

LEGAL POST



KEVIN VAN PAASSEN / NATIONAL POST

Seven chairmen for Seven Sisters: The men who run Canada's most influential law firms. From the left, Ed Waitzer of Stikeman Elliott; Les Viner of Torys; Tim Kennish of Osler Hoskin & Harcourt; Jim Christie of Blake Cassels & Graydon; Iain Scott of McCarthy Tétrault; Dale Lastman of Goodmans; and Bill O'Reilly of Davies Ward Phillips & Vineberg, photographed at Canoe atop the Toronto-Dominion tower.

MOTIONS

A look at the legal world's comings and goings

Benchers big pay squabble



SANDRA RUBIN

Picture it. Forty-three lawyers vying for the floor. Among them, Earl Cherniak of Lerner & Associates, Neil Finkelstein of Blake Cassels & Graydon, John Campion of Fasken Martineau, Clay Ruby of Ruby & Edwardh, Julian Porter; Frank Marrocco of Gowlings and George Hunter of Borden Ladner Gervais. All enormously talented. None, however, known for brevity.

The Benchers of the Law Society of Upper Canada were arguing over Bencher remuneration. We hear they spent almost an entire day bickering over a proposal that they be paid an honorarium of \$25,000 a year.

Many of the bigger names were against it. "If we get paid, every poor solo practitioner [read schmuck] who makes \$30,000 a year is going to try to get elected and make a career out of this," says one.

"And why not? It would double their income."

See MOTIONS on Page FP12

Will Canada's corporate pool remain big enough to even sustain the Seven Sisters?

Rumble on Bay Street

BY SANDRA RUBIN
Senior Business Writer

The Seven Sisters, the charmed circle of Bay Street law firms that traditionally dominate the country's largest deals, held their leadership positions last year but the latest independent rankings signal subtle power shifts as Canada's pre-eminent law firms battle over a shrinking pie.

Toronto, the most competitive legal market in the country, has 21 firms going after high-end deal work, some a great deal more successfully than others. That group of 21 is broken down into tiers, with Osler Hoskin & Harcourt; Davies Ward Phillips & Vineberg; Blake Cassels & Graydon; Torys; McCarthy Tétrault; Stikeman Elliott and Goodmans — the Seven Sisters — considered tier-one for their depth of talent and presence at the table on virtually all deals of note.

Competition for premium work is fierce. And there are challengers among the senior tier-two players, with Ogilvy Renault mounting a serious offensive on breaking into the top ranks. Fasken Martineau, Fraser Milner Casgrain and Borden Ladner Gervais are also making it clear that they are not about to go quietly into the night.

That has led to some intense skirmishing behind closed doors. "When you see those guys on a deal, anytime they can help you out — they don't, if you know what I mean," says the senior player at a tier-two firm.

But the fight for market share comes as many pundits question whether Canada's corporate pool will remain large enough to support even seven top-tier firms.

A great number of corporate mergers have already been done and bank mergers, which appear inevitable, will only

shrink the corporate base further. There are also U.S. market forces at play, with more corporate finance work fleeing south and the Sarbanes Oxley Act already having a significant impact on Canadian securities practices.

Many senior law-firm tacticians believe there will be enough high-end work to sustain only three or four tier-one firms a few years from now.

Each of the Seven Sisters is eminently capable of handling large, complex deal work and litigation. That means the question of how they differentiate themselves becomes imperative to maintaining market share.

The bets being placed today on strategy — which practice areas to bulk up, whether to be a full-service firm or do only high-end transactional work — will ultimately determine which firms stand their ground, which are forced to merge, and which slide out of the senior ranks.

Over the past year, lateral recruitment,

and the stakes weren't nearly as high.

A close examination of the new Lexpert rankings shows that Blakes, among the Seven Sisters, made the most dramatic advance over the past year through what one market observer calls "some very shrewd recruitment moves."

Blakes, a full-service national firm that predates Confederation and helped incorporate the predecessor to CIBC, has always been able to count on a huge volume of bank work. But it was seen as old-school and sleepy as recently as five years ago, and in real danger of slipping.

Under the leadership of chairman Jim Christie, a senior banking practitioner, the firm carried out a clear-eyed assessment of what was needed and committed the money to making the necessary changes.

It started with competition — an area so vital to structuring large M&As that sophisticated clients will sometimes se-

Blakes has made dramatic advances through 'some very shrewd recruitment'

or poaching select partners from rival firms, has become the strategy of choice for gaining quick tactical advantage.

Talent wars have been especially fierce in emerging practice areas such as information technology and intellectual property, and in "gateway" areas such as tax and competition, which are big in bringing in other business.

The jostling for market share has sent mobility among senior lawyers to levels unheard of a generation ago when partners stayed at the same firm their entire working lives.

But then again, a generation ago, Canadian law firms were still playing in a protected business environment —

lect a law firm on the basis of its competition group or split a deal, hiving off the competition elements.

Blakes brought Cal Goldman, a superstar in competition law, back from Davies less than a year after it welcomed back Neil Finkelstein, one of the country's leading competition litigators.

The firm also opened a Montreal office, moving bodies into what has been becoming a tactically important deal terrain. And it beefed up its Bay Street presence recruiting people like Eric Spindler, a corporate practitioner who led the CP breakup, away from McCarthy.

"Blakes has been acquiring people that will impress decision-makers with-

in large corporations," says one Bay Street strategist who, like his peers, spoke on condition of anonymity. "It is very surgical theft."

But the firm also appears to be nurturing some very promising younger talent. A look at the bull's-eye chart for senior practitioners and rising talent combined — a measure of bench strength — shows how far Blakes has come, placing it second only to Oslers.

As for Oslers, it had nowhere to go. As was the case in last year's rankings, it remains dead centre, 14 points ahead of Davies for strength at the most senior levels, and 17.5 points ahead of Blakes when younger talent is factored in.

Oslers is a powerhouse in M&A and corporate finance, and has arguably the strongest corporate tax group in the country. "They are like a juggernaut in these areas," says one Toronto-based strategist.

The firm sees tax, pensions and competition as areas that will be impervious to the onslaught of U.S. influences, and key to maintaining its dominance in a shrinking market.

And it wants to be in all of Canada's major deal markets. The rankings suggest that Oslers, which seemed incapable of doing anything wrong, may have misjudged the difficulties in entering the Calgary market in 1995. But it made no such miscalculation in its entry into Montreal just over a year ago. A slashing flank attack on high-end corporate work, the strategy has already started paying dividends.

Oslers acted for Montreal-based BCE and Bell Canada in the \$3-billion sale of Bell Directories to a group including Kohlberg Kravis & Roberts and the Ontario Teachers Pension Plan Board. Oslers Ottawa and Toronto offices were also brought in on what turned out to be the largest leveraged buyout in Canadian history.

See POWER SHIFT on Page FP14

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A WHO'S WHO OF TORONTO'S TOP CORPORATE LAW FIRMS

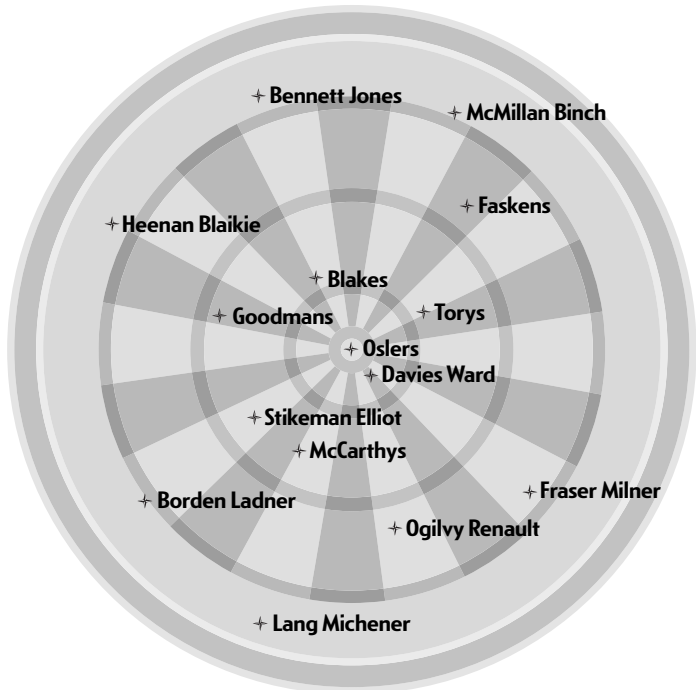
The bull's-eye charts show those firms ranked by Lexpert as the top corporate law firms in the key Toronto market. The ratings were compiled using data from 8,327 questionnaires completed by prominent lawyers, in-house counsel and users of legal services. In assessing corporate strength, Lexpert focused on eight key practice areas — corporate commercial, corporate finance, mergers and acquisitions, banking, corporate law, competition, insolvency and restructuring, and corporate litigation. The final ratings were compiled using a formula that assigns weighted points in the noted practice areas, as follows:

- 1.5 points for any lawyer identified as a leader in noted practice area listed in the 2002 Lexpert-American Lawyer 500
- 1 point for each additional lawyer whose name appears on the Most Frequently

- Recommended list in the 2001 edition
- 0.75 point for each additional lawyer whose name appeared in the Consistently Recommended tier in 2001
- 0.50 point for any lawyer who appeared on

- the Repeatedly Recommended list in 2001
- 0.25 point for each lawyer whose name appears as a candidate in any of the practice areas in the Lexpert database

TOTAL SCORES — SENIOR PRACTITIONERS ONLY



TOTAL SCORES — SENIOR AND RISING TALENT



COMBINED SCORES RELATIVE TO OFFICE SIZE



The overall result of this weighted assessment, taking the city's largest firms into account, is represented in the bull's-eye chart on the left. The middle chart shows the overall result taking major and secondary firms into account. The chart on the right is the score proportionate to a firm's size. It is arrived at by dividing the total score by the number of lawyers at each firm.

SOURCE: LEXPERT® COPYRIGHT 2003

NATIONAL POST

No firm immune to poachers

POWER SHIFT

Continued from Page FP9

Oslers was hit with some losses last year — notably Deborah Alexander, a senior corporate finance partner who went to Bank of Nova Scotia and George Addy, a respected competition lawyer who went to Davies — but its leading position for combined senior and younger talent suggests it won't be a problem. "Oslers is like a battleship that can take a lot of big hits," says the strategist. "It just shows what depth — and what deep pockets — they have."

If Oslers is a battleship, Davies is a cutter.

When it comes to strength at the most senior levels, the showing by Davies — which comes as close to any firm as nipping at Oslers' heels in the bull's-eye charts for senior strength — is especially remarkable when size is factored in.

Davies made its mark with less than half the numbers Oslers has in Toronto: 138 to 296. As the bull's-eye chart measuring strength relative to office size confirms, when it comes to strength pound for pound, Davies has no peer.

The law firm, with offices in Toronto, Montreal and New York, has always adhered to a strategy of small and sophisticated, limiting itself to top-end transactional

work for clients such as Celestica and Barrick Gold. It also has strong ties to Merrill Lynch.

Davies shines in complex deals such as the US\$1.6-billion acquisition by Australia's Amcor Ltd. of international business operations from Schmalbach-Lubecca of Germany. The deal was led out of Montreal with the international antitrust elements co-ordinated out of Toronto and heavy involvement of the New York office.

Holding second spot in a dead deal economy is a testament to the muscle of Davies' key practice groups — starting with M&A led by J.P. Bisnaire. The firm is structured to offer strong support for deal work in areas such as tax,

competition and securitization.

"Will Davies be able to continue showing so well if the deal flow doesn't come back?" asks one chairman. "A truer test may be a year or two out. I think it's still too soon to tell."

Davies, too, has been hard hit by defections. "They have lost so many partners in the last year-and-a-half that some people have started to refer to them as the farm team for the rest of Bay Street," says one strategist. Davies responds that it is the target of so much lateral poaching because it has such depth of talent.

As well as Messrs. Goldman and Finkelstein, it lost all the senior lawyers in its technology group, most notably Duncan Card, who went to Ogilvy Renault.

Technology is one of those emerging areas that, like outsourcing, is seen as so strategically important by some firms that they are investing heavily to get it up and running.

"When we recruit in the area, it's not for technology companies per se," says a senior strategist at another tier-one firm. "We're recruiting for the information technology requirements of our existing corporate base. The banks, for example, have huge amounts of information technology."

Does Davies see a strong technology practice as critical to holding its overall strategic position? Its next lateral recruitment may tell.

The bull's-eye chart for strength at the senior levels shows Torys and Blakes dead even, 14 points behind Davies, confirming that Torys has been able to maintain its position in the Toronto market while deploying considerable energies and resources to New York.

Torys has stayed small and transactional — and gambled on north-south instead of east-west, merging with a little-known New York firm in early 2000 and emphasizing seamless cross-border service to its clients.

In one of two highly strategic moves last year, the firm picked up a piece of Arthur Andersen's international tax group in New York, and signalled it intends to be a leader in U.S. tax as it affects Canadian client corporations.

Its bold cross-border manoeuvre, which raised eyebrows a couple of years ago, is "beginning to pay off big time," according to one senior strategist, with Torys acting for SBC Communications in the \$6-billion Bell buyback, and for Thomson Corp. when it divested itself of its remaining U.S. print operations and again on its US\$1-billion IPO on the New York Stock Exchange.

Managing partner Les Viner, seen as "the single most important factor" in designing the strategy, brought over the entire 16-member intellectual property group from the now-defunct Donahue last year to complement Torys Toronto-based information technology practice.

"What's really going to be interesting is to see what Barry Reiter, who heads their IT practice and is a really smart guy, does with that IT-IP combination," says one Bay Street player, "and whether that combination profits from the New York connections, because technology is very much north-south." Consider it a bet placed. The remaining three of the Seven

Sisters — McCarthys, Stikeman Elliott and Goodmans — are locked in a tie when measured for the strength of their senior practitioners, 12 points behind Blakes and Torys.

They may be side-by-side on the charts, but they are three very different firms.

McCarthy Tétrault is a big full-service model with offices across Canada. It is in the middle of a major corporate reorganization designed to knit its offices (and its army of more than 800 lawyers) into a unified firm with a common vision and a common profit pool.

There are growing pains, it's like trying to turn the Queen Mary. But with two of the Big Five banks on its roster, Bank of Nova Scotia and Toronto-Dominion Bank, and clients such as Noranda, McCarthys "has got one of the strongest franchises in the country," according to one strategist.

McCarthys also has what is viewed as the strongest consistent presence across the country of any of the tier-one firms, and it uses its offices in Calgary, Vancouver and Montreal to offer one-stop shopping on inbound U.S. and international work.

The firm's national strategy was clearly on show in the \$18-billion breakup of Canadian Pacific into five separate public companies, which involved significant teams in Toronto, Calgary, Montreal and London.

McCarthys also moved to bolster an already strong corporate tax group earlier this month, acquiring Doug Cannon from Fasken Martineau, to be reunited with Nigel Johnston. Like Oslers, McCarthys views Canadian tax as money in the bank.

Like McCarthys, Stikemans has a national platform with offices across the country, although unlike McCarthys, it has grown organically rather than through mergers, and is much smaller and more narrowly focused on transactional work.

Also unlike McCarthys, the rankings show Stikemans has two extremely strong offices — Montreal and Toronto — with Calgary, Vancouver and Ottawa not viewed as playing at quite the same level.

But the strength of Montreal and

al marketing, and it's paid off. It is my sense of the seven firms, they have the greatest profile internationally."

Stikemans, for example, acts for the Cheung Kong Group, controlled by the Li family in Hong Kong. Over the past five years the firm's Sydney office has overseen close to \$6-billion in mergers and acquisitions in Australia on Cheung Kong's behalf and has acted for them in infrastructure transactions throughout Asia and in the United Kingdom.

It's believed that today, nearly half of Stikemans' gross billings come from outside the country.

Goodmans, in sharp contrast, has a strategy of staying close to home and sticking close to its clients. The smallest and most entrepreneurial of the Seven Sisters, the firm is a testament to smarts over size.

Goodmans does not have one of the big banks in its stable and has shaped itself to take advantage of that fact — building a strong corporate and M&A team to serve on-the-move Canadian businesses such as Four Seasons, Roots and Cott.

The firm has carefully selected a few key practice areas and is among the market leaders in each of its chosen fields. It is especially strong in commercial real estate — counting the Reichmann family among its clients — and in the Canadian REIT market.

Goodmans also went shopping at the height of the dot-com boom for insolvency talent, snagging Geoff Morowicz, one of the leading practitioners in the field. It now has what is regarded as the strongest insolvency teams on Bay Street which, combined with its lock on the real estate investment trust market, has ensured it is perfectly positioned to ride out the slow deal economy.

In fact, the firm is widely believed to be the most profitable firm on the Street, and profitability is key to the talent wars — suggesting that even through it's the smallest of the Seven Sisters, Goodmans won't be an easy target for any challenger looking to topple an incumbent.

Among the senior tier-two firms amassing the talent to make a move, the rankings suggest that Ogilvy Renault has made the most dramatic advances as its merger with Meighen Demers, a respected Toronto boutique, began to show results.

Ogilvys was involved in the TSX IPO and would have been in on the Hydro One offering had it gone forward — two of Bay Street's flagship mandates last year.

"Ogilvy Renault's growth and success in Toronto is nothing short of remarkable," says one Bay Street lawyer. "In the space of six years they have gone from zero to over 145 lawyers and are very serious contenders for top-end work. They have made tremendous inroads in this market."

And no one believes it will end there. The high-stakes skirmishes between firms and between tiers are expected to continue throughout 2003, with the business of law, in terms of tactics and end-game strategy, not dissimilar to a hard-fought military campaign.

With apologies to Sir Winston Churchill, the practice of law is almost as exciting as war, and quite as dangerous. In war, you can only be killed once, but in the practice of law, many times.

It's not always Sisterly at all.
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