lawyers in certain practice areas, such as lawyers in family law, may lead to a limited workforce and lawyers available for firm hires.

These issues increase the need for partners to foster good associate relationships and to make the effort to keep associates that are a strong fit for their firm.

Summary

Legal culture is changing and the culture of associates is also changing. New generations of associates seek different work environments from their employers and have different life goals and relationships to their work.

Technological changes and the ability for associates to launch their own law firms with minimal overhead and little start-up cost mean that some associates do not feel bound to stay at law firms that are not meeting their needs for financial and other compensation requests.

The recent fall of a national mega-firm in Canada has again raised the discussion of where “firm” culture is headed and the practical role of partnership models.

If firms cannot retain associates they are inevitably depleting their economic and energy resources. A disposable associate culture essentially means that firms are taking on the role of being extended training sites for associates. Not investing in a mutually-beneficial relationship with associates means that associates will leave.

Succession planning and building a strong firm culture relies on a reciprocal relationship of wants, needs and compromises between partners and associates.

Survey Results: Associates and Law Firm Negotiations

The Survey: Quantitative Findings

The survey created on SurveyMonkey ran for approximately one month and was distributed through networks of lawyers, junior law groups, legal associations, individual lawyers, faculty members at universities, and legal listserv groups.

Forty-two associates completed the survey. The demographic breakdown was as follows:

- 28 women
- 12 men
- 2 transgender persons
- 8 associates identified as a racialized person or person of colour.
- 1 person identified as a person with a disability.
- 3 associates identified as being from the LGBT (Lesbian Gay Bisexual Transgender) community.
- 28 identified as being called to the Bar for 10 years and under.
- The majority of responses came from associates aged 30 to 45 years old.
- 17 responses came from associates working in law firms comprised of 10 to 20 lawyers.
- 17 responses came from associates working in law firms comprised of 10 lawyers or fewer.

Type of Negotiation Process:

- 14 associates indicated that they had a formal negotiation process/salary review that is conducted with each associate in the law firm.
- 9 associates indicated they were on a grid structure review, i.e. all junior associates 1 to 5 years are provided set salary increases, bonuses for met billable targets, other incentives, etc.
- 21 associates indicated that there was no formal negotiation/salary review process at their firm.

Qualitative Assessment of the Review Process:

45% of associates selected that they had a negative experience with the negotiation process, while 54% identified having a positive negotiation experience (one survey did not provide a response to this question).

Although a slight majority of associates indicated that they did have positive negotiation/salary review processes, additional comments on the surveys highlighted that the majority of survey participants believed their negotiation/salary review process to be:

- Non-transparent, e.g. no discussion occurred from management about the process;
- Discussion between associates regarding their individual negotiations was discouraged;
- Management was not organized and/or did not have a clear structure; and
- Management was vague about the salary, bonus and/or performance matters.

Of the associates that indicated they had left their law firm:

- 8 went to work for another law firm.
- 6 started their own solo practice

- 5 went to work in public service, government or a public interest law firm
- 1 left the practice of law

Some of the survey responses of those continuing to stay at their original firm also contained comments about not knowing what would occur moving forward with their legal careers and if they would continue to work at their current firm.

Expectations and Reality of Issues Covered in the Negotiation Process

There was much overlap in what issues associates selected that they wanted covered in their negotiation process and what was actually addressed in the process. These primarily reflected matters related to salary review, billing target review, and review of bonuses.

In addition, there was overlap on areas of review of performance, review of pro bono training and other non-billable performance, review of mentorship, and partnership track considerations.

Areas that were absent from actual negotiation reviews but which associates wanted covered were matters related to:

- Reviews of allowable vacation time (25 responses);
- Considerations of sabbatical and or other designated leave time (19 responses);
- Parental leave time (14 responses); and
- Part-time work or job share options (17 responses).

After the negotiation process, 12 survey participants identified that being a partner was still their goal in a law firm, while 11 selected that being a partner was no longer their goal (18 selected not applicable and 2 did not respond).

The majority of negotiations were conducted by partners and managing partners.

Most survey participants felt they were able to approach the person/people who had conducted their negotiation process with any concerns they had about the process.

As for sharing or canvassing other associates about their negotiation experience both in the firm and with associates at other firms, the majority of associates indicated having such conversations or seeking out such information from their colleagues.

The demographic breakdown provides only part of the picture; the qualitative responses from associates enable the more substantive analysis regarding the negotiation process.

The Survey: Qualitative Findings

Although limited by how many participants responded to the survey, what emerged as most useful from the survey were the qualitative responses associates provided as to their negative and positive experiences with the negotiation/salary review process. In addition, where permitted to provide comments and feedback not captured in the survey, some associates offer their views to partners regarding the barriers and best practices that would facilitate more meaningful associate reviews.

Below is a sampling of some of the insightful comments elicited from associates about the negotiation process, categorized under the specific survey questions from which the response feedback was derived.

I had a positive experience with the negotiation/salary review process at my law firm: (text in brackets added by author for clarity)

- Partners made first offer and then were very approachable if I wanted something changed.
- I think my firm pays relatively well. So from that perspective, it's a satisfactory experience. However, after the 5 year call mark, the lock-step salary ends. I am about to enter a negotiation process that looks quite different and there is little guidance as to expectations, parameters etc. going forward.
- There was not a ton of feedback but it was a predictable, structured program.
- Felt that my priorities and interests were taken into account. Felt that there was mutual benefit to the process and the outcome.
- We annually review my salary in an open manner. I have always felt that my opinion mattered.
- My salary has always been adjusted in a way I find fair and generous.
- We discussed my goals and interests in an open and frank manner. Management appeared to engage with the issues I brought up as important to me. I felt like the firm was very interested in my future with them. They left me with the impression they were prepared to invest in my future with the firm.
- A couple of positives from the firm:
 - the timeframe around the negotiations has been included in contracts that I have signed. This makes it much easier to broach the subject of a review. It can be stressful to try and figure out how to reasonably broach these topics; and
 - the firm's expectations around this process have been clear and consistent from the beginning, making discussions around this issue quite straightforward.
- Our firm increases salary (bonuses) based on merit.
- Commission works (individual knew that they would be provided 45% split in advance)
- It (the negotiation process) is also a learning and growing experience.
- Usually a good time for constructive feedback and goal setting.
- Options are discussed and I understand the correlation between my performance and my salary.
- The set grid meant there were no surprises and everyone advanced equally.
- When disclosure as to how the numbers (for salary and bonuses) were reached was made (were) shared with associate.
- I am on a fee split agreement and have successfully negotiated an increased share.
- Fair outcome without the need for long negotiations.
- Sit down, have a business minded discussion, show respect and shown respect, no written contract required.

I had a negative experience with the negotiation/salary review process at my law firm:

- The feedback and the salary increase did not add up. I received only positive feedback and then was only offered a slight increase in salary, which was way below what my colleagues were being paid.

- They were unwilling to be flexible or to negotiate.
- People of the same year class were treated differently based on their popularity.
- I was told that the maximum raise I could get was \$10,000. So I requested that, then found out that another associate got \$18,000.
- There is no formal review or negotiations - although I was led to believe there was when I was hired.
- Very difficult to explain the kind of debt a new lawyer comes out of law school with, and how low guaranteed salaries coupled with unattainable targets affect standard of living and general ability to move forward.
- Always stressful to discuss negotiations about yourself and the person you work with.
- The factors on which success in the firm was premised were strictly financial without regard for other meritorious contribution to the firm. Factors which were not express at hiring became very important at salary review, notwithstanding that they were contrary to expectations on hiring.
- I was simply informed of huge increase in billable target, months after that target was to take effect.
- Process highlighted discrepancy b/w culture actively espoused by partners and that actually endorsed by firm practices when it comes to compensation: e.g. times have changed, we should not work ourselves into the ground, work life balance important, etc., however when it comes to remuneration, communicating that if we want to make enough to live on (really), need to work far, far more as partners did when junior; e.g. recognition of junior lawyers in development phase, explicit focus on supporting in that, but paying very low salary and imposing unreachable billing target so not sustainable to expect them to develop at a reasonable pace.
- No performance review component - no negotiation, merely informed of new structure - no real response to concerns I expressed, or questions and this was at odds with the sense I have had of being a valued member of the team - no recognition or discussion of nonbillable contribution to firm development (not only during this 'negotiation' but on an ongoing basis)
- Lack of actual contracts. Verbals only.
- Although there was a yearly review, it was not formal nor structured. Essentially you had one chance to give your input as to your targets for the coming year and any other issues you wanted to customize and the managing partner would come back to you with your target. Very little movement or flexibility in other aspects of compensation (vacation, flex time, part time, etc). Each year I would ask for specific compensation, other than salary... I wanted more flexibility in vacation time, with an increased target but no increased income. There was little to no flexibility for these things as they were fearful about setting a precedent. Ultimately, in my final negotiation, I put significant time into crunching numbers and justifying my requests with figures, trying to address the partners' anticipated concerns. They did not give any supporting reasons for their refusal to my requests (in this case, for limited period of three days per week). It felt like it was about mindset and not about the actual impact of the requested accommodation/compensation. I felt they did not treat me as an equal in terms of

understanding numbers and the financial needs of the firm. I did not mind a 'no', I just wanted it to come with concrete reasons in a way that was respectful to my being at the negotiation table.

- Limited provision of feedback re: if doing well or what should be improved
- It was take it or leave it. There was no negotiation. The firm lied to me about several material facts, and had I known the truth I would have quit. I stayed with the firm too long based on their misrepresentations.
- Process not done in a timely way. Increase in targets without being advised (and the increase was initially applied for retroactively for 6 months – but then negotiated to only have it retroactive for one month).
- No objective performance measures. Comments arbitrary. Lack of formal process at previous firm made it difficult to instigate negotiations.
- The firm was unrealistic about market forces and associates hyper mobility - unwilling to be realistic.
- Outcome was fine but there were many delays until the process actually happened.
- They withdrew a commitment to pay for my robes when I was called.

If you could tell Partners at law firms about the impact of the negotiation process on Associates and what Partners could do to better address Associates' needs, what would you say?

- Structure! Even if you do not have a salary scale (which I wouldn't want), I would still want a formal process where I am formally reviewed, and I know I can discuss my salary increase. I would like a set date and that day to be scheduled well in advance.
- Have more discussion to begin with, rather than presenting an option to constitute a springboard for discussion.
- Having a questionnaire or meeting process where associates can give feedback and express what is important to them, and then the follow up to ensure that this feedback and information was received and considered by the partnership, and what steps they are taking to address it is important. Even if there is a set structure, it is important to find out what associates are looking for and what is important to them so that structures and processes can be made with this in mind. Clear communication and support is key for retaining associates. Considering other options such as part-time work, job shares, sabbaticals, or leaves may be very important to your associates and it is important to keep an open mind. What was done in the past will likely not meet the needs of present and future associates who may have different values, ideas and life goals.
- Associates need to feel valued and the way that is done is to compensate them adequately in accordance with their performance. If an associate does not feel valued they will not stay.
- You should treat each associate as an individual. High performers will resent lock-step salary patterns and leave you if they can.
- Maternity leave should be revisited and more of an open discussion. It is a very take it or leave it process. I believe that many young female associates leave the practice entirely as a result of the closed door attitude towards maternity leave and parental needs (i.e. returning part time for a period) of young parents and mothers in particular.

- More feedback on work product - which is hard given the individualized nature of family law practice.
- Negotiating your salary is a stressful process. Having a clear understanding of when the process is to happen and being able to track your progress through the year is important. Also, if I am not meeting certain expectations, advising more than once a year is helpful.
- Listen more to our needs (ie. for mentorship etc.)
- I think setting clear and consistent expectations (between associates and year to year) is useful. By being upfront and setting associate's expectations about these issues from the start, it allows us to make decisions accordingly. If there are some issues which are non-negotiable, it is much easier to make that decision up front, instead of trying to deal with it later on.
- That a merit based system is best and that recognition of factors outside of billing must be considered.
- Be transparent, be fair, be equitable.
- There needs to be transparency, clear understanding of the process and the review process must include the associate! Otherwise the associate is left in the dark and unsure if they are on the right track or not and what they can improve on.
- Higher guaranteed salaries in early years. Attainable targets. Listen and try to understand the financial burdens new lawyers face, which may be very different than those faced by lawyers called in the 70s and 80s.
- Be open and honest; know what the rules of the game are going in; compensation should match the level of work and training I have.
- Be less circumspect about the expectations of the Firm.
- Obtain and be willing to share comparable re what other firms are offering in the same community. Demonstrate willingness to discuss and respond to questions and concerns that are raised. Basically, come prepared rather than simply alluding to attributes of the compensation package and historical examples as answer to those concerns. Refrain from using historical benchmarks (decades ago) when responding to concerns re salaries and targets. Ensure your actions align with your words: if you say you support a change in law firm culture/private practice, put that into action rather than paying lip service to the ideas and falling back into old ways when it comes to compensation and supporting associates. Conduct reviews on a regular schedule, known by all in advance, and ensure the relevant information is available at that time. Discuss changes in compensation prior to imposing them, and treat these sessions as negotiations that both sides must agree to rather than the like it or lump it approach of simply imposing new structure.
- It needs to be a two way review - and, always have things in writing, even a simple letter setting out agreed upon terms if a contract cannot be formally drawn up.
- I would say that the status quo is not working for this generation of associates. That compensation should include a variety of considerations and should be more tailor made. That transparency and markers are essential to the negotiation process. And that partners should treat associates as a party to the negotiation, not just the recipient of partnership decisions. That if the process were to change, the Partners have to get behind whatever policies they endorse (eg. if they allow part time, they need to have a Partner try this to really get buy in).

- Be honest, be clear, have 360 degree feedback for everyone in the firm, be transparent, have integrity.
- I feel like the structure of remuneration is very confined, it's either A or B. I wish there were more options explored.
- The formal written review and in person meeting to go over the review is important. Feedback, encouragement and constructive criticism are helpful for an associate who is learning the ropes. Set grids also assist in keeping things equal for all.
- Listen to what our concerns are. Don't just assume we are lazy/spoiled if we value doing things a different way, i.e. If we are willing to work less and as a result earn a little less, it's not because of lazy/spoiled but because of different priorities. Not only is a salary review helpful but performance as well. I want to know how I am doing and if I don't get feedback, I don't know how to improve.
- Some associates take negotiations very personally, which makes it difficult. Positive and negative/constructive criticism are helpful, and I personally like that the process here is casual and informal. Having comparables from other firms is helpful in neutralizing the personal aspect of a review.
- Rely on objective measures, take a course on how to have difficult conversations and learn better people skills. There should be an HR manager to oversee the process.
- Treat us as indispensable future partners who really matter to you. If we are not good enough, then just fire us. Don't send mixed message in a feeble attempt to have justification for smaller increases. We just resent you for that.
- Demonstrate why (show parts of the books) what a junior is asking for is unrealistic.

Any other comments or feedback you would like to share regarding your negotiation process that was not covered in the survey?

- I found negotiating benefits very successful – the general bias is that women are not as skilled at negotiating as men. However, I had very clear reasons why I wanted the benefits that I did, and I received better perks than most of my colleagues at other firms.
- It's unreasonable to assume that associates don't talk with each other in the firm as well as others in other firms.
- I don't feel like there is much 'negotiating' although there was a discussion and I made a decision. I didn't feel like there are a lot of options and hence didn't feel like I 'negotiated'.
- I don't like the process but it felt good to get over my fears and ask for what I wanted.

Next Steps: Moving Forward

Fostering relationships with associates is like building any healthy relationship. Associates have identified the need for respect, transparency, honesty, acknowledgement, appreciation, and meaningful engagement.

The survey snapshot highlights that if the negotiation process is transparent and responsive to the needs of associates then associates will continue to actively contribute to the development and growth of firm culture. Most associates do not want to leave their firm, but feel they have to leave when they are not heard, valued or included in the negotiation process.

Negotiations not done on a timely, well-organized and prioritized basis with the willingness of partners to provide realistic compensation or to discuss and offer other incentives leave associates feeling less loyal and overall disheartened towards the firm.

Research indicates that to survive, the modern law firm will need to address different generational shifts in the workforce and in particular will need to be attuned to the millennial generation. In addition, to retain a diverse workforce, firms and legal culture in general will need to make efforts to offset the high attrition rates of women in the law, in addition to other groups disproportionately marginalized in the practice of law such as racialized lawyers, Aboriginal lawyers, lawyers from LGBT communities, and lawyers with disabilities (to mention only a few groups).

The negotiation dance can be a positive process. Associates want to contribute to their firms and partners need associates to make the firms productive, sustainable and economically viable. The negotiation process may involve a step forward and a step back but if it can be rooted in respect and a desire to meet common goals, share in successes and to meet somewhere in the middle then the willingness to do so remains in the question: Shall we dance?

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