

Lawyers turn to hot sectors to survive mining slump

Rise in medical marijuana use, aboriginal business among sources of work

By Glen Korstrom

The recent downturn in the global mining sector has underscored how important it is for lawyers to be versatile and quick to adapt to developments in emerging legal areas.

Hot legal sectors in the future are expected to stem from trends such as e-commerce, marijuana and an aging population.

The established niche of aboriginal law is also expanding rapidly because more First Nations are working collaboratively with large companies.

“In the past, if a firm acted for a big mining company that was mining somewhere and there was a First Nation making a land claim over that mine area, the law firm could have a potential conflict,” said Gowling WLG managing partner Shayne Strukoff. That would restrict the law firm from acting for both the mining company in one case and the aboriginal group on a separate matter.

“Now there are a lot more commercial transactions [involving First Nations] being done that are separate and apart from land claim issues. There aren’t as many conflicts anymore because a lot of these corporations are getting more sophisticated and they realize that it is better to do joint venture agreements and arrangements directly with First Nations groups.”

Gowling has six lawyers working on aboriginal law matters; five years ago it did not have any, Strukoff said.

Warren Smith, managing partner at the legal recruitment company The Counsel Network, said many large firms in Vancouver “are effectively built for bull markets and are known to have fairly large securities and merger and acquisition practices built around substantive mining activity.”

However, “when that work goes away or the volume dips for an extended period of time, the question is what to do with that transactional skill set,” Smith said. “I think they are all grappling with that question at the same time.”

He said a lot of lawyers who previously helped piece together mergers, acquisitions and financings in the mining sector are now finding technology or biotech clients.

Farris, Vaughan, Wills and Murphy LLP managing partner Keith Mitchell agreed that legal skills are often transferrable across sectors but said his firm has long had a significant biotechnology practice.

Last year, Farris’ biotechnology lawyers helped close Tekmira Pharmaceuticals Corp.’s (TSX:TKM) \$890 million acquisition of OnCore Biopharma Inc.

Other Farris work that stems from trends includes what Mitchell called the “one-off” case that helped change laws important to an aging population. The BC Civil Liberties Association hired Farris partner Joe Arvey to successfully argue and spur the Supreme Court of Canada to rule last year that mentally competent adults who are suffering intolerably from an incurable illness have the right to die.

Canada’s law that criminalizes marijuana use and possession still stands, but demand for advice related to workers who use medical marijuana is rapidly increasing, according to Fasken Martineau DuMoulin LLP associate Monique Orioux, who works with 13 other lawyers in her firm’s labour and human rights group.

“Our number of lawyers has not increased because of marijuana-related work but we have all received training on the topic,” she said. “I conducted a seminar in house just a couple months ago on marijuana and the workplace. Cases have arisen in the past several years.”

Orioux used to have clients who asked generally about alcohol and drug use in the workplace and how to maintain safety.

Then, as the number of medical-marijuana dispensaries mushroomed in Vancouver, clients increasingly asked Orioux specific questions about how to deal with employees who came to work high.

Clients want to know when they can test for marijuana use without intruding on employees’ privacy rights as well as when they can discipline an employee without discriminating against that worker on the basis of his or her disability.

“Marijuana is a hot topic that impacts every employer regardless of the work that they conduct,” Orioux said. •

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