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WORK SESSION II – LAW OFFICE MANAGEMENT

TITLE: FLEXING FORWARD: WHAT IS YOUR VISION?

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A decade ago, discussion around the need for flexible work arrangements started to become increasingly more open in the legal community, primarily because women recognized the limits on their ability to excel at being both full-time lawyers and full-time mothers. Work-life balance concerns are a regular topic of discussion today and now often involve issues surrounding elder-care as well as child-care, desires to make a difference outside of the practice of law, such as teaching or becoming involved in politics, and just wanting to slow down a bit and take time to travel or simply enjoy life. These issues affect all ages and a growing number of male lawyers today as well.

The public sector has always been seen as a refuge for those seeking to escape the pressures of the traditional practice and its focus on billable hours. Those who have chosen this career path can attest that the time commitment required to practice law in the public sector is no less than that in private practice. The challenges and rewards are certainly different. The perception conveyed by material available on the internet on this issue, is also that the public sector is more open to progressive concepts like work-life balance. The reality however is that when salaries are paid out of tax dollars, the scrutiny faced in the public sector means that it can be very onerous to implement such programs. It can mean these measures actually need to be tested and accepted in the private sector before they can be implemented in a government environment, such as in a municipality. Resource constraints may also make in-house law department managers a bit hesitant to consider options that might mean fewer available lawyer hours as well.

The Boston Bar Association Task Force on Professional Challenges issued a report in 1999 entitled *Facing the Grail: Confronting the Cost of Work-Family Imbalance,* that report documented a number of the pressures facing lawyers as they try to manage the practice of law without placing their family's needs behind their career. Some of the key findings of the Task Force were that both men and women want rewarding legal careers and meaningful involvement in the lives of their families; career decisions are being increasingly made on the basis of employers' policies and practices respecting work-life balance; flexibility in career paths and work-life flexibility can be consistent with firm profitability; relentless pressure for more billable hours at the expense of family time leads to attrition, and attrition costs money.

In 2001 the American Bar Association, Commission on Women in the Profession released a paper entitled "*Balanced Lives Changing the Culture of Legal Practice*". While not legally mandatory to consider flexible work arrangements, comments made in the preface to that document sum up very clearly both the reason why we need to have a plan in place for our staff to access flexible or alternative work arrangements (AWA) and the challenges that this reality creates:

"….Ultimately the issues addressed in this manual speak to the very purpose of our lives. Most of us were attracted to the law for the nobility of its principle; the rule of law and the peaceful resolution of disputes that is so essential for any society to flourish. But if we endeavor to be a positive force in our nation's progress, we must also be good parents and good spouses, good friends and good neighbors. We must uplift those less fortunate. A lawyer after all, is also a citizen. The noble life is a life of balance, with each obligation attended to. No responsibility should be completely sacrificed for the benefit of another. …..

But the work must be done by the thousands of legal practitioners of good faith who seek not only to improve their own lives, but also to make a marked change in the way the profession operates. It will require the faith, honesty and diligence of both employers and employees, partners and associates, clients and law firms. Most of all, it will necessitate what is quite possibly the most difficult and fearful task of all; to set aside one's pre-conceived attitudes, biases and comfort levels to open one's mind to the new ways."[1]

BENEFITS AND CHALLENGES OF ACCOMMODATING AWA

As a law office manager, whether in private practice or within a municipality, there are several reasons for considering flexible or alternative work arrangements. In today's world, the values of the baby-boom generation and careers defined by endless hours in the office, are quickly being overtaken by the values of a generation that seeks a balanced life, with time for family and personal development (sports, education, spiritual) in addition to commitment to a rewarding career. This means that there is a need for change in how we approach work-life balance and in our expectations of employees.

"Firms that don't pay attention to these generation changes today are really going forward at their own peril. This is not about kids coming out of law school and not appreciating how hard life is or not willing to be able to do what they need to do. This is about profoundly different people with different life experiences who are looking at life right now in law firms and saying, you've got to be kidding me.[2]"

To attract, retain and motivate high achievers, it is essential to be able to assure them of quality challenging work at competitive rates of compensation. In the public sector, there is an added benefit of a clear public interest in the work being performed and the opportunity to make a difference and to shape the community in which they live, will be important to many who seek out public sector positions. It cannot be assumed in any way that those who seek AWA are in any way less committed to the profession of law; they will have compelling reasons for doing so, whether they be family-related, or relate to an opportunity for personal development.

There are several benefits that are ascribed to having policies that allow for AWA, in both the in-house practice and the private practice of municipal law, including:

- Recognizing the value of personal development needs and responsibilities outside of the office leads to improved morale and employee loyalty;

- Cost-effective alternative to potential employee turnover, loss of corporate memory and associated re-training costs and;

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[1] American Bar Association Commission on Women in the Profession - *Balanced Lives Changing the Culture of Legal Practice* (September, 2001) at page 3 by Robert E. Hirshon, President.

[2] Women's Bar Association of the District of Columbia, *Creating Pathways to Success*: Advancing and Retaining Women in Today's Law Firms (May 2006) at page 38.

- Efficiencies and increased productivity through a healthy, professional relationship. It has also been noted that lawyers on reduced schedules are often productive than lawyers who work regular office hours and have a higher ratio of billable to non-billable time[3];

- Allows staff to schedule their lives to meet family and civic responsibilities;

- Reduce employee absenteeism. High levels of stress, substance abuse and illness can be attributed to inability to the find a proper work-life balance;

- May reduce fixed costs by office-sharing and increased sharing of administrative support;

- May address a legal duty to accommodate, under a Human Rights Code, individuals in the office who have disabilities yet are capable of performing the essential duties of their job.

- Can serve as a transition to retirement.

There are also challenges that come with introducing AWA. Law is a service business and meeting client needs is the biggest challenge to be faced. While clients may not interact face to face with a lawyer in a municipal setting on a daily basis, they often have a level of comfort in knowing they can find help just down the hall if they need it. Arrangements must therefore take into account the needs and peculiarities of a lawyer's particular client mix. There will be challenges in scheduling meetings, providing for training opportunities, and in maintaining group dynamics when team members are routinely missing. These can be discussed with the employee and means can be put in place to address them.

Some of the bigger challenges will be the need to put a system in place to monitor performance that meets public sector accountability, a system to address confidentiality and privacy legislation requirements, and a system does not add significantly to the burden on managers. Dealing with others in the office who may see approval of an AWA for a peer as being unfair; those in the corporation who will see AWA as a lack of commitment and the stigma that can be there as a result ie. "oh, you're in the office today", will also be challenges.

The Keys to success are mutual commitment, flexibility, and accountability.

DEFINING WHAT IS AWA OR A FLEXIBLE WORK ARRANGEMENT

Flexible or alternative work arrangement is any working arrangement or schedule that is different from the employee's daily expected hours of work or days of work. These include but are not limited to the banking of hours, compressed work week, flex time, job sharing, job pooling, part-time arrangements, telecommuting, and voluntary reduced hours. In the context of professionals, banking hours often means arrangements where lawyers can work additional hours

[3] The Law Society of Upper Canada – *Guide to Developing a Policy regarding Flexible Work Arrangements* (March, 2003) at page 13.

for a set time period, usually a number of years, in exchange for a sabbatical-type leave. The other arrangements are self-explanatory.

HOW TO BEGIN

A decision must be made regarding who will be eligible for AWA. Generally, administrative positions are not well-suited for most AWA arrangements due to the need to interact with persons walking in the door, in addition to answering calls, filing documents, accepting service, etc. Lawyers and paralegals on the other hand, can often work with a high level of independence, and work on assignments that are project-based and require minimum levels of supervision, and are ideal for consideration. The work habits, skills and abilities of each individual must also be assessed and considered. AWA is a privilege and not a right.

A written policy allows everyone to know from the outset the expectations of both the managing lawyer and of the lawyer or paralegal seeking an AWA arrangement. It also allows everyone impacted to best understand the expectations of the parties, and provides a level of legitimacy to the arrangement that might not otherwise exist. A written policy shows commitment to the concept of AWA by the legal department or firm.

The following guidelines will assist in developing a plan:

- Determine what types of AWA arrangements you are willing to support. The size of the office and the type of practice may impact this decision however, consider leaving it to employees to come forward with their own proposal. Be open and assess each request on its own merits. The interests of the office and the clients as well as the individual need to be addressed in any proposal for AWA.

- AWA should be open to all staff and not discriminate, however, care must be taken to ensure there is sufficient managerial discretion regarding who will be authorized for an alternative work arrangement. The policy should state that AWA will be considered for individuals who are results-oriented and whose work can be accommodated by the arrangement; it is not a right. Lawyers and paralegal staff may be more easily considered for telecommuting, whereas this likely won't make sense for administrative support staff however, don't predetermine areas of the office or practice that will be excluded or establish set numbers of persons eligible – as these limitations will create tension between staff. Leave to the individual employee to make their business case.

- Characteristics of an employee who is suited to telecommuting specifically, are someone who is self-motivated; results-oriented and comfortable setting priorities and meeting deadlines; requires minimal supervision; an effective communicator who will take initiative; adaptable to changing routines and environment; knowledgeable about office and corporate practices and protocols; and has a proven track record of successfully discharging work responsibilities. For this reason, it is appropriate to require new staff to be employed by the municipality for a period of six months to a year before allowing them to submit a proposal for AWA.

- Set out clearly the expectations of both the manager and the staff and the consequences of not meeting them ie. termination of AWA, possible discipline where appropriate. What hours will be worked, how will assignments be received, what instructions should be give to support staff for dealing with issues when the employee is not in the office, how will emergencies or unexpected surges in workload be handled, are some of the matters to be addressed. Establish regular reviews to ensure AWA is working for the office and for the employee.

- Access to technology and other equipment will be key to success in any proposal that involves telecommuting or work outside of the office. For good or bad, cell phones and the Blackberry have made us available to our clients, colleagues and staff at all times and from almost any location. In the public sector it may not be possible to cover overhead costs or to even supply computers for home use, so identify in your policy what the expectations are of employees and what you can possible provide. Ensure that all equipment, data and confidential information will be properly secured at the remote workplace, and ensure that arrangements to retrieve the equipment and data as necessary are in place. Consider in the context of any applicable privacy legislation and records retention policies in place.

- Determine what, if any, impact an AWA will have on duties and assignments. Look at the lawyer's ability first and foremost and not the lawyer's schedule. To the greatest extent possible the type and quality of file assignments should not change however, flexibility must be available to meet unforeseeable needs of the office or concentrated periods of work outside of the schedule. Lawyers participating in reduced-hour options often complain that they end up eventually working full-time hours for part-time pay, and care must be taken to guard against this, and respect the reduced-hour arrangement. At the same time, lawyers on flexible schedules must be prepared to acknowledge that there will be unforeseen needs in the department, and work outside of the schedule will be required on occasion. Any concerns or problems with the arrangement must be communicated promptly.

- When considering a proposal to telecommute, determine how the employee will remain in contact with the office and what the expectations are regarding meeting office service levels for returning phone calls or responding to emails, or meeting with clients. Establish minimum standards for participation in team meetings, training, client development and other departmental exercises.

- Set out very clearly what, if any, impact AWA will have on salary and benefits. AWA will likely not have an impact where the total number of hours worked does not change, as when telecommuting or working a compressed work week. Reduced hours however will result in reduced compensation, and could impact pension and other benefits.

- Opportunities for career advancement and for continuing legal education should not be impacted by an AWA however, it must be recognized that such opportunities likely will interfere with the flexible work arrangement. In private practice, it is quite possible that an AWA could delay consideration for partnership and this needs to be discussed at the

outset. For those who are partners, a flexible work arrangement for partners may require amendments to the partnership agreement.

- Evaluation of performance needs to be addressed in the policy. Evaluation procedures may not have to change however, greater reliance will likely be placed on the employee's work results, rather than the supervisor's observations, when evaluating an employee who is telecommuting.

Attached is a draft model agreement that I have prepared taking ideas from a number of sources. Some of the terms of the agreement will only apply to telecommuting, but it will serve as a comprehensive checklist of the things that need to be considered in agreeing to a flexible work arrangement. In the end, it comes down to the business case and the characteristics of the individual.

The most current report on the issue was released on March 7, 2008 by the New York State Bar Association entitled "*Final Report: Special Committee on Balanced Lives and the Law*". That Report notes that professional satisfaction among attorneys is at an all-time low, for a number of reasons. It advises that flexible work policies are being demanded by lawyers of both genders for a variety of reasons beyond parenting, such as volunteering, writing, teaching, civics, to name a few[4]. It appears from the report that there is still a long way to go for the profession to meet the needs of its members.

A study by the Women's Bar Association of the District of Columbia noted that men and women, partners and associates and public servants alike, young and old members of the profession are all seeking more balance. While working with lawyers on various schedules at unconventional times may present challenges, "Management is a minor inconvenience in comparison to the benefit gained by having a stable and happy workforce[5]." There is a clear message for all of us who manage law offices, whether in the public or private sector, that we must provide a business response to the changing needs of our workforce and be open to alternative work arrangements, providing flexibility to the greatest extent that we can.

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[4] New York State Bar Association, *Final Report - Special Committee on Balanced Lives in the Law* (March 7, 2008) at page 10.

[5] Women's Bar Association of the District of Columbia, *Creating Pathways to Success*: Advancing and Retaining Women in Today's Law Firms (May 2006) at page 39.

Telecommuting Alternative Work Agreement

Employee Name: _____

Department: _____ **Date:** _____

The following terms have been agreed upon concerning your request for a work at home schedule on _____ day(s) of each week beginning _____. The workdays shall be _____ hours.

Work Schedule

We have agreed that this will be your normal work schedule. You understand that if business needs change, with reasonable notice, you will be expected to adjust your work schedule to meet the needs of the department. We also expect that you will make every effort to arrange your personal appointments either on your days off or after work hours. The work schedule is as follows:

_____

_____

_____

_____

Job Duties

Your work status, job duties and responsibilities will remain essentially unchanged as a result of this Agreement. You agree to carry out your responsibilities to your clients and to this Department in a professional and competent manner, even though that obligation may at times conflict with the terms of this Agreement.

Trial Period

A _____ month trial period (not to exceed six months) will run from _____ to _____. Upon completion of this trial period, we will evaluate the success of the schedule to determine whether it can be continued. if management determines this arrangement is not successful, management may require you to return to a regular schedule in the office at any time within or at the end of the trial period.

Cancellation

If this arrangement continues after the trial period, management reserves the right at any time to change the work schedule, including restoring it to a regular schedule in the office, if business needs change or if management determines that this work schedule is not successful. One month notice will be provided of any such change. Please note that a change in where you work (home versus office) without other changes, (such as increased hours or extra workdays) is not considered a significant work change.

Holidays/Vacations

Vacation, and sick pay are calculated on the number of hours of days an employee works per week as well as the length of service. Requests for vacation and sick leave will be handled as if you were at the office, and require Manager approval.

Equipment

You understand that the department is not obligated to provide basic necessary equipment in order for work at home to be possible. It is your responsibility to obtain and maintain al equipment and supplies for use during a telecommute schedule. Assignments shall be assigned and received either in person or via e-mail. You agree that any equipment, software, data, supplies or furniture ("Equipment") provided to you (and listed in Schedule "A") for work purposes is only to be used by you and only for work-related purposes. In the event of equipment failure or malfunction, you agree to notify your manager

immediately in order that repair or replacement of equipment can be made, and to grant access to the designated repair person. You agree that all Equipment remains the property of the municipality and must be promptly return upon request or upon resignation or termination of employment.

Work Space

You agree to designate an appropriate work space within your home for the purpose maintaining the Equipment in a clean safe location free of distractions and to properly safeguard confidential information at all times. You will promptly contact your insurance carrier and provide the municipality with evidence of insurance and the coverage provided.

Meetings

All staff and client meetings are the responsibility of each employee and shall be attended by such even if the meeting is scheduled on a day away from the office. If there is a meeting scheduled on your scheduled weekday day off, it is your responsibility to submit all work due for the meeting to your manager the day before the meeting, and to obtain all information discussed or distributed at the meeting immediately upon your return.

OSHA/Worker's Compensation

You understand that ALL incidents occurring during telecommute time must be reported in writing to your manager within 24 hours. The employer is not responsible for inspecting or maintaining the work site while you are at home working. It is your responsibility to maintain a clean and safe working environment while at home. You acknowledge that you liable for injuries to third persons at your home.

You understand that this agreement does not constitute a contract of employment between you and the municipality and does not alter the basic employment at will relationship between you and the municipality. The municipality's policies applicable to regular employees continue to apply to you unless this Agreement states otherwise.

Other

The municipality will not reimburse you for any alternate work location expenses such as phone lines, high speed internet service, heat, electricity, insurance or equipment not provided. It is your responsibility to determine any tax implications related to you working at home. The municipality will not provide tax assistance or assume any tax liability resulting from the agreement.

We agree that this Agreement overrides any previous oral or written agreements, represents the entire agreement respecting alternative wok arrangements, and agree to abide by its terms.

Work and Family

Working from house is not a dependant care solution. It is recommended that a designated person be present to provide primary care during work hours if dependants are present in your home. It is your responsibility to ensure that family care obligations do not interfere with your work obligations or safety obligations under this Agreement.

Employee Signature: _____ **Date:** _____

Manager Signature: _____ **Date:** _____