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TAPPED OUT

America's largest law firms are siphoning off Canada's top associates

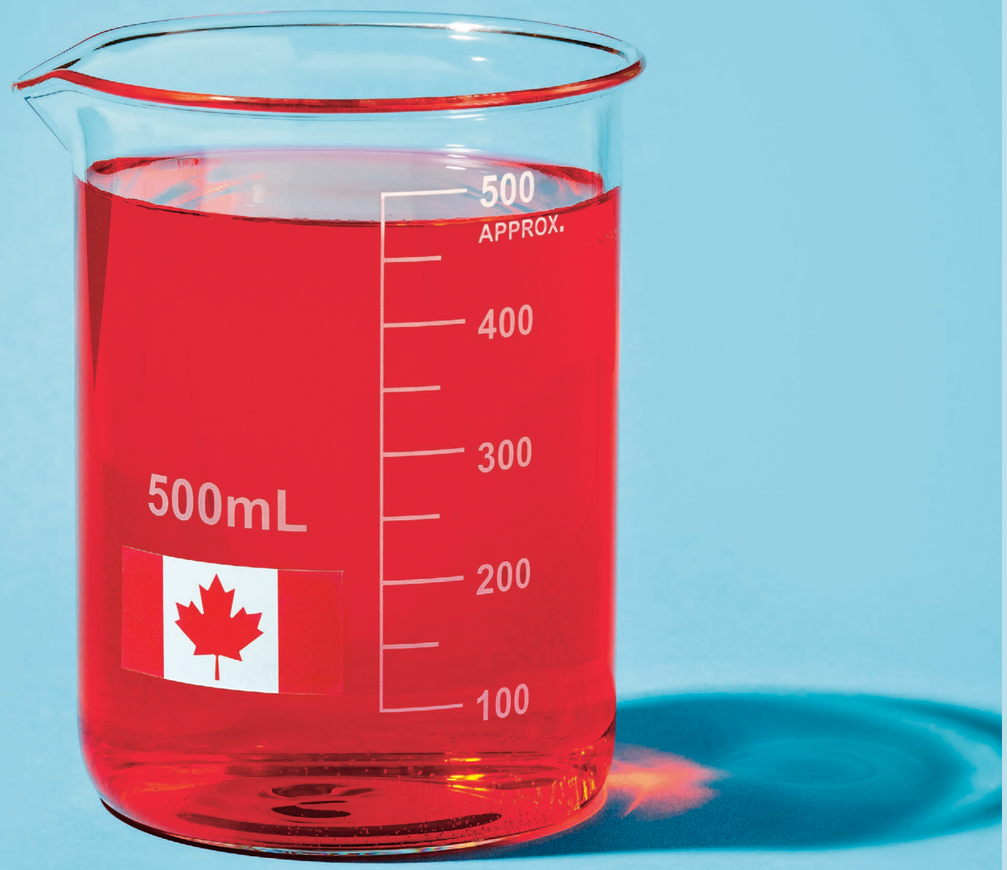
The Brain Drain

The pandemic has triggered an economic boom in the corporate world. And with large law firms taking on more work, the competition for legal talent has become fierce.

Over the past year, top firms across the United States have used money and the promise of adventure to lure associates away from Bay Street.

And there's no way to stop the exodus

by Luc Rinaldi
photography by Andrew B. Myers



In early 2021, Kojo Hayward was a second-year associate at Osler, Hoskin & Harcourt LLP in Toronto with no plans to leave his job. He liked his colleagues and enjoyed his work, providing legal advice to exciting local upstarts like the fintech firm Wealthsimple. He made good money, too — about $130,000 a year, plus a year-end bonus.

But then a friend of Hayward's who had moved to a firm in the United States told him that his workplace was looking to add more lawyers. In short order, Hayward applied and received a job offer. Before accepting it, though, he decided to take a few meetings with American recruiters to see what else he could find on the job market. After a series of emails and LinkedIn messages, another enticing opportunity arose. The Los Angeles office of Latham & Watkins LLP — one of the most prestigious and profitable law firms in the U.S. — was looking for associates who could advise high-growth tech companies and their investors, handling mergers, acquisitions and exits. This basically matched his caseload at Osler, but, if he moved to California, his salary would rise to US$240,000, plus a discretionary year-end bonus.

"I thought, *Okay, what other cities in the world would I want to live in?*" recalls Hayward. "Los Angeles was at the top of my list." He was attracted to the balmy weather and West Coast lifestyle, California's thriving tech scene and the calibre of the city's law firms. "The big thing wasn't even the money, to be honest. The money was a nice cherry on top."

Plus, the timing was right for an adventure. Hayward was 30, single and childless. After mulling it over, he told himself, "If I don't go now, when will I?"

Hayward applied and, after a whirlwind of interviews, got the job. When he told Osler, the firm was sad but congratulatory. "We were really sorry to lose Kojo," says Doug Bryce, Osler's national managing partner. "But I understand entirely why, at his age and stage, an adventure of that sort is appealing."

Hayward isn't the only lawyer who's been lured south of the border by weather, prestigious work and a fat paycheque. He knows at least half a dozen other associates who have left Toronto to work in the States. Virtually every large Bay Street firm has lost at least one or two associates to America over the past year. For the most part, these associates have moved to elite legal giants in New York and the Bay Area, such as Kirkland & Ellis LLP, White & Case LLP, Cooley LLP and Shearman & Sterling.

It may seem strange that this cross-border hiring frenzy began when borders were, well, closed. All manner of industries — travel, hospitality, retail, entertainment — were decimated by the pandemic, resulting in closures, mass layoffs and emergency relief funds. The least fortunate have struggled just to pay rent and feed their families.

Meanwhile, many white-collar professionals managed to *prosper* throughout the coronavirus crisis and its economic aftermath. Large law firms and their clients have more work — and more profits — than ever. "When the world's in a crisis, lawyers tend to be busy," says Adam Lepofsky, founder and president of RainMaker Group, a Toronto-based recruitment agency.

The surge in business has many causes. Early in the pandemic, large employers worldwide had endless legal questions about health and safety restrictions, layoffs and wage subsidies. Plenty of companies went belly up, resulting in a spike in bankruptcy and insolvency matters. Then central bankers flooded the global economy with trillions of stimulus dollars; in tandem with low interest rates, that meant corporations had plenty of capital available to make all kinds of business deals. And, with huge swaths of employees working from home, major tech companies enjoyed a spike in revenue. "The amount of work that this has generated for some of the big U.S. firms is jaw-dropping," says Bryce. "And it requires an army of associates to do that work."

"The biggest challenge I've got right now is finding people."
—Dave Leonard, CEO of McCarthy Tétrault LLP

By late 2020, American firms had depleted the talent pools in their own country. "There's a shortage of suitable U.S. talent," says Warren Bongard, the president and co-founder of the legal recruitment firm ZSA. The busiest law firms started to look beyond the domestic job market.

American recruiters have looked to other countries — including Canada, Australia and Ireland — where educated, experienced associates are doing identical work in similar legal landscapes for less money. "A number of U.S. firms are engaged in a ferocious war for talent," says Bryce. "Our transactional associates are a terrific target for them because they can plug them into their existing structure."

That's a terrifying scenario for Bay Street, where the largest firms are desperate for associates for all the same reasons as their American counterparts. "The biggest challenge I've got right now is finding people," says Dave Leonard, the CEO of McCarthy Tétrault LLP. "If I could hire 20 or 30 more associates across the country tomorrow, I'd have work for them."

In an attempt to stop — or at least slow — the bleeding, virtually all of Toronto's biggest law firms have taken defensive measures. Torys LLP acted first, instituting a new two-pronged associate bonus. All associates received a cash payout equal to 10 percent of their salary in May, with a second payment going to any associate who bills a certain number of hours by the fall. Most large firms followed suit, introducing a similar special bonus structure. Deborah Dalfen, the chief professional resources officer at Torys, says the bonuses are a token of appreciation for associates, who have worked long hours, often under challenging conditions, through the pandemic. She hesitates to call them "retention bonuses," as some have, because she doesn't think they'll have that effect. "If people are interested in going to the U.S. for a larger salary, what we are capable of doing will not be enough to offset that," she says. "The markets and economics in Canada and the U.S. are so different. We're just not able to financially match what they're offering." (Dalfen is confident, however, that "the experience a lawyer will get at Torys is as good or better than they'd get at any U.S. firm.")

If the exodus continues, the Canadian legal market could become hollowed out and starved of talent. But is there anything Bay Street firms can do to stop American competitors from stealing their best lawyers?

This is not the first time that U.S. firms have poached Canadian associates. In fact, many in the legal world consider this to be the "third wave."

The first wave began in 1998–99, at the height of the dot-com boom, when firms in New York and Silicon Valley — which were losing associates to lucrative in-house positions at

technology companies — started hiring out of Toronto. "They realized there was an untapped talent pool up here," says Bryce, who was an associate at Osler at the time. "An entire generation of associates above me in Toronto got decimated by that first wave." The associates who remained on Bay Street had to take on the mountain of work that their colleagues had left behind, but they also enjoyed a clear path up the law-firm hierarchy. "It provided a series of opportunities for my generation, the ones who stayed, because all of a sudden, the people above us disappeared."

After the dot-com crash that began in March 2000, the international hiring spree ended, and many laid-off Canadians returned home. But by 2006, Toronto associates had another opportunity to head south or even overseas. Firms in the U.S., London and Dubai were awash in M&A work due to a hot stock market, low interest rates and massive amounts of borrowing. This second wave came to an abrupt end as well, thanks to the 2008 global financial crisis.

Few people would have expected 2020 to bring a third wave. In the spring, shortly after the pandemic arrived, the legal job market went dead. "It was basically crickets chirping for us," says Emily Lee, the co-founder of ALT Recruitment Partners in Toronto. "Nobody could wrap their heads around starting a new recruit in those circumstances."

Besides, many law firms were worried they'd need to cut staff, not hire more. "We were telling partners, in no uncertain terms, that we have to be ready for some pretty tough situations," says Bryce. Though Osler ultimately didn't lay anyone off or adjust compensation due to COVID-19, the firm did temporarily decrease partner draws, afraid that the pandemic would adversely impact cash flows.

By the end of the summer, however, client companies were performing better than expected. After a brief standstill, there was a glut of IPOs and, especially in the United States, SPACs (special-purpose acquisition companies, an alternative means of taking a company public), resulting in massive amounts of legal work. In addition to racking up billable hours, law firms were saving on expenses. Lawyers weren't flying overseas or taking clients out to dinner. The extra cash helped firms bolster their bottom lines. "Much to everybody's surprise," says Bryce, "2020 was a terrific year for most big law firms."

The exodus began quietly, with a flurry of emails and LinkedIn messages from American headhunters offering Toronto associates astronomical salaries. "For those who are young and unattached, who had been living inside their apartments for eight months straight, the idea of an adventure was pretty darn exciting," says Kate Reder Sheikh, a San Francisco-based recruiter with the headhunting firm Major, Lindsey & Africa. Meanwhile, she adds, "there's no mountain high enough that firms won't climb to get capital markets and M&A talent."

The U.S. firms' most effective weapon, of course, is money. At a major Toronto firm, third-, fourth- and fifth-year associates — the demographic most likely to get poached because they're experienced but not yet on the cusp of partnership — typically make between $150,000 and $200,000 a year. In the U.S., where top firms follow a pay grid called the Cravath scale, those same associates would earn between US$240,000 and US$305,000. And that doesn't even take into account the colossal year-end bonuses that American firms award to associates. According to the current market rate, a fifth-year associate would take home a US$52,000 bonus.

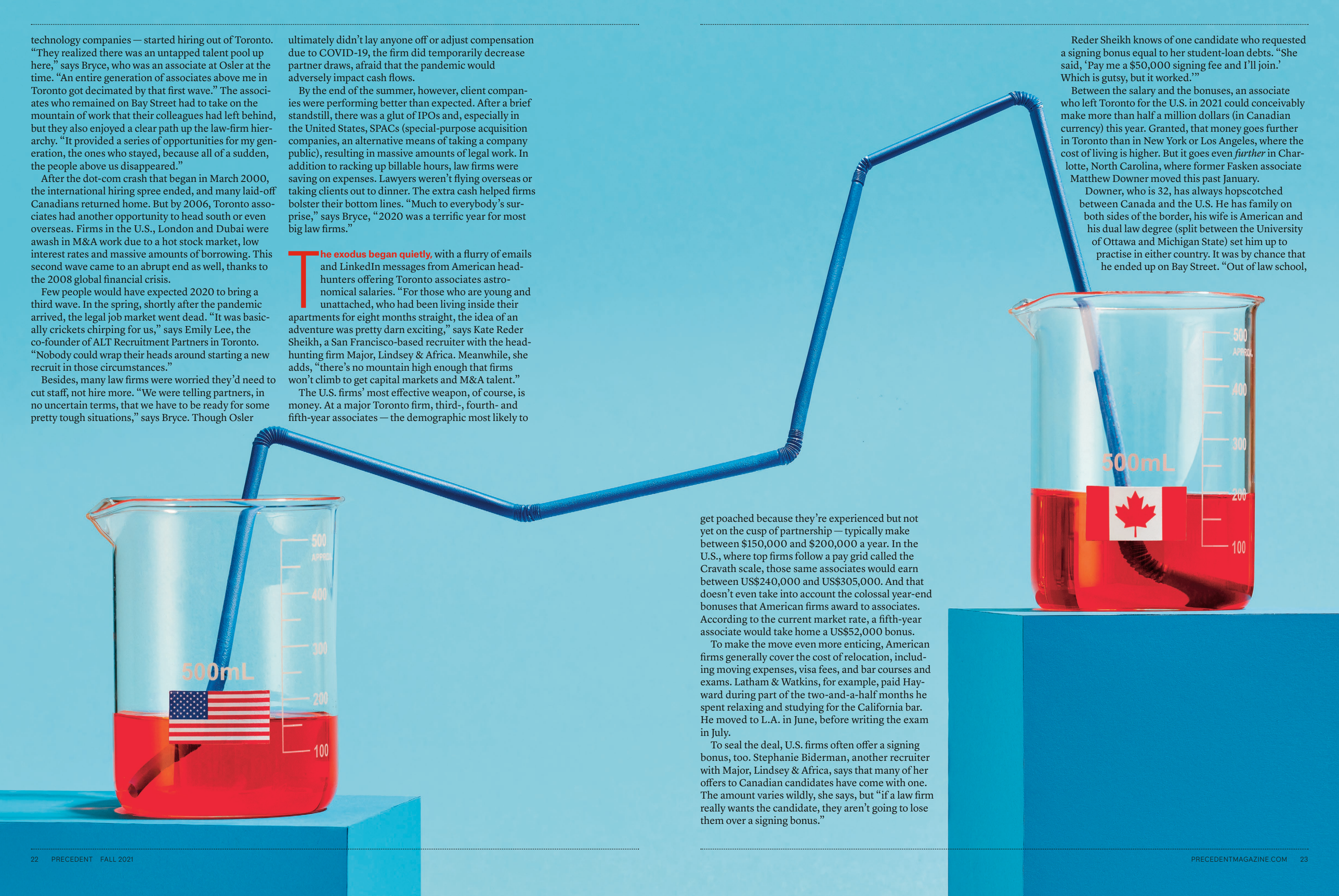
To make the move even more enticing, American firms generally cover the cost of relocation, including moving expenses, visa fees, and bar courses and exams. Latham & Watkins, for example, paid Hayward during part of the two-and-a-half months he spent relaxing and studying for the California bar. He moved to L.A. in June, before writing the exam in July.

To seal the deal, U.S. firms often offer a signing bonus, too. Stephanie Biderman, another recruiter with Major, Lindsey & Africa, says that many of her offers to Canadian candidates have come with one. The amount varies wildly, she says, but "if a law firm really wants the candidate, they aren't going to lose them over a signing bonus."

Reder Sheikh knows of one candidate who requested a signing bonus equal to her student-loan debts. "She said, 'Pay me a $50,000 signing fee and I'll join.' Which is gutsy, but it worked.'"

Between the salary and the bonuses, an associate who left Toronto for the U.S. in 2021 could conceivably make more than half a million dollars (in Canadian currency) this year. Granted, that money goes further in Toronto than in New York or Los Angeles, where the cost of living is higher. But it goes even *further* in Charlotte, North Carolina, where former Fasken associate Matthew Downer moved this past January.

Downer, who is 32, has always hopscotched between Canada and the U.S. He has family on both sides of the border, his wife is American and his dual law degree (split between the University of Ottawa and Michigan State) set him up to practise in either country. It was by chance that he ended up on Bay Street. "Out of law school,



“There is a marketplace for talent across the border, and we can’t be blind to that.”

— Doug Bryce, national managing partner at Osler, Hoskin & Harcourt LLP

my wife and I had a deal that whoever landed the better job, that’s where we would move,” he says. Fasken offered him work in 2017, so the couple settled in Toronto.

For a few years, life was good. Downer liked his colleagues and his work in corporate law, dealing with banks, private equity and real-estate funds. But when the pandemic hit, he and his wife were confined to a 600-square-foot condo. Within a few months, they were miserable and burnt out, stuck in an endless loop of 12-hour days, Zoom meetings and late-night emails. As Downer recalls, “My wife and I started looking at each other more and more, like, *This isn’t sustainable*.”

In the summer of 2020, Downer visited his wife’s relatives in Charlotte. Restaurants were open, small businesses were thriving and real estate was relatively affordable. (The average home sells for nearly $1.1 million in Toronto, more than double the average price in Charlotte.) Downer and his wife could see themselves buying a house there and enjoying time with family. As soon as he got back to Toronto, Downer asked a recruiter to find him a job in Charlotte or another mid-sized U.S. city. He eventually received an offer from the Charlotte office of the global law firm Mayer Brown, doing corporate work. Downer took the job, and, as of January 2021, his base salary was US$200,000. By summer, it had risen to US$215,000.

Whether or not Bay Street firms can compete with that kind of salary, they decided earlier this year to do something. Torys was the first domino to fall. This year, associate bonuses are now de rigueur at Bay Street’s biggest firms. “To be blunt, we can’t have our competition offering bonuses and then say to our people, ‘We’re not going to do that,’” says Leonard, of McCarthys. “It’s not right, it’s not fair, it’s not good for business and, quite frankly, it would increase attrition.”

At Osler, Bryce had also come to the same conclusion, factoring in pressure from the south. “It would be disingenuous not to say that one of the elements that went into that bonus was the competition from U.S. firms,” he says. “There is a marketplace for talent across the border, and we can’t be blind to that.”

Beyond the bonuses, Toronto firms have ramped up their slate of perks and benefits. McCarthys implemented a one-time increase to associates’ tech allowance to help them outfit their home offices. The firm also started sending $100 Uber Eats credits to associates every month and partnered with Fairmont to offer its employees discounts on hotel suites. Torys, meanwhile, increased the amount it gives to associates for mental-health services like therapy and counselling up to $4,000 per year, and it gave every employee access to a new suite of virtual health and wellness tools.

Most firms have framed the bonuses and perks as a token of appreciation for the hard work that associates have put in over the pandemic. That may be true, but they’re also defensive measures: they can’t afford to lose any more talent. Even if firms aren’t able to stave off American headhunters, they need to protect themselves from the Canadian competition. Bay Street firms, flooded with legal work themselves, are battling one another for associates on home turf.

RainMaker’s Lepofsky says firms find themselves wanting for associates, in part, because they failed to act sooner. “For the most part, firms here are reactive, not proactive,” he says. “They’re risk-averse and prudent about their business practices. They prefer to know they have the work before they decide to hire.”

The first and second waves of foreign poaching ended in economic catastrophe. The industry hopes this one will not. Based on what clients have told Leonard, he predicts a strong demand for legal work for the rest of 2021 and into 2022. “I think there’s still wind in this market, and we’re certainly planning for that,” he says. “I don’t see demand letting up.”

Whether it’s gradual or sudden, though, the red-hot market will cool down. The IPO and SPAC spree has already slowed. Interest rates will eventually rise, stimulus funds will dry up and a post-pandemic era of relative austerity may begin. American firms won’t always need as many associates as they do today. “It’s cyclical,” says Dalfen. “As hard as it might be to see some people depart for greener pastures — no pun intended — that will calm down and it’s our expectation that we’ll see people coming back.”

After the first and second waves, lawyers returned to Bay Street en masse. But today’s legal landscape is dramatically different. The pandemic has shown that lawyers can work from anywhere. When former Fasken associate Kai Kramer landed an in-house position with MongoDB, a database-software company headquartered in New York, the company said he could stay in Toronto. Instead, he and his wife decamped to Calgary, a cheaper city closer to her family. Now, he leads the company’s commercial legal operations for all of western North America. “I’m finding that, in the tech world, all the companies are really building up their in-house departments,” he says. Much like the big U.S. law firms, MongoDB, which already employs 14 lawyers, is now looking to hire more Toronto talent. “We can definitely get capable people from Canada at — it sounds bad to say — a discount.”

It’s a fool’s errand to try to predict the distant future. But Bryce, for his part, still believes in the allure of Toronto. He expects many departed Canadians will return when they want to start families or advance their careers.

Bryce speaks from firsthand experience. He worked in New York from 2008 to 2011, albeit at his own firm’s office, before returning to Toronto. “If you’re in your 20s and haven’t put down roots yet, the idea of making more money and living in a global city is exciting,” he says. “The fine print is that you’re going to be working so extraordinarily hard that you aren’t going to get to enjoy that city very much. It’s a bit of a short-term transactional relationship, in truth.”

As for his lost associate Hayward, “I hope he’ll come back one day,” says Bryce. “We’re betting that some of the people who left will return enriched by their experience and training, and that will be quite valuable to us and our clients. We’re playing the long game.” For Bryce, and the rest of Bay Street, the long game may be the only choice.P