

# THE LONG

ACCOUNTING FIRMS IN CANADA HAVE THUS FAR BEEN UNABLE TO BREAK INTO HIGH-END BUSINESS LAW, BUT PATIENCE MAY YET BEAR FRUIT AS THEY CONTINUE TO BUILD CAPACITY IN LEGAL SERVICES

BY JULIUS MELNITZER

**THE RECENT ANNOUNCEMENTS** by two national firms that senior executives from PricewaterhouseCoopers and KPMG Canada would be joining them in key strategic roles is telling evidence that traditionalists are finally appreciating the extent to which the Big Four accounting firms have reset their sights on the country's legal services market.

Beth Wilson, former KPMG Greater Toronto Area Managing Partner, has succeeded Chris Pinnington, a lawyer, as CEO of Dentons Canada LLP. And Gino Scapillati, most recently Vice-Chair at PwC and the firm's former national managing partner, is now at Bennett Jones LLP as Vice-Chair, Strategy and Innovation.

Dentons characterized Wilson's recruitment as a "bold and innovative" move. "It is a reflection of our clients' increasing view that their legal advisors should be more than just a traditional law firm, and should offer broader perspectives, insights and understanding of their business and industry," said Richard Scott, chair of the firm's Canada Board. Elliott Portnoy, Dentons' global Chief Executive Officer, drew a parallel between the "significant disruption and transformation" affecting lawyers and the "auditing and consulting" professions. And Bill McFarland, CEO of PwC Canada, singled out Scapillati's role in helping to "transform [PwC's] go to market approach during a period of significant change."

At their core, the national firms' resort to Big Four talent recognizes both the extent to which the accountants are ahead of lawyers when it comes to technology and efficiency, as well as their emerging assault on legal services, including some of the profession's most cherished and profitable practice



PHOTO: SHUTTERSTOCK



# GAME

An aerial photograph of a city skyline at dusk. The sky is a deep blue, and the buildings are illuminated with warm lights. The word "GAME" is overlaid in large, bold, black serif letters across the center of the image. The buildings are a mix of modern glass skyscrapers and older, more traditional structures. The streets below are visible, with some traffic and streetlights.



areas. “The Big Four are much more agile and creative than law firms,” says Paolo Berard, Managing Counsel North America Home at Centrica, an international energy and services company. “Even as law firms are having trouble moving away from the billable hour, the Big Four are being proactive and they’re expanding what they do because they want to be in a company’s boardroom every six months.”



**DAVID ROBERTSON** > EY LAW LLP

“As opposed to going into full-service law, what we’re asking ourselves is, what services complement the existing professional services that Ernst & Young provides? We’re looking to add legal services where our client base is looking for a seamless provider.”

So if there’s any more doubt that Canada’s major firms will have to spread their wings in Big Four fashion, it’s quickly disappearing. What prompted the burst of urgency evidenced by the Dentons and Bennett Jones appointments, however, is the accounting firms’ resolute expansion into legal services in recent years.

“I wouldn’t be surprised if, 10 years down the road, law firms will have to go toe-to-toe with the Big Four or otherwise differentiate themselves in some way,” says Geoff Creighton, a review committee member for BlackRock Canada Funds and former chair of the Canadian Corporate Counsel Association.

For the most part, the Big Four are maintaining a studied insistence that they’re not poaching on lawyers’ hallowed territory of high-end business law. But there’s plenty of evidence that their long-term goals reach well beyond the scope of what they have characterized as “complementary” legal services. “The Big Four have been quiet

about what they’re doing, working in the weeds to bulk up on their legal-services capabilities while the traditional law firms have been happy sailing along on a 20-year bull run,” says *Lexpert* columnist Heather Suttie, a Toronto-based legal marketing and business development consultant who was formerly media relations director for Ernst & Young.

In 2016, Ernst & Young Canada merged Couzin Taylor LLP, an in-house tax boutique long associated with EY, and Egan LLP, a business immigration boutique founded by lawyers formerly associated with EY’s defunct satellite law firm, Donohue, Ernst & Young LLP. The two then combined with a business law services group led by former Norton Rose Fulbright Canada LLP partner Tony Kramreither to form EY Law LLP. The new firm promised to deliver “integrated, multi-disciplinary services including corporate reorganiza-

tions, mergers and acquisitions, financings, joint ventures, transfer pricing, drafting, commercial contracts, policies, procedures and corporate secretarial services.” The scope of these services, arguably, gives “complementary” new meaning.

Deloitte has taken a different, but equally ambitious and forward-looking approach to the provision of legal services. In 2013, Deloitte Tax Law LLP allied with immigration boutiques Shouli & Partners LLP in 2013 and Guberman Garson Segal LLP in 2014 to create an international immigration law entity.

About the same time, Deloitte broadened its legal-services profile by moving aggressively into the ancillary-services legal market. In 2014, the accounting firm acquired ATD Legal Services, an end-to-end discovery service provider with proven e-discovery capabilities. More recently, in 2016, Deloitte absorbed Conduit Law, which offers “outsourced lawyers to support in-house legal teams, meet business

needs on demand at law firms, and deliver short-term projects or special engagements.” The Conduit acquisition followed by one week an alliance with Kira Systems, which has developed a machine-learning contract analysis system.

The other members of the Big Four — KPMG and PwC — have also expanded in recent years, but they have for the most part confined themselves to tax and immigration practices. In 2012, immigration firm Greenberg Turner merged with KPMG Law LLP, which also provided tax services through a previous combination with Moskowitz & Meredith LLP. For its part, PwC bought yet another immigration firm, Bomza Law Group, in 2014 and, one year later, formally joined with Wilson & Partners LLP to form PwC Law LLP, which provides Canadian tax advice and international immigration services.

Still, the expansionary activities of Deloitte, KPMG and PwC qualify as contained. Dabbling in legal tax services is nothing new for the Big Four, and immigration law, largely the province of “consultants” in any event, seems a natural add-on to entities with a huge international client base. Even Deloitte’s aggressive foray into ancillary services reflects the Big Four’s traditional role as supporting consultants to law firms. It’s also reflective of a market that is increasingly populated by non-legal providers. What distinguishes Deloitte in this market, however, is that its newly acquired ancillary-services practices will benefit immensely from the synergies of the firm’s international network, bringing in clients whose use of Deloitte’s expanding menu of legal services in Canada will doubtlessly be encouraged.

The stalking horse for the scope of the Big Four’s future in Canada is likely to be EY Law. In this regard, it’s of some interest that George Reis, the managing partner of EY’s business immigration services, told *Law Times* that the firm’s business law practice would draw on “EY’s vast global legal network to support its global inbound clients in navigating the complexities of today’s business environment.” In this context, failing to recognize that “support” almost certainly includes referral work borders on naïveté.

It would also be a mistake to underestimate the referral clout of the Big Four’s

legal-services arms around the globe. Statistics compiled by the Harvard Law School Center on the Legal Profession show that, by 2012, PwC had quietly accumulated legal practices in 70 countries, Deloitte in 49, KPMG in 39 and EY in 23. Three years later, those numbers had grown to 85, 69, 53 and 69 countries respectively, in the process expanding the accounting firms' legal services reach beyond their stronghold in Europe to include markets like Asia, Latin America and Africa. In the UK, PwC, KPMG, EY and 110 other accounting firms have obtained alternative business structure (ABS) licences, which allow them to offer a limited but growing spectrum of legal services.

The factors enabling this market expansion include changes to legal regulatory frameworks, as the introduction of ABS entities demonstrates, and the globalization of the legal market. The Big Four have also taken full advantage of gaps in the governance of auditor independence and of their long track record of pro-

#### **PAOLO BERARD** > CENTRICA

“The Big Four are much more agile and creative than law firms. Even as law firms are having trouble moving away from the billable hour, the Big Four are being proactive and they're expanding what they do because they want to be in a company's boardroom every six months.”

viding multidisciplinary services across borders. More particularly, the Big Four's strategy has been to jump into the opening left by the top law firms, which have been focusing on premium work for premium clients, and end-running the traditional market by offering a full range of services, particularly to multinational clients.



Jordan Furlong, a prominent legal consultant, strategist and futurist, has opined in these pages that what the Big Four are really aiming for is the mid-market. His view is that rather than seeking the “bet the company” mandates, they're looking to the far more numerous “run the company” retainers and getting them in practice areas like mid-level corporate commercial, labour and employment, regulatory compliance, immigration and tax law.

There's considerable support for this view. Centrica's Berard says his company would be reluctant to give “very specific legal mandates” to the Big Four. “Seeking guidance from them around themes and topics is a great idea, as is bringing them in for setting up policy procedures,” he says. “But I probably wouldn't use them for a fact-specific scenario, like giving legal advice on transactional work or litigation.”

According to Malcolm Mercer, a partner



at McCarthy Tétrault LLP in Toronto and General Counsel to the firm, transactional work is where the Big Four are lacking experience. “Moving to the transactional side from where they are would not be a simple evolution,” he says. Mercer also believes that accounting firms will be cautious of competing in litigation waters because law firms are significant buyers of the litigation consulting services they provide.



**DANIEL DESJARDINS** > BOMBARDIER INC.

“For the time being, they’re not into big M&A or bet-the-company litigation, but it doesn’t mean they won’t go there ... And in that case, we’ll opt for the provider that provides the best quality and most efficient service and costs.”

According to Suttie, however, experience is within reach. “All accounting firms think about is money and process and efficiency, and that’s why they’re going to gobble up some very good legal talent,” she says. “They have tools in the shed that are attractive to the younger generation of lawyers.”

As things stand, information gleaned from Mergermarket’s 2016 global league tables of legal advisors suggests that transactional work is already on the Big Four plate. Europe is where they have made their strongest impression on the M&A landscape. Most impressive is PwC Legal, which ranked 17th in deal count among legal advisors in Europe; and Deloitte, which ranked ninth in buyouts by deal value.

Spain and Iberia are particularly strong for the Big Four: Deloitte ranked sixth in deal value in Spain and fifth in deal count in Spain and Iberia; PwC took fourth place in Spain and Iberia in deal count, and 15th in the region in deal value; and KPMG

ranked 13th in deal count in the region.

To be sure, the numbers aren’t overwhelming. It’s also true that Europe is where the Big Four’s legal practices took root and have had the greatest impact. EY, for example, is France’s largest law firm. But just showing up in the M&A rankings among the most powerful law firms in the world gives the Big Four a cachet they haven’t managed before — at least not on what has always been hallowed ground for traditional law firms.

“The penetration of the Big Four is less obvious in North America but it’s growing with only regulatory hurdles in the way,” says Daniel Desjardins, Senior VP and General Counsel at Bombardier Inc. “For the time being, they’re not into big M&A or bet-the-company litigation, but it doesn’t mean they won’t go there, especially because they can learn from their experience in Europe. And in that case, we’ll opt

for the provider that provides the best quality and most efficient service and costs.”

Any discussion of Big Four strategy in Canada’s legal market, however, has an elephant in the room: the accounting firms have tried this before and they failed spectacularly, culminating with the 2003 wind-up of multidisciplinary firm Donahue, Ernst & Young LLP.

The failure can be traced to, among other things, the oversized ambition of what was then the Big Five, which included pre-Enron Arthur Andersen. Trading on their multi-disciplinary practice (MDP) capabilities, the Big Five made no bones about the grandiosity of their ambitions: phrases like “largest law firms in the world” and “major players in the transatlantic New York-London corridor” flew about like the swallows at Capistrano in the mid-’90s.

In July 1998, Russel Robertson, then managing partner for Arthur Andersen in Canada, intimated that the Big Five would



take no prisoners in their quest for legal-services dominance.

“If I were a lawyer, I’d be concerned if ... the ... major accounting firms got into the legal services businesses,” he told the *Toronto Star*. And in late 1999, Douglas Black, managing partner of what was then Donahue’s in Calgary, told *Lexpert*, “My role in Canada during the next three to four years is to build [Donahue] into a national law firm with 300 lawyers. By 2002, Ernst & Young intends to be one of the three largest global business law firms with 3,000 to 4,000 lawyers worldwide. Our objective is the senior corporate market.”

But with few exceptions, MDPs never attained their avowed goal of being in direct competition for top-tier international legal work with the US and UK majors, such as Shearman & Sterling; Skadden, Arps; Clifford Chance; Linklaters; Freshfields and the like. In Canada, where the Big Five never escaped the mid-market straitjacket, Donahue topped out at about 130 lawyers and closed up shop in 2003. Over the next decade or so, complacency replaced the fear originally evoked in the legal profession by the *in terrorem* arguments that MDPs would change the practice of law forever.

What’s different this time around is that strategic spin has replaced predatory bom-



**GEOFFREY CREIGHTON** > BLACKROCK CANADA FUNDS

“I wouldn’t be surprised if, 10 years down the road, law firms will have to go toe-to-toe with the Big Four or otherwise differentiate themselves in some way. ... The only thing holding the accountants back is the regulatory side, where Canada is a laggard, but sooner or later there will be cracks in that.”

bast. “As opposed to going into full-service law, what we’re asking ourselves is, what services complement the existing professional services that Ernst & Young provides?” says David Robertson of EY Law LLP’s Calgary office. “We’re looking to add legal services where our client base is looking for a seamless provider.”

On its face, then, there’s been a change from competing for premium legal work

like M&A to providing “complementary” services. What isn’t being said is that the understated goals might well represent a tactic laying the groundwork for a grander overall strategy. “Since the dissolution of Donahue in Canada, the Big Four have been watching from the wings and waiting for the right time to make their moves,” says Heather Suttie. “What they’re doing now is quietly integrating legal services targeted to key client industries into the services they offer.”

Indeed, the rationale — seamless service — hasn’t changed at all from the MDP days. What has changed, of course, is the rapid evolution of client-driven demands on lawyers, an evolution that emphasizes efficiency based on innovation and technology in a market where purchasers of legal services are increasingly cost-conscious and alternative providers are eating up the commoditized end of what many law firms used to provide.

ALM Intelligence has found that 80 per cent of in-house departments are insourcing more; 40 per cent are decreasing their use of law firms; and 68 per cent are increasing the use of alternative service providers. Indeed, at a recent Canadian Club panel luncheon, BMO’s General Counsel, Simon Fish, reportedly left many in the audience speechless when he said that, all things being equal, “it doesn’t matter” if a company’s legal work was done by a law firm or an accounting firm.

What hasn’t changed — at least not until recently — is the intransigence of the Canadian legal profession, a tendency most acutely emphasized when the Law Society of Upper Canada turned its back on alternative business structures, an approach not much different from its last-century demands that MDPs be owned by lawyers. “The only thing holding the accountants back is the regulatory side, where Canada

is a laggard, but sooner or later there will be cracks in that,” Creighton says.

The most recent study of the Canadian legal market, authored by Deloitte, could well be a marker of the Big Four’s understated strategy in their push for legal market share. “The study is a covert advertisement that Deloitte is big, integrated and understands technology, and that large integrated global solutions provider are better providers of legal services,” Creighton says.

A review of the study, *Canadian Legal Landscape 2017*, demonstrates that Deloitte is making its point by omission. “Accounting firms are very cagey,” Suttie says.

The study surveys about 100 general counsel and law firms nationwide in the second half “to understand the current legal landscape in Canada.” But nowhere does it mention the impact of the four largest professional services networks in the world on the market — this, despite the fact that the study predicts that 2020 will mark a “tipping point for individual firms which will impact the competitive landscape and the role of talent in law firms.”

The key area in which traditional law firms are lacking, Deloitte maintains, is in their use of technology. “Perhaps our most interesting finding is that, while technology is arguably the biggest enabler of achieving best-in-class status, it is largely under-exploited by both in-house legal departments and law firms,” the study states. Nonetheless, it appears that “law firms are just turning their mind to the issue,” even as an “overwhelming majority of respondents identified technology/service delivery as a major game-changer in the marketplace.”

But who’s going to fill the gap? “Organizations that invest time and resources to integrate technology and legal services will weather many of the challenges currently facing the legal industry,” the study states.

But who are these organizations? Deloitte leaves that question unanswered, perhaps because the accounting firm wants readers to regard the answer as self-evident. Whether it is or isn’t remains to be seen, but Big Law’s recruitment of Big Four alumni — Wilson at Dentons and Scapilati at Bennett Jones — suggests that firms are preparing to make the answer to that question much less self-evident. ☞

Julius Melnitzer is a freelance legal-affairs writer in Toronto.