

The Canada/U.S. Market

by Richard Potter QC

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“Haythe who?” So began *Lexpert’s* November 1999 editorial [not included in this version] A rhetorical question. Rhetorical in that within a day everyone knew who Haythe & Curley was. News travels fast. As intended, the question captured the reaction of Bay Street to the announcement by Toronto-based Tory Tory DesLauriers & Binnington (now Torys) that it was merging with New York-based Haythe & Curley. One of Canada’s most prestigious corporate law firms had taken the bold step of being the first firm to enter the U.S. legal services market, albeit by “marrying down”. “Not exactly Cravaths, are they?” sniffed a number of competitors, as if there was little chance of other top-tier firms deigning to consider such a step.

No matter. There was exactly the same reaction four months later in England. when London-based Clifford Chance, a charter member of the “magic circle”, announced its merger with New York-based Rogers & Wells, a somewhat scrappy second-tier firm. “Not exactly Simpson Thacher, are they?” sniffed a number of upper crust competitors.

Disparity of profits *vis-à-vis* top-tier New York firms is a well-known obstacle to cross-border or trans-Atlantic mergers, as many U.K. and Canadian law firms have learned to their chagrin. During the period 1999 to 2002 there have been nine trans-Atlantic mergers, none of which can be characterized as “mergers of equals” (ie, Mayer Brown & Platt (US) and Rowe & Maw (UK), Jones Day Reavis & Pogue (US) and Gouldens (UK), and so on). The exception on the horizon was the anticipated merger between New York-based Fried Frank and London-based Ashurst Morris Crisp. These negotiations broke down in early May of this year.

Facts are hard things. The key point is not scoring bragging rights as to “with whom” one enters the US market (ie, Cravaths; Wachtell, Lipton; David Polk & Wardwell; etc). That’s pie in the sky.

The “hard fact” is a firm’s client base. The bottom line is whether the overall business case dictates that a firm needs to enter the U.S. market, often to follow in the “footprint” of clients. Conversely, for some firms the historical nature of their client base, ie, the importance of US-headquartered clients and inbound referrals, will suggest nuanced approaches, ranging from informal “best friends” relationships with a number of US law firms through to sector specific strategic alliances, ie, McCarthy Tétrault and Fried Frank. A small number of firms with a strong domestic client base where inbound/outbound considerations do not weigh heavily may simply be drawn by the opportunities presented by the huge American market. Whatever the circumstances, the decision-making process must be grounded in the composition of the client base, with a watchful eye on the integration of the Canadian and US economies.

Torys has 230 lawyers in its Toronto office and 70 lawyers in the New York office. Fifty per cent of the hours billed in New York pertain to US work for Canadian-based clients, the

balance for US-based clients. The firm has recently committed to sufficient additional New York space to house a further 70 lawyers. That's some "footprint".

The massive integration of the Canadian and US economies is well-known. Merger and acquisition activity in Canada has fallen to its lowest level since 1995. According to Toronto-based Crosbie & Co., the value of the 210 transactions recorded in the third quarter of 2002 totalled \$12.3 billion, down 44.7 per cent from the second quarter. Nevertheless, Crosbie & Co goes on to point out that cross-border activity remains the backbone of the Canadian M&A market with 315 of the 661 transactions for the first three-quarters of 2002 being cross-border.

A report from Calgary-based First Energy Capital Corp. adds another dimension. The recent spate of US acquisitions of Canadian oil and gas properties has resulted in US companies owing about 40 per cent of Canadian production and reserves. Importantly, the Canadian units of US independents like Burlington Resources, Devon Energy, Apache, and Anadasko Petroleum have become so important that they represent 15 to 40 per cent of total operations for these companies. In other words, Canadian operations form a significant part of what these companies do. Accordingly, it is a reasonable assumption that important decisions – business and legal – regarding these assets will be made in the States. This transfer of decision-making power is commonly referred to as the "hollowing out" of Corporate Canada.

The auto and auto parts industry is central to the economic well-being of southwestern Ontario. The irrelevance of the Canada/U.S. border is best illustrated by Robert Renault, Vice-President, Public and Government Affairs at DaimlerChrysler Canada. "We operate on a 'just-in-time' inventory system. We use steel and components in our engine casting plant in Toronto, which may have already travelled from Hamilton to Ohio and back. The finished casting then goes to Detroit to our engine plant, then back to Ontario for assembly into a vehicle body and likely delivery back to the States as a finished vehicle. What drives all of this back and forth is cost. The only way the border is relevant is if crossing and re-crossing it slows us up, adding cost. Otherwise, it's as though it didn't exist."

"As though it didn't exist." These words haunt Canadian law firms. For them, the border does exist. It's a fact. A hard fact. And for this reason, for major Canadian law firms, the provision of cross-border legal services is now the number one strategic issue.

For some firms, such as Torys, there is a "footprint" to follow. Other firms, such as Oslers, Stikeman Elliott, and McMillan Binch LLP, have a long history of acting for US companies with significant Canadian interests. These firms may gravitate towards a different approach, such as maintaining corporate strength for US/Canada transactions, but seeking market differentiation through pre-eminence in domestically regulated, and thus sheltered, practice areas, ie, corporate tax, competition law, or litigation. The devil, of course, is in the details of the client base. Most firms will have important inbound and important outbound aspects to their client base, which can paralyze decision-making due to entrenched opposition to change on both fronts.

It is useful to approach the situation from the perspective of the corporate clients, whose choices now include:

- the “traditional response” of Canadian legal advice from a stand-alone Canadian firm, together with referral to a US firm for US legal advice (the Canadian and US firms may or may not be members of a international network of affiliated firms, eg, Blakes in Canada and Steel Hector & Davis LLP in Miami are both members of Lex Mundi);
- the “traditional response”, but coupled with the benefit of the Canadian firm’s New York office providing additional assistance plus liaison with a US law firm, eg, Oslers or Stikeman Elliott;
- retention of a U.S. law firm on the basis of the US firm’s Toronto office, eg, Shearman & Sterling, Skadden Arps, or Hodgson Russ;
- retaining a US law firm through the US law firm’s marketing directly into Canada from its US base (and without a Canadian office, eg, Testa Hurwitz);
- obtaining cross-border legal advice via a Canadian firm that offers US legal services from its New York (eg, Torys or Davies Ward) or Washington (eg, Miller Thomson) offices;
- obtaining cross-border legal advice through a Canadian firm that provides US legal advice from Canada (eg, Clark Wilson in Vancouver);
- retention of one or both members of a formal cross-border alliance or “merger” (the alliance may be partial, eg, McCarthy Tétrault/Fried Frank, or full, eg, Mann & Gahtan/Brown Raysman or Miller Canfield);
- in a category on its own, Baker & McKenzie.

How do Canadian companies react to this mosaic of possibilities? Like clients in every market, they naturally welcome any broadening of choice. However, turn the lens around and examine the mosaic from the perspective of Canadian law firms. How does this growing array of choice for clients affect them and their role in a more fragmented market?

Except for those few firms which already have made clear choices, Canadian lawyers see themselves in an increasingly disconnected marketplace, one in which there are many firms offering an apparently similar service – integrated North American advice – but in many different ways. The clearest message from this is the pressing need for differentiation. How will each firm explain to its knowledgeable clients that its approach to delivering North American services is the best one?

Twenty-seven Canadian and US law firms (see Schedule A) were interviewed for this article. These interviews uncovered a remarkable unanimity on the part of Canadian law firm management. There is agreement that the response to the provision of cross-border legal services will be the single most important strategic decision made in the past several decades. As well, management understands that this response will determine how successful the firm will be, and may even determine whether, by 2010, their firm will continue to exist.

However, there is a large gap between an appreciation of the significance of the issue and a decision as to what to do about it. The balance of the article investigates the responses by Canadian firms to the challenge of “what to do about it”.

One aspect on which there is almost universal agreement is that, in the cross-border context, clients do indeed seek the Holy Grail of “seamless service”. In the past, Canadian clients were content to await recommendations for US legal services from their Canadian lawyers. The clients would invariably follow the recommendation, and they never complained about having to instruct different sets of lawyers on both sides of the border. That profile no longer reflects the real world.

Although agreement is unanimous that seamless service is the goal, there is somewhat less agreement on what this means in practice. Each firm professes that the highest quality of service, without overlap and duplication, is what it delivers. However, if the firm does not have US law capability, the then stated rationale is the firm’s desire to see that the Canadian client gets the best US advice for a particular situation or, as it was sometimes put, ensuring that the client has a “real US lawyer” acting for it.

Where this position, ie, a “real US lawyer”, has much less force is when the Canadian client is a mid-market player that specifies a more “cheap and cheerful” approach to cross-border legal services. A good many corporate clients blanch at the thought of retaining the likes of Cravaths or Sullivan & Cromwell. In this particular context, it is important to note that a recent report by RoyNat Capital found that 95 per cent of the mid-market Canadian companies polled said they plan to either enter or expand their presence in the US market.

Except for the “already integrated firms” providing a dual-law capability (eg, Torys, Davies Ward, and Miller Canfield in Detroit/Windsor), few firms which espouse seamless service actually provide what most commentators regard as the core components, namely a completely integrated service team on both sides of the border and integrated billing. McCarthy Tétrault is an exception by virtue of its strategic alliance with Fried Frank, but this is practice area specific, ie, cross-border M&A and financing work.

In any event, seamless service is clearly about more than formal teams and billing. Clients discern added value simply from seeing that their lawyers understand the subtle differences in business culture on each side of the border, as well as the client’s own unique business culture.

Throughout the interviews, this question of differences in business cultures arose time and again. It was succinctly expressed by Tom Linn of Miller Canfield. “The client quickly sees value when it’s clear that you already understand the language of business on both sides of the border. It’s not just a question of which law applies and what the law says. It’s more about practicalities –how things get done in the other country and how that will affect their business”.

At the heart of the matter is a deep concern, and one on which there is not yet unanimity (both as to its existence and its importance) as to the shrinking Canadian market for high-end legal services. This view is expressed variously in a cluster of observations: Canadian clients are spending less of their global legal services dollars in Canada; Corporate Canada has suffered a “hollowing out”; mid-market capital financing is departing for New York; and the Canadian market for legal services has matured, thereby reducing growth opportunities except for the US and elsewhere.

Starting first with the “mature market” scenario, this is still too fundamentally against interest to be widely accepted. Firms which have just completed national mergers are understandably reluctant to acknowledge that this difficult task, at best, may be but a way station *vis-à-vis* further cross-border expansion, or, at worst, ill-conceived, ie, the inclusion in national firm platforms of non-essential markets.

Yet, there are many parallels between the situation faced by Canadian firms today and that in the UK 15 years ago, which led London firms to seek growth opportunities on the continent. Simply put, the London firms saw little possibility for meaningful growth in their domestic market, which they regarded as mature. An important difference, of course, is that the UK firms entered Europe armed with UK law, which, along with US (ie, New York) law, is a principal language of international transactions. Canadian firms expanding into the US, on the other hand, face the challenge of adaptation to the dominant choice of law, invariably that of New York State.

Alongside “mature market” concerns is the spectre of “hollowing out”. Turning again to the First Energy Report, the cross-border consolidation in the oil and gas sector has been so intensive that the number of large Canadian companies has dwindled to six from a high of 41 in 1997. Of the 35 that were acquired or merged, US companies bought 21. The integration is so complete that market analysts now refer to a North American equity market for the oil and gas industry. It is difficult to see how such developments cannot affect the demand for high-end legal services in the Calgary market, particularly in relation to second-tier firms.

The converse situation to “hollowing out”, but equally alarming, is the “footprint” scenario, ie, Canadian-based corporations entering and expanding in US and international markets while their domestic operations remain relatively static, ie, “mature market”. Jacques Demers at Ogilvy Renault in Toronto heads a special committee established by his firm to examine its options *vis-à-vis* the U.S. market. While no decisions have been made, Demers does confirm the anecdotal impressions of many of the lawyers interviewed for this article. According to Demers, spending by Canadian-based corporate clients on Canadian legal services is declining in relation to the amount spent in the US and internationally.

Uncertainty may characterize large parts of the “shrinking market” debate. There is, however, more clarity with respect to the mid-market. In the mid-level capital markets, significant change is already affecting Canadian firms as their clients seek out deeper and sometimes more receptive capital pools south of the border. What used to be thought of as a

domestic process – the financing by private equity or venture capital of emerging mid-market enterprises – has recently become a North American process. As noted by Ken Ottenbreit of the Stikeman Elliott office in New York, “this particular slice of Canadian capital markets has really become part of the US capital market.”

Although mid-cap work is only one segment of the full spectrum of cross-border work, it represents a welcome growth area during a slow market in big-ticket M&A activity. It is also instructive to examine mid-market dynamics as a harbinger of developments across the board. Several strategies are at work. The first approach is to funnel Canadian-based, southbound work through an office in Canada. For example, mid-market growth is driving the expansion of the Toronto office of Hodgson Russ. This Buffalo-based firm opened in Toronto in the early 1990’s, shortly after the arrival of two New York heavyweights, Shearman & Sterling and Skadden Arps. As one of its initiatives, Hodgson Russ is busy making new contacts throughout the Ontario legal and business community promoting its ability to ease Ontario-based mid-cap businesses into US capital markets.

The second approach to the Canadian mid-market by US firms is that of “carpetbagger”. Not at all a term of derision, this simply describes a frequently used means of marketing services across borders, without use of a local office. In this case, US firms increasingly are travelling to Canadian centres such as Toronto and Montreal to call on Canadian law firms, attend conferences and give private seminars on US topics of interest to Canadian lawyers and prospective clients – especially topics relevant to entrepreneurs looking to tap pools of US capital.

One such US firm is Testa, Hurwitz & Thibeault, a 500-attorney firm from Boston. In speaking with partner George Davitt during a recent foray into Ontario, it is clear that Canada is an important market for the firm in its capital markets practice. Davitt emphasizes his firm’s familiarity with emerging technology companies and their ability to source US venture capital and private equity.

As one would expect, US carpetbaggers target high-end, future growth oriented work from the Canadian mid-market. This, of course, is financially rewarding work that Canadian firms can ill afford to lose. But it is not only the mid-market that attracts the carpetbaggers. Shaw Pitman is a Washington, DC-based four hundred-plus attorney firm with a strong technology practice, particularly in outsourcing. It has scooped a good number of high-profile retainers in Canada, including significant transactions for Air Canada, CIBC and Seagram.

In tapping the Canadian market US law firms naturally seek out relationships with Canadian law firms that do not have a US law capability. This sort of intermediary contact can be efficient and mutually beneficial to everyone. However, over time, it is also likely that many direct Canadian client-to-US-law-firm links will be formed; links which may progressively marginalize the Canadian law firm.

Here lies one key aspect of the dilemma over cross-border work. If the centre of gravity with respect to a body of legal work is crossing the border to a larger and deeper marketplace,

how do the Canadian firms stay involved in any meaningful fashion? As the client's relationship with the US firm matures, the Canadian firm will eventually lose the ability to refer that work to other US firms or investment banks. Given the "to and fro" of business referral relationships, nobody views such developments with equanimity.

Before confronting the problem directly, i.e. following in the client's "footprint", an interesting but ambitious alternative is the approach of Vancouver-based Clark Wilson, at least with respect to the mid-cap corporate finance market. For Bernard Pinsky the required response was clear. "We have six BC solicitors who are now qualified in seven different US jurisdictions and we do the southbound finance work ourselves. We simply listened to what our Canadian clients wanted. They are delighted to know that we don't have to send this work out."

Why is this approach "ambitious"? Because the only way that it can work – where the goal is the highest quality of service – is to manage the US Law Practice Group very tightly in terms of constant education and re-education. In this scenario, CLE is not a luxury, it is a constant necessity. Fortunately for Clark Wilson, there is so much available work that many lawyers are engaged exclusively within the US Law Practice Group, so their skills are in constant use. This is vital because anything short of a complete commitment will not produce a level of quality equivalent to that of a US attorney practising in the States.

If a Canadian firm can provide US legal services in Canada, and Canadian clients are moving south, why not follow the clients? This is, of course, the route taken by Torys and, to a more limited extent, by Davies Ward. To date, the segment being targeted by these two firms is the high end of the market, specifically cross-border M&A, transactional, financing, and counsel work.

From the outset, the most frequently-voiced fear respecting direct entry into the US market has been the almost "certain" loss of reciprocal referrals from US firms. The reasoning is straightforward enough. If a Canadian upstart practises US law, how could one expect US firms to continue to send work to this new competitor? However, this seemingly obvious truism is now met with a more considered and qualified reply from managing partners than that proffered almost four years ago, when Torys announced entry into New York.

On the Canadian side of the border, most of those interviewed now see beyond this rather fuzzy generalization to the need to discover whether their existing sources of work would, in fact, be adversely affected by a move to provide US legal services. They no longer see the question as an all-or-nothing proposition but, instead, want to examine whether they could practise US law in one or more narrow areas without closing down US referrals.

Further, it is beginning to come home that the underlying problem of grounding a US strategy entirely on arm's length referrals is that the source of the work is beyond one's control. If a Canadian firm is becoming progressively more reliant on inbound referrals as a replacement for work gone south, this may well prove to be the first step down a slippery slope. Generalizations are dangerous. One must start from an appraisal of what the firm actually gives

out and receives by way of referral work. One firm, which recently did so was “shocked” to learn, contrary to “conventional wisdom within the firm”, how little inbound work factored into the overall revenue base. The “hard fact” that needs to be examined is the nature of the client base.

On the US side of the border, the reaction of senior attorneys to the possibility of Canadian competition in their backyard is relatively relaxed. Generally, the response mirrors that of Milt Strom of Skadden Arps in New York. “Sure, we keep track of referrals and we don’t consciously refer work to competitors – who does? But Canadian work is often below the radar screen.”

Contributing to this relative indifference is the fact that over the past decade New York has been flooded with formerly regional US firms (Jones Day; Kirkland & Ellis; Orrick, Herrington & Sutcliffe, and so forth) that have “invaded” New York. A case in point is the successful assault that Los Angeles-based Latham & Watkins has made on the New York market. The entry of US regionals was quickly followed by a further invasion by UK firms (Clifford Chance, Linklaters, Freshfields, Allen & Overy), initially practising only UK law but quickly going dual capability, ie, US and UK legal services. In a marketplace that is already so deep and international, the entry of a few Canadian firms is unlikely to produce an overall negative response.

Canadians often do not fully appreciate the extent to which the so-called US super regionals have entered the New York market and, conversely, the extent to which New York-based top-tier firms have entered important US regional markets, such as Chicago and Los Angeles/San Francisco/Palo Alto. The hyper-competitive nature of the overall US market is best illustrated by the Global Securities Information Inc. “2002 Legal Counsel Rankings for M&A” [not included in this version]. While the first four slots in the deal chart are occupied by top-tier New York-based firms, over 50 per cent of the slots are taken by regional firms. It is interesting to note that Torys weighs in with the 17th slot and that no New York office of the London-based majors made the grade.

The most that can now be said about the referrals dilemma is: it can no longer be used as an excuse for refusing to re-examine a firm’s cross-border strategy. It becomes one of many factors to be considered and not, by definition, a “show-stopper”. No possible outcomes should be excluded out of hand, says Demers. “The real question is a simple one. What makes the most business sense for us?”

At the other extreme of the “what to do about it” spectrum is the “traditional response”. That is, do not practise US law and “play the field” with US law firms when it come to referrals. Variations may include a “best friends” policy in which referrals, while not formally restricted to certain firms, do indeed follow a small number of predetermined channels. Another variation includes the opening of a New York office, one in which only Canadian law is practised.

A New York office practising Canadian law can play a role of considerable importance in a firm’s cross-border strategy. But like other elements, it must be seen as an integral part of the

overall strategy. If staffed well and used properly, the office can educate US law firms about the firm's differentiation in the Canadian marketplace, it can funnel important information back about the changes in the US market, and it can make informed judgements about US law firms that can greatly improve the quality of reciprocal referrals. (Indeed, each of these benefits flows equally from having a US office that practices US law.) Most importantly, such an office can spearhead the firm's drive to improve the service product to Canadian clients – especially those clients who desire cross-border services that are as seamless as possible.

But each of the major full-service practice firms that have a Canadian-law US office (these include Fraser Milner Casgrain, Fasken Martineau, Stikemans, and Oslers) is going to have to relentlessly continue to weigh the balance between benefit to be gained by practising some segment of US law against cost of lost referrals. Equally, a firm such as Miller Thomson which has a Washington DC office practising US trade law will have to weigh whether it is obtaining the highest value it could by narrowing its US law component so severely.

For firms which espouse the “traditional response”, with or without a Canadian law US office, another near universal reaction relates to the support which should be provided by information technology. Jim Christie, Chairman of Blakes, puts it this way: “If you believe that referrals are indeed important to you, as we do, then you absolutely must be careful to track them – both inbound and outbound.” Everyone interviewed for this article understood that they could not allow the value of these referrals to be lost simply because they are poorly tracked. In large firms with multiple offices this means that unless referral data and the decision-making process about referrals itself is centralized, that value may not be realized. Decisions about what kind of work can be sent to US firms is too important to remain the prerogative of individual partners.

It is one thing to examine Canada/US legal markets in terms of the content of “what to do about it”. But what of the general attitudes of law firm management towards these questions? While all firms react positively to the importance of the topic, are their actions consistent with their aspirations? There is clearly a wide variation in attitude, on both sides of the border.

In Canada there are many firms still in denial, in the sense that the topic appears to have little urgency for them. Most often this occurs where the firm has historically been able to rely on the “traditional response”, but has not done any serious research to discover whether these assumptions are still valid. Frequently, such a firm will be a member of an international network of firms. The prospect, for example, of surveying their clients to find out how clients rate the firm in terms of meeting their cross-border needs is still foreign to this group of firms. They tend to respond, reluctantly, by saying that they will “simply have to work a little harder in servicing their cross-border files.”

At the next level, there is a growing group of firms, like Ogilvy Renault, which have conducted serious research and investigation into alternative responses. Within the coming year we will learn the results of their examination. If even one or two major firms decide to reorient their US strategy, then the pressure on the first group of firms, i.e. “traditional response”, will intensify.

At a third level, of course, are firms that have already conducted their investigation and concluded that change is required. Interviews with these firms are instructive. Torys and Davies Ward are firms which opted for significant change after communicating with clients. After the fact, they continue to consult with clients to verify and fine tune their strategy. Torys, for example, is in complete agreement that a US office is vital in acquiring both a “substantive sense” of how business is conducted in the US and also the “style of practice” which needs to be absorbed. But there is also the importance of geographic proximity. In addition to the New York capability, Torys now has in Toronto five partners and 15 associates who are qualified to practise in both Ontario and New York.

When one looks at the attitudes of US law firms, there is an equally broad array of responses to cross-border work, from very active exploitation to outright indifference. At the one end of the spectrum, the US firms with Canadian offices (Brown Raysman/Mann & Gahtan, Hodgson Russ, Kavinoky & Cook, Shearman & Sterling, Skadden Arps, Dorsey & Whitney) have shown a clear appreciation of the Canadian marketplace as a source of cross-border work. Each firm appears to have a coherent business plan, which plays to the specific clientele and market segment they are seeking.

However, lack of a Canadian office by no means translates into a lack of interest in Canada. For instance, at Paul, Weiss in New York, the firm’s Canada/US cross-border practice has been a central part of its international strategy. Leonard Quigley is the senior of three attorneys who dedicate 100 per cent of their practice to high-end Canada/US work. When interviewed in New York, Quigley brought into a three-way telephone conversation two younger partners who were that day working on different deals in Calgary. “We think we are unique in that we don’t have an office in Canada but we have three partners working exclusively on Canadian work and on substantial matters, often the very largest cross-border deals,” says Quigley. “We find the work challenging and very interesting”.

In a different but parallel strategy, the New York and Chicago-centric Sidley Austin Brown & Wood regards North American cross-border clients and deals as an important element in their practice. Says Christopher Hilbert in the New York office, “we don’t have a Canadian practice group as such, but we certainly regard Canadian cross-border work as valuable and I spend a great deal of my time on it. I have enjoyed cultivating Canadian-based clients over the years. We acted for Bombardier back when the only product they made was snowmobiles.”

However, as in Canada, there are US firms for which a distinct Canada/US cross-border strategy is a foreign concept. Nixon Peabody is a 600-plus-attorney firm originally based in Rochester, only 50 miles across Lake Ontario from Canada. It now has offices in New York and Boston and sees itself as a growing national firm with many international ties. However, for such a dynamic firm, its view of work across the US/Canada border is oddly traditional. This is the view that Canada is so near that it is not really a foreign market. The firm has established relationships with many Canadian firms – and this strategy, they believe, continues to serve them well. The Nixon Peabody position is shared by at least two other firms from northern New York State which now also have New York City offices, Phillips Lytle and Hiscock & Barclay, both originally Buffalo-based firms.

Perhaps the most interesting comparison is between the attitudes of two firms in Detroit – Miller Canfield, which has merged with the small Wilson Walker firm in Windsor. Miller Canfield has 300 attorneys. The second firm is Foley & Lardner, a nearly 1000-attorney firm originally from Milwaukee, but now in many centres across the US. Two years ago Foley & Lardner opened an office in Detroit to better serve clients in the auto and auto parts industry. Both these firms rely heavily on the auto sector. For Miller Canfield, one way to better serve the integrated cross-border auto industry was to itself become a cross-border enterprise. Foley & Lardner, however, even though it is equally committed to the auto industry, sees the industry strictly from the traditional perspective of relationships with many Canadian law firms.

Torys announced its merger with Haythe & Curley in October of 1999. Not much has happened since then. There has been no subsequent “terrain-altering” cross-border initiative, from either a major Canadian or US firm.

However, it would be a serious mistake to interpret this relative surface calm of the Canada/US legal market as indicative of a stable situation. The financial undercurrents of the cross-border legal market are powerful. The prize is rich. Once a precipitating event takes place, developments can take place very quickly.

During the mid- to late-1990s, the London-based majors transformed the legal landscape in Europe. The 1998 to 2000 period of consolidation which shaped the current legal market in Canada was profound. Should a second major Canadian firm enter the US market in a meaningful fashion, or should it become evident that a significant US presence provides a tangible competitive advantage to a Canadian firm in its home market, other firms would be hard pressed to sit on the sideline.

It is instructive to note that a number of Tory insiders believe that within three to five years their New York office will be larger than their Toronto office. And then, of course, there’s Chicago and Palo Alto. For, as everyone knows, if you can make it in New York, you can make it anywhere.

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Schedule A

Firms Interviewed

1. Foley & Lardner
2. Hodgson & Russ LLP
3. Fasken Martineau DuMoulin LLP
4. Nixon Peabody LLP
5. Hiscock & Barclay
6. Phillips, Lytle, Hitchcock, Blaine & Huber LLP
7. Testa, Hurwitz & Thibeault LLP
8. Miller, Canfield, Paddock and Stone PLC
9. Sidney Austin Brown & Wood LLP
10. Osler Hoskin & Harcourt LLP
11. Torys LLP
12. McCarthy Tétrault LLP
13. Davies Ward Phillips & Vineberg LLP
14. Stikeman Elliott LLP
15. Blake Cassels & Graydon LLP
16. Fraser Milner Casgrain LLP
17. Baker & McKenzie
18. Ogilvy Renault
19. Shearman & Sterling
20. Skadden, Arps, Slate, Meagher & Flom
21. Dorsey & Whitney LLP
22. Mann & Gahtan LLP
23. Kavinoky & Cook, LLP
24. Paul, Weiss, Rifkind, Wharton & Garrison
25. Miller Thomson LLP
26. Clark Wilson
27. Brown Raysman Millstein Felder & Steiner LLP