

# Calling in the green team

Environmental law boutiques offer specialized and, now, much-in-demand expertise

BY JENNIFER MCPHEE

Rising concerns about the environment and the ever-expanding regulatory landscape are placing companies under more scrutiny for their green records. This, of course, is good news for lawyers at environmental law boutiques. But even in the best of times, competing with the legal goliaths isn't easy. So why would companies and corporate lawyers decide to call in the green teams at environmental law boutiques instead of turning to full-service firms?

Few firms have established expertise in environmental law, so companies and corporate lawyers turn to environmental law boutiques when they need hard-core expertise, says certified environmental law specialist Donna Shier, a partner at Willms & Shier Environmental Lawyers LLP. The Toronto boutique is known for tackling a full range of work in the environmental law sphere, including providing advice on commercial transactions, operating approvals, managing investigations, civil litigation, regulatory enforcement, and prosecution defence. "We know how to get from here to there," says Shier. "And we do that in the most expeditious way. What you want to do is couple success with value."

Because of its reputation and track record, companies often hire the firm's lawyers even when they have an in-house environmental department, says Shier. However, a substantial amount of the firm's work involves providing environmental law services to business law-



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yers who have established relationships with corporate clients.

Like everything else, environmental law has become much more intricate and complex. As a result, in much the same way business lawyers consult tax lawyers about the tax implications of a deal, they now require seasoned experts to provide advice on the environmental due diligence aspects of purchases, sales, or mergers, whether these transactions involve real estate, assets, or shares. All the buying, selling, and expansion generated by the bustling Canadian economy, combined with the proliferation of new environmental regulation, is keeping the boutique's 13 lawyers very busy. "There's more and more to understand," says Shier. "There's more and more to

comply with, and more and more where you can run amok, run afoul of it, and get yourself in trouble."

Montreal's six-lawyer environmental lawboutique Robert Daigneault, Cabinet D'Avocats was founded by Daigneault, a former biologist who became a lawyer 20 years ago while working for the Quebec Department of Environment. The firm draws clients because of its knowledge not only of environmental law, but also of the environment itself, says Daigneault. Environmental consultants and out-of-province law firms are a significant source of referrals for the firm, which tends to steer clear of routine work in favour of unique and challenging cases and files. "[Clients] use our services when the issue becomes a

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complex one,” he says, “and since we’ve been involved in other complex issues or unusual cases, it’s more efficient for them to use our services.”

Dianne Saxe of Toronto’s Saxe Law Office is a certified specialist in environmental law, and has thrice been named one of the world’s leading environmental lawyers. Saxe holds one of Canada’s only PhDs in environmental law. Reputation matters, but clients also want to know what they’re getting on top of an excellent lawyer, she says. Unlike the full-service heavyweights in skyscrapers lining Toronto’s financial district, Saxe Law Office is located slightly off the beaten track, just a few subway stops north of the downtown core. Since the firm doles out less in rent and salaries, it can afford to charge lower rates. “Maybe that doesn’t matter to Imperial Oil, but it matters a great deal to small municipalities and small and medium-sized businesses,” she says.

Another bonus that boutiques can offer smaller clients is priority status. Small clients may be small potatoes to full-service firms, but virtually any client is an important client to a boutique, says Saxe, who previously was a lawyer at Fasken Martineau DuMoulin LLP and Davies Ward Phillips & Vineberg LLP.

“Those are very, very big organizations, and, to be an important client to them, you have to spend an awful lot of money,” she says. “Someone who we’re giving 10 hours a month to is a significant client. They get our attention,” she says.

And because boutiques specialize in just one niche area, small law firms tend to point clients with green issues in the

direction of boutiques, because they don’t have to worry that they’ll never see them again. “If a small firm refers a valued client to a full-service law firm, they will almost inevitably try to steal all the client’s business,” says Saxe.

Larger firms also retain boutiques when a conflict exists, says John Hunter of the Vancouver-based civil litigation boutique Hunter Litigation Chambers, known for its expertise in the forestry sector. “The courts have been quite clear about ensuring the conflict rules aren’t going to be relaxed just because lawyers have chosen to organize themselves into multi-jurisdictional firms,” he says. “So that tends to bring in some work for the boutiques.”

Whether large companies use the services of boutiques often depends on whether corporate counsel cherry-pick lawyers for work in specialized areas or give large amounts of work to a small number of full-service firms, often in exchange for things like rate discounts or single billing, says Saxe. “We get some really fascinating work from very, very big companies,” she says. “They know we won’t have five people staffed on a file that takes one or two, and they know they are important clients.”

Whether General Electric Co. (Canada) works with a full-service firm or a boutique firm is driven by who the lawyer is, says Christopher Hart, a senior lawyer for the conglomerate known for its campaign to provide customers with energy-efficient products, invest in clean technology, and reduce its own emissions.

“We look for lawyers who have complete mastery of that area of law,

people who are practical and efficient, can adapt to the way we work, and understand how we approach issues,” says Hart, who deals exclusively with environmental, health, and safety law.

GE Canada currently works with a small group of first-class environmental lawyers at full-service firms. Sometimes the company’s environmental legal issues spill over into other practice areas, and lawyers at full-service firms can easily consult lawyers with different expertise. But Hart says General Electric’s doors are certainly not closed to boutique firms. “If they think they’ve got something to offer us, come and talk to us.”

Saxe has managed to get around the lawyer-down-the-hall problem by joining the International Network of Boutique Law Firms. Because the network functions like a virtual law firm, seeking advice from legal stars in different practice areas is just a phone call away. But the big firms have a bench strength advantage, she admits. “If I get run over by a truck, there’s a big hit to what my firm can do. If a lawyer gets run over by a truck at a 200-person law firm, it’s not such a big difference.”

And she’s not completely convinced that the recent upsurge of work created by the public’s renewed interest in all things green will last. She’s seen similar phases come and go. “There’s a flavour-of-the-week problem in government and in public interest. The public never stays interested in anything for very long. But fortunately there’s work to do in all phases of the cycle. There’s just more fun work when there’s an up phase.”