

Clifford Chance no longer No. 1

The times they are a changin'. International law firm Clifford Chance LLP, one of the five largest U.K. law firms, has been toppled from its perch as the world's largest law firm by revenue. The firm recently revealed its average partner profits fell 37 percent to approximately US\$1.2million, according to *The Times*. Clifford Chance's banking and finance, mergers and acquisitions, real estate and private equity practices have been hit hard by the current global recession, according to the London newspaper. New York-based Skadden, Arps, Slate, Meagher & Flom has overtaken the title and billed US\$2.2 billion in 2008.

Learning not to seal the deal too quickly

They warned us. And it's not so much that we didn't listen to them. It's more like they didn't listen to their own warning.

I'm speaking of the law school professors I've seen warning their students about "the zeal for the deal." You know the phenomenon. An affable, busy or even scared negotiator wants to get a deal done so intensely that s/he concedes too much, too quickly and leaves a lot of value on the table. This passion for getting a deal done can also cause a negotiator to keep scheduling rounds of negotiations with someone who doesn't have the authority or desire to do a deal. But the zealots often feel that with perseverance they can summon a magic phrase or be so engaging that a deal is inevitable.

Enter the law school teachers who provide cautionary tales about such zeal, but also construct exercises in classes that seem to reward students for doing a deal at almost any cost. I'm sometimes asked in to adjudicate and will relate a recent experience I had.

The facts of the case involved a very successful football coach in the southern U.S. Odd and extraneous information was pro-



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vided, including his win/loss record, his performance bonus, fan support and so on. More relevant was that he had a morals clause in his contract and his school was of the religious variety. The item of interest seemed to be his having a woman in his hotel room during a road game. Students were assigned the tasks of representing the school and the coach.

In then walked these students, exhibiting the confidence and *bonhomie* of young lawyers-to-be. There was no actual back slapping and no one actually said “How ya doing guy?,” but that was the general atmosphere as the big guys got in touch with their feminine sides and the young women used existing and sincere skills to find common ground.

They probed. They questioned. They tested to see how to make the pie bigger, as they say at Harvard and elsewhere. They walked on egg shells as they discussed the coach's great service. They expressed support for him as he might be pondering his move on to another team. Faces were saved, whether they needed saving or not. The coach loved his school, but if it were time to move on he could leave with his head high and face new challenges as life's horizons receded.

Chests puffed up in mutual victory, hands were grasped firmly and the pie indeed got bigger, right before my eyes.

But being a professional pain in the neck and elsewhere, as I gave feedback and marks at the end, I did ask the question, “Who was the woman in the hotel room

and what happened in there?” No one knew. In fact, they were surprised I asked.

However, I started with the worse case scenario and moved to better possibilities:

“Is it illegal in this jurisdiction to have a prostitute in one's hotel room?” Not sure, but probably not.

“Could the woman have been a model and the coach's hobby drawing or photography?” Sure.

“Could this have been a registered massage therapist or other out-call health care professional such as a chiropractor, reflexologist, Reiki practitioner or acupuncturist?” Possibly.

“How about a Tarot card reader for the superstitious coach?” Yeah.

Obviously this woman could have been anyone, including the coach's daughter. I questioned why no one wanted to know this important fact. The answer is complex. These cases, or problems which are erroneously called “simulations,” give the impression that something must be negotiated or done about the facts as presented. Moreover, if you're in a course called “Lawyer as Negotiator,” the implication is that you better negotiate something.

But in reality you are sometimes better off not negotiating. If you work in mergers and acquisitions, as I occasionally do, the fact that 82 percent of all such deals destroy value should be in your mind. Why do that deal when statistics indicate you will fail? How often has a burning issue disappeared after a good night's sleep? Stirring up issues and emotions is often the cause of problems and leaving well enough alone should also be taught — “Lawyer as Procrastinator” could be the title of a course. By stirring the issues up in this simulation one can lose a great coach, or create huge liability if he's done nothing wrong. Perhaps he just wants to take away a huge settlement and collect a salary from the next school too.

Regardless, the prerequisite to the “Lawyer as Negotiator” course should be called “Lawyer as Fact Finder.” ■

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Midsize firms feel squeezed between big, boutique firms

Midsize

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law.

“That is a scenario that is likely going to be repeated,” said Jean-François Thèorèt of Haney Legal Recruitment. “We will be seeing a growing number of law firms who will decide to specialize to become essentially boutique firms.”

Quebec midsize law firms are now at a crossroads. Too small to stand up to the large firms capable of offering a broad range of services under one roof and not nimble enough to stare down boutique firms who have successfully carved a niche, midsize law firms are caught in the middle.

“The market is saturated,” points out Dominique Tardif, the manager of the Montreal office of ZSA Legal Recruitment. “In Quebec, we know, that it isn't easy for medium-sized law firms to find repeat clients while

staving-off the competition from boutiques and large law firms. Medium-sized law firms face daunting challenges, and some have stood up to the challenge better than others.”

According to Raymond Crevier, the former head of Montreal-based Ogilvy Renault LLP from 1994 to 2005, mid-sized law firms face a forbidding future. He points out that there is a wide and growing perception within legal circles that in order to be profitable, law firms either have to be small and specialized or national in scope, with little room in-between.

“As a general rule, a boutique firm that practises in a very clear specialized field and that has earned a fine reputation, shouldn't worry,” said Raymond Crevier, who recently left retirement to join Fitzwilliam Legal Recruitment in Montreal. “Medium-sized firms, however, face three choices: either section itself off into a boutique firm;

merge with a large firm that is ready and able to absorb it; or remain in business and stand up to its greatest challenge — to develop and hold on to its clients.”

While no easy task, successful medium-sized law firms have generally positioned themselves as a haven for small-to-medium-sized business (SME) capable of offering a varied selection of legal services at affordable rates, something that large law firms can ill afford to do thanks to their large overhead, notes Crevier.

The key, though, is to have a shared vision among partners on how to run the firm — something that was absent at Grondin, Poudrier, Bernier and ostensibly also at Bélanger Sauvé, according to observers of the Quebec legal milieu.

“It becomes far more difficult to develop a brand of the firm if people don't see things the same way,” explained Tardif, who previously practised with Robinson

Sheppard Shapiro LLP in their civil and commercial litigation department. “It's important, up to a point, to share the same vision in order to run the firm, and tackle such things as how to determine rates, expand and maintain the client base, evaluate the performance of lawyers and grow the practice.”

Ironically, the demise of Grondin, Poudrier, Bernier and Bélanger Sauvé's business law department is proving to be a golden opportunity for medium-sized law firms to grow their practices. The competition to recruit new talent from the ranks of the two firms is stiff, particularly since most passed on the opportunity to take advantage of the downfall of Desjardins Ducharme LLP two years ago. A Quebec law firm that appeared to be heading for a bright future, Desjardins Ducharme collapsed under the weight of illiquidity, poor leadership and an absence of coherent vision. The majority

of its lawyers headed off to Lavery de Billy, now known as simply Lavery.

“I know there are certain lawyers at Bélanger Sauvé who are being courted by more than one law firm,” said Thèorèt. “A lot of medium-sized law firms lost the opportunity to recruit good talent and grow their practice when Desjardins Ducharme collapsed. This time round, they are demonstrating interest for individuals or groups of lawyers.”

But not all lawyers are of interest, added Thèorèt. Law firms are now “cherry-picking,” and are interested only in luring lawyers who have solid credentials and a significant client base willing to follow them to their new practice.

“It's going to be far more complicated for lawyers who are furnished clients by other partners or associates — they are really going to have a tough time finding something.” ■