

## Business & Careers

# Boutique hiring requires careful planning



**Warren Smith**  
The Headhunter

I was recently speaking with a partner from one of the top boutique law firms in my market about the challenges they faced in recruiting mid-level associate talent for their firm. This partner was lamenting how they were not seeing the same calibre of mid-level associates they would routinely be able to hire at the articling student/new call level of hiring.

Here are four key areas we discussed in assessing why his firm may be struggling in securing star associate talent for his firm.

### Proactive recruiting

Relying solely on advertising to secure talent is not an effective means for recruiting star talent in a competitive market. While newly qualified lawyers are frequently in abundance in the market (large firms regularly higher more students than they need associates), once you get to mid-level talent, there is much greater competition for top talent.

Not only is top talent being pro-actively retained by their current employers, other firms (and companies) are regularly



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approaching stars to test whether they might be open to making a move in the market—whether directly or through recruiters.

To ensure you have the best chance at securing top associate talent, it is critical that your firm proactively engage the market and not strictly rely on advertising or word-of-mouth for hiring talent.

### Year-round recruiting

One of the common misconceptions boutique firms face is they believe associate hiring is done on the firm's terms, not the market's. Managing partners often believe hiring a star associate is only done when there is a clear need at the firm. Even if the firm is prepared to

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take a proactive stance when there is a clear need to hire, the challenge is top talent may not necessarily be looking to move when you are looking to hire.

As a boutique, while you must obviously manage associate salary costs, recognize that the best firms in the market will regularly be looking to hire top talent when it

**Be bold, Page 23**



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## Recognition: Be aware of your audience

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Rather than going in intending to persuade, Sheriff said the immediate goal should instead be to establish understanding.

"It's about getting the other side to understand your position and building a process from there," Sheriff said. "If you get them to understand, you'll be in a better position to react and to create a tailored conversation or written report that might ultimately persuade."

Sheriff recommends listening actively and looking for non-verbal cues which can reveal whether or not the person is comfortably engaged.

"The indications are there even in the first five minutes," Sheriff said. "If the conversation seems choppy or it feels like I'm not necessarily affecting the person and having them understand what I'm trying to say, I might think about how we're communicating. Do they engage in small talk? Do they want to move the conversation to another topic? You can use that information, if you're aware of it, early on in the conversation."

Dawn Marchand, vice-president of marketing with the Canadian Bar Insurance Association, once met with a group of lawyers and was gently chided for using too many exclamation marks in an e-mail.

While punctuation might seem trivial to some people, a subjective matter of per-

ception, that's precisely the point. Marchand says people generally fall into one of four dominant personality types—analytical, driver, amiable and expressive—and anyone who wants to persuade needs to recognize their audience.

"The lawyers agreed with my comments, but with them being analytical and me being expressive, to them I overused exclamation points," Marchand said. "I realized that I can make my point without driving it home like that."

The key, Marchand said, is adapting to your audience. "Most people are so worried about getting their point across that they don't look at the objective."

Marchand said a person looking to be persuasive needs to recognize that their own personal brand—how others perceive them—is what ultimately enables influence. "If you're known as a person who is reasonable, listens and has good ideas, then you're going to have a much easier time persuading someone."

Of course, persuasion isn't a one-way street. Marchand warns that the best, most sincere efforts might quite reasonably not carry the day. "You might only be able to get them over 60 or 70 per cent," she said.

"If you're speaking to them in their language, and they're still not coming around, then I suggest that you consider what they're saying very carefully."

## Business & Careers

# Taxpayer Bill of Rights won't speed up dispute process



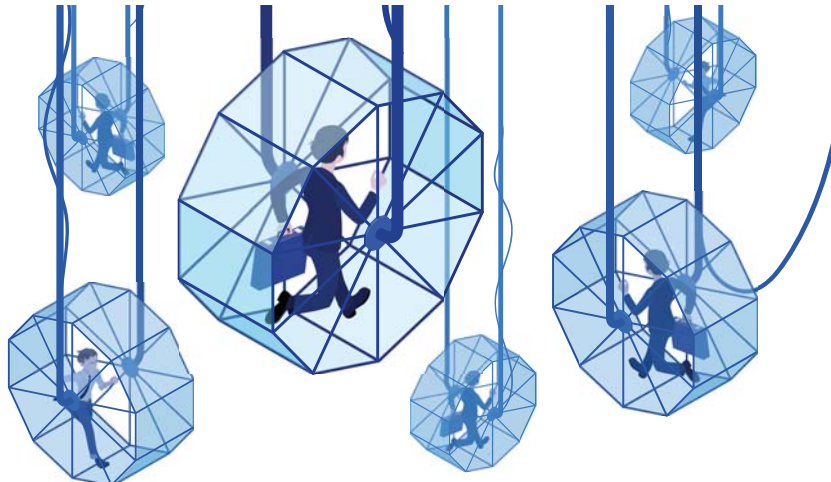
**Vern Krishna**  
Tax Views

Canadian taxpayers can be excused for thinking that when the government proclaims a bill of rights that they actually have rights under it. In fact, as many taxpayers discover, they must learn to wait, and then, wait some more.

There are three principal steps for resolving income tax disputes with the Canada Revenue Agency (CRA). The first is to file a proper and coherent notice of objection. Although the mechanics of this step are fairly simple (identify the taxpayer, the assessment objected to, the years involved, and the reasons for the objection), it is important to set out the relevant provisions and a brief statement of the reasons for the department to review.

The deadline is tight; the taxpayer must generally file the objection within 90 days of the date that it is mailed, or within one year of the due filing date. The deadline is strictly enforced even if Canada Post fails to deliver the notice to the taxpayer. There is no requirement for the CRA to send the notice by secure mail or courier. If it is lost, the taxpayer pays the price for non-receipt.

The next step involves an independent and impartial administrative review of the objection by the CRA, which staffs its appeals branch with its own employees. The statutory obligation of the minister of National Revenue on receiving the objection is to reconsider the assessment *with all due dispatch* and then either vacate, confirm, or vary it, and notify the taxpayer in writing. The Taxpayer Bill of Rights gives taxpayers the right to a formal review, and a



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right to receive timely information. The bill, however, is a feel good public relations document. It has no legal status whatsoever, and is administered by an ombudsman who has absolutely no authority over the CRA.

In fact, the administrative review is a slow and long drawn out process, which can drag on for years, during which time the taxpayer is charged non-deductible interest on the disputed tax, at 5 per cent (2016) compounding daily, if they do not pay in advance.

As the auditor general's report tabled in Parliament on Nov. 29, 2016 confirms, the CRA interpretation of timeliness and the statutory mandate of processing "*with all due dispatch*" is flexible. The impression that it conveys is an image of speed and efficiency. The reality is otherwise. In 2014, for example, the CRA processed approximately 29.6 million income tax returns. Taxpayers filed objections to 66,864 of the returns for income taxes totalling \$4.8 billion. However, as of March 2016 there was a backlog of 171,744 objections



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Tax Chambers LLP

for personal and corporate returns, representing more than \$18 billion of federal taxes, which was an increase of 300 per cent from \$6 billion in 2005.

After filing an objection on a low or medium complexity file, a taxpayer can expect to wait up to a year for initial contact by an appeals officer. Thereafter, it takes an average of 143 days to resolve low com-

plexity objections, which represent approximately 60 per cent of the yearly objection intake. The CRA resolves about 65 per cent of these objections in favour of the taxpayer, and had to cancel almost \$1.1 billion in penalties and interest in 2016. However, any interest that the CRA pays the taxpayer (3 per cent in 2016) is taxable as income. In the result, the taxpayer pays non-deductible interest at 5 per cent on unpaid taxes, and is taxable on interest refunded at 3 per cent.

The average resolution time for medium and high complexity objections is staggering: 431 days for medium, and 896 days for high complexity files. Add in the initial contact time from an appeals officer, and medium complexity files can take more than two years to resolve; high complexity files can take up to three-and-a-half years.

In theory, the taxpayer can apply to the federal court to have his or her assessment considered with all due dispatch. In practice, the probability of success is minimal to non-existent. The court follows its precedents from over 60 years, before

the advent of electronic technology or even calculators, that allow the CRA almost complete discretion in considering timely resolution. As the Exchequer said in *Provincial Paper Ltd. v. Minister of National Revenue* 1954 DTC 1199:

"...There is no standard in the act or elsewhere, either express or implied, fixing the essential requirements of an assessment. It is, therefore, idle to attempt to define what the minister must do to make a proper assessment. It is exclusively for him to decide how he should, in any given case, ascertain and fix the liability of the taxpayer."

And again six years later in *Jolicoeur v. Minister of National Revenue*:

"There is no doubt that the minister is bound by time limits when they are imposed by the statute, but, in my view, the words 'with all due dispatch' are not to be interpreted as meaning a fixed period of time. The 'with all due dispatch' time limit purports a discretion of the minister to be exercised, for the good administration of the act, with reason, justice and legal principles..."

Canadians also pay for the inefficiencies of tax administration in other ways. In 2015, for example, the CRA employed the equivalent of 1,138 full-time employees and spent \$148 million on salaries and associated costs. In the result, Canadian taxpayers end up paying both ways, for their own dispute and the costs of government administration.

Canadian taxpayers deluded by government public relations into believing that they actually have rights under the Taxpayer Bill of Rights accept, as did John Milton, that "they also serve who only stand and wait."

**Vern Krishna CM, QC, FRSC is professor of law, University of Ottawa, and counsel, Tax Chambers LLP (Toronto). Vern.Krishna@taxchambers.ca, www.VernKrishna.com.**

## Be bold: Don't be afraid to approach your star associate

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becomes available, even if it means overextending in the short term on their human capital costs, to ensure they always have access to the best talent in market for their future growth potential.

### Be persistent

As a headhunter, I can tell you some of the most successful placements we've made have only occurred after the candidate has made multiple rejections to an

offer of employment. For many lawyers, the experience of rejection is so unpleasant that they simply stop pursuing a potential lateral hire after the initial "no."

While this is not to suggest you should become a stalker with candidates who don't immediately accept, recognize that respectful persistence helps signal to a potential lateral hire how important they are to your firm.

Also appreciate that a lawyer's circumstances can change over time, and by being persistent you

are creating a greater window for them to accept as they go through change with their current firm.

### Don't be afraid to ask

Finally, some boutiques may suffer from an inferiority complex, and believe that a star associate is far too committed to their firm to even bother approaching. Years of recruitment experience has taught me you never know who might be open to making a move, given the right opportunity.

Asking the question can often yield surprising results. If nothing else, it will provide you with an opportunity to educate the market further on your firm's story and place in the market—and may create an opportunity for you to revisit down the road, as your respective circumstances change.

Overall, the key is to recognize recruitment is an ongoing process for boutique firms. Much like your client recruitment process (read: business development), associate recruitment is an integral compon-

ent of the long-term success of your boutique firm and should be discussed regularly as part of the firm's management and strategic affairs.

**Warren Smith is the managing partner of The Counsel Network, Canada's oldest lawyer recruitment and career consulting firms. He is also the first Canadian to be elected president of the National Association of Legal Search Consultants (NALSC), North America's leading legal recruitment industry association.**