

## CAREERS

## Work-life seminar helps firm harmonize intergenerational relations

By Nora Rock  
Toronto

Show an articling student of today a “spider” — the plastic adaptor that fits into a 45 record so that it fits the hi-fi spindle — and chances are that she won’t be able to tell you what it’s for. But she’ll definitely be able to teach you how to download a ringtone for your PDA; in fact, she can do it while she participates in a webinar and updates her LinkedIn profile.

Over lunch last month, members of Toronto’s Fraser Milner



Nora Spinks

Casgrain LLP (FMC) listened avidly while Nora Spinks, CEO of Work-Life Harmony Enterprises explained the differences between boomers, busters and the nexus and net generations. The seminar was presented by LifeSpeak Inc.

Aimee Israel is Chief Executive Officer at LifeSpeak. “We partner with organizations across Canada — many of which are employers of choice — that are looking to implement a high calibre, proactive program to support their employees.” LifeSpeak offers three programs: Parents at Work, Vitality at Work and Generations at Work, bringing expert speakers into the workplace to discuss topics that fall into these general categories.

Spinks’ presentation focused on managing generational diversity. Spinks explains that “it’s one of those issues that lawyers may not think much about: if you’re going to have these boomers going out, and these other generations coming in, what are the differences between these generations, in terms of attitude, approach, philosophy, aspirations, expectations, education? These things are vastly different, when you compare a 60-year-old today to a 20-year-old.”

Studies have shown that world events (and parental pre-occupations) to which we are exposed when we are around 10 years old have a profound and permanent impact on our world view. This explains why boomers, who were ten in the ’60s and ’70s — a period of economic growth — tend to believe that hard work will bring prosperity, while the Nexus generation (who were 10 during the recession of the ’80s) tend instead to distrust the security of their jobs and to perceive themselves as having little control over their own career success.

Spinks notes that the tensions that flow from generational differences are amplified in a high-pressure environment like the modern law firm. She explains that law firms have historic structures (for

example, partnership structure) that members are eager to preserve, but that may alienate certain portions of the workforce (for example, members of the Nexus generation, who may resent having to *earn* partnership, a status which they may not associate with job security). “If firms ignore generational diversity, they will continue to be frustrated. They’ll lose people at both ends of the spectrum, and they’ll develop a reputation of being less supportive of diverse needs, expectations, and priorities. It’ll become harder to attract people at a time when there’s more competition for really good lawyers.”

Spinks also predicts that, because of the extreme individualism that characterizes the “Net” generation (those who were aged



Kate Broer

10 in the ’90s and later), firms “will have to distinguish themselves as a place not only to make money, but to learn, to grow, to have interesting and challenging work, to meet extraordinary people” in order to satisfy work-life goals that are broader and more diverse than simply a high income.

Kate Broer, a litigation partner at FMC, participated in the generational diversity seminar, which was part of a series that was being presented at the firm. Broer was impressed by the high attendance: there were about 35 members of the firm present, ranging, she noted, “from students all the way up to senior partners”. The more junior members were particularly willing to speak up and participate, and Broer credits the firm’s progressive culture with making this possible. “As you saw”, she added “the boomers in the group handled the younger members’ comments with excellent humour.” The firm, which Broer describes as “61 per cent female at the associate

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## LEGAL BUSINESS

## Shareholder litigation is rife with conflicts and best avoided



COMMENT

By  
Vern  
Krishna

An individual's duty in sports is to the team. As Yogi Berra said: "You protect them through good and bad, because they'd do the same for you." Not necessarily so in corporate law, where there is a swamp of conflict rules. To be sure, a lawyer owes an undivided duty of loyalty and confidence to his clients. However, there are difficult conflicts where legal counsel who has privileged information must choose between his duty to the corporation and the directors who retain him.

A central tenet of corporate law is that the board of directors manages the business of a corporation. What happens, however, if direc-

tors appropriate lucrative contracts for personal advantage? If the directors injure the corporation by appropriating its opportunities, it is unlikely that they will then have the corporation launch a suit against themselves. Thus, shareholders may litigate where directors fail to discharge their fiduciary obligation to look after the corporation.

There are two types of shareholder litigation: direct and derivative. In direct litigation, a shareholder sues the corporation because it may have denied her personal rights – for example, the right to pro rata dividends, the right to vote or obtain proxy information. If the shareholder is successful, she will personally recover any remedial damages.

In a derivative suit, the alleged injury is to the corporation. For example, corporate directors may breach their fiduciary duty by appropriating for themselves a contract that rightfully belongs to the corporation. The shareholders suffer collectively through the lost corporate opportunity. In these circumstances, the shareholders can sue the corporation derivatively – that is, by naming it as a nominal

defendant and the directors personally as the real defendants. If the shareholders succeed, damages go into the corporate treasury and not personally to the shareholders. To be sure, the shareholders benefit indirectly to the extent that the recovery enriches the corporate treasury.

Derivative actions cause conflicts and privilege problems for legal counsel. The first conflict pertains to the types of defences that the corporation may raise as a nominal defendant – as opposed to the defences that the real defendants (the directors) should raise. For example, if directors appropriate a contract from the corporation, it is in their personal interest to have the corporation raise as many procedural and substantive defences as possible. This is because it is unlikely that the corporation will indemnify the personal legal expenses of the directors if a court determines that they breached their fiduciary duty to the corporation.

The classic defence in appropriated contract cases is that the opportunity was not really a corporate opportunity at all. If it was, the corporation did not have the finan-

cial resources to exploit it anyway. If the defence succeeds, the directors are off the hook. But who should pursue, and pay for, the legal defence?

A second problem arises in the matter of legal representation. It is clear that the corporation and the directors should have separate legal counsel to represent their respective interests. This is particularly important in respect of settlement discussions. If the shareholders are ultimately successful, the corporation will receive the recovery and the directors will be liable. If the suit is unsuccessful, the directors will not be liable. Clearly, one person cannot properly represent both the corporate and directors' interests.

There are also difficult problems of solicitor/client privilege. The corporation's legal counsel is privy to information that is confidential and that he would previously have derived from the directors. Legal counsel cannot properly draw a wall between the information that she derives from the corporation through its directors and officers.

In theory, legal counsel acts for the corporation as an entity. Of

course, as a matter of practice, the directors of the corporation retain its legal counsel and issue instructions. A lawyer retained by the corporation represents the corporation, but receives his instructions from its directors and officers. The lawyer's duty in a derivative suit is exclusively to the corporation. He cannot compromise the duty in any way by conflicts and privilege defences.

Corporate misgovernance undermines the integrity of the capital markets, damages the corporation's reputation and erodes the economic interests of shareholders. Misgovernance can also cause lawyers to have conflicts with their clients. As a country singer said: "The greatest conflicts are not between two people but between one person and himself." Shareholder litigation – whether direct or derivative – is expensive and corporations should avoid it with proper counsel.

*Vern Krishna, CM, QC, FCGA, is Counsel, Borden Ladner Gervais, LLP (Barristers & Solicitors) and executive director of the CGA Tax Research Centre at the University of Ottawa.*

## Boomers place value on face-to-face meetings

DIVERSITY

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level" is very open to the subject of work-life quality. While there may not be perfect "balance" in the lives of its busy lawyers, the personal-life issues that they face "are more acknowledged now."

The presence of multiple generations at FMC has coincided with new technological developments, and the result has meant changes to the way work is done. "There



Meghan Thomas

are different expectations, now," says Broer, "about where associates will be when they're working." Many lawyers take work home instead of staying evenings at the office.

While this is the kind of cultural change that can potentially cause inter-generational strife, FMC seems to have instinctively responded to the needs of different generations through the use of technology. One detail that arose from Spinks' presentation was that boomer lawyers place a higher value on face-to-face meetings than do their younger peers. At FMC, an internal webcam system allows lawyers to see each other while speaking on the phone. "It helps keep you focused on the caller", adds Broer – which, if Spinks' research is any indication, may help reduce the pitfalls associated with the net generation's preference for continual multi-tasking.

Meghan Thomas, also of FMC, is the firm's Director of Professional Development. She was responsible for arranging and overseeing the delivery of the LifeSpeak program through which this seminar was delivered. The generational diversity seminar, she explains, is part of "an overall pro-

gram" which includes seminars on topics of interest to a wide range of firm members.

Aimee Israel explains that "programs are custom-designed based on the client's demographics." LifeSpeak maintains a roster of over 170 speakers across Canada, and conducts a rigorous screening process with each expert before adding him or her to the roster.

Thomas was clearly pleased with the response to Spinks' seminar, and adds that "a greater understanding of generational differences can assist firms like FMC that use practice teams", allowing the multi-generational teams to leverage their diverse strengths while minimizing misunderstandings. Sensitivity to intergenerational issues can also be an advantage when dealing with the firm's clients from

different generations.

Israel notes that many of LifeSpeak's clients see the seminars as an important tool for recruitment and retention, and with good reason: 88 per cent of participants in the LifeSpeak program report that participation in the program

positively impacts the way they feel about their employers. "Knowledge won't make all the work go away ... but at least employees get the sense that their challenges are recognized, and they feel supported. That goes a long way."

## ANNOUNCEMENT

The Partners, Associates and Staff of  
**Zarek Taylor Grossman Hanrahan LLP**

are pleased to welcome to the firm the following Associates:

**Mark Smith**  
**Renata Bronshtein**  
**Elizabeth Wilson**

We would also like to congratulate **Dalia Fudim** and **Jeremy Shaw** who have also joined the firm upon their call to the Bar on June 18, 2007.