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Canada – Law Firms

The Toronto-New York Connection: A Cross-Border Practice Builds For The Future

The Editor interviews Philip J. Brown, Partner, Torys LLP, Toronto.

Editor: Mr. Brown, would you tell our readers something about your professional experience?

Brown: I have been at Torys for 12 years. Prior to Torys, I was at McCarthy Tétrault for several years. My practice is in the area of corporate law, with a specialty in corporate finance and mergers and acquisitions. Much of my focus recently has concerned innovative cross-border transactions with respect to income funds and merger and acquisition transactions.

Editor: Can you tell us something about the firm's origins and history? What practice areas have been key to the firm's development?

Brown: Torys was started in the 1960s, and the objective was to make it as high end a corporate workplace as could be done at the time. The focus was on large Canadian corporate clients, and it was important for the firm to develop strong relationships with the senior executives of these clients to bring in the best kind of work. In the years since, the firm has expanded to offer a greater range of services to meet client demands, and it has built upon and added to the original areas of practice. Corporate law and corporate finance were at the center of the firm's practice in the early days. Over time, many other areas have been added, including litigation, pensions, employment, environmental, tax, technology, IP



Philip J. Brown

and real estate.

Editor: Can you share with us some of the factors that went into the decision to open an office in New York?

Brown: That is probably the biggest strategic decision that Torys has made over the course of its existence. We discovered that many of our clients were heading south for transactional work. To avoid losing them to other firms, we came to the conclusion that we had to follow them into the United States. Our initial focus was on the large clients that fell into this group, but we came to realize that a number of smaller, mid-market clients – particularly technology clients and companies in other sectors – were also pursuing this strategy.

Editor: What kind of expertise are

these clients seeking in going ?

Brown: It varies from client to client, but there is considerable focus on mergers and acquisitions, corporate finance and private equity transactions. From these areas, interest expands into tax and environmental issues.

Editor: Is the New York office beginning to serve as a gateway to Canada for the firm?

Brown: Most of its work to date involves southbound rather than northbound clients. However, as the office attracts more U.S. clients, I see an increasing flow of work coming north.

Most of the lawyers in the New York office are American, although a handful are Canadian. One of the objectives is to have a complement of Canadian lawyers qualified to practice law in the United States, as well as American lawyers able to practice Canadian law. We have a number of Canadian associates taking the New York bar examination every year.

In cross-border transactions what used to happen was that two firms – one in Toronto and one in New York – would do the same work. There was a great deal of needless duplication. Now one firm does the work, and it doesn't matter on which side of the border the lawyers are located. If the transaction involves, essentially, a Canadian client heading south, the work will usually be done by the New York office; if it involves a U.S. client heading in the opposite direction, the work tends to be done in Toronto.

Editor: How do you see the New York

Please email the interviewee at philbrown@torys.com with questions about this interview.

office evolving? Where would you like it to be in, say, five years?

Brown: We have about 75 lawyers at present, and I can see us growing to 200. I do not think that the office will necessarily expand in terms of new practice areas, but we will increase the number of people doing work in the areas on which we are already focused. This includes securities and tax work, M&A, private equity, energy and, perhaps, banking law.

Editor: Please tell us about your own practice. How has it evolved over the years?

Brown: In the early years of my practice, I was engaged in securities law and had a particular focus on corporate finance. Today I handle a combination of corporate finance and mergers and acquisitions. Things have changed considerably over the years, and one of the principal changes involves the response time that clients expect of their attorneys. Technology has had an enormous impact on the practice of law, and service is expected to be instantaneous. We recently handled a transaction in which a client more than doubled in size. This entailed teams in New York and Toronto working in tandem, and such was the ease of communication that the deal was consummated with almost no face-to-face contact or travel back and forth.

Editor: Much of your work has involved cross-border transactions. Was there much of this when you started out? Has NAFTA had an impact on the work you do?

Brown: I have always had an interest in cross-border work because of my interest in the United States, its history and politics, but at the beginning of my practice it did not constitute a large part of what I did. In recent years I have really begun to focus on this aspect of my practice, and more than 50 percent of my work today is cross-border.

The trade figures would indicate that NAFTA has had a beneficial effect on the economies of the three countries concerned. I am not sure, however, that it has had much impact on our work. What has been important is the currency exchange

rate. As the value of the U.S. dollar has decreased, more and more Canadian work has headed south, and this has had a dramatic impact on the cross-border transactional work that we handle.

Editor: Canada is playing an increasingly important role in the global economy, which offers both opportunities and risks. Canada is both a destination for incoming investment and a source of capital for the development of enterprises all over the world. Does Torys feel it can play a role here?

Brown: Canadians are thinking more globally than they did in the past. When we think globally, however, we think more about the United States than elsewhere. In the mergers and acquisitions area, for example, it is the inflow from the United States to Canada, and vice versa – in contrast to Europe and Asia – that tends to drive the practice. This is a dramatic change from a time when mergers and acquisitions concerned transactions among Canadian corporations alone.

We have given thought to creating a Canadian national firm. Our principal strengths, however, remain in practice areas that have a north-south orientation, rather than east-west. For at least the immediate future that orientation, I think, is going to be our principal focus.

Editor: What about other offices in the United States?

Brown: This is an ongoing discussion. We think of Washington, D.C., for antitrust and regulatory practice. The West Coast for technology and Chicago for banking and general corporate work are also possibilities at some point in the future. We may, however, just remain in New York.

Editor: Are there practice areas that you are looking to expand?

Brown: We are interested in expanding some practice areas. Our New York tax group has grown from one lawyer to six in recent years, and we have added strength to our cross-border energy practice. These two areas in particular are candidates for expansion. The firm has

some banking capability in the New York office, and this is also an area that we have targeted for growth. We have a large IP group in Toronto and a small one in New York, and this is an area almost certain to expand in the future. In our core areas, such as corporate finance, we are adding people on an ongoing basis.

Editor: Can you tell us about the income trust work the firm is doing?

Brown: This has been a huge growth area for us. The income trust is an innovative financial product that serves to take the peaks and valleys out of the economic cycle for us. We started in the income trust market about five years ago. This was directed at Canadian clients – we led the market in doing these deals in Canada – but when we realized how beneficial this product could be, we began to focus on the U.S. market. This involved a number of U.S. corporations that were too small to go public in the United States. The structure is complicated, so the market on the U.S. side has been slower to develop. Nevertheless, interest is very great, and we are increasingly busy in putting these deals together. One of the principal advantages that Torys possesses is having the resources to address both securities and tax issues on both sides of the border and for both U.S. and Canadian clients.

Editor: There is also increasing competition in the legal world and increasing consolidation. Would you share with us your thoughts about Torys' place in this process?

Brown: There has been some consolidation in Canada. Unless a firm has a set of practice areas that meet the needs of its clients, it is difficult to survive. Torys' principal strengths – corporate finance, mergers and acquisitions, and private equity work – represent an important differentiator from many of the firm's competitors to the extent that these practice areas lend themselves to cross-border work. They are wonderful platforms on which to build other practices and services in response to client needs. I believe that Torys is well positioned to meet the increase in competition in the legal world and the pressure of consolidation.