INTRODUCTION

Lawyers face competing personal and professional demands on their time. For some, the rigours of full-time legal practice leave little time for family obligations and other interests. It is critical that firms recognize this dilemma that lawyers face, and take steps to facilitate its resolution. Alternative work arrangements are a valuable option for firms to consider.

By reducing time spent at work, alternative work arrangements enable some lawyers to strike a balance between their professional responsibilities and responsibilities outside the firm. As an efficient, productive means by which firms can accommodate individual lawyers’ commitments, alternative work arrangements also make economic sense. The implementation of a policy on alternative work schedules is a progressive step toward resolving some of the problems many lawyers encounter with traditional full-time legal practice.

WHAT ARE ALTERNATIVE WORK ARRANGEMENTS?

In general, alternative work arrangements are arrangements which allow a lawyer, partner or associate, to work less than full-time hours. The key to alternative work arrangements is their flexibility; they are tailored to the particular needs of the individual lawyer and law firm. There is no pre-determined limit to the creativity of an alternative work arrangement; the only limitations are the arrangement’s practicality, fairness, and flexibility within the setting of a law firm.

When adapting alternative work arrangements to law firms, the following minimum requirements are suggested:

1. The policy should clearly define what contribution the person is expected to make, i.e. the lawyer must work a defined percentage of his or her prior annual billable and non-billable hours.

2. The lawyer must keep reasonably regular and predictable office hours, and must communicate these to colleagues, clients, and support staff.

3. The lawyer must maintain a degree of flexibility in his or her schedule in order to accommodate client emergencies, peak work periods, or difficulties in scheduling.
4. The lawyer must maintain reasonable contact with his or her secretary during off hours/days.

5. Periodic reviews should be mandatory to ensure that the arrangement is continuing to work for both the firm and the lawyer, and to make necessary adjustments.

These criteria are not limitations on the creativity of proposed alternative work schedules – they are merely suggested threshold requirements and elementary aspects of professional responsibility.

TYPES OF ALTERNATIVE WORK ARRANGEMENTS

Some more common types of alternative work arrangements include:

1. Full-Time Flexible Arrangements
   (a) Flexible working time – with working time, the number of hours that must be worked and billing requirements do not change, but, the usual fixed hours are replaced by a flexible schedule. There is usually a core time during which all employees are to be present, with the flexible portions being at the beginning and end of the day.
   (b) Compressed work week – there are varying forms of the compressed work week. The most common schedule comprises four work days of 12 hours each, following which the employee has four days off.
   (c) The work schedule may include work-at-home arrangements, whereby all or part of the work arrangements can be conducted at home or an alternative location.

2. Part-Time Arrangements
   (a) Job sharing – job sharing entails two people sharing the responsibilities, hours, salary and benefits of one full-time position. It is a flexible form of permanent part-time work, which can be characterized by a division of the work week, or work days, or by alternating weeks.
   (b) Part-time work – part-time work means reduced hours, either by shorter daily hours, or by working fewer days in a week.
   (c) Specified case or cases – the lawyer may be responsible to complete or conduct a specified case or cases, after which time off is scheduled.
PURPOSES OF ALTERNATIVE WORK ARRANGEMENTS

As stated, alternative work arrangements help lawyers balance work with outside interests and commitments. Although raising children is probably the most commonly articulated purpose for using alternative work arrangements, other purposes may include family commitments, medical reasons, educational advancement, teaching, political aspirations, and bar activities.

An effective policy should not require a lawyer to furnish reasons for requesting an alternative work arrangement. The legitimate goals of the policy will be obscured by irrelevant inquiries into the validity of the reasons given. This kind of scrutiny neglects to recognize that each lawyer might have a different, but equally important, reason for requesting alternative work arrangements.

THE NEED FOR MUTUAL FLEXIBILITY

The success of an alternative work arrangement depends almost entirely on the flexibility of the lawyer working the alternative schedule, firm management, and the other lawyers in the firm.

1. The Lawyer Working an Alternative Schedule

Although the lawyer’s schedule must be respected to the extent possible, there will inevitably be occasions that demand the lawyer’s availability without regard to his or her work schedule. The lawyer whose alternative work arrangement has been approved must be flexible enough to accommodate occurrences such as client emergencies, peak work periods, and scheduling difficulties. *These circumstances are inevitable for any professional, and the lawyer working on alternative schedule is no exception.* In general, these circumstances should not amount to more than minor glitches in the efficient functioning of the alternative work schedule. If these occasions occur with enough frequency so that the schedule is consistently being disrupted, this should be brought up by the lawyer at his or her periodic review.

2. Firm Management

After approving the alternative work schedule, the managing partners of the firm should remain supportive of the lawyer. If problems with the schedule arise, these should be constructively addressed at the lawyer’s periodic review. Every reasonable effort should be made to encourage the proper functioning of the alternative work schedule, including encouraging other lawyers to be more flexible when dealing with lawyers working alternative schedules. Above all, firm management must respect the integrity of the alternative work arrangement.
3. Other Lawyers in the Firm

The success of an alternative work schedule depends largely on the cooperation of all lawyers within the firm. Aside from obvious behavior such as denigrating lawyers working alternative schedules, other lawyers can impede the efficient functioning of alternative work schedules by consistently scheduling meetings at problematic times. Other uncooperative behavior might include intimating to clients that the lawyer working an alternative schedule is "never around", demonstrating open and unreasonable frustration with the lawyer's schedule, or badgering the alternative schedule lawyer on days/hours off. The lawyer electing to work on an alternative schedule needs to ensure the adequate arrangements are made to service clients so that other lawyers do not become unduly burdened during the lawyer's absence from the office. The key to successfully implementing an alternative work arrangement is good communication between all the lawyers.

CONCERNS ABOUT ALTERNATIVE WORK ARRANGEMENTS

The literature in this area discloses concerns commonly raised about alternative work arrangements. Although these concerns often lack any factual basis, they both create and are used to justify negative attitudes about alternative work schedules. Accordingly, concerns about alternative work schedules must be addressed so that they are not ultimately damaging to the success of an effective policy. The concerns can be roughly grouped under the following headings:

1. Profitability

Understandably, the major drawback to alternative work schedules for law firms is their perceived lack of profitability. This concern, however, is often more of an assumption than a fact. The experience of other occupations (i.e. the public service), and of law firms within Canada and the United States shows this concern to be more prevalent than its validity warrants. In fact, alternative work schedule policies can increase the profitability of a firm. Longer range profitability for the firm includes the retention of talented and experienced lawyers, increased loyalty, a reduction in turnover, and therefore a reduction in training expenses.

2. Productivity

This concern often takes the form of a rather crude comparison: a lawyer working full-time is obviously more productive than one working reduced hours. This is not necessarily the case. A better starting point would be to analyze the productivity for the amount of time worked. The American literature suggests that lawyers working alternative work schedules are often more productive on a pro rata basis than their full-time colleagues. Because lawyers on alternative work schedules have a limited amount of time within which to complete their work, they are forced to be more organized and efficient.
Contrary to popular belief, alternative work schedules can increase lawyer productivity and reduce wasted time.

3. **Commitment**

Lawyers on alternative work schedules are often regarded as lacking in commitment to the firm. Because they choose to spend some of their time elsewhere, this is seen to signify reduced loyalty to the firm. However, there is no necessary correlation between hours worked and firm commitment. Alternative work schedule lawyers demonstrate strong loyalty to the firm, because despite their familial demands or other ambitions, they are actively seeking ways to remain involved in practice with the firm. These lawyers are ensuring that their work does not suffer because of personal commitments.

The concern about commitment depends on how alternative work arrangement lawyers are characterized. If a lawyer on an alternative work arrangement is characterized as a “shirker” who is not a true member of the firm, that lawyer’s commitment is called into question. If, however, the lawyer is seen as attempting to balance important life goals by developing a mutually beneficial work schedule, the lawyer’s commitment is not an issue.

4. **Service to Clients**

Genuine concerns about reduced service to clients are commonly voiced. Firms worry that lawyers on alternative work arrangements will be difficult to contact, and will be unable to deal with day-to-day client needs. However, proper organization and scheduling have been used to alleviate this concern. For various reasons (e.g. court appearances, meetings, etc.), most full-time lawyers are unavailable for certain predetermined times each day or week; this face will ensure careful scheduling of client interviews or meetings.

5. **Firm Morale**

Will friction between lawyers working full-time and lawyers who have chosen alternative work arrangements damage morale? To a large extent, the answer depends on the alternative work schedule developed, the manner of its implementation, and the way in which it is communicated to the members of the firm. Certainly, with a properly developed and implemented alternative work schedule, there should be no reasonable grounds for resentment. As long as it is emphasized that an alternative work arrangement lawyer’s salary is commensurate with their reduced billable hours, other lawyers will realize that “free time” has its price.

The success of any alternative work arrangement will depend on all members of the firm. Accordingly, the firm should encourage wide acceptance of any policy by all the lawyers in the firm. This can be done by ensuring that all lawyers are involved in the formation of a policy. At the very least, the policy should be carefully explained to the
firm, so that lawyers who take advantage of the policy are not seen as being given special privileges.

6. The “Floodgate” Concern

The fear that firms will become a schedule-bound morass of lawyers on alternative work schedules is unfounded. The economic reality is that most lawyers are dependent on a full-time salary; firms with alternative work policies have not experienced an overabundance of lawyers eager to participate. Alternative work schedules appeal primarily to lawyers who have responsibilities and commitments in other areas.

7. Inapplicable to the Practice of Law

A common assumption is that alternative work arrangements just will not work for lawyers. However, experience in law firms in Canada and the United States exposes this as a myth. Lawyers in virtually all areas of law have adapted alternative work schedules to fit their practices. The key once again is the level of flexibility and organization that is maintained by the lawyer working an alternative schedule. Often, a reduction in the number of clients a lawyer is responsible for enables the lawyer to have greater control (and fewer conflicting demands) over his or her time.

THE NEED FOR A WRITTEN POLICY

Because a written policy ensures that the same criteria apply to everyone equally, a written policy enables lawyers who are considering alternative work arrangements to know the grounds on which their requests will be considered, as well as the impact of such a reduced schedule on salary, benefits, and progression towards partnership. Moreover, a written policy alleviates the potential problems of hostility, lack of respect, and lack of support that may arise from ad hoc decisions. In general, written policies are advisable because they provide a clear understanding of the expectations and responsibilities of all parties affected by the alternative work schedule.
SAMPLE POLICY

I. STATEMENT OF PURPOSE

[FIRM NAME] recognizes that despite a strong commitment to the Firm and to the practice of law generally, individual lawyers may have family obligations or other interests, which make it necessary for them to develop ways to better manage their time. This policy will provide productive and flexible alternatives to full-time practice for lawyers who wish to balance professional responsibilities and other pursuits.

With the guidelines set out in this policy, [FIRM NAME] will make every reasonable effort to facilitate the implementation of alternative work arrangements. [FIRM NAME] realizes that the participation and contribution of all firm members is necessary for the success of alternative work arrangements. Lawyers working alternative schedules remain commitment professionals, and [FIRM NAME] believes that their opportunities for professional growth and career advancement should not be suspended.

[FIRM NAME] recognizes its responsibility for balancing the interests of the lawyers requesting an alternative work arrangement, the other lawyers in the firm, the firm’s clients, and the firm itself. Efficient, organized, and flexible alternative work arrangements can work to the advantage of all parties concerned.

II. KINDS OF ALTERNATIVE WORK ARRANGEMENTS

Alternative work arrangements are adapted by lawyers to fit their individual situations. As such, arrangements may be structured to reduce hours by altering hours, days, or weeks worked, or to maintain hours but at non-traditional locations or times. The variety of alternative work arrangements is limited only by the need to strike a workable balance between the lawyer’s personal and professional responsibilities and the interests of the Firm. Alternative work arrangements may include job sharing, part-time work, flexible working hours, or a compressed work week, or working from a remote location.

III. REQUIREMENTS

Although there is no pre-determined format for all alternative work schedules, they must conform to the following four basic requirements:

(a) The arrangement should clearly define what contribution the person is expected to make; i.e. The lawyer works a defined percentage of his or her prior annual billable and non-billable hours.
(b) The lawyer keeps reasonably regular office hours, and communicates these to colleagues, clients, and support staff.

(c) The lawyer maintains a degree of flexibility in his or her schedule in order to accommodate client emergencies, peak work periods, or difficulties in scheduling.

(d) The lawyer maintains reasonable contact with his or her secretary during off hours/days.

The success of an alternative work arrangement requires the acceptance and understanding of all lawyers in the firm. Other lawyers must take into account the periodic lack of availability of the lawyer working an alternative work arrangement, and must be reasonable when scheduling meetings with him or her.

IV. ELIGIBILITY

Both partners and associates are eligible to work alternative schedules. An associate must have been employee with [FIRM NAME] for [NUMBER OF YEARS] prior to requesting an alternative work arrangement.

V. DURATION

[FIRM NAME] considers that efficiently running alternative work arrangements may continue indefinitely. Periodic review of lawyers on alternative work arrangements will determine the future workability of each schedule, having regard to the needs of the lawyer, and the overall needs of the firm and its clients.

VI. WORKLOAD AND LEVEL

Although lawyers working alternative work arrangements will have a reduced volume of work, they will continue to be assigned matters commensurate with their experience and abilities. Alternative work arrangements lawyers will not, by virtue of their limited schedules only, receive limited assignments of duties far lighter than they are capable of handling. Lawyers working alternative work arrangements remain professionals; they will be given the opportunity for professional challenge and growth.

VII. COMPENSATION AND BENEFITS

The salary and benefits for lawyers working alternative schedules will generally be adjusted on a pro rata basis reflecting the reduced hours worked. The basis for
compensation will be determined in writing by the Firm and the lawyer working an alternative schedule prior to the change in the work schedule occurring.

VIII. PARTNERSHIP

An associate working an alternative schedule will generally progress toward partnership at a proportionately slower pace than an associate working full-time. [FIRM NAME] considers that this pro rata delay for associates working alternative work arrangements reflects the fact that lawyers working full-time will have the opportunity for more experience and presumably more rapid professional development. The basis for the partnership will be determined in writing by the Firm and the lawyer working an alternative work arrangement prior to the change in the work schedule occurring.

IX. REQUESTS/PROPOSALS

Requests for alternative work arrangements will be submitted to [MANAGING PARTNERS/FIRM COMMITTEE] and must be in writing. The requesting lawyer will submit the proposal at least [THE SUGGESTED MINIMUM NOTICE PERIOD IS TWO MONTHS] before he or she proposes to begin working the alternative schedule. [FIRM NAME] may consider shortening or waiving this notice period under urgent circumstances.

A request for an alternative work arrangement will estimate the average annual billable and non-billable hours the lawyer has been working, and will outline the structure of the proposed alternative schedule. The request will be as specific as possible, and will state precisely which hours/days are to be allocated as office time. The lawyer requesting an alternative work arrangement is not obliged to give reasons for his or her request.

X. APPROVAL

When considering proposals for alternative work arrangements, [MANAGING PARTNERS/EXECUTIVE COMMITTEE] may consider the general workability of the proposal itself, the workload and coverage situation in the lawyer’s department, and the number of other lawyers already working alternative schedules. [FIRM NAME] will attempt to facilitate approval of all reasonable proposals.

XI. REVIEW

Lawyers on alternative work arrangements will be subject to the same periodic review as full-time lawyers. A component of this review will be an assessment of how well the alternative work arrangement is working for both the lawyer and the Firm. If the
schedule is found to be problematic or deficient in any way (e.g. impeding the efficiency of client service or the lawyer's professional development), the lawyer and the [FIRM REVIEW COMMITTEE] should discuss what arrangements are needed to render the schedule more efficient and effective.

XII. TERMINATION

If an alternative work arrangement is consistently problematic, the Firm will discuss the problems with the lawyer, and give him or her an opportunity to correct them. [FIRM NAME] may terminate the alternative work arrangement if, after discussions with the lawyer, the lawyer continues to fail to meet the requirements of the arrangement. The Firm will give the lawyer at least [THE SUGGESTED MINIMUM NOTICE IS TWO] months’ notice of the termination.

A lawyer working an alternative work arrangement who wishes to terminate the arrangement and return to full-time practice will give the Firm at least [THE SUGGESTED MINIMUM NOTICE PERIOD IS TWO] month’s notice.