

A checklist for avoiding conflicts on



lateral lawyer transfers*

Lateral hiring of partners or associates occurs at firms of every size, and is becoming far more common. The other articles in this issue of *LAWPRO Magazine* address the topic of finding someone who has the right credentials and is a good fit, from both the point of view of the firm and the transferring lawyer.

However, in addition to reviewing the transferring lawyer's credentials and suitability, the transferring lawyer and firm will need to identify and deal with potential conflicts of interest that may arise with respect to clients at the transferring lawyer's previous firm, and in particular, clients for whom the transferring lawyer worked.

This critical task is not as easy as it might seem on first thought. The hiring firm must have sufficient information to complete an internal conflicts check, while at the same time making sure that no confidential client information is disclosed by either the transferring lawyer or the hiring firm.

Here are some steps you may want to take to identify potential conflicts of interest when dealing with a lateral hire:

- Ask for a current curriculum vitae so that you can review the background of the transferring lawyer. You will want to look back at least five years, or to the time of articling if this was less than five years ago.
- Check with the lawyers in your firm, or search within your conflicts system if it has the data to identify any matters on which the transferring lawyer's previous firm was on the other side.
- Ask the transferring lawyer for a list of major clients and the matters he or she worked on (but not any confidential information, including the identity of clients if that is confidential) and have your firm's conflicts person run these names through your firm's conflicts database.
- In an interview (not in writing) ask the transferring lawyer if he or she is aware of any potential conflicts due to work done while at his or her previous firm.

- Ask the transferring lawyer if he or she sat on any boards, and if so, have your firm's conflicts person run this information through your firm's conflicts database, including, ideally, the name of the entity, the directors and officers.

It is critical that both the firm and the transferring lawyer take an honest and critical look at any potential conflicts situations. Unfortunately, the serious assessment of conflicts often does not occur until the very final stages of the transfer when the lawyer and firm are committed to making the transfer happen. A strong desire to hire a transferring lawyer should not lessen the need to identify and fully assess potential conflicts, and to take appropriate steps to deal with them if necessary. This may include erecting confidentiality screens or seeking client consents. In some cases, it may mean that the transferring lawyer cannot be hired or that the hiring firm may have to send existing clients to another firm.

Informing all lawyers and staff about the transfer once the transferring lawyer starts at the new firm will help identify potential conflicts that were not identified in the pre-transfer screening, and will ensure that appropriate confidentiality screens are put in place. The CBA Conflicts of Interest Task Force's Toolkit (www.cba.org/conflicts) has an excellent model of a Lateral Hire Memorandum.

Resist any temptation to overlook or ignore any real or potential conflicts that arise when a lawyer transfers from one firm to another. A failure to deal appropriately with these conflicts only delays the inevitable. In all likelihood the firm will have to refer any clients with a conflict to another firm, and it may even face a malpractice claim as a result of a conflict. ■

* Portions of this article were adapted from the *Checklist for interviewing transferring lawyer* which appeared in the CBA Conflicts of Interest Task Force's Toolkit (www.cba.org/conflicts).

Dan Pinnington is director of practicePRO, LAWPRO's risk management and claims prevention program. He can be reached at dan.pinnington@lawpro.ca.