

# CANADIAN Lawyer

WWW.CANADIANLAWYERMAG.COM

ISSUE 45.02 | \$11.95

## VIRTUAL ARBITRATIONS

Arbitrators predict they are here to stay, especially in a hybrid form

### TOP BOUTIQUES

Canada's leading tax, wills, trusts and estate and insurance defence boutiques

### PERSONAL INJURY

With court process changes differing widely across Canada, COVID-19 has had varying effects on PI disputes

### CROSS EXAMINED

Representing tech and life sciences companies is even more meaningful for Vanessa Grant during the pandemic

# TOP TAX LAW BOUTIQUES:

## A taxing time needs expertise



**TRYING TO** figure out corporate taxes is an intricate process at any time. However, trying to make sense of tax obligations in a year where COVID-19 brought havoc on businesses will mean they will have to be especially reliant on lawyers and accountants to walk them through what could be a very complicated tax year.

Winners of this year's *Canadian Lawyer's* Top 10 Tax Law Boutiques indicate 2020 will provide some additional challenges when figuring out taxes — especially how to deal with the inevitable losses that many companies have faced because of pandemic lockdowns and the impact they had on revenue and profits.

Anthony Strawson, co-managing partner with Felesky Flynn LLP, says that many of the companies with which he works, especially those in oil and gas, have gone through a few tough years already, and the pandemic has certainly made things worse.

“This year, we’ve seen from clients an emphasis on understanding government subsidies, loss utilization, debt forgiveness type of rules than you might see in more normal times. There is more concentration on harvesting losses, making sure they are in the right places.”

Blair Dwyer of Dwyer Tax Law says one big trend he notices is lawyers “learning to navigate the new rules on private corporation taxation and the complicated tax on split-income rules. While the rules are complex, it is still possible to work with the rules.”

Kim Moody at Moodys Tax Law LLP says

one issue he has seen is that many countries — including Canada — were not ready for the impact of doing business remotely or digitally as compared to the traditional bricks-and-mortar approach. Taxation systems “need to be modernized and updated to capture appropriate taxation revenues for profits generated on their residents.”

Added to the impact of COVID-19, boutique tax law firms are seeing other trends that have increased the need for professional services. The partners at Thorsteinssons LLP outline just a few of the challenges that have emerged in tax law.

“Over the past years, there’s been a noticeable shift toward greater complexity and compliance work required, especially in regard to the taxation of private companies,” says Alexander Demner.

Due to general economic conditions, Ian Humphries says there has been a shift away from larger M&A deals — although those certainly still exist — and “toward estate planning, asset protection and loss utilization.”

Kyle Lamothe says that “clients have also increasingly expressed concern over potential future tax changes — marginal tax rate increases, capital gains inclusion rate changes — which has prompted various tax planning steps being taken.”

With government taking on so much debt to deal with COVID-19, there is a fear that future tax bills can only go higher. “There’s a lot of anxiety and discussion around future taxes and what governments might ultimately do to pay for some of these things coming out





of the pandemic,” says Felesky’s Strawson.

Moody agrees, saying that COVID-19 has exacerbated this issue but that many governments — including Canada — were spending more than their revenues even prior to COVID, thus putting pressure to increase taxation directly or indirectly. “There are many possibilities for increased taxation and we are watching this closely.”

Vitaly Timokhov, a partner at TaxChambers LLP, says the federal government moved quickly to establish support programs through legislation such as Bill C-14, the COVID-19 Emergency Response Act. But the Canada Revenue Agency has sent strong signals that some of the benefits handed out during 2020 will likely be audited, even though it gave unclear communication on whether support

would be given based on gross or net income.

As well, there is concern that the government has not yet communicated how it will pay for all the COVID-19 programs.

“Will it be increase in the capital gain inclusion? A possible increase in GST rates? Or limitations on the principal residence exemption?”

Timokhov adds, “Given the size of the revenue that needs to be raised, it cannot be done through small incremental changes.”

Sheena Bassani of Barsalou Lawson Rheault Barristers & Solicitors says that one side effect of the pandemic was to further “digitize” the economy, leaving more profits outside the reach of tax administrators.

While there have been attempts by the OECD to come up with a multinational solu-

## HOW WE DID IT

In late 2020, *Canadian Lawyer* asked lawyers, in-house counsel and clients from across Canada to vote on the top tax boutiques. They were asked to rank their top firms from a preliminary list, with a chance to nominate a firm that was not included. To qualify for our list and be voted for in our survey, firms were required to derive a minimum of 80 per cent of their work from tax law.

tion, Bassani says, “some countries, including Canada, are losing patience and, after launching digital sales taxes, have warned they will deploy their own approach to tax the income of digital giants.”

# TaxChambers LLP TAX LAWYERS AND ADVISORS

- Corporate & Business Taxation • Taxpayer Representation & Litigation
- Canada/U.S. Cross-border Tax, Trust & Estate Planning

PROUDLY RANKED ONE OF CANADA’S TOP 10 TAX LAW BOUTIQUES SINCE 2017



155 University Avenue, Suite 300, Toronto, Ontario, M5H 3B7 Tel.: (416) 847-7300 | [taxchambers.ca](http://taxchambers.ca)

# TOP WILLS, TRUSTS AND ESTATES LAW BOUTIQUES:

## Leaving a legacy that will last



**WHEN YOU'RE** dealing with a deadly pandemic that is more fatal to the elderly than most others, the law surrounding wills, estates and trusts can come sharply into focus.

This year's winners of *Canadian Lawyer's* Top 10 Boutiques in Wills, Estates and Trusts have seen some key trends emerge recently, especially those related to COVID-19. Among them is the rise of video conference options for dealing with estate planning during a pandemic that has left many people unable or unwilling to leave the safety of their home.

Daniel Paperny, a partner with winning firm WEL Partners, says client meetings, court hearings and mediations are all conducted over Zoom, and "we have normalized the practice of taking affidavits and witnessing the execution of certain documents via video conference as well.

"To say that the pandemic has impacted our practice area and the way we do business would be an understatement," says Paperny.

The pandemic has revealed necessary modernizations long overdue in estate and trust planning, including virtual execution of testamentary documents and advances toward digitizing wills. And, like many, lawyers and support staff aren't in the office as much as they used to be, most of the time doing their work from home.

Margaret O'Sullivan, managing partner

at winner O'Sullivan Estate Lawyers, says these changes will "allow more efficiency and ability to accommodate clients wherever they may be, including snowbirds going south and others to their summer homes, which will smooth out the process." Likewise, estate planning on video platforms will live on beyond the pandemic.

"Our ability to reach out to our clients wherever they may be in the world will present new opportunities and give us a true global reach."

Many clients of wills, estates and trust boutiques have lost loved ones who have fallen ill, been hospitalized and died due to COVID-19. Often, the death of someone due to COVID-19 can be sudden and unexpected, so there was no estate plan in place. Of

### HOW WE DID IT

In late 2020, *Canadian Lawyer* asked lawyers, in-house counsel and clients from across Canada to vote on the wills, estates and trust boutiques. They were asked to rank their top firms from a preliminary list, with a chance to nominate a firm that was not included. To qualify for our list and be voted for in our survey, firms were required to derive a minimum of 80 per cent of their work from wills, trusts and estate law.



course, says Paperny, this can lead to a greater likelihood for litigation due to the lack of a plan.

Sender Tator, a partner with Schnurr Kirsh Oelbaum Tator LLP, another winning firm in the wills, trusts and estates category, says he seen quite a bit of litigation that has come out of the transfer of wealth as the Canadian population ages. As well, there are more disputes between estate trustees and beneficiaries over the executor's handling of the administration of the estate.

Nimali Gamage of Goddard Gamage LLP agrees, saying there are more "family members abusing or misusing the court process to battle siblings under the guise of elder law litigation." There's also an increase in the number of people of all ages wanting to make wills and powers of attorney due to issues raised and discussions prompted by COVID-19.

The pandemic has brought into focus some of the shortcomings in long-term care homes and assisted living facilities

**"To say that the pandemic has impacted our practice area and the way we do business would be an understatement."**

Daniel Paperny, WEL Partners

— with issues related to understaffing and inadequate living conditions. This in turn has led to more conflict among family members in trying to determine the care for their elderly loved ones and at what cost.

"There can be highly contentious disputes between substitute decision-makers, children or other family members about the manner in which elder adults should be cared for," Paperny says.

Angelique Moss of Casey & Moss LLP says she is seeing similar situations. "The decision to move someone into long-term care is particularly fraught right now due to COVID-19. Siblings will often have different views about what's in their parent's best interests." Her colleague Laura Cardiff adds, "These can be very heated files. In many ways, they have more in common with a child custody matter than your traditional estate litigation file."

Even day-to-day decision-making requires an "impossible balancing" of COVID risks against the harm of isolation, she says, "for example, whether or to what extent to permit visitors, how to define essential outings, navigating the wearing of PPE and, now, receipt of the vaccine." All these decisions can leave substitute decision-makers vulnerable to criticism and even litigation.

# An award is only as good as the work it represents.

---

Honoured to be named  
(for the third time!)  
one of Canada's Top 10  
Wills, Trusts & Estates boutiques  
by Canadian Lawyer magazine.

---

# B

BALES BEALL LLP

[balesbeall.com](http://balesbeall.com)

## TOP BOUTIQUES

## DE VRIES LITIGATION LLP

[www.devrieslitigation.com](http://www.devrieslitigation.com)



**B**y living up to its motto — Advice, Advocacy, Resolution — de VRIES LITIGATION LLP is consistently named one of the top wills, trusts and estates boutique law firms in Canada.

“Our calling card is that we’re litigators first,” said Justin de Vries, the principal of de VRIES LITIGATION LLP. “We are litigators who litigate estates, trusts and capacity issues, as opposed to estates or trusts lawyers who are litigators. We know our way around a courtroom.” The firm also advises on complex estate administrations and its clients range from large financial institutions to individual trustees, executors and beneficiaries. Justin de Vries is also a busy mediator helping settle often intractable estate disputes.

Due to the firm’s expertise, de VRIES LITIGATION LLP lawyers are often in court, including the Ontario Court of Appeal, and they routinely attend examinations and mediations. They are regularly appointed by the court as estate trustees, guardians and section 3 counsel under the Substitute Decisions Act.

“We bring a professional approach and get people to focus on resolving the immediate issues and not litigating the longer-term issues,” Justin de Vries said of working in what can sometimes be emotionally charged situations. “Compromise is a term we use a lot in the estates world, and we try to get our clients to focus on the future, not the past.”

## HULL &amp; HULL LLP

[www.hullandhull.com](http://www.hullandhull.com)



**F**or more than 50 years, Hull & Hull LLP has been a leader in all aspects of estate, trust and capacity law. The firm has acted in Canada’s largest and most complex estates cases, including at the Supreme Court of Canada, and its lawyers have written some of the leading texts on estate law. Among the certified specialists in estate and trust law and civil litigation, Hull & Hull LLP’s team includes a former chief justice of Ontario.

Hull & Hull’s services, however, extend beyond the hard facts of a case. “We are also sensitive to the needs of clients who often approach us when dealing with what is already an extremely difficult and stressful time of their lives,” says associate Nick Esterbauer.

That ethos was established by the firm’s co-founder, Rodney Hull, who was one of the first lawyers in Canada to specialize in estate and trust issues, and his son, co-founder Ian M. Hull. “We draw on our established expertise but remain highly engaged in the development of the law and new strategies to assist in providing clients with the best service possible,” Esterbauer said.

Those strategies include sharing their expertise within the legal community, speaking regularly at professional development programs and seminars and formal teaching appointments, as well as publishing a daily blog and releasing a weekly podcast.





# TOP INSURANCE DEFENCE LAW BOUTIQUES

## Times are changing for insurance defence lawyers

**IT GOES** without saying that when you are thinking of trends in the field of insurance defence law, COVID-19 would have a big role to play.

“It became very clear to us very early on that the pandemic was going to completely change some key aspects of our business,” says Benson Percival Brown LLP partner Heather Vaughan. That included, as it did with virtually all law firms, moving to a remote work environment over the course of a weekend and then spending the next few weeks ironing out the kinks in a virtual world.

As part of pivoting to a virtual practice, insurance defence firms have learned how to conduct pretty much any court hearing or meeting with clients or witnesses virtually. Examination for discoveries, mediations,

**IMPRESSING CANADIAN LAWYER  
IS GOOD.**

**IMPRESSING OUR CLIENTS  
IS EVEN BETTER.**



Thanks to *Canadian Lawyer* for naming us a  
Top Ten Insurance Defence Boutique.

[www.bensonpercival.com](http://www.bensonpercival.com) | 416.977.9777

**BENSON PERCIVAL BROWN LLP**

# TOP BOUTIQUES

pretrials and settlement meetings have pretty much all moved to a virtual format.

Likewise, the courts have innovated at a rate that has not been seen before because of the pandemic and are poised to embrace many of these new tools permanently.

Brian Rhodes of Dolden Wallace Folick LLP says that, in December 2020, some of the firm's lawyers conducted a two-day appeal hearing by Zoom. It was the first case heard in the B.C. Court of Appeal using the Caselines application for electronic management of evidence at trial, a technology many court jurisdictions are now using.

Eric Grossman of Zarek Taylor Grossman Hanrahan LLP says it is likely that litigation practice in the insurance defence world has changed for good because of the tremendous cost savings and efficiencies associated with

virtual hearings. He was recently involved in a nine-day virtual hearing and the experience was "incredibly efficient," especially since the lack of travel obligations made things easier.

In insurance-related litigation coming out of COVID-19, lawyers at the winning firms say claims are expected to rise in areas such as business interruption, wrongful death in residential care facilities and claims against companies for not providing paid goods or services such as the airline industry.

Rhodes says his firm "worked closely with domestic and international insurers to address unique and novel insurance issues affecting the retail, hospitality and recreational business sectors." He adds that the firm recently has been handling class action claims involving long-term care homes, pharmaceutical products and allegedly defective

## HOW WE DID IT

In late 2020, *Canadian Lawyer* asked lawyers, in-house counsel and clients from across Canada to vote on the top insurance defence boutiques. They were asked to rank their top firms from a preliminary list, with a chance to nominate a firm that was not included. To qualify for our list and be voted for in our survey, firms were required to derive a minimum of 80 per cent of their work from insurance defence.

construction materials.

Richard Hepner, a partner at Dutton Brock LLP, says the "new normal has its pros and cons. . . . The second wave has not been easy, and we are finding ways to deal with COVID fatigue and break up the monotony of 'just work,'" he says. **CL**



**Forward Thinking  
Strategic Litigators**

**CHOSEN AGAIN**  
HONORED TO BE ONE  
OF CANADA'S TOP 10  
INSURANCE DEFENCE  
LITIGATION BOUTIQUE FIRMS  
*As Voted By Canadian Lawyer Magazine*

**STRONG TOGETHER**  
TORONTO | WHITBY | OTTAWA | FMLAW.CA



# THANK YOU.

We are honoured to be again recognized as one of the Top 10 Insurance Defence Boutiques in Canada by *Canadian Lawyer Magazine*. Thank you to our peers and colleagues who voted for us, and to our incredible clients who trust us with their work.



Congratulations to the other firms listed. We are proud to share this award with you.

---



**ZAREK  
TAYLOR  
GROSSMAN  
HANRAHAN** | LLP

Great People. Exceptional Advocacy. Serving all of Ontario.

T: 416-777-2811 | [www.ztgh.com](http://www.ztgh.com)

## TOP BOUTIQUES

TOP BOUTIQUES  
2021

## TAX LAW

**Barsalou Lawson Rheault Barristers & Solicitors**  
Montreal  
barsalou.ca

**Counter Tax Lawyers**  
Toronto  
countertax.ca

**Drache Aptowitz LLP**  
Toronto, Calgary, Ottawa  
drache.ca

**Dwyer Tax Law**  
Victoria  
dwyertaxlaw.com

**Felesky Flynn LLP**  
Calgary, Edmonton, Saskatoon  
felesky.com

**Millar Kreklewetz LLP**  
Toronto  
taxandtradelaw.com

**Moodys Tax Law LLP**  
Calgary, Edmonton, Toronto,  
Buffalo, NY  
moodystax.com

**Radnoff Haworth LLP (formerly  
Radnoff Law Offices)**  
Toronto  
radnofflaw.com

**TaxChambers LLP**  
Toronto  
taxchambers.ca

**Thorsteinssons LLP**  
Toronto, Vancouver  
thor.ca

## WILLS, TRUSTS AND ESTATES LAW

**de VRIES  
LITIGATION LLP** 

**Telephone:** (416) 640-2754  
**Website:** devrieslitigation.com

**Hull & Hull LLP** 

**Telephone:** (416) 369-1140  
**Website:** hullandhull.com

**Bales Beall LLP**  
Toronto  
balesbeall.com

**Casey & Moss LLP**  
Toronto  
caseyandmoss.com

**Goddard Gamage LLP**  
Toronto  
ggsllawyers.com

**Horne Coupar LLP**  
Victoria  
hornecoupar.com

**Legacy Tax + Trust Lawyers**  
Vancouver  
legacylawyers.com

**O'Sullivan Estate Lawyers**  
Toronto  
osullivanlaw.com

**Schnurr Kirsh Oelbaum Tator LLP**  
Toronto, Bowmanville  
estatelitigation.net

**Whaley Estate Litigation Partners  
(WEL Partners)**  
Toronto  
welpartners.com

## INSURANCE DEFENCE LAW

**Bell Temple LLP**  
Toronto  
belltemple.com

**Benson Percival Brown LLP**  
Toronto  
bensonpercival.com

**Chomicki Baril Mah LLP**  
Edmonton  
cbmlp.com

**Dolden Wallace Folick LLP**  
Toronto, Vancouver, Kelowna, Calgary  
dolden.com

**Dutton Brock LLP**  
Toronto  
duttonbrock.com

**Flaherty McCarthy LLP**  
Toronto, Whitby, Ottawa  
fmlaw.ca

**Lindsay LLP**  
Vancouver  
lindsayllp.ca

**Stieber Berlach LLP**  
Toronto  
sblegal.ca

**Whitelaw Twining Law Corp.**  
Vancouver  
whitelawtwining.com

**Zarek Taylor Grossman Hanrahan LLP**  
Toronto  
ztgh.com

# CANADIAN Lawyer

PROUDLY BROUGHT TO YOU BY THE  
BUSINESS PUBLISHING COMPANY OF THE YEAR

## PRINT



## DIGITAL



## EVENTS



FIND OUT MORE ABOUT US AT [WWW.KEYMEDIA.COM](http://WWW.KEYMEDIA.COM)



SYDNEY | AUCKLAND | DENVER | LONDON | MANILA | SINGAPORE | TORONTO