The endangered partner

The "brass ring" of partnership is losing its relevance.
What the future of law firms means for the oldest law firm institution.

~ By Jordan Furlong ~

Here are four common uses of the word "partner." I'd like you to identify which one is not like the others.

1. **Life partner**
2. **Dance partner**
3. **Tennis partner**
4. **Law firm partner**

You might conclude, as I do, that the first three examples all suggest elements of friendship, teamwork, sharing, even devotion. The fourth? Try bringing up "sharing" and "devotion" at your next law firm partnership meeting and let me know how well that goes.

Many law firm partnerships — mostly those whose membership you can count using no more than two hands — do fit the more widely used meaning of the word. But the larger the firm, the likelier "partnership" is used in its strict dictionary sense: "a legal relationship among persons contractually associated as joint principals in a business."

As firms have expanded to other cities and even countries, the relationship among its equity holders inevitably has changed. It's difficult to refer to a lawyer, in another office, whom you've never met and likely never will, as your "partner" in any but the most formal business sense. As Inigo Montoya famously observed in *The Princess Bride*, "You keep using that word; I do not think it means what you think it means."

But there's much more to new definitions of "partnership" than just semantics. The purpose and function of partners within a law firm are changing rapidly in ways that, for the most part, will seriously undermine the relevance of the position, maybe permanently. Law firm partners might even become an endangered species.

What are partners for?

Let's go back to basics. What purpose does a law firm partner serve? As near as I can tell, there are three justifiable reasons to admit a lawyer into partnership:

1. She brings in a great deal of business, enough to sustain *far more* than just her own practice.
2. He *excels* at maintaining existing client relationships and strengthening those clients' bonds to the firm.
3. She manages the firm, its people, or its processes with *extraordinary* skill and effectiveness.

At the very least, partnership is in upheaval: there likely will be fewer real equity partners in the future and they will be held to higher standards.

Take a look at the law firm nearest you: would you say that all the partners meet one of these criteria? Most of the partners? Half? Stop when you've hit the right percentage.

Quite a few law firm partners, it must be acknowledged, don't really meet any of these criteria. They're "partners" today mainly because they were lucky enough to come up for promotion when their firms were rich, happy and expansive. That doesn't mean they're bad lawyers or that it was a mistake

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to confer partnership on them; it simply means that the entry criteria for partnership were looser over the past few decades than they are now.

Canadian law firms are beginning to feel a pinch that their American and British counterparts have already been experiencing over the past couple of years as a stinging pain. Revenue is steady or down. More corporate work is staying in-house. Clients are pushing hard for lower and flatter fees. The staff and associate cuts that can be made have been made.

The law firm pie, in essence, is no longer expanding, and in some cases is starting to shrink. What do you do in that situation? Well, if you're a law firm, you reduce the number of seats at the table.

Partner elimination

A survey late last year revealed that half of Britain's top 30 firms have de-equitized partners or were preparing to do so. An American report released just last December showed that 71 per cent of the top 200 U.S. firms planned to ask one or more partners to leave this coming year. Earlier this year, Magic Circle giant Linklaters announced plans to cut 40 partners. As the global economic malaise continues, how long will Canadian firms hold off on following suit?

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At the same time, some global operations with "non-equity partners" have announced that they're converting to an entirely equity-based partnership; whether they admit it or not, they're essentially tapping their "employee" ranks for capital infusions. This means these "non-equity partners," present in 85 per cent of the top 200 U.S. firms and in many Canadian firms, can either pony up and join the equity ranks, revert to a more accurate "superannuated associate" status, or

L'associé en péril

Le cercle privilégié des associés perd de sa pertinence. Que réserve l'avenir pour la plus vieille institution juridique?

Voici quatre usages communs du mot partenaire. J'aimerais que vous identifiiez celui qui n'est pas comme les trois autres.

1. **Partenaire de vie**
2. **Partenaire de danse**
3. **Partenaire de tennis**
4. **Partenariat entre associés d'un cabinet juridique.**

Vous pourriez conclure, comme je le fais, que les premiers trois exemples suggèrent des éléments d'amitié, de travail d'équipe, de partage — même de la dévotion. Le quatrième? Essayez de parler de « partage » et de « dévotion » dans votre prochaine réunion d'associés et vous me direz comment ça se passe.

Plusieurs firmes — surtout celles dont le nombre d'associés peut se compter sur les deux mains — répondent à ces critères. Mais plus le bureau est gros, plus le concept de partenariat risque de s'entendre dans le sens plus strict du dictionnaire: « Une relation légale entre des personnes qui se sont associées contractuellement en tant que dirigeants d'une entreprise ».

Tandis que les firmes se sont étendues à d'autres villes et à d'autres pays, cette relation a inévitablement changé. Difficile de référer à un avocat que vous n'avez jamais rencontré comme votre associé autrement que dans un sens strictement légal.

Mais il y a plus à la nouvelle définition d'associé que de la seule sémantique. Leur raison d'être et leur fonction au sein d'une firme changent rapidement, d'une manière qui diminuera la pertinence de leur rôle. Les associés pourraient devenir une espèce en voie de disparition.

À quoi servent les associés?

Je peux voir trois raisons pour admettre un juriste dans le partenariat: il apporte des dossiers; elle excelle à entretenir les relations avec la clientèle; il est un administrateur efficace.

Un certain nombre d'entre eux, il faut l'admettre, ne répondent pas vraiment à ces critères. Plusieurs ont été assez chanceux pour accéder à la table d'associés parce qu'ils étaient mûrs pour une promotion au moment où leur firme allait bien et avait beaucoup d'argent. Mais les critères se resserrent. Les firmes canadiennes commencent à ressentir une pression financière que leurs homologues américaines et britanniques ont sentie au cours des dernières années. Le gâteau ne grossit plus — dans certains cas, il rétrécit. Que faire? Quand vous êtes un cabinet juridique, vous réduisez le nombre de sièges à la table.

Un sondage mené vers la fin de l'année dernière a révélé que la moitié des 30 plus grosses firmes britanniques avaient décapitalisé certains de leurs associés ou planifiaient de le faire. Un scénario semblable a été observé aux États-Unis. Combien de temps faudra-t-il avant que leurs homologues canadiennes leur emboîtent le pas?

Mais un défi plus grand point à l'horizon: celui de la séparation du rôle traditionnel de propriétaire et de gérant d'un cabinet juridique. Cette séparation est déjà en cours dans certaines firmes, dont les plus larges, où l'autorité est déléguée explicitement ou implicitement aux associés les plus influents ou qui rapportent le plus de clientèle.

La tendance à long terme est encore plus intrigante, avec des modèles comme en Angleterre ou au Pays de Galle, où des non-juristes sont déjà en voie de devenir propriétaires de cabinets juridiques. Dans ces firmes, les associés seront peut-être encore propriétaires, mais ils ne seront pas des administrateurs. Reste à voir si le modèle traversera l'Atlantique.

Pour et contre

De toute évidence, le modèle traditionnel des cabinets juridiques sera très différent d'ici 10 ans. Les firmes emploieront moins d'avocats, et plusieurs d'entre eux ressembleront davantage à des employés qu'à des associés. Le partenariat tel qu'on le connaît — un ensemble de juristes qui opèrent sur une base de confiance et offrent des services juridiques en générant des profits — semble être en péril.

Est-ce qu'on perdra quelque chose dans cette évolution — l'histoire, la collégialité, un sens du professionnalisme? C'est fort possible. Mais il serait naïf de croire que le cabinet juridique moderne n'a pas déjà fait un pas dans cette direction. **N**

find another home.

Other routes into partnership are falling into disrepair as well. A U.K. survey in 2011 showed that fully one-third of all laterally recruited partners had left their new firms just three years after arriving; within five years, the number jumped to 44 per cent. (We do little better here in Canada: by one report, some firms fail to retain even half their laterally acquired partners in the long run.) Laterals are also the likeliest partners to abandon their new firm; if they've moved once for more money, they'll probably do it again.

Add to those sorry numbers the results of a recent U.S. survey, which showed that about half of firms' current partners had started their careers elsewhere, and you start calling into question altogether the effectiveness of firms' much vaunted "partner track." Far from seeing it as the fabled "brass ring," many of today's associates view partnership (accurately, I would say) as the proverbial pie-eating contest in which the prize is more pie.

What does all this tell us? At the very least, partnership is in upheaval: there likely will be fewer real equity partners in the future and they will be held to higher standards. Many firms, unfortunately, seem to have no clear strategy for how to acquire or develop partners for the long term. Short-term profitability factors are driving an alarming number of firms' long-term personnel, leadership and ownership decisions.

For better or for worse, non-lawyers will fill most of the seats around the boardroom table...

Owner versus manager

Law firms might well muddle through these challenges, albeit at a cost of reduced effectiveness and competitiveness. But there's a more serious challenge to partnership on the horizon: the impending separation of partners' traditional dual roles of owner and manager.

This separation, of course, has already been underway for a while, especially in larger firms. Many firms are steered by partnership committees acting with authority delegated (explicitly or implicitly) by the partnership at large. The biggest rainmakers and most cantankerous corner-office dwellers wield far more influence (and increasingly, make much more money) than most of their "partners." Quite a few partners essentially own non-voting "Class B" shares in their firms.

Many partners in this situation have come to accept that their nominal managerial and decision-making authority has attorned to an inner circle of power brokers; some even welcome this development. They run risks in the process — in a crisis, that inner circle will protect its own interests first — but they're largely content that their firms are already quasi-corporations, with a "chair" and "board of directors" who give the orders.

The long-term trend is the more intriguing one — the eventual removal of "quasi-" from "corporate." The UK *Legal Services Act (LSA)*, proclaimed in 2007 and already responsible for stripping self-governance from the legal profession in England & Wales, is the likely catalyst. In February, the LSA authorized new models called Alternative Business Structures (ABS); within two weeks, three law firms were purchased in part or outright (subject to regulatory approval) for a total amount of £125 million.

An ABS is a vehicle by which non-lawyers can own part or all of a law firm. What will that mean? In England & Wales, it means that banks are going to offer legal services. So too, judging from media reports, will major retailers, accounting firms, private equity houses, loss adjusters, insurance companies, publicly owned law firms in other countries, and others not yet announced. These interlopers will start in the consumer and small-business sector, but they're likely to target bigger fish down the road. And they won't all be interlopers: DLA Piper, the world's second largest law firm, is creating an ABS firm offering commercial services to corporate clients at fixed-fee rates.

All these entities, from across a wide spectrum of private-sector providers, will essentially be launching law firms and employing lawyers; some will even buy existing law firms outright. In many of these firms, partners may still be owners, but they will not be managers. The new proprietors might be open to input from their lawyers, but they won't be giving them the keys to the car.

The conversation between ABS firm owners and the firm's "partners" will go something like this: "You will work hard here, and you will be paid very well; but you will not be making the decisions about the business strategy and tactics employed by this firm." For better or for worse, non-lawyers will fill most of the seats around the boardroom table, and they will have little patience for negotiating the traditional Dance of a Thousand Partners whenever major decisions must be made.

ABSs are, of course, legal only in England & Wales; but could they hop the pond? Canada already counts two global London-based firms in Norton Rose and Clyde & Co., with others sure to follow; the U.S. has many more. The American Bar Association's Ethics 20/20 Commission is poised to endorse looser restrictions on non-lawyers owning equity in law firms. New legislation in Canada and lawsuits the U.S. are both challenging longstanding rules about who can legally own a law firm or provide legal services.

The gain and the loss

What does this all mean? Certainly, that the traditional law firm model is under serious stress and will look quite different ten years from now. But it also seems likely that law firms of the future will employ fewer lawyers than they once did, and that many of those lawyers will resemble employees more than equity owners and strategic directors. "Partnership" as we have known it might be in peril.

Partnership is a fine way to run a small, closely held collective of lawyers who know each other, trust each other, and run a tidy and profitable legal business; probably it will continue to hold sway in that environment. It has proven a far less effective system for running a major enterprise like a modern law firm. Those firms, one way or another, will be operated like — and by — corporations more so than the partnerships of old.

Will something be lost in that event — history, collegiality, a sense of professionalism? Quite possibly. But it would be naïve to think that the modern major law firm hasn't dispensed, at least in part, with some of those elements already. **N**

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