

Q&A

WITH JOHN BLAIR, NATIONAL HEAD OF COMMERCIAL LITIGATION AND CINDY CLARKE, NATIONAL HEAD OF SPECIALIZED LITIGATION, BORDEN LADNER GERVAIS LLP

Together, you represent two ends of the generational spectrum, which is always a healthy indicator of a firm's legacy in the market and its succession plan for longevity. Did you want to comment on BLG's strategy regarding this firm-wide?

John: Succession planning is one of the pillars of both our client service standards and our initiatives to attract and retain highly qualified legal professionals. Cindy is a prime example of succession planning done well. Her quick rise to a senior leadership role in the firm is not only a testament to her focus on client service, it also highlights BLG's focus on identifying and nurturing talent to ensure we provide service continuity to our clients.

Cindy: Thanks John. I've benefited from working for a firm that fosters and encourages leadership development in its lawyers from the early stages of their careers and onwards. BLG has some great programs in place, from structured training in specific areas of the law to training on "soft skills" such as people management. And this training is complemented by our diversity initiatives, such as our program specifically geared towards women's leadership development. We also value experience and are benefiting greatly from having a range of perspectives when making important decisions.



Cindy, you are National Group Head for "Specialized Litigation," while John, you are National Head for "Commercial Litigation." Could you provide some examples of what type of case would fall into which bucket, and what types of entities would be covered by each? Is there any overlap, and if so, what would be an example of that?

Cindy: Yes, our Specialized and Commercial Litigation Groups together form a cohesive litigation department that works together very closely ensuring we bring our best talent to our clients across the country. As a national firm, we can offer clients seamless, round-the-clock service no matter where the client is located or where the dispute is taking place. Specialized Litigation identifies litigators who focus on a particular industry and the laws which impact that industry, or a specialized area of law like labour and employment. For example, Specialized Litigation includes our Construction Group and our Municipal Law Group, which focus on land use planning disputes and expropriation matters, and also includes our industry-leading Health Law and Insurance & Tort Liability Groups. Lawyers in these groups devote themselves to becoming industry experts to ensure they can provide practical, efficient advice.

John: That's exactly right. As the name suggests, the Commercial Litigation Group handles commercial dispute resolution, which could be anything from an international arbitrations, to a shareholder or estate disputes, or a privacy class action. As Cindy said, our groups work hand-in-hand. Regardless of the home group of any given lawyer, our focus at BLG is to establish the right teams for our clients based on their needs, looking at who has the best skill set and experience to successfully handle each case.

Did you want to highlight the key players in each group, perhaps regionally?

Cindy: That's a tough call. We pride ourselves on having a strong team, whether the lawyers are established or up and coming. If I were to focus on those who currently serve in national leadership roles at BLG, it would be people like Sharon Vogel and John Morris, both based in Toronto. Sharon leads our Construction Group and John leads our Health Law Group, both of which are renowned for their expertise. Pitman Patterson, the leader of what we call our "EMER" Group, is based in Toronto, and oversees our environmental, municipal, expropriation and regulatory lawyers. In Ottawa, we have Larry Elliot, who leads our Insurance

& Tort Liability Group and provides specific expertise in insurance, product recall and directors' and officers' liability. And finally, in Montréal we have André Royer, the head of our Labour & Employment Group. Each of these people are leaders within the firm because they are exemplary lawyers who are known for their expertise and outstanding client service. They lead by example! Of course, with over 180 lawyers in my group alone, there are so many I could name. I'll simply note that other identified leaders include Steve Winder (Labour & Employment, Vancouver), Trish Morrison (Construction, Calgary), Pat Hawkins (Health Law, Toronto), Kevin McGivney (Municipal Liability, Toronto), Kirk Boyd (Insurance Defence, Ottawa), Stéphane Pitre (Construction & Insurance, Montreal) and Alex Buswell (Labour & Employment, Montreal).



John: I agree with Cindy – it's impossible to pick just a few names out of literally dozens of highly ranked lawyers. We have really talented lawyers across the country, but if I can only highlight a few, our regional group managers in each office act as the leader of the group in their respective markets. These "RGMs" as we call them are Brad Dixon in Vancouver, Michael Marion in Calgary, David Di Paolo in Toronto, Kirsten Crain in Ottawa, and Mathieu Piché-Messier in Montréal – each of whom brings their own unique

strengths to their practice areas. In addition, Randall Block (Calgary) is recognized as a top oil and gas litigator, Rob Deane (Vancouver) is handling high stakes international arbitrations all over the world, Guy Pratte (Toronto) regularly leads some of the highest profile cases in the country, Jim Douglas (Toronto) is a highly sought after securities litigator....I'm getting hoarse!

You are both active in class actions. What percentage of your respective practices is dedicated to this as opposed to individual actions? Do you foresee a growing trend toward either?

John: Yes, class actions have become more prevalent in recent years, and we don't see any indication that activity in this area will slow in the years to come. We've noticed recently a trend towards privacy class actions being launched after data breaches. We've also seen an increase in product liability class actions, shareholder claims and competition class actions. The risks to businesses are increasing as more and more plaintiff firms are turning to class actions against businesses and often launching copycat actions modelled on U.S. claims.

Cindy: John and I are both members of BLG's Class Actions Group, which is comprised of lawyers from both of our groups who have unparalleled experience in defending class actions across the country. With our breadth of expertise across each of our offices, we offer our clients a truly integrated national approach which is particularly important when dealing with class actions. Our group has grown significantly in recent years and has deep technical, industry and of course legal expertise.

John, you have been a noted authority on securities litigation for years. What are some typical securities-related issues you deal with, and what have you noticed as far as trends in this practice? Is this work generated entirely within Calgary where you are based or do you often find yourself attending to securities matters in other provinces as well?

John: Securities litigation is definitely a



staple of my practice. It's an area of the law that I'm very passionate about since the facts of the cases are invariably intriguing and the work entails a huge variety of cases before courts, tribunals and regulatory bodies such as securities commissions.

Canada's regulatory framework as it pertains to the financial sector and particularly securities has seen a lot of change. In 2016, for example, the Canadian Securities Administrators (CSA) consulted with stakeholders on a variety of regulatory changes, including a controversial proposal to introduce a new requirement for firms and representatives to act in their clients' "best interests", in addition to the existing standard of registrants dealing fairly, honestly and in good faith with their clients. BLG acted as a commentator on these consultations, and expressed our concern that this may result in registrants being held to impossible or unmeasurable standards. A large part of our practice is representing advisors in both litigious and regulatory forums, and it is ever-changing.

In addition, shareholder activism continues to be a key issue for Canadian boards and management, particularly within the mining and energy sector. Last year, our team of counsel in Vancouver and Toronto was successful in a joint B.C./Ontario securities commission hearing in the well-known "Dolly Varden" case where a shareholder took issue with a private placement and sought a cease trade order.



Construction litigation seems to be an area that many firms, if they didn't attend to this work already, are eager to carve a space for themselves within. Has there been an "explosion" in this work or have you witnessed more of a gradual increase?

Cindy: Construction, as an industry, tends to ebb and flow with the economy – and so matters related to construction tend to follow that pattern. That said, we have here at BLG a team of construction litigators who are consistently recognized as the leading construction lawyers in Canada because of their expertise and knowledge of both the law and of the construction industry. Our knowledge is so deep and widely respected that our partners Bruce Reynolds and Sharon Vogel were tapped to lead a province-wide review of the *Construction Lien Act* legislation in Ontario. The report, which garnered the support of a diverse advisory committee, has been widely acknowledged as an outstanding piece of work and will likely form the basis for legislative reform in Ontario and across the country. We work hard for our clients and that shows in the outcomes of the matters we are engaged with – always putting our clients' best interests first. We recently successfully defended a Canadian joint venture against a \$1.1 billion arbitration related to a major construction project. It was a significant case for BLG, and our success was due to

our ability to bring together expertise and talent from across the country. We also leveraged technology to efficiently and effectively conduct document review with our in-house discovery services team, allowing our leading partners including Chris O'Connor Q.C. and Michael Skene to identify issues and apply critical thinking to provide deep, value-added insights.

Did either/both of you care to comment on the role of arbitration and other alternative dispute resolution methods in your respective practices? Is it still on the increase or has the pendulum begun to swing back toward courtroom litigation?

Cindy: Our services are centered around creative problem-solving, which often requires avoiding protracted litigation. The majority of our clients have been with us for many years, and they turn to us because they know we can effectively and efficiently defend claims, and always in their best interests. We have a track record of recognizing that there are many times that a matter is best addressed through negotiation on our client's terms. Our clients rely on our in-depth knowledge of the law and its application. Furthermore, we understand the practical implications of litigation and appreciate that there are many factors which impact on a legal strategy in a dispute and that all factors, practical and legal, need to be taken into

account when advising clients on the implications of a particular case. Our job is to help the client understand how a case is likely to unfold and to provide them with the insights they require to make the decision whether to resolve a matter.

The Association Of Corporate Counsel (ACC) awarded BLG and its long standing client, Healthcare Insurance Reciprocal Of Canada (HIROC), the 2013 ACC Value Champion Award for Achieving Predictability and Pay for Performance in Long-Term Client/Firm Arrangement. Did you want to comment on the criteria for this award and how the firm met or indeed exceeded said criteria? Also – how has the relationship with HIROC grown as a result of innovative business practices?

Cindy: We were thrilled to be recognized by the ACC for this award because providing value is an integral part of our commitment to service excellence, which drives everything we do at BLG. This award was developed to promote the idea that cost and value of legal services should be connected, which is something we are very comfortable with given the value we think we add. The ACC awards collaborations between law firms and law departments that deliver substantial value to their client organizations. Our award stemmed from a six-year fee arrangement with HIROC, a long-time client. The fee arrangement was developed to provide HIROC with predictable legal fees for a portfolio of litigation claims. It also includes performance incentives measured by the client so that a significant portion of the fee is at risk and only to be paid if we exceed expectations in terms of service quality, expertise and case outcomes. To ensure this approach is successful for both parties, we implemented many process improvements with HIROC, using technology and an innovative approach to litigation to ensure that we meet our clients' needs and spend time on the matters that need it. In the end, we also benefit from the greater predictability provided by our arrangement, as it has allowed us to retain top talent and plan for the succession of senior partners so that we can continue our relationship with HIROC for many more years to come.