The majority of in-house lawyers are familiar with the term secondment — the act of hiring a lawyer from an outside firm on a temporary basis. While the concept has been around for a long time, it's becoming more commonly used as in-house counsel suffering from budget constraints, higher workloads, and temporary leaves-of-absence look for relief.

While the majority of secondments are used to fill maternity leaves, the service can come in handy in a variety of ways. Maybe you need a lawyer with a specialized skill set because your company is new to Canada and in the midst of setting up its labour and employment policies — you might hire a secondee who specializes in Canadian labour and employment law. On the other hand, you might have a temporary influx of work and need extra resources to complete a special project.

“Secondments are a way to get something done that you need done in a cost effective way,” says Michael Sherrard, partner with Sherrard Kuzz LLP. “Here’s another way to get those services completed, as opposed to simply retaining firms on an hourly rated basis.”

Basically, if your company has a need, the right law firm will find a way to fill it. Whether they’re well publicized or not, most law firms have a secondment program — primarily because they’re great marketing tools.

By temporarily lending out their lawyers, these firms develop a unique insight into the inner workings of their clients — and can offer better legal advice later on as a result. On the same token, once in-house counsel has taken the time to train a new lawyer, they’re more likely to go back to that lawyer, or law firm, when future legal work arises.

“For us, it’s a great way to get high quality talent — either for a maternity leave or on a specific project. It allows us to get someone high calibre from a law firm that we know and trust, in a very cost effective way,” says Ildiko Mehes, general counsel for Teva Canada. “It’s a win for the law firm too, because we definitely go back to them down the road for advice and they get a lot of work out of it.”

How secondments work
Because virtually every secondment is different — tailored specifically to a company’s needs — there aren’t any steadfast rules in how you approach them. If your business has the need for additional lawyers, simply raising the issue with a law firm you know and trust is all it takes to get the ball rolling.

“I was generally aware of the concept of secondments before using one, but I didn't really know the details. That being said, at the end of the day there aren't that many details. It’s a fairly simple notion,” says Mehes. “I reached out to two of our main law firms and raised the opportunity with them, and found them both to be engaged with
the idea. In our case, I proposed a fee arrangement and the law firms accepted it.”

In Mehes’ case, the company needed to fill a position left vacant by a maternity leave. Up until that point, they had hired full-time lawyers to fill maternity leave positions, and then simply retained those lawyers when the leave was over. In 2012, however, a maternity leave arose and the company no longer needed another full-time lawyer, so Mehes considered a secondment.

“The alternative is to hire lawyers on a contract basis, which is never ideal,” she says. “I think you have a different pool of candidates who are applying for contract positions as opposed to full-time.”

The secondment turned out to be a success, and Mehes says she won’t hesitate to arrange another one should the opportunity arise — whether it’s as a result of another maternity leave or a special project.

“In our industry, the change of pace is incredible,” she says. “The business is changing, the challenges are changing and growing, so the idea of using secondments on a project basis makes a lot of sense.”

The fine print

While the concept of secondments is pretty straightforward, there are obviously details you have to work out ahead of time — most notably, the lawyer’s salary and insurance requirements.

“Traditionally, our firm would take care of that,” says Sherrard. “But sometimes it’s quite important that the lawyer is on the client’s salary, because the client wants that independence.”

Sherrard says some firms only charge cost recovery — where the client would only cover the cost of such things as bonuses, benefits, and salary — as opposed to an hourly rate. In other situations, the secondment might involve a reduced rate, or an alternate fee arrangement.

Another thing to consider is who will supervise the lawyer — will the lawyer be required to only work on the secondment, and therefore only answer to that client, or will they be able to keep part of their workload at the firm? If it’s the latter, how will that work?

That’s the type of terrain Miller Thomson LLP had to navigate when Deloitte approached the firm for a secondment. Deloitte’s legal department needed a commercial lawyer on a temporary basis to act as a stop-gap as they recruited a full-time lawyer, so the firm arranged a secondment split between two associates.

“Our secondment involved one full-time lawyer three days a week — it was essentially a part-time secondment split between two lawyers,” says Nikki Latta, associate general counsel at Deloitte.

“This worked out great, because [the two associates] didn’t have to give up their practice at the firm. If one was working on a deal, the other could handle our needs.”

The only potential challenge was the issue of conflicts.

“We have some of the same clients, so we had to make sure there was no conflict on any of the files we were working on,” says Max Spearn, associate at Miller Thomson and one of the secondees who worked with Deloitte. “It happened a couple of times, but it was the exception to the rule. The solution was pretty simple — we just didn’t work on those files while on secondment.”
Making the most of the experience
The most successful secondments benefit all parties involved: the client, law firm, and secondee. One of the most important first steps, therefore, is finding the right person for the job. Depending on the situation, this might be a lawyer with a specific skill set, or it might be a more junior associate who is chomping at the bit for in-house experience.

Sidonia Loiacono, an associate at Aird and Berlis LLP, fit into the latter category when her firm recommended her for a secondment at the City of Toronto in 2010. At the time she was a junior associate, with enough experience under her belt to hit the ground running when the City asked her to fill in an eight-month gap left by two maternity leaves.

Loiacono was thrilled for the opportunity to broaden her skill set and learn about the intricacies of the City of Toronto legal department, and she believes the experience made her a better lawyer in the long run.

“It definitely challenged my comfort zones,” she says. “In the private sector, the work you’re engaged in is that of a junior to senior member. That wasn’t the case with the city. Within my first week of being there I was handed a file with a lot of complex issues and the file was given to me to run with. That was the type of work you don’t get as a young associate in the private sector.”

Loiacono’s experience, as is the case with most secondments, left her with a better understanding of the City of Toronto — and made her an invaluable resource for future legal work.

“I am definitely one of the go-to people now,” she says. “There are other people in my group that have very specialized expertise, but now I’m another addition to this group that has a specialized knowledge base with matters involving the City of Toronto.”

This is a great advantage for the firm, but it’s also a benefit to the client, because now they have one more trusted adviser to consult when the need arises.

Loiacono adds that, while she feels her firm did a good job matching the right lawyer with the right client, a secondment’s success also requires plenty of support from the client and a good attitude on behalf of the secondee.

“I think it’s vital that you really seek out the opportunities to make the most out of it. You get out of it what you put in,” she says. “Be enthusiastic, inquisitive, and take on challenges. I think that will go a long way. Be proactive and flexible — that’s the only way you’ll have a meaningful secondment experience.”

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