

★★★★★ Top boutiques ★★★★★



The new normal

The top arbitration chambers, personal injury, and aboriginal law boutiques are offering new opportunities for practitioners, as well as building on new areas and offerings in the legal field.

By Shannon Kari

The reason so many judges are continuing to work as arbitrators after stepping down from the bench, is that after a lifetime in the law, “you can’t just turn it off like a tap,” says former Supreme Court of Canada justice Ian Binnie. Instead, “you kind of go into a slow fade,” he jokes.

Far from fading, Binnie is one of a number of former senior judges and prominent lawyers who are now active

in the increasingly competitive arbitration and mediation sector. Binnie is a member arbitrator at Arbitration Place in Toronto, along with a number of other leading legal practitioners, including former chief justice of Ontario Warren Winkler, associate chief justice Dennis O’Connor, and Court of Appeal justice Robert Armstrong. Former SCC judges, Michel Bastarache and Jack Major are at ADR Chambers, as is former Ontario chief justice Roy McMurtry.

The high-profile roster likely helps explain why these firms were among those selected as the top 10 arbitration chambers in *Canadian Lawyer’s* readers survey. A record number of responses were submitted to select the top arbitration chambers and aboriginal and personal injury law boutiques.

The top arbitration firms ranged from operations with large rosters of lawyers to small ones such as AR Group in Toronto. Guy Jones and Shari Novick

offer mediation and arbitration services primarily in the areas of personal injury and employment law. “It is important to find a niche,” says Jones, whose past experience includes time spent as the director of litigation for the City of Toronto.

There have been a number of new entrants into the field in the past five years and it is becoming more competitive, Jones suggests. “You can’t rest on your laurels,” he adds. While the ongoing backlog in the civil courts may mean more potential litigants are looking for alternative solutions, it doesn’t mean a reduction in expectations. “They want quick decisions. You have to provide a good service,” says Jones.

For Binnie, who went straight from private practice to the Supreme Court, the crowded ADR field is not that different a concept from when he was first on Bay Street. “It is a more dignified system of entrepreneurial justice,” says Binnie. Speaking to *Canadian Lawyer* the day before he was scheduled to fly to Singapore to arbitrate a dispute, Binnie says increasingly, there are international opportunities for Canadian arbitrators. “It is a chance to put Canada on the map,” he says.

Another area of the profession where the practice is growing and constantly evolving is in aboriginal law. For the first time, *Canadian Lawyer* readers were asked to pick the top aboriginal law boutiques. The five firms selected are based in a number of different provinces.

Jean Teillet, a partner at Pape Salter Teillet LLP, says it is still a much smaller field than other legal areas, but the scope of the work is changing. “For 20-plus years, what we were doing almost exclusively was trying to negotiate or litigate some kind of recognition,” says Teillet, a founder of the Métis Nation of Ontario. “The idea that there could be equity partnerships was not even on the table,” she recalls. As a result of a number of Supreme Court decisions over the years, “those doors are now open. That litigation has changed the landscape.”

Pape Salter has offices in Vancouver and Toronto and it is not uncommon for

aboriginal law boutiques to have an association with a lawyer in another province. Victoria-based Devlin Gailus Westaway Law Corp., also has an office in Ottawa, headed by a former lawyer for the federal government. The practice of aboriginal law is now very much negotiation-based, says Christopher Devlin. “A significant amount of the practice is negotiation of claims and economic opportunities,” he says. While the discussions with governments are always civil, “it takes place at a brutally slow pace,” says Devlin.

For a firm to stand out in this area “a personal touch,” is essential, he says. “You have to be in the communities. Trust is so important.”

The length of time for a case to make it through the courts or for an agreement to be negotiated between a government and First Nations can be a financial stress on a boutique firm. Maurice Law in Calgary has tried to find a way to deal with this form of “access-to-justice issue,” by entering into an arrangement with an insurance firm. If there has been an independent review of the possible litigation and it is found to have merit, there is funding similar to a “line of credit,” explains Ron Maurice, senior partner at Maurice Law.

His firm focuses on specific land claims and unfulfilled treaty obligations, many of which involve territory that was “surrendered” to the federal government in deals signed in the early 1900s, under the pretext the land was being under-utilized. “About 25 per cent [of First Nations land] was surrendered back to the Crown,” during Sir Wilfrid Laurier’s tenure as prime minister says Maurice, often in deals tied to land speculators with ties to the federal government. The firm’s most successful negotiation to date was a \$130-million agreement reached with the federal government on behalf of the Cote First Nation in Saskatchewan. The settlement involved 15,000 acres of reserve land surrendered in 1905.

While this area of the law has grown to the point that some firms specialize, Montreal-based Dionne Schulze is a “full service firm” for its aboriginal clients. Enforcing treaty rights, interpreting statutes as they apply to First Nations and providing

specialized services to individual bands, are all part of the practice, says David Schulze. He describes the firm’s clients as being similar to “small governments” and as a result, they require a wide range of legal services. One example was a class action over the application on reserves of a provincial fuel tax. Schulze acted for the chief of the Assembly of First Nations of Quebec and Labrador, in a \$2-million settlement reached in 2011.

This year’s top personal injury boutiques boasts two new firms — BolandHowe and Litwiniuk & Co. — since the last survey in 2013. Firms from Ontario, British Columbia, and Alberta are represented in the top 10.

As it was two years ago though, the biggest issue in personal injury, in the country’s largest province, is the explosion in direct-to-consumer advertising. For the firms with a long track record in personal injury litigation and extensive courtroom experience, the advertisements on radio stations, billboards, and television promising virtually risk-free results, can be a source of frustration.

“I believe you need to be willing to be in the trenches, fighting for your client in court,” says Tim Boland, of BolandHowe in Aurora, just north of Toronto. While he believes “the vast majority” of personal injury lawyers do their best for their clients, it is “very difficult for the public to cut through the advertising noise,” says Boland, a past recipient of an Ontario Trial Lawyers Association award for accomplishments in trial advocacy.

His views are echoed by James Vigmond, of Oatley Vigmond LLP. His firm entered into a marketing alliance called the Personal Injury Alliance in 2012 with McLeish Orlando LLP and Thomson Rogers, as a result of the advertising blitz by some firms with significantly less litigation experience. “The whole issue of advertising is vexing and frustrating,” says Vigmond. The increased marketing emphasis is something that he would like the Law Society of Upper Canada to take a more active oversight role in, to ensure that personal injury law firms advertisements are not misleading. **CL**

And the award goes to...

Once again, as they have been in every survey since the award was first conceived, the three law firms of PIA Law are honoured to be ranked among the top ten Personal Injury Law Firms in Canada by Canadian Lawyer Magazine.

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