



Farris Partner Elizabeth Harrison, Q.C. features in this article.

Wanted: Lawyers ready to go green

'Environmental lawyers are gaining access to business people who have real money'

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By Julius Melnitzer

The environmental lawyer, it turns out, is to the green age what the intellectual property (IP) and information technology (IT) lawyers were to the dot-com era. In the dot-com era, IP and IT types evolved from being an afterthought on transaction teams to being integral to their proper functioning.

Their place in firm hierarchies rose mightily as their specialized practices -- patent prosecutions, trademark and copyright protection, IP litigation, as well as licensing and outsourcing -- became important profit centres in their own right. However, the business lawyers -- the core corporate commercial, corporate finance, securities and M&A types -- didn't go away in the e-commerce era. Nor did they lose their influence in the legal hierarchy. Their understanding of how business and transactions work remained the legal lynchpin for a transaction's success. They called themselves e-commerce lawyers, and their ranks included a fair number of entrepreneurial IP and IT types who evolved into business lawyers.

"More and more clients want to be part of this movement and get in on the carbon market." - Elizabeth Harrison, Q.C.

That's now happening to environmental lawyers in a legal market where the cleantech designation is the flavour of the day. As governments introduce a range of climate change initiatives, demand for legal advice is driving the rise of the environmental lawyer. "My experience is that senior business people take an interest in cleantech and climate change and they understand that they need to know something about it," said Toronto-based Gray Taylor, leader of Bennett Jones' climate-change and emissions-trading group, who started out as a corporate commercial lawyer and became an environmental transaction lawyer before taking on his current form. "For the first time, environmental lawyers are gaining access to significant business people who have real money." It's not that the link between environmental lawyers and business is entirely new.

"What's new is that cleantech lawyers will become important in transactions because they will have to respond to a host of new regulatory issues as well as the impact of the cap-and-trade market," said Paul Cassidy, head of Blake Cassels & Graydon's environmental group in Vancouver. In other words, climate-change considerations have brought business law closer to environmental law than it has ever been.

"Things have got to the point where any transaction where a client finances or buys or sells something that impacts the environment invokes the need for environmental negotiation," said Montrealer Anne-Marie Sheahan, who leads McCarthy Tétrault's environmental law practice. "This has evolved over two decades, but recently, there is more and more negotiation about the environmental elements of such a transaction." When the product is an energysaving device or service, the negotiation often revolves around pricing.

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“If you have a system that reduces heating costs, how do you price that to someone who has an existing building?” asks David Pamentor, national leader of Gowling Lafleur Henderson’s technology industry group, who is based in Toronto. “Because business models are evolving, creativity is often required to turn a product into a commercial enterprise.

“And the newer the product is, the more skepticism you get, so frequently it becomes a matter of the supplier sharing the actual savings with the customer. The lawyer’s job is to make sure the pricing and structuring add up to a good deal for the client.” Transactional energy lawyers, who have always had access to monied clients, are also moving into cleantech.

Lisa DeMarco, who leads Macleod Dixon’s Toronto energy practice, comes from a background that combines energy law with environmental law. “That worked out perfectly because at its core, carbon constraint and carbon finance are primarily energy-productivity issues, not environmental-law issues,” she said. “The question for clients is how much bang they’re going to get for their energy-conservation efforts and how few bucks they can spend to do it.” And it works the other way too.

At Farris Vaughan Wills & Murphy in Vancouver, Elizabeth Harrison, Q.C. has extended her general corporate, M&A and financing practice into the renewables and emissionstrading aspects of cleantech. “More and more clients want to be part of this movement and get in on the carbon market,” she said.

About Elizabeth Harrison, Q.C.

Elizabeth has provided legal advice on various matters including mergers and acquisitions for public and private companies; corporate governance issues; establishment of commercial, “not for profit” corporations to effect public-private partnerships; drafting legislation to effect transactions; corporate reorganizations; arrangements to achieve a division of assets and the creation of a new public company; arrangements to affect merger of companies, including pooling of interests and general corporate advice to clients including advice on incentive and employee stock compensation plans and deferred unit plans.

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