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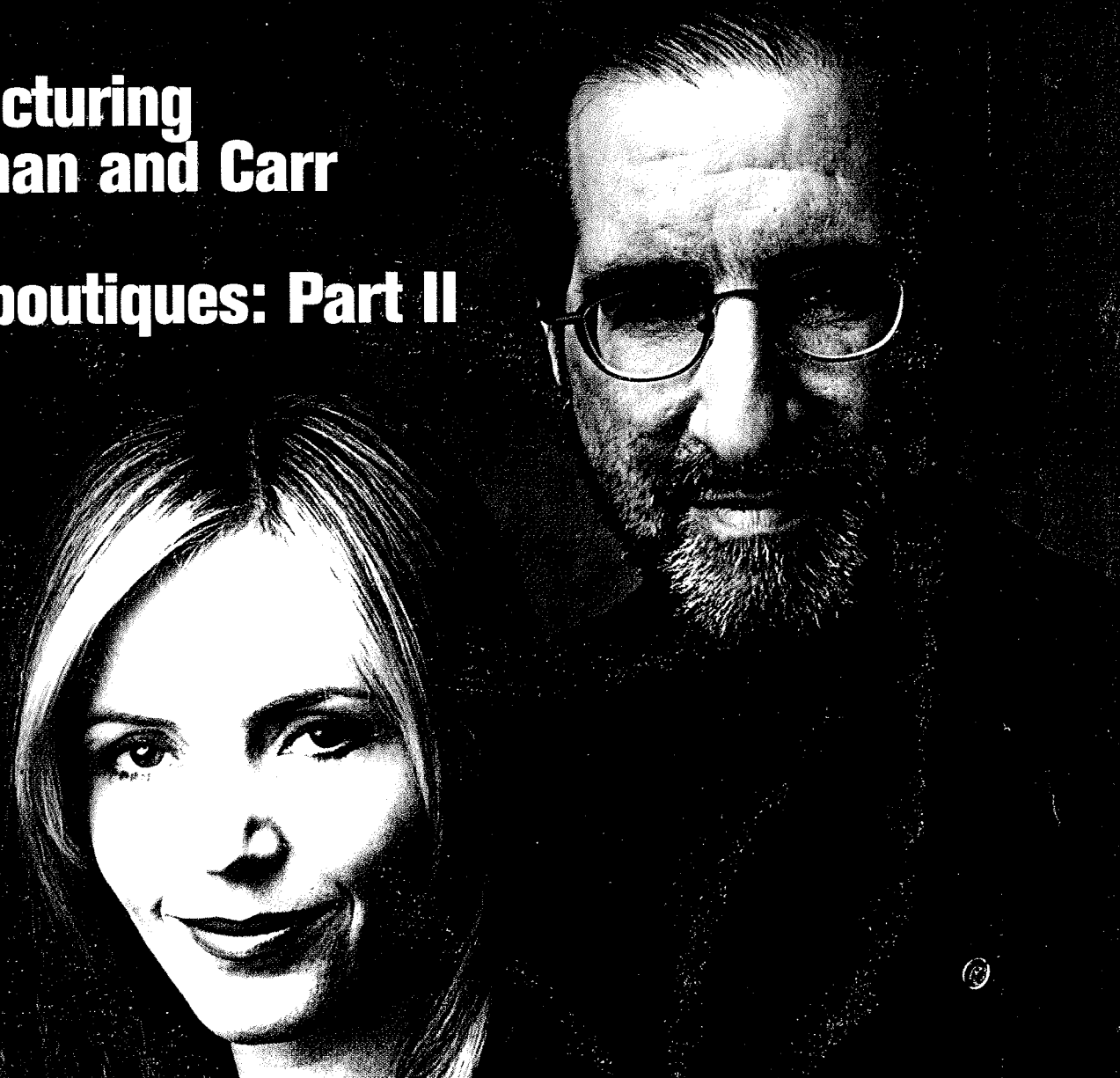
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U.S. Law Firms Invade London

Restructuring Goodman and Carr

Superboutiques: Part II



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SUPER BOUTIQUES

Part 2

By Julius Melnitzer

The number of lawyers in the litigation boutiques canvassed by *Lexpert* for the first and second parts of this article varied from five to thirty-five. For the boutiques, matching the resources of the litigation and other departments of the major, full-service firms is a problem of varying degree across the country. Boutiques in some regional centres may have as many litigators as the litigation departments of the local large, full-service firms. This is certainly the case in Winnipeg where Scurfield Tapper Cuddy's 21 litigators compare favorably with the litigation departments at city heavyweights such as Aikins, MacAulay & Thorvaldson, Fillmore Riley or Thompson Dorfman Sweatman. But in Toronto, even Genest Murray's 35 litigators cannot always match the overall numbers in the litigation departments of the downtown full-service firms, where some of the majors have 100 or more litigators. This is also the case in Montreal and Calgary, where the boutiques tend to be much smaller. And the problem is compounded when the comparison goes beyond a body count of lawyers to a comparison of support staff, students and general infrastructure.

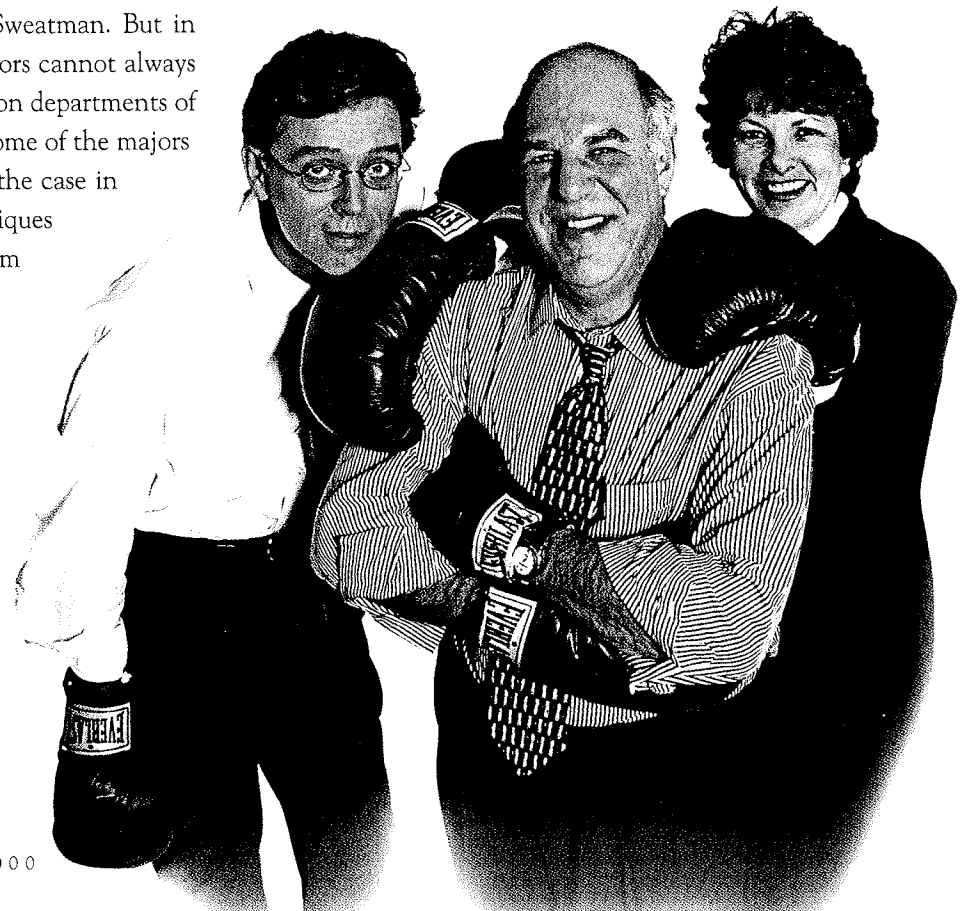
None of the boutique litigators expressed any hesitation about taking on the large departments they regularly face, subject to one caveat. "There are special cases like the abo-

riginal litigation I did at my former firm that can require as many as ten lawyers," says Mark Skorah of Vancouver's Skorah Doyle Khanna. "And if a case like that, or one that occupied all five lawyers in our firm came along, we'd have to turn it down." Skorah's attitude differs from that of Hughes, Amys' Paul French, who points to the Toronto firm's complement of 30 lawyers as "allowing us to take cases smaller boutiques cannot."

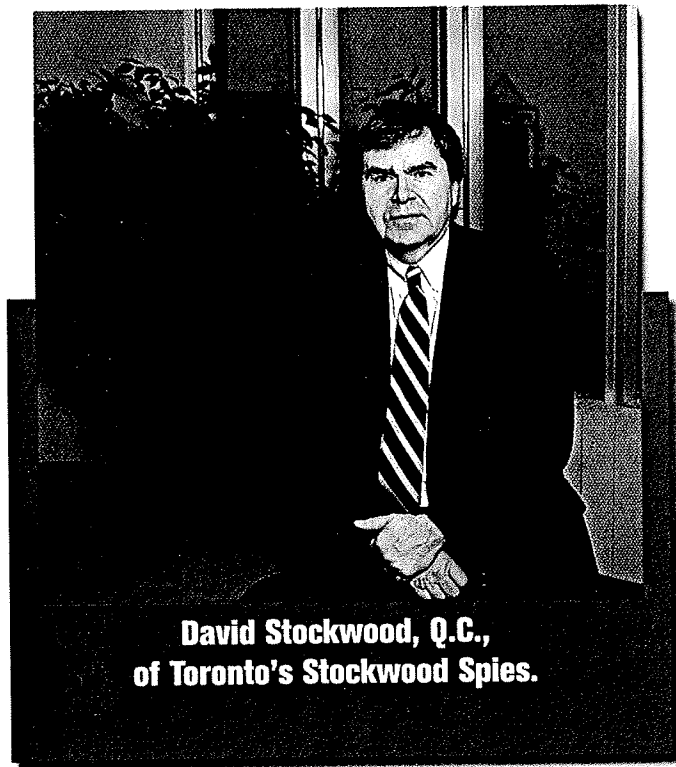
In any event, massive cases requiring ten lawyers are rare, according to David Stockwood, Q.C., of Toronto's Stockwood Spies, who has seven lawyers in his firm.

Interestingly, despite the

Clockwise: Terrence J. O'Sullivan, C. Clifford Lax, Q.C., and Eleanore Cronk of Toronto's Lax O'Sullivan Cronk.



wide range in size found among litigation boutiques, seven or eight lawyers appears to be the favoured or optimal size among the majority of top-drawer counsel operations. "Generally, even the largest cases do not need more people than a senior lawyer, a lawyer with mid-level experience, a



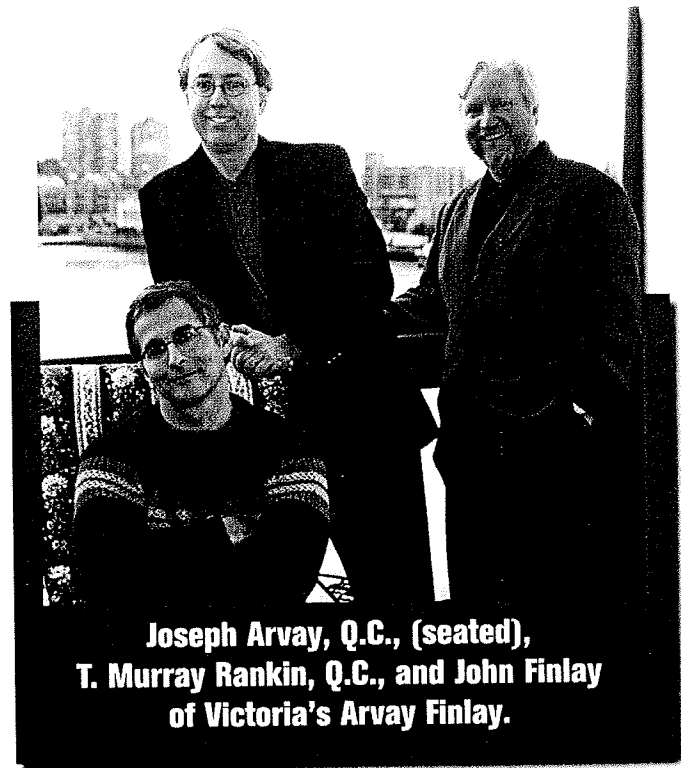
**David Stockwood, Q.C.,
of Toronto's Stockwood Spies.**

junior lawyer or student, and a law clerk," notes Irwin Nathanson, Q.C., of Vancouver's eight-lawyer Nathanson Schachter. "Beyond a certain number of lawyers on a file, you don't gain anything." This is also the view of Gordon Kugler of Montreal's Kugler Kandestin, which has 13 lawyers on its roster. "There are almost always only two or three issues really in dispute, and if you can distill those issues from the myriad of facts and issues others are trying to present, you'll be successful." Kugler goes on to say that, "There's so much extraneous material going through most cases, I hardly ever read it. And I won't conduct discoveries that are really wasteful fishing expeditions, or read transcripts that go on and on and on." The most cogent endorsement of this perspective, however, comes from a litigator who occupied several senior positions at one of Canada's leading full-service firms before moving to a boutique, and who spoke on condition of strict anonymity. "The number of people large firms throw at cases is wholly unnecessary," our source said. "It's as if they have a flock out there that they have to feed."

According to many practitioners, the trick for boutiques who wish to maintain a relatively small size is to avoid taking on more large cases than the firm can handle without

reducing its level of personal service. In other words, turn work away. But that, according to our unnamed source, is heresy at the large firms. "Most of the large firms recruit beyond their needs because they feel an intense competition to keep up with the pack. At my old firm, we offered jobs to students without reference to whether we had work for them, just to ensure nobody thought we were unsuccessful. A smaller organization would never do that, could never afford to do that. And adding people you do not need leads to huge overheads." Huge overheads that boutiques do not have, particularly because many outsource support services ranging from paralegals to information technology assistance to basic office tasks. "My rate is lower and more flexible than it was at my old firm," says our source.

This is not to say litigation boutiques come cheap. But their rate structure incorporates lower overheads and allows comparable and even greater profitability ratios on lower dollar amounts. "We have to make sense from an economic standpoint of pursuing litigation in its own right, as



**Joseph Arvey, Q.C., (seated),
T. Murray Rankin, Q.C., and John Finlay
of Victoria's Arvey Finlay.**

opposed to it being an aspect of a larger service," says James Woods of Montreal's eight-lawyer Woods & Partners. "We can look at briefs on a case by case basis and budget accordingly." Similar views are expressed by Joseph Arvey, Q.C., whose seven-lawyer Victoria and Vancouver-based litigation boutique, Arvey Finlay, has quarterbacked some of British Columbia's most important trials. "We simply do not have the luxury of wolf-packing a file," Arvey says. And, in any event adds his partner John Finlay, doing so

has serious consequences as it can take out of the equation the all-important comprehensive tactical grasp that senior counsel must have of any complex matter. Finlay says it is quite simple. "The more lawyers there are on the file, the less any one lawyer knows about the entire file."

Greater efficiency is another cost-effective benefit boutique practitioners say they provide clients. "Want to know how I did a trial when I was at a large firm?" asks our source, whose name appears as counsel on some of Canada's longest and most complicated cases. "I did not even know what courtroom I was supposed to be in. There were messengers delivering boxes with documents for me. Now I own a luggage cart. I take only what I need. If a document arrives, I

make one copy, not ten. Clients are getting more and more sensitive to the fact that the large firms cannot handle lawsuits for less than six figures and, in more and more cases, seven figures." For many of the big firms it is, or was, a different world. Glenn Smith, who practises with Toronto's 17-member Lenczner Slaght Royce Smith Griffin notes that "When Doug Laidlaw, Q.C., (then the senior litigator at McCarthys) was alive, clients would meet him once and then not see him again until the trial, and as often as not, someone else would end up doing the trial. In a big firm, you can do that just because the substitute is from McCarthys, and that creates instant credibility with the client." But the efficiencies of boutiques, according to Stockwood, dispense with the need for "an army of juniors." Boutiques achieve these efficiencies, says Eleanore

Audi Alteram Partem

"It's unfair and inaccurate to say that big firms throw too many people at lawsuits," says Joel Richler, co-chair of Blake, Cassels & Graydon's commercial litigation department in Toronto. "I've been in a room where lawyers from a boutique have outnumbered me, by as much as three to one on discoveries and three to two at trial." The days of big firm lawyers attending discoveries with bag carriers is over, Richler adds, simply because clients will not pay for it. Fasken Martineau Du Moulin's John A. Campion, who spearheaded the successful severance of Canada's stockbrokers from the Bre-X class action litigation, maintains that the defence in this massive case was conducted with "extraordinary efficiency and without a duplicated hour among the lawyers involved."

As further testimony to corporate clients' satisfaction with well-run large firm litigation departments, Paul Steep, the head of litigation in McCarthy Tétrault's Toronto office, notes that only one corporate client's file left his firm when the Lenczner Slaght group broke off. "Major corporations have ongoing work that is tied up with the corporate and securities department, and they want a team that includes the lawyers in those specialties." Indeed, Richler suggests the perception that big firms over-lawyer their files may spring from the host of other specialties available in-house to large firm litigation departments. "If I can go down the hall and talk to a securities or municipal expert, I suggest there is an economy to that over hiring outside counsel."

So what accounts for the litigation boutique phenomenon of the nineties? According to Charles F. Scott, Ogilvy Renault's Toronto-based senior Ontario litigator, it's not a phenomenon at all. "Everything old is new again," Scott explains. Scott began his career as an articling student with Kimber Dubin, former Ontario Chief Justice Charles L. Dubin, Q.C.'s law firm, which "even then was a prototype for the litigation boutique." Just

one week after Scott joined Kimber Dubin, the firm merged with Tory Tory DesLauriers & Binnington, where H. Lorne Morphy, Q.C., Robert P. Armstrong, Q.C., Sheila Block and Scott kickstarted the litigation department. "What's important to litigators is not to be the fifth star in a big firm's service bureau," Scott says. The key to keeping a strong litigation department on hand in a big firm, he says, is to allow a combination of service litigation for corporate clients and a traditional "one-off" counsel practice where litigators are themselves rainmakers attracting clients.

"The big move to litigation boutiques came in the eighties when Genest Murray started up and Cherniak (Earl A. Cherniak, Q.C., of Lerner & Associates) moved his practice from London to Toronto," says Meighen Demers' Robert L. Armstrong. Armstrong has a unique perspective on the boutique issue from his perch as senior litigator at mid-sized Meighen Demers. "Guys like Lenczner and Slaght (Alan J. Lenczner, Q.C., and Ronald G. Slaght, Q.C. of Lenczner Slaght) saw Cherniak succeed and they said to themselves, 'We have high profile names too, we can also get conflict work and we can be successful' - and they were right. Big clients also use boutiques because they know that when they call people like Lenczner, they'll get Lenczner."

According to John Campion, senior litigators depart large firms to avoid giving up the "few big cases around because of conflicts" and because they believe "there is a better chance of getting their names in the public eye if they are with small firms." But Campion, who knows many of the boutique litigators mentioned in this article well, believes "personal reasons for leaving outweighed their professional reasons for leaving." There is more than a hint of this consideration in Charles Scott's explanation for his departure from Torys to head up Ogilvy's Toronto litigation department about a year ago. As Scott notes: "After you turn 50, a change of professional atmosphere adds a little kick to one's life."

Cronk (formerly of Fasken Campbell Godfrey, now Fasken Martineau DuMoulin) of seven-lawyer Lax O'Sullivan Cronk, by stripping out the middle layer of lawyers and having the senior partners take a hands-on approach to case management, appearances, and client contact. "My clients appreciate that they are dealing with me," says Peter Greene, a partner in Kelly Affleck Greene's 13-lawyer Toronto office. "And all of my partners are of the same ilk." This is an important advantage in an age where many clients are looking to the talents of the individual lawyer instead of a firm brand name when deciding whom to retain.

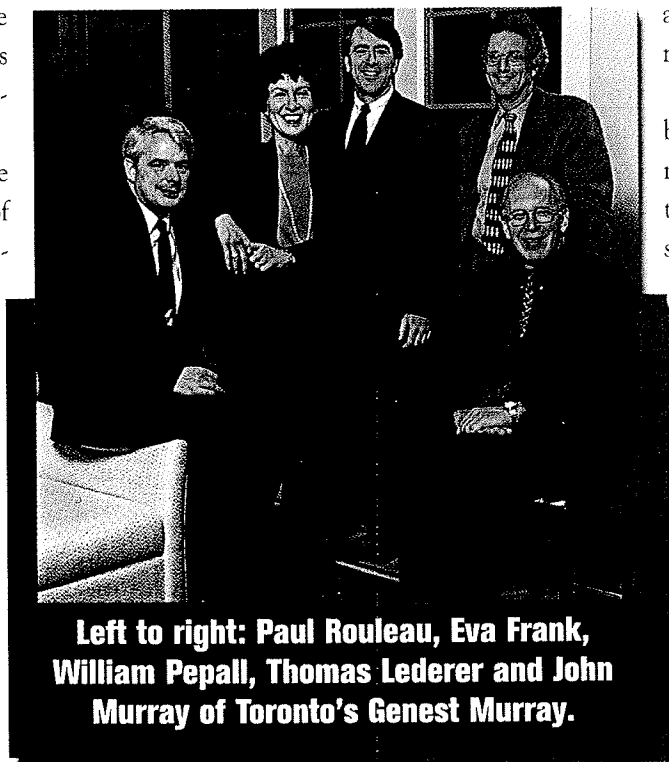
James Hodgson, formerly with Blakes and now practising with eight-lawyer Hodgson Tough Shields DesBrisay O'Donnell in Toronto, says he is in court much more often these days, and does some of his own discoveries. Cronk's partner Clifford Lax, Q.C., (formerly of Goodman Phillips & Vineberg) tells his clients that he will be deeply involved in preparatory work. For the first time in years, Lax finds himself showing up in Motions Court. "From the client's point of view, it's a very efficient way to work," says Terry O'Sullivan (formerly of McMillan Binch), the third founding partner of Lax O'Sullivan Cronk, "because one hour of my time or Cliff's time or Eleanore's time is equivalent to many more hours spent by junior lawyers." This is because the success of top-tier litigators lies in getting to the relevant issues and facts quickly, a benefit that many boutique practitioners say is lost among docket-happy juniors. "I know my clients and I know the work that is in the firm and I can control the quality of that work," notes Vancouver's Irwin Nathanson.

The "hands-on" attitude that characterizes so many of the leading boutique practices also extends to another area that is of vital if not defining importance: the admission of partners. At the major, full-service firms the partnership more often than not simply rubber-stamps the admission decisions made by partners regarding those partners' departments. Second guessing one's partners on matters

which you generally have no direct knowledge of does not make sense. Within firms, and within large departments, admission decisions can frequently be very political. Again, to give voice to our unnamed source: "In my previous firm, there was so much log-rolling regarding partnership admissions that you would have thought we were all lumberjacks. But, when you have a large corporate client base whose litigation needs require constant attention, and when there is a need to 'keep the peace', the fact that so-and-so would not be your first choice is less important. As long as they would be your second choice, it's OK. Now we look at these decisions very, very carefully." Indeed, every leading boutique interviewed for this article emphasized again and again the importance of collegiality and a shared commitment to excellence when making decisions regarding partnership admission. As Eva Frank at Genest Murray points out, "resources in the sense of back-up support is not the critical factor in explaining the success of certain boutiques. It is the excellence of the people." At Genest Murray every partner meets with a prospective partner and the admission decision is a full partnership decision. "If you want to call us demanding," Frank says, "go right ahead."

Case management efficiencies and high partnership admission standards are not the only advantages boutiques say they enjoy. "Administrative decisions come far more quickly, something that clients perceive and appreciate," notes Montreal's James Woods. That puts Woods in a position to devote "far more of my time to just practising law," again diminishing the need for reliance on juniors.

Escape from administrative bureaucracy is a freedom that is relished by many boutique practitioners, including the construction and family law litigators of Vancouver's Jenkins Marzban Logan, all of whom previously practised at a leading Vancouver full-service firm. According to senior construction litigator Robert Jenkins, the amount of time spent on indeterminable administrative matters was clearly one of the important factors leading to his decision to establish a boutique practice. Jenkins notes that the

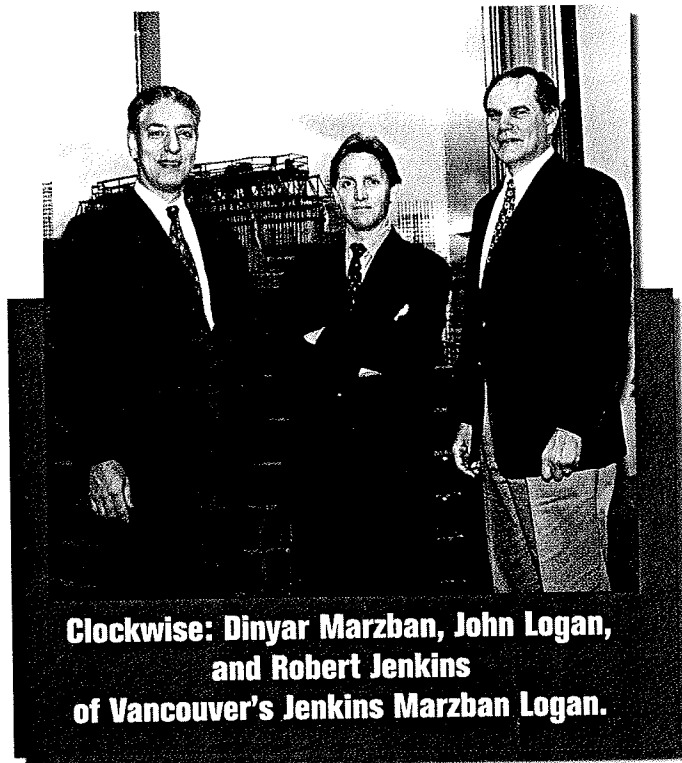


Left to right: Paul Rouleau, Eva Frank, William Pepall, Thomas Lederer and John Murray of Toronto's Genest Murray.

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absence of endless administration within a boutique frees up considerable time which can be devoted to what he does best, practise law. And, Jenkins points out, he is more successful financially and his fees are lower.

The ultimate leveler between the litigation boutiques and the big firms' litigation departments, however, may be technology. Hodgson remembers, as a young lawyer, that he was able to win some motions simply because he had access to materials in Blake, Cassels & Graydon's enormous library which were not available to his opponents.



Clockwise: Dinyar Marzban, John Logan, and Robert Jenkins of Vancouver's Jenkins Marzban Logan.

But on-line research and communications means the latest caselaw, statutes and academic writings are instantly available to any lawyer with a computer. Document management programs, imaging software and CD-ROMs dramatically reduce the personnel required to assemble raw materials and move them around. Video-conferencing facilities and e-mail cut down travel time and courier costs.

Today, hard work and keeping up includes making the most of technology. "We have ensured that everyone in our firm, lawyers and support staff, get deeply into our software applications and use them to the fullest, and we do not hesitate to spend on leading-edge technology," says Clifford Lax. "I can tell you, when our consultants came in to train us, the partners here paid a lot more attention than they did at their old firms." *Lexpert's* unnamed source is emphatic that technology gives boutiques advantages in

facing the large firms. "Every partner and lawyer in a large firm has a computer screen, but many do not use the technology, principally because they do not have to. They have juniors and support staff they can rely on instead."

The advantages of technology reach beyond case management and administrative benefits. The availability of internet-based research dispenses with costly libraries and the expensive space they occupy. "Big firms could easily cut their libraries in half, but they don't," says our unnamed source. "They just go on incurring expenses they do not need for the sake of appearances that are of dubious, if any, value." Meanwhile, sophisticated financial systems reduce administrative time for boutique partners and staff, leaving more time for case work.

Taking full advantage of the efficiencies state-of-the-art technologies can provide, such as voice-recognition systems, can lead to surprisingly significant reductions in overhead costs. Dives, Grauer & Harper is a litigation boutique founded in mid-1999 when three partners left one of Vancouver's major full-service firms. The new five-lawyer firm equipped itself with the most advanced support systems on the market. Whereas in their former environment this group of lawyers would have customarily had a support complement of eight, they now require only two support staff. According to partner John Dives, the savings on overhead was even more dramatic than they had anticipated. And, Dives notes, these savings enable the group to provide the same level of litigation services previously provided while at their former firm, but at very competitive rates.

Overall, the business case in support of the ability of litigation boutiques to take on anyone, regardless of size, is impressive. But the strongest evidence comes from the field, where the boutiques are doing exactly that. Terry O'Sullivan of Lax O'Sullivan Cronk makes perhaps the most telling point: "The firms we're fighting are the same firms that send us cases."

If technology is important to litigation boutiques in general, it is a *sine qua non* of survival for insurance law defence boutiques. In an industry where globalization is driving consolidation at a rapid pace, insurers are cutting down their approved lawyers' lists, increasing pressure on rates, demanding the submission of standard-form computerized accounts to third party auditors, and looking to on-line reporting procedures. They are even resorting to the unheard of by suing their lawyers for negligence as evidenced by Kansa General's \$6 million judgment (now under appeal) against their longtime counsel, Toronto

insurance boutique Fellowes McNeil.

One example of the consolidation taking place within the insurance industry is CGU Insurance Co. of Canada. In 1998 General Accident plc and Commercial Union plc merged their UK and European offices to form CGU plc. CGU Group Canada Ltd. is the umbrella company for all of CGU plc's holdings in Canada. One of these Canadian holdings is CGU Insurance Co. of Canada which, during the course of 1998 and 1999, went on to merge with General Accident Group (Canada) Ltd., Commercial Union Assurance Co., Canadian General Insurance Group, and L'Exclusive Compagnie d'Assurance Générale. Other member companies that now operate under the CGU banner are Traders General Insurance Company, Scottish & York Insurance Company, and OIS Ontario Insurance Services Limited. In September of 1999 CGU went on to acquire French-owned GAN Company of Canada, the country's 22nd largest property and casualty insurer. As one would expect, the CGU conglomerate provides work to hundreds of law firms across Canada. Reliable sources in the insurance bar told *Lexpert* that Toronto's highly-regarded Cassels Brock & Blackwell parted ways with CGU after the insurer twice unsuccessfully demanded lower hourly rates. The sources also reported that Toronto's Rachlin & Wolfson reacted to CGU's third-party auditing demands by cutting ties with General Accident, an insurer the firm had represented for two decades. Neither firm, however, would comment on developments involving CGU.

The silver lining is that consolidation and the subsequent tightening of purse strings within the insurance industry have made full-service firms less attractive to insurers, to the benefit of boutiques. It's no coincidence that two leading insurance boutiques in Toronto, Rogers, Moore and McCague, Wires, Peacock, Borlack, McInnis & Lloyd, are respective breakaways from Osler, Hoskin & Harcourt LLP and Smith Lyons, two large full-service firms. Rogers, Moore's Donald Rogers, Q.C., has been

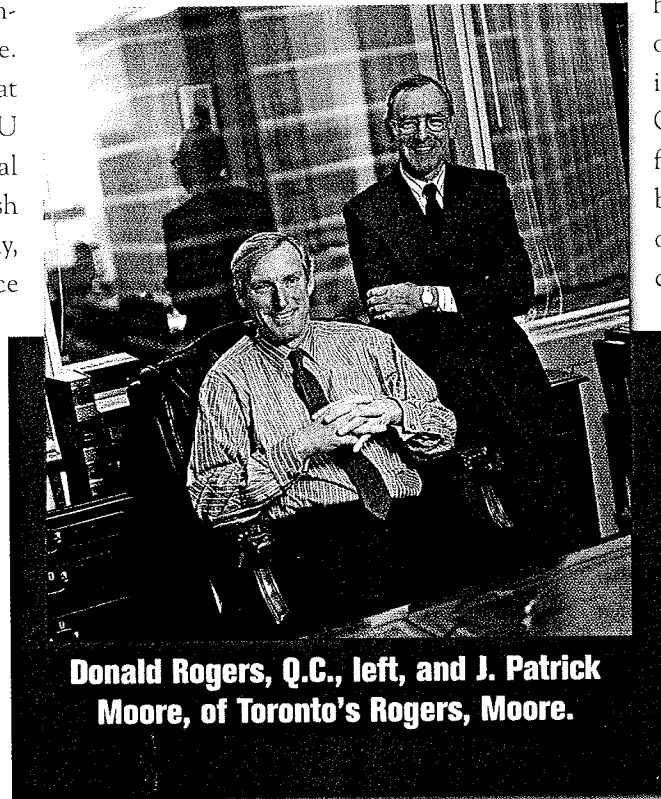
practising insurance law since 1970. His previous boutique, Rogers, Rogers & Moore, had earlier merged with Oslers. Rogers speaks highly of his years at Oslers, but says his clients are more comfortable in the smaller setting, an observation bolstered by the fact that "not a single client" failed to accompany Rogers, Moore when its 11 lawyers left Oslers five years ago. "There is a feeling among insurers that the lawyers are more approachable here," Rogers says. "And it's just as well. Only small firms can respond effectively to the changes going on in the insurance industry, including the need to control hourly rates with low over-

heads." Rogers credits those low overheads with the steady rise in his income since he left Oslers. "I am glad I was in a big firm, but the last five years have been the best professional years of my life, and not just financially."

The reaction of Rogers' clients is common among insurers. "Insurers are shying away from larger firms," said one Montreal lawyer, "because the cost is greater and they are not necessarily getting better quality work or enhanced responsiveness." And like Rogers, Moore, many boutiques are using sophisticated technology to adapt to the insurance

industry upheaval. In another development, nine firms spread across Canada, (including leading insurance boutiques such as Montreal's Gasco Lelarge; Toronto's McCague, Wires; and Vancouver's Whitelaw Twining), have formed Canadian Litigation Counsel, a nationwide association of independent law firms. Gasco Lelarge's Robert Gasco says the association, which is in turn affiliated internationally with the Harmony Group (US law firms) and Insurolaw (European law firms), allows members to cooperate in providing national and global services to insurers.

Not all defence firms have been as forward-thinking. Talk of law firm merger and dissolution is rampant in insurance law circles. "It's a very competitive business," says Philippa Samworth of Toronto's Fireman, Regan, Samworth. Her firm, in various incarnations, has been around since the early sixties, and now has 20 lawyers on



Donald Rogers, Q.C., left, and J. Patrick Moore, of Toronto's Rogers, Moore.

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staff. When CGU instituted third-party billing audits, the firm was unable to deliver accounts for months in the first half of 1999. "Everybody in the firm had to relearn how to docket, and we had to change our technology to conform with (the third party auditor's) requirements," Samworth said. "Technology is critical," agrees Thomas Clemenhagen of Lawson, McGrenere, Wesley, Rose & Clemenhagen, also of Toronto. "The administrative paper volume has increased tremendously over the years." Five years ago, Lawsons hired a full-time IT professional to enable the firm's 19 lawyers to service the changing needs and requirements of its large insurance-based practice.

For insurance litigation lawyers, it is a paradoxical situation. In a world where globalization is driving major Canadian full-service firms to bulk up in order to provide the depth their corporate clients require, consolidation in the insurance industry and the resultant pressure from very large purchasers of legal services to cut costs have led to a windfall for the boutiques. Not all boutiques, however. The winners are those practices adroit enough to restructure themselves in a fashion which permits them to effectively compete in an extremely cost-conscious market.

As any itinerant lawyer will tell you, there are often different rules for Toronto than elsewhere in Canada. This is as true of labour and employment law boutiques on the management side as it is of litigation and insurance boutiques. The top management labour practices in Montreal, i.e. Fasken Martineau Du Moulin, Heenan Blaikie, Lavery de Billy, and Ogilvy Renault, are substantial and important components of these firms. In Toronto, on the other hand, labour and employment at many of the large full-service firms is little more than a supplementary or support service for the firm's corporate group. According to David Wakely of Filion, Wakely & Thorup, corporate lawyers have little understanding of

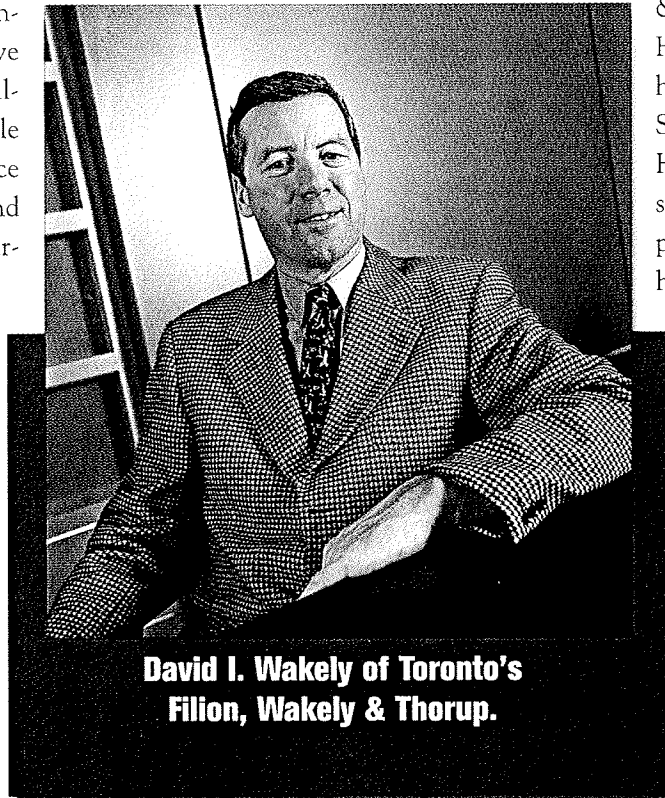
what labour lawyers do. "They think collective bargaining has little to do with practising law, as if we spend our time hanging around the Holiday Inn all day and night just for fun."

With the exception of a limited number of major full-service firm labour departments which have "stand alone" practices, the management labour relations market in Toronto is dominated by boutiques. Seen as clear market leaders are such firms as Filion, Wakely & Thorup; Hicks Morley Hamilton Stewart Storie; Mathews, Dinsdale

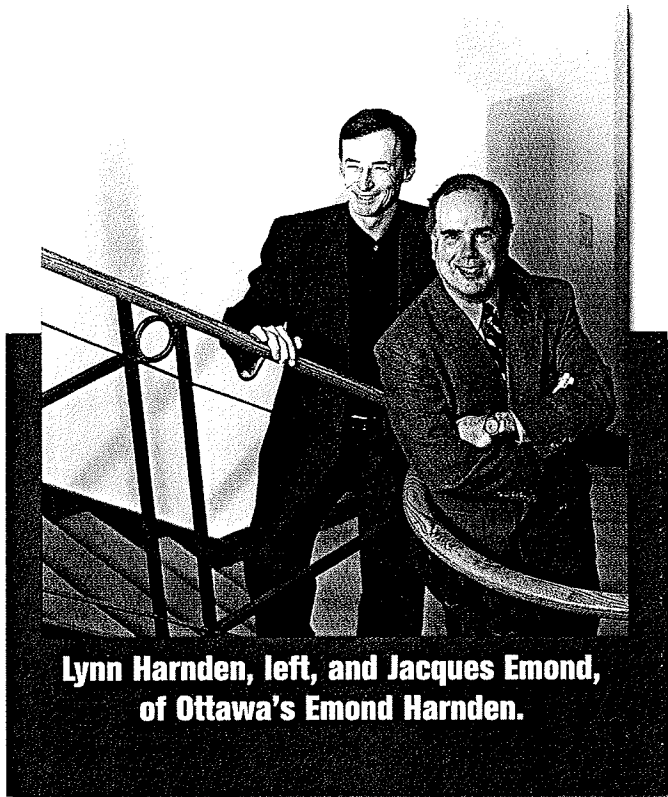
& Clark; and Stringer Brisbin Humphrey. Each of these firms has a distinct personality, says Stringer Brisbin's Charles Humphrey: "Hicks has been very successful in the corporate and public sector business, Mathews has a significant presence in the construction industry, and we have developed a national reputation in specialized areas like health and safety, and workers compensation." Wakely describes his firm as one with a problem-solving approach that has excellent relations with unions and provides quick and inexpensive solutions for clients.

Charles Humphrey suggests labour lawyers function more effectively in boutiques because labour law involves continuing adversarial relationships where emotional and ideological considerations can be an important part of the equation. "It's a people business, and in boutiques the lawyers, especially the senior lawyers, can be closer to the action in a day-to-day sense." Wakely maintains that his clients know "exactly what to expect" from the firm's 25 lawyers in Toronto and London, Ontario. "We can get people on a matter very, very quickly without having to deal with bureaucracies or checking with the corporate department to see if it's O.K. to send a certain lawyer on an injunction that morning."

There is a great deal of price-consciousness regarding fees among the labour law boutiques, and they have no compunction in comparing their rates with the fees charged by labour lawyers at the large, full-service firms. Humphrey states categorically that his firm is "20 per cent less costly" than labour departments at the large firms.



**David I. Wakely of Toronto's
Filion, Wakely & Thorup.**



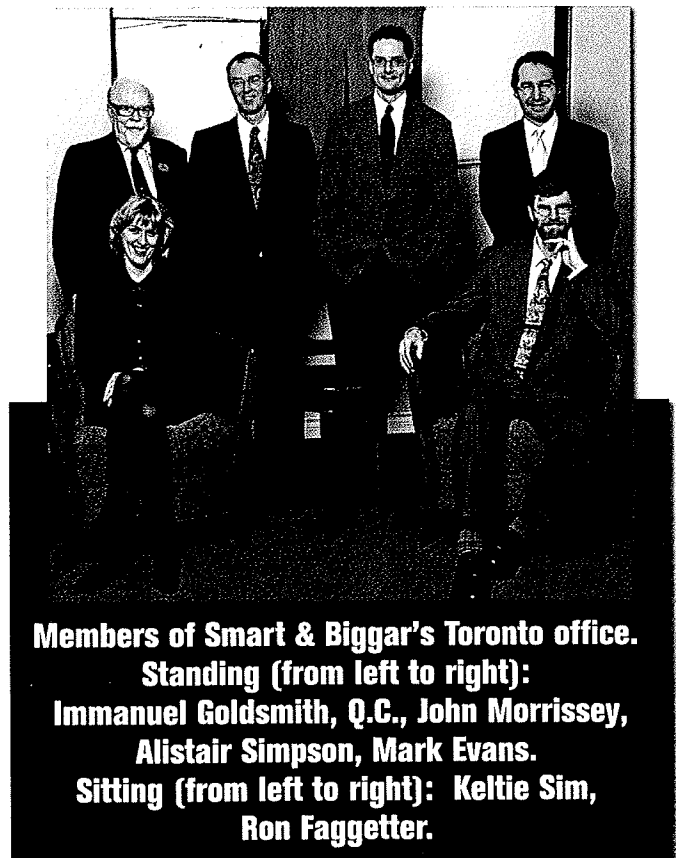
Lynn Harnden, left, and Jacques Emond, of Ottawa's Emond Harnden.

John Murray at Genest Murray agrees. "In management labour relations there is no question that the market is driven by the boutiques. It is not an unfair conclusion to suggest that the boutiques can be up to 20 per cent less costly than the labour groups at full-service firms, who are expected to bill out at rates comparable to those of the firm generally."

In Ottawa, Emond Harnden founding partners Jacques Emond and Lynn Harnden practised labour relations and employment law on the management side at Gowling & Henderson (now Gowling, Strathy & Henderson) in the eighties. "At the time, management labour law requirements in Ottawa were being serviced out of Toronto and Montreal, but there seemed to be an ever-increasing need for local labour law expertise," recalls Harnden. "It was difficult, however, to deliver those services from a large firm, partly because of conflicts." The two partners went out on their own, and have been "busy from the beginning." Their main competition, Harnden says, are the local offices of Ogilvy Renault and Borden & Elliot. But Harnden is a little more cautious than his Toronto counterparts about price comparisons. "It's possible that we can deliver services in a more cost-effective way, particularly since we don't have the high rents that come with being in the downtown core."

Being large, however, hasn't impeded the success of IP giant Smart & Biggar. The firm's 50 lawyers and 50 patent agents, technical consultants and students supported by a

staff of 150 spread across offices in Ottawa, Toronto, Montreal and Vancouver, make Smart & Biggar about twice the size of any other IP boutique in Canada. Despite Smart & Biggar's position in the market, Toronto Managing Partner Mark Evans has no trouble characterizing his firm as a boutique: "Boutique defines the parameters of what a law firm does, rather than its size." The advantage of size in an IP practice, according to Evans, is that it spreads the cost of the expensive infrastructure, like the proprietary docketing and file management systems that Smart & Biggar uses to monitor and protect their clients' intellectual property nationally and internationally. "Although it's generally regarded as a narrow field, IP law requires a critical mass because it is very diverse both legally and technologically," Evans adds. François Painchaud at Montreal's Léger Robic Richard agrees: "Corporate lawyers can move much more easily from industry to industry than IP lawyers or other IP professionals. Technology tends to be specific and very specialty intensive. An IP firm that has civil engineers on hand will not be able to service companies looking to patent peptides or chemicals or biotech products. The more you want to cover, the more you need to spend." Smaller patent practices - Painchaud calls them "a niche within a niche" - tend to limit themselves by providing good quality service to certain sectors or in certain aspects of IP practice, such

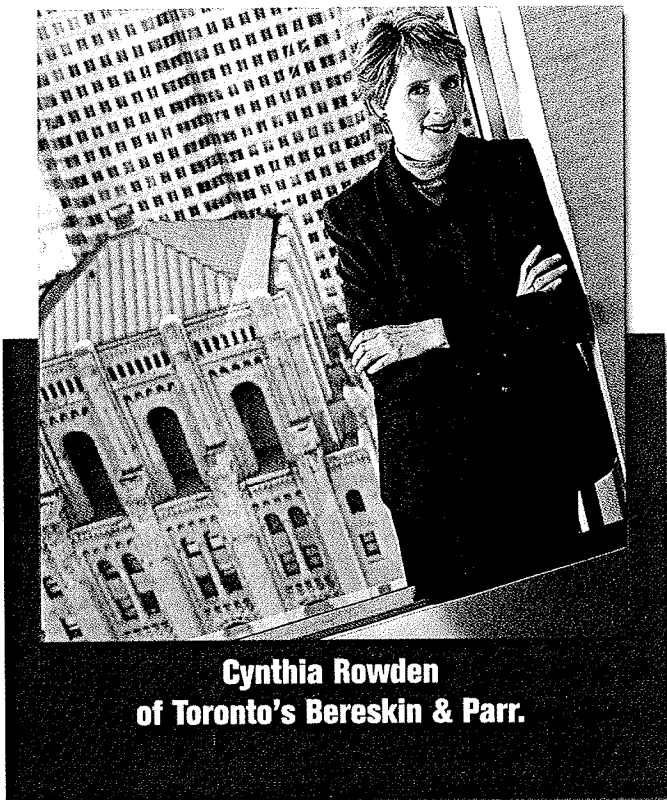


**Members of Smart & Biggar's Toronto office.
Standing (from left to right):
Immanuel Goldsmith, Q.C., John Morrissey,
Alistair Simpson, Mark Evans.
Sitting (from left to right): Keltie Sim,
Ron Faggetter.**

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as IP litigation.

At 35 lawyers, nine patent and trademark agents, and over 100 staff, Bereskin & Parr, Toronto's largest IP office, certainly has the critical mass to provide a full IP service. Still, like Evans, Bereskin & Parr partner Cynthia Rowden calls her firm a boutique. "Our growth since we started up in 1965 has not changed what we do," she explains.



**Cynthia Rowden
of Toronto's Bereskin & Parr.**

"We've simply gone from being a small boutique to being a large boutique." The high overheads of IP firms, she says, springs directly from the large volume of patent and trademarks such firms oversee. Rogers Hughes of Toronto's Sim, Hughes, Ashton & McKay, a 27-lawyer IP, 13-patent agent (through Sim & McBurney) operation is of the same mind. "In our end of the world, technology is big-time," he states. "The filing and obtaining of patents and trademarks from computer databases, the time-sensitive nature of the practice, and the complexity of the litigation mean we could not live without sophisticated technology." At press time, Hughes was at trial in a Montreal courthouse. His equipment included four computers, a number of PowerPoint projectors, two printers and on-line capacity.

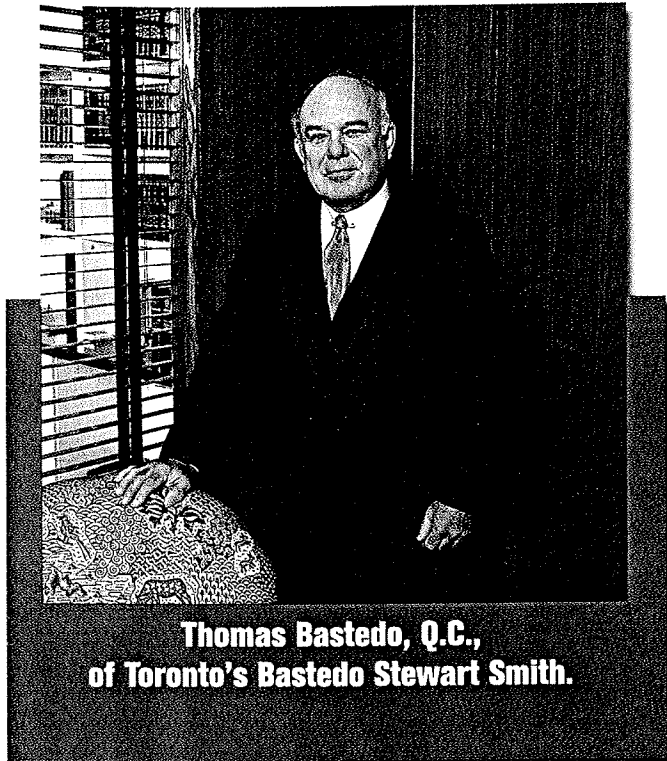
Yet the high start-up costs and premium on technical excellence do not explain the mixed success major full-service firms have met with in intellectual property law. They have tried. Practically every major IP boutique in Canada

has been approached at one time or another by full-service firms seeking a merger. The boutiques, concerned about the appropriateness of the fit, have declined. And the large firms have had varying degrees of success in starting IP departments from scratch. The boutiques are just too far ahead in their technical appreciation of clients' products and business, the cornerstone of IP legal business. But where were the large firms in the beginning, in the sixties, when the major IP boutiques were established? "We're sexy now," says Hughes, "but until recently corporate commercial and litigation departments in large firms tended to think of IP lawyers as second-rate and trivialized the practice." Ron Dimock of Dimock Stratton Clarizio agrees. "Years ago, patent lawyers were thought of as nerds and geeks. Today, major corporations view their intellectual property as their most valuable asset and they are prepared to go to extraordinarily lengths to safeguard these assets." That many of the large, full-service firms have missed the IP boat, there is little doubt. "I could use five people tomorrow to keep up with the work," says Rodger Hughes. Dimock Stratton Clarizio is in a similar situation having grown from three lawyers to thirteen in the space of just five years.

Family law and immigration are two other specialties where boutiques in large part dominate the field. In many cities across Canada the full-service firms' complement of family and immigration lawyers represents little more than a bolt-on to add substance to the "full-service" label. Many large firms "have one or two immigration lawyers whom they use as a supplementary service and not



**Left to right: Mark Eisen, Bruce Stratton,
Ronald Dimock, Michelle Wassenaar
and Dino Clarizio of Toronto's
Dimock Stratton Clarizio.**



**Thomas Bastedo, Q.C.,
of Toronto's Bastedo Stewart Smith.**

as a revenue generating component," says Joel Guberman of Guberman, Garson, a Toronto immigration law boutique specializing in corporate immigration. Immigration and family law practices are transactional, handholding-intensive, personal service businesses with heavy emotional aspects that do not lend themselves to the attitudes and economics of major full-service firms. As Guberman, whose firm is the beneficiary of many large-firm referrals, puts it: "Immigration work is too people-oriented to merit the attention of the large firms."

Leading family law boutique Bastedo Stewart Smith emerged from a mixed-service Toronto firm that totalled 30 lawyers at its peak. Eventually the firm downsized to ten lawyers with varied practices. "But that broke up about four years ago because the practices had nothing in common," says partner Thomas Bastedo, Q.C., one of Canada's top family law practitioners. Bastedo is convinced that the boutique is the best way to practice family law. They have the advantages of collegiality, an internal body of specialized precedents and legal know-how, minimal administrative time, low overhead because of "a synergy of expenses," and "we hardly ever have conflicts except when we get retained by husband and wife." Bastedo Stewart depends on referral business, which comes readily from large law firms "who don't want to become embroiled in the personal affairs of clients." In turn, the relationships give the boutique access to the referring firms' specialists when required.

Family law boutique practices are also prominent in

12 MEN

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1 PASSION

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Super Boutiques Part II

Calgary. "There are very few law firms with over 60 lawyers that have a family department," notes Julia Turnbull, Q.C., of 8-lawyer family law specialists Turnbull Boyes. The firm's clients must rank highly in Calgary society. Peter Newman, in his book *The Titans*, dryly comments that for establishment Calgarians going through a divorce a clear status symbol is how tough their family law lawyers are. According to Newman, Turnbull and her partner Judy Boyes are two of the toughest such practitioners in the city. Turnbull, whose 11-year-old firm started up in 1988 with two lawyers, says that the personal nature of services her firm provides would make them more costly in a large firm setting. "My husband's a partner at Code Hunter (now Gowling Strathy & Henderson) and I have no desire to work in that kind of setting," Turnbull says. "I think we'd all have to work harder and longer at a large firm to make the kind of money we're making now."

This much is clear from the wide range of law firms which may properly be called boutiques: they share a entrepreneurial spirit, a desire to be on their own, to be in control, and to create something that belongs unique-



Julia Turnbull, Q.C., left and Judy Boyes of Calgary's Turnbull Boyes.

ly to them. They articulate a strong need to break away or stay away, in the words of one lawyer in Thorsteinsson's Toronto office, "from being a cog in a monolithic machine."

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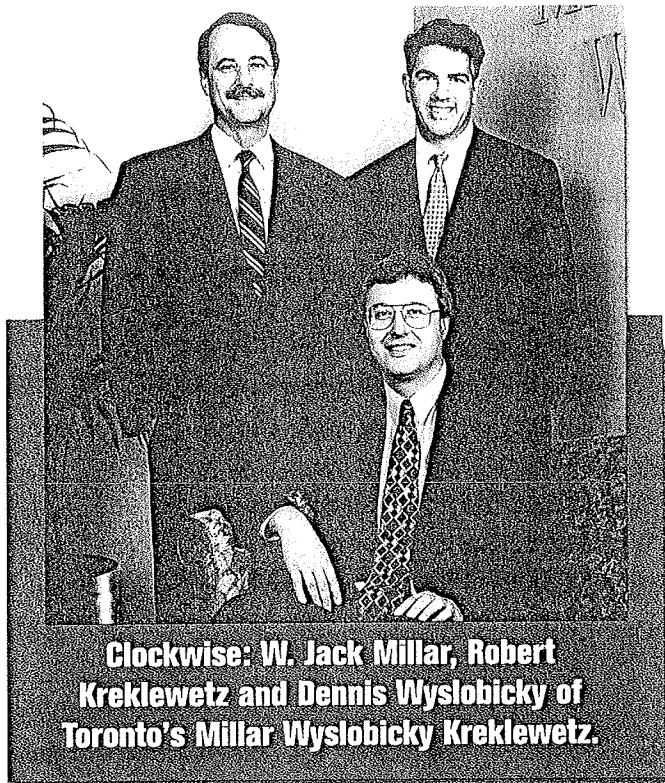
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Clockwise: W. Jack Millar, Robert Kreklewetz and Dennis Wyslobicky of Toronto's Millar Wyslobicky Kreklewetz.

To do that, boutique lawyers are prepared to break the mold. This is particularly true in the high-technology sector, where remuneration in the form of stock options or equity is gradually becoming accepted, even sought after, as payment for legal services. The entrepreneurial instinct is also evident among litigators, attracted by the freedom to broaden their professional horizons, to take on work for plaintiffs as well as defendants, and accept cases on contingency or other alternate fee arrangements. Even in the traditionally conservative tax area, Thorsteinsson's Managing Partner Douglas Mathew says his firm has attracted "more entrepreneurial types of clients, because we as a firm tend to be more entrepreneurial, much more in the driver's seat of a deal than the tax departments of the large firms."

For many, the entrepreneurial mentality becomes the great divide separating boutiques from the large, full-service firms. For example, insiders say that the precipitating event leading to the departure of Paul LaBarge and Debbie Weinstein from Blake, Cassels & Graydon to form Ottawa high-tech boutique LaBarge Weinstein centred on a dispute over the propriety and partnership treatment of stock options as an element of lawyers' remuneration. "We've acted on startups where we took equity positions, and other law firms are imitating us now," says Paul LaBarge. "We've pulled away from the docketable hours model, and will quote a fixed price for any transaction." Amy-Lynne Williams of Toronto IP/IT boutique Deeth Williams Wall says her firm's founders "left Blakes because we had a differ-

ent perspective on entrepreneurial clients than the other lawyers at the firm." And although Deeths has not taken an equity or stock position as remuneration for its work, "it's not out of the question," Williams states. Meanwhile, the firm is "billing by the hour, billing to a maximum, or quoting fixed prices for quantifiable work." Proposals for alternate fee arrangements, she says, require a quick response for the firm's fast-moving clients. "It's difficult to move quickly in large firms, especially on fee issues," Williams observes. The emphasis entrepreneurial clients place on lawyers' work product rather than the mechanics of how long it took to produce the product, then, may be a better fit with boutiques than large firms. "When lawyers started with a billable hours model, they did themselves a huge disservice because they discounted the value they bring to transactions," says LaBarge, "They capped their professional returns because there are only so many hours in a day."

This is not to say boutiques are problem-free. Success brings questions about growth, and growth causes big-firm issues to emerge. The inevitable cycle has already taken its toll. In Toronto, the lawyers making up Thornton Grout Finnigan broke away from litigation boutique Kelly Affleck Greene, itself a breakaway from Fasken Campbell Godfrey (now Fasken Martineau Du Moulin) to form a more specialized insolvency litigation boutique. Similarly, Millar Wyslobicky Kreklewetz, a microspeciality three-partner tax law firm that has become a brand name for commodity tax and related international trade work, left Thorsteinssons in 1995, four years after arriving there from Blakes' Toronto office. "When we were at Blakes, lawyers told us that we'd get more referrals if we were a stand-alone tax firm," says partner Jack Millar, "but after four years at Thorsteinssons, we got the same feedback." Ironically, the entrepreneurial spirit motivated both moves.

The pervasiveness of the entrepreneurial mentality in a size-conscious, specialized legal practice may be what ultimately defines boutiques. "Whenever lawyers leave big firms or however they start out on their own, they have to find business or they die," says Michael Flavell, Q.C., of Ottawa's Flavell, Kubrick & Lalonde, an Ottawa boutique well known for its international trade and competition law work. "In the big firms, there will always be work from historical clients. But we in boutiques live off our reputations. People come to us as specialists, so if clients stop thinking you're excellent, you're toast. You've got to believe in yourself." ■

Julius Melnitzer is a Toronto legal affairs writer. This text is the second and final part of our article on Super Boutiques. The first text appeared in the November 1999 issue of Lexpert.