

A case of youth versus experience

By Jeff Gray
Globe and Mail Update

Plenty of younger lawyers want to move up the ranks. Trouble is, a lot of veterans aren't eager to retire

Bill Davis was Ontario's premier before many of the junior lawyers at Torys LLP, the firm where he worked after leaving politics, were born. Now, at 80, he is doing something few people his age do: He is starting a new job.

This week, Mr. Davis rejoined Davis Webb LLP, the law firm founded by his father in Brampton, Ont., nearly a century ago. The former Progressive Conservative premier's son, Neil, is a partner there.

"I would be bored if I weren't still working. ... I enjoy what I'm doing. ... I have no desire to sit back and put my feet up," the elder Mr. Davis said yesterday in an interview.

Law firms are full of big-name former politicians whose roles are often more about their strategic advice, and their Rolodexes, than their billable hours. Mr. Davis acknowledges he is certainly not a conventional lawyer. But he also isn't the only veteran who is reluctant to retire.

Many in the baby boom generation - now hitting retirement age - are resisting going quietly off to the golf course. This demographic bulge, legal industry observers say, threatens to frustrate younger lawyers who are eager for senior roles but forced to wait for their elders to move on.

"Frankly, if that previous generation doesn't step aside and allow that next group the opportunity to do it, they're going to go and seek it elsewhere," said Adam Pekarsky, 40-year-old president of the Pekarsky Group, a Calgary consultancy and recruiting agency for law firms. "It's a retention issue, as much as it is anything else."

Mr. Pekarsky, who recruited several lawyers in their 40s to join Ogilvy Renault's newly launched Calgary office this year, said the promise of career "oxygen" is a big draw for many younger lawyers, tired of waiting in line behind baby boomers.

Ben Rogers, one of five founding partners of Ogilvy Renault LLP's new Calgary branch, said the baby-boom demographic wasn't a factor in his decision to leave Blake Cassels & Graydon LLP for his new job.

But Mr. Rogers, 39, said it is clear that law firms that fail at succession planning, or shifting clients from senior lawyers to younger ones, are going to run into trouble.

Some mid-level lawyers at big firms feel frustrated by a baby boomer wall that denies them a chance to work with major clients, Mr. Rogers said, adding: "None of us went to law school to be backroom support staff."

Adding to the frustration is the fact that Canadian law firms are shying away from making associates into partners as quickly as they used to, traditionally after six to eight years, said Dalvinder Bhathal, director of the Counsel Network, a lawyer recruitment agency.

"They've said, 'Look, given what's happened, we can't make you partner this year, just because of the economy,'" she said.

Partners share in a law firm's profits; when profits are smaller, firms are understandably reluctant to cut a shrinking pie into more pieces.

The demographic bulge of older partners at Canadian firms may also be to blame. But Ms. Bhathal said the model for advancement used by international law firms against which Canadian firms measure themselves could also be a factor.

Firms in London and New York often have many more associates, Ms. Bhathal said, and unlike Canada, consideration for making partner is not automatic.

Among the tools meant to help clear the way for younger lawyers are mandatory retirement clauses in law firm's partnership agreements.

Although Ontario and other Canadian jurisdictions have done away with mandatory retirement for most workers at age 65, the terms of partnership agreements at many law firms can still include provisions that make partners step away from their practice, sometimes gradually, as they reach a certain age.

Many of Canada's major law firms have mandatory retirement policies; but some that have them also make side deals to allow certain partners to stay on.

Eldon Bennett, managing partner of mid-sized Aird & Berlis LLP in Toronto, said his firm did away with mandatory retirement for partners a few years ago. He said many lawyers at the 130-strong firm, which can trace its roots back to 1919, expressed a desire to keep working.

"People tend to be in better shape and really want the intellectual stimulus to do it. In some cases I suspect it was a financial consideration," said Mr. Bennett, 63. "We recognized you could lose people you didn't want to lose."

The demographic waves keep coming, however. According to a survey by Lexpert magazine, an estimated 40 per cent of lawyers at Canada's biggest firms were called to the bar after 2000, a wave of young professionals who will no doubt start to get restless if their career growth is stunted.

And this new generation of social-media and technology-savvy lawyers is said to be even less willing to wait its turn, and more resistant to sacrificing things such as work-life balance.

"I think it's classic generation gap," said Ms. Bhathal, the recruiter. "You're always going to get that kind of friction happening."

In the United States, the tussle over forced retirement for lawyers has also been, perhaps not surprisingly, a source of litigation.

In 2007, Sidley Austin LLP in Chicago agreed to change its mandatory retirement rules as part of a \$27.5-million (U.S.) settlement with 32 former partners.

Last month, New York law firm Kelley Drye & Warren LLP was hit with a complaint from the U.S. Equal Employment Opportunity Commission, the latest in a series of similar actions against law

firms. The complaint alleges that the firm's policy to force partners at age 70 to relinquish their equity stake in the firm violated age-discrimination laws.