

INTRODUCTION

“**T**HERE IS A KIND OF GENIUS to a firm this size,” said a McCarthy Tétrault lawyer as we considered the forces that had built

that combines many legal specialties in complex and unpredictable ways. When boards and CEOs are betting the company, they need law firms that can assemble substantial teams of first-rate lawyers at short notice.

In 2004, Steel Company of Canada needed that kind of law firm. For twenty-five years, Canada's largest steel producer had seen declining steel prices erode its market position and create a liquidity crisis. (The company had 9,000 active employees and 15,000 pensioners.) McCarthy Tétrault had been advising Stelco on governance issues since the early 1990s. When the steel-maker's board decided to seek a court-supervised restructuring, McCarthy Tétrault was one of a handful of law firms considered for the assignment. "At the end of the day," said Blair Cowper-Smith, a key McCarthy Tétrault lawyer on the Stelco file, "they needed a big firm, and it was going to be one of four or five. What did McCarthy Tétrault have to offer?"

Stelco's difficulties made it almost a perfect client for the firm, the kind for which McCarthy Tétrault and its predecessor firms had spent twenty-five years preparing. "In the 1980s," Cowper-Smith reflected, "we could see more companies would become national and international in scope, and it made sense to us to provide the kinds of services they need. We had to be big, we had to have lawyers on staff who were specialists in a number of areas. We had to be one of what would be a relatively small number of firms capable of handling complex, multi-dimensional transactions. We said, 'That's the market we want to be in.'" By 2004 McCarthy Tétrault had concluded that the core of its business lay with about fifty large corporations and institutions across Canada that would frequently tap its substantial expertise in corporate finance, mergers and acquisitions, litigation, tax, insolvency, pensions, real property and the other legal services such clients required. "As we looked at Stelco's needs, McCarthy Tétrault could offer strengths equally in insolvency



McCarthy Tétrault's senior leadership team launched the firm's 150th anniversary in January 2005. From left, Owen Johnson, national practice group leader; Kenneth Morell, chief operating officer; Iain Scott, chief executive officer; and Trevor Bell, national professional resources leader.

and litigation. It's like having the cardiologists and the surgeons," said Cowper-Smith. By the end of 2004, with the restructuring hearings continuing and international banks and investors considering takeover bids or financing proposals for Stelco, more than fifty McCarthy Tétrault lawyers were working on the Stelco file.

These lawyers practised in several offices as well as in many legal specialties. "It makes no difference whether someone is two floors or

a phone call or an e-mail away,” said Cowper-Smith, citing a recent project for which one partner came from the Montreal office and another from Calgary to advise a client, “and the client probably never knew what offices they happened to work in.” The firm’s hard-won abilities to practise law in the courtrooms and boardrooms of all the principal business centres in Canada and beyond, in French or English, in common law or civil law, with Canadian, American or European stakeholders, had become essential aspects of the service a leading law firm provided to the large national and international corporations that were its key clients.

FOR ANYONE INTERESTED in the emergence of the very large law firm and what that phenomenon has meant to Canadian law and to the country’s economy and society, there is no better case study than that of McCarthy Tétrault LLP.* In the 1980s, the predecessor firms of McCarthy Tétrault launched—against considerable opposition, only quelled in 1989 with a Charter of Rights decision in the Supreme Court of Canada—the era of the “national” law firm when they merged into a single firm operating in all the major business centres of Canada

*“LLP” because, like most large law firms, McCarthy Tétrault has responded to recent legislation that permits professional partnerships in Canada to become “limited liability partnerships.”

and internationally as well. The firms that would become McCarthy Tétrault had identified growth as not only a response to client pressures but also a strategy for competitive advantage. In 1983, one of them had predicted that “a firm with a limited local base will find it increasingly difficult to prosper in the face of the competition which the sophisticated and diversified national firms will offer.” McCarthy Tétrault was formed to be that sophisticated and diversified national firm. As the first mover in Canada in regional expansion, it had positioned itself to exploit the competitive advantage that size and specialization could offer.

Since then, McCarthy Tétrault has been the largest law firm in Canada and a leader in developing new structures for law firm governance and administration. Having grown by the start of the twenty-first century into a \$350-million-a-year organization applying sophisticated strategic planning in a highly competitive environment, McCarthy Tétrault has committed itself to finding and applying management methods to deploy the strengths of a single law firm that now comprises hundreds of lawyers with many specialties, located in many cities, working within two Canadian legal systems and a variety of domestic and foreign markets. From the 1980s to the early twenty-first century, McCarthy Tétrault has been a key participant in the most substantial transformation in the nature of Canadian law firms to occur since long-lived business law firms first came into being in the mid-nineteenth century.

In fact, McCarthy Tétrault's constituent firms had been present at that earlier historical moment, too. Its predecessor firms in Toronto and Montreal were established within a few years of each other in the period from about 1860 to about 1890 that saw the birth of l

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Charles Gonthier, two “alumni” of the firm who, from 1998 to 2003, constituted two of the nine justices of the Supreme Court of Canada, and Gérald Tremblay and Thomas Heintzman, who led the firm’s litigation team in 2004. But for the most part this book is not a retelling of the great court battles and leading cases of these lawyers and their colleagues.*

The firms that formed McCarthy Tétrault have also represented the business law needs of great Canadian corporate enterprises. In Quebec, Ontario, Alberta and British Columbia, clients of McCarthy Tétrault’s constituent firms have always included governments, banks

*In recent years, biographies of some of the great Canadian lawyers have appeared, including, notably, *John J. Robinette: Peerless Mentor: An Appreciation*, by George Finlayson, himself a leader of the McCarthy & McCarthy litigation section for many years.

and financial institutions, resource companies, industrial enterprises and development companies. In their days, Leighton McCarthy, Gordon MacDougall, Beverley Matthews, Robert Black, Yves Pratte and others acquired the same stature among corporate solicitors that their litigator colleagues held among courtroom barristers. They advised on deals, mergers, takeovers, financings and development projects that helped to create great corporate institutions, to

harness Canada’s natural resources through mines, pipelines and power dams, and to transform the fabric of Canadian cities through spectacular development projects. Still, this book provides relatively few detailed accounts of these transactions, partly because of client confidentiality restrictions but principally because McCarthy Tétrault lawyers have been involved in so many newsworthy transactions over the last century and a half that an attempt to cover even the most significant and dramatic ones would become little more than a summary.

This book is a history that is less about the legal work the lawyers have done for their clients than about the law firms they built, the factors that placed them among the dominant Canadian firms of their day, and the decisions that have placed McCarthy Tétrault in the front rank in the law firm environment of the twenty-first century.

The Montreal law firm that evolved from the sole practice of Eugène Lafleur into Clarkson Tétrault before becoming one of the founding firms of McCarthy Tétrault in 1990 had a close relationship with the leading private hydroelectric resource company in Quebec for over fifty years. The Toronto firm, launched by D'Alton McCarthy Jr. and retaining his name throughout, was intimately associated for more than a century with one of Canada's principal life insurance companies. But in 2004 leading law firms had fewer secure, exclusive, long-term relations with particular clients, who can disappear in mergers (as Canada Life Assurance Company did in 2003), expropriations (as Shawinigan Power did in the 1960s) or insolvencies of the kind that threatened Stelco. Corporations now have most of their routine legal work done in-house by their own legal staff, and their in-house corporate counsel are much more inclined to put the specialized work out to tender, transaction by transaction. They negotiate rates and terms and may choose to spread their work around to more than one law firm.

In this more competitive "transactional" market for legal services, there are fewer secure lawyers and law firms. Even senior lawyers need to hone their business skills as well as their legal ones, while younger lawyers move among firms, go "in-house," or shift between large firms and specialized legal "boutiques." Competition among law firms has become intense, and corporate retainers that once supported many relatively small law firms in most Canadian cities are now likely to go to a handful of large law firms, most of which operate nationally or internationally. Law firm recruitment has become professionalized and competitive as law firms work more intensely than ever to identify, recruit, train and retain the talent on which their future prosperity will rest. Nowadays the recruitment pool, once largely restricted to well-connected young men, is much more diverse, and firms pursue equity and diversity policies as an integral part of their efforts to hire and retain the most promising lawyers.

In many ways, law firms have begun to look more like other businesses. It is almost a truism within large law firms that the “professional practice of law” has evolved into the “legal-services business.” This is an international phenomenon that has become a Canadian one, and McCarthy Tétrault has been at the heart of the transformation.

THIS HISTORY OF McCarthy Tétrault and its predecessor firms began several years ago, when the partnership’s leaders saw twin anniversaries approaching—the 150th anniversary of the Ontario branch of the firm and the 120th anniversary of its Quebec branch—and asked me to help them recapture the record of where they had come from. But perhaps there has been more than looming dates behind their interest in this history. Many senior lawyers and leaders within the firm, in Montreal, Toronto, Calgary or Vancouver, were vividly aware of having, during their professional lives, participated in a historic transformation in the nature of legal practice and the way lawyers work. Some were recently retired, others approaching retirement, others still in midcareer, but all had begun their practices in casually managed and informally led firms of ten or twenty or at most forty lawyers, in an era when a law firm was nothing like this large, branded, professionally managed legal-services enterprise that employs some 2,000 people across many cities and practises kinds of law and kinds of business that were unknown when they entered the profession of law.

Contemplating a history of their firm, these lawyers sensed that the culture of the firm, the legacy of stories and personalities and achievements that provide identity for it and reinforce a sense of pride in one’s work and one’s partners, could no longer be transmitted the way it used to be. In a firm with hundreds of lawyers in many cities, younger lawyers do not have the same kind of constant, informal contact with the seniors and leaders through which traditions were once passed on. The organization is simply too large to rely on casual transmis-

sion of firm lore and culture and a sense of where the firm has come from and what its values are. The origins of this book, therefore, may also express a wish to document in more formal fashion an institutional memory that can no longer flow so effectively through oral transmission.

McCarthy Tétrault is a fusion of four substantial law firms in four regions of Canada; indeed, how the constituent firms met the challenge of learning to operate as a single unit is one of the themes of this book. I have recorded McCarthy Tétrault's origins not in straightforward chronological fashion but as a series of individual firm histories. The first chapters follow McCarthy & McCarthy, which began in Barrie, Ontario, in 1855 as the law firm of the McCarthy family. McCarthy & McCarthy's first tentative steps into western Canada in the 1980s became the catalyst for the building of the national law firm, so sections about Alberta and British Columbia follow the Toronto chapters. Both Black & Company in Calgary and Shrum, Liddle & Heberton in Vancouver were younger firms than their eastern counterparts, but both grew out of distinct regional legal cultures that I have sketched in the Alberta and British Columbia sections.

McCarthy & McCarthy's first mergers were in the west, but the firm could not be national without a strong base in Montreal, long the centre of the country's business and home to many of its leading law firms. The central chapters of the book turn to the unique legal culture of Quebec to follow the growth of the firm Eugène Lafleur founded in 1885 into Clarkson Tétrault and the key role the latter played in shaping the national partnership of McCarthy Tétrault that came about in 1990.

The formal mergers, however, were only one step in building McCarthy Tétrault. The final chapters follow the history of the merged firm through the 1990s, as the environment for law firms continued to change rapidly and the partnership explored new methods of managing legal practice on a grand scale.

ONCE MCCARTHY TÉTRAULT identified its need for a history of the firm, it commissioned me, on the advice of its publishing consultant, Ramsay Derry, to tell its story. The firm gave me unprecedented access to its archives and files, and its lawyers and staff were unfailingly cooperative and supportive through more than 100 formal interviews and many more informal appeals from a non-lawyer suddenly immersed in the world of a large law practice. I am grateful to W. Iain Scott, chief executive officer of McCarthy Tétrault, James C. McCartney, who was chair of the National Management Committee when I began

*Of the two name partners of McCarthy Tétrault, Mr. McCarthy had been dead for more than a century when I started this book, but M. Tétrault still went to the office every day and I benefited from his thoughtful and courteous reflections.

my research in 2001 and took a particular interest in the project throughout, and to Jacques Tétrault* in Montreal, Sholto Heberton in Vancouver, and Richard Shaw and Douglas Ewens in Calgary, as well as to all the individuals whose contributions are acknowledged in Appendix B.