

Calgary Goes Global

Macleod Dixon's merger with Norton Rose made one thing clear: Calgary is the most important battleground in Canadian firms' fight for survival and global relevance BY MARZENA CZARNECKA

BILL TUER DOESN'T *look* like a reluctant bride. He looks, well, like what a seasoned, well-respected Calgary corporate lawyer who's managed one of the city's most successful, independent law firms for the past decade should look like: a leader who knows in what direction he's steering the ship and why.

But a reluctant bride is what Tuer, Managing Partner of Calgary energy powerhouse law firm Macleod Dixon LLP, calls himself and the firm. It's tongue-in-cheek — but also true. Ever since Bay Street's leading law firms decided that the Calgary market was a market they wanted to be in, Macleod Dixon has been one of their three most desirable targets — one of *the* Calgary law firms the East most wanted to drag to the altar (the other two, still stalwartly independent: Bennett Jones LLP and Burnet, Duckworth & Palmer LLP). And, while it occasionally engaged in a dance or dalliance, in the end, the firm always spurned its Bay Street suitors, pursuing instead a stalwart agenda of national independence and independent global expansion, setting up offices in the world's "frontier" legal markets: Moscow, Almaty, Caracas, Bogotá and Rio de Janeiro (and, nationally, Toronto).

So when, in October 2011, the firm finally said yes, joining forces with Norton Rose OR LLP (until June 2011, Ogilvy Renault LLP) and thus becoming part of the 2,600-lawyer global player the Norton Rose Group, the event marked an unprecedented milestone in the evolution of the Calgary legal landscape — and threw an already competitive and destabilized market into further flux. And it underscored, again, what Calgary lawyers have long known — but have not always successfully communicated to their other (read "Bay Street") colleagues. The battle for the survival and global relevance of the Canadian national law firm will be fought, and won, in Calgary.



No one knows this better than the former Ogilvy Renault. Its management won't outright say that setting up a Calgary greenfield in January 2010 was a necessary prerequisite for the subsequent deal with the Norton Rose Group — but Calgary lawyers have no such qualms. Nick Kangles, Norton Rose's Calgary Managing Partner until the Macleod Dixon merger comes into effect, is unequivocal: "If a Canadian law firm wants to be part of an international law firm, they have to be in Calgary," he says. Indeed, the instant Torys LLP, which had eyed the Calgary market back in 1999 via a merger with Bennett Jones — arguably the only Calgary firm that would be a bigger merger prize than Macleod Dixon — entered the Calgary market with its own greenfield in March 2011, the street cast the deal as the penultimate step in making itself attractive for a global suitor (Allen & Overy LLP, given the two firms' past co-mandates, was the favourite).

Even if there is no global merger in the cards — and Torys Managing Partner Les Viner swears dealing with the Calgary greenfield will be plenty for now — a Calgary presence is critical for getting the global work. "More and more often, as Torys was doing international pitches, people were

saying, 'Tell us about your capability in Calgary,'" says Scott Cochlan, one of Torys' founding partners in Calgary. "It's damn hard to claim oil and gas expertise without a presence in Calgary."

It is as simple as that. With the world appetite for energy and natural resource unabated, if there's a trend of global law firm entrants into Canada post-Norton Rose, the Canadian law firm's Calgary office will be the deal maker or breaker, as much, if not more so, than its Bay Street reputation and presence — and any other offices, pure icing if not unwanted baggage. Tuer and Norton Rose OR's Managing Partner John Coleman don't say this. But Calgary lawyers do.

WHAT A CHANGE

When Bay Street first lay siege to it — McCarthy Tétrault LLP and Blake, Cassels & Graydon LLP first came west in, respectively, 1981 and 1985 — the Calgary market felt like the parochial gauche poorer cousin. At the close of the 20th century, when merger mania gripped Canadian law firms turning Calgary's independent shops into the Calgary offices of Borden Ladner Gervais LLP, Fraser Milner Casgrain LLP, and Gowling LaFleur Henderson LLP et al., it was still a patronized if highly desired little brother.

Today? Calgary's lawyers are mostly focused on the same thing as their clients: trying to predict global trends of resource consumption and production and whose appetite for control of those resources will prevail. Any inferiority complex with regards to Canada's financial centre out East is gone.

Against this backdrop, Tuer's assertion that Macleod Dixon "negotiated from a position of strength" rings absolutely true. As does Macleod Dixon's analysis that, in 2011, hooking up with a global player makes sense. "Based on clients we have, and our energy and natural-resource focus, an international dimension is clearly part of our business — and it has to be part of our business plan," says Tuer. In

1999, it was pretty easy to say no to a national merger. In fact, it was pretty easy to say no to a national merger in 2009 — when Macleod Dixon and Ogilvy Renault reportedly last seriously engaged in "m" talks prior to Ogilvy's Calgary greenfield attempt.

But an international merger? As Macleod Dixon's leap shows, even if you're a Calgary



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You can't lose sight of what it's really about: servicing the industry here and the need to service our clients.



powerhouse, in 2011, that's a move you need to seriously consider.

Even before Macleod Dixon dropped its bomb of an announcement, the Calgary legal landscape was more in flux than ever before. The Ogilvy and Torys greenfields were stimulating partner mobility, and Ogilvy's deal with Norton Rose had people wondering what — who — was next. Every time a big-name managing partner from a national firm flew in from Toronto, the market in Calgary braced for more destabilization (the official word from Davies, as of September 7, 2011: "We have evaluated the Calgary market from time to time. At this point, no decision has been made.") and pondered how many more law firms this city of one million taxpayers — albeit with 250 corporate head offices, and the lure of the world's third-largest proven global crude oil reserves (some 171.3 billion barrels at last count) — could support.

A WORD FROM THE REBELS

As Calgary firms draw global interest, one is staying put

THEY DIDN'T MERGE with anyone 10 years ago. They didn't even open a single non-Calgary office. And they've experienced a decade-plus of unchallenged success. In 2011, they're still a firm to go after if you want to acquire a top-notch Calgary office without an extra Toronto office. And they still don't want you. "It doesn't make sense for us," says Gary Bugeaud, Managing Partner of Burnet, Duckworth & Palmer LLP. "It's hard to see how we could improve our business model by expanding, or becoming part of something bigger."

Grant Zawalsky, one of BD&P's M&A stars, agrees. "There may be a business case for a global merger for some firms, as there was a business case for a national merger for some firms," he says.

BD&P continues to pursue its one-office, energy-focused, pay-attention-to-the-juniors-and-watch-the-firm-fly-with-them-as-they-grow model. That means they miss out on some of the work. They haven't represented a single Chinese investor in the oil sands. "But we've been on two-thirds of those files, playing for the other side," says Zawalsky. It's a good place it be.

The Macleod Dixon merger simultaneously removes one competitor – the 12-lawyer Norton Rose OR greenfield – and gives the market another, with Norton Rose now having a real presence in the city. Ultimately, though, the deal further destabilizes the market: firms loath to pursue a global merger will need to, at the very least, seriously think about one. Firms actively interested in one – Fraser Milner Casgrain is on the record as talking with various firms – may suddenly feel renewed pressure. Give no ear to the naysayers, this is a paradigm-changing deal on a level that the Ogilvy-Norton Rose deal, in Calgary at least, was not. Yet, despite its magnitude, the fundamentals of the Calgary market remain the same. They have been constant since February 13, 1947, when Imperial Oil drilled its first gushing well in Leduc, Alberta. Law firms come and grow and go, but it is the world's hunger for and consumption of the oil patch's resources, the price of oil and gas, and the resulting boom-and-bust deal cycle that define this market – especially the hunger.

That hunger is such that even when an energy bust looms, global money – and thus global law firms – is eyeing Calgary. The oil sands reserves are vast, and expensive. The world – from sovereign wealth funds to private-equity players through to independent oil producers – understands that it needs to come together to pay for them. And it's anxious to do so, the intermittent tarring of the sands' image in the press notwithstanding. This is, of course, good news for law firms – local, national and global – if they're present in the market and able to capitalize on the resulting legal work flow.

"There are decades and decades of work here," says Jerry Schramm, a partner with Lawson Lundell LLP. The Vancouver-based firm has had a quiet presence in Calgary since 1997, selling its Aboriginal and regulatory expertise to the oil sands producers. "On a bad day, more interesting deals get done in Calgary than in a month in Vancouver or even Toronto," says Schramm. And the deals – particularly as far as the capital-intensive oil sands work is concerned – are just the beginning. "People sometimes forget, there are two levels of work there. There is the transaction work, getting the deal done. And then there is all the on-the-ground work in terms of devel-

oping the project." Not as high-profile as the headline grabbing deals featuring the Koreans, the Arabs or the French – but unfolding over years and decades, and "dwarfing," says Schramm, the transaction file in terms of billable work.

That's why Torsys is here. And Norton Rose. And why others are sniffing around and knocking on doors. Why they want to be here, in this context, is a no-brainer. Where things get complicated is execution. "There is a difference between interest, action and success," says Brock Gibson, the Calgary-based Chairman of Blakes. "There will be – there should be – plenty of interest in Calgary, but you need to distinguish between interest and actually doing something about it." And action, he stresses, doesn't guarantee success. "It doesn't take a lot to open an office and put up a website with the word Calgary on it. That is not that difficult to do," says Gibson.

It took Blakes – one of Calgary's first new entrants, back in 1985 – more than two decades to fight its way to the top of the Calgary legal hierarchy. Others near its vintage are still struggling. And the "younger" greenfields launched by Osler, Hoskin & Harcourt LLP and Stikeman Elliott LLP in the mid-1990s – well, they've all had their ups and downs.

That's another fundamental reality that hasn't changed: Calgary is an extremely tough legal market, and it eats new entrants for breakfast. "The big boys in Toronto might think we've got a bottomless pit of institutional files from RBC," says Michael Thackray, one of the founding partners of Calgary energy boutique Thackray Burgess, which in 2009 was merged into the national law firm McMillan LLP. "That's not the way things work here." Partner Richard Peters agrees with that sentiment, "A lot of background work happens here to get a file," he says. "And a lot of work to keep it."

In such an environment, Calgary lawyers expected the Norton Rose and Torsys greenfields to struggle for years. Perhaps decades.

The Macleod Dixon deal changes that, in spades. As of January 1, 2012 – and, really, effectively as of its announcement – Norton Rose transforms from a new entrant with a negligible footprint into a 150-plus lawyer powerhouse that's been earning market stripes and building local relationships for almost a century.

And yet, in the Calgary market, past success is no predictor of anything. Not even if you're Bennett Jones, the firm that's held a disproportionate chunk of Calgary's legal market since year zero. The firm remains the yardstick that top-tier transactional firms, wannabe transactional firms, and more modest mid-market or regional players measure themselves against. The only bigger, more impactful story for the Calgary market than Macleod Dixon joining up with a global player would be news that Bennett Jones did the same. And now that Macleod Dixon has taken the plunge, the market's eyes are firmly on its granddaddy and its next move.



KENNETH WARREN
 > GOWLING LAFLEUR HENDERSON LLP



This is by far the most fluid, volatile legal-services market in Canada. The entry of Norton Rose and Torsys only fuelled an existing fire.



Bennett Jones is still on, or near – if you talk with the cynical – the top of the Calgary heap. "When you're on top, all you can do is maintain that position, and that's the hardest thing you can do," says Perry Spitznagel, the firm's Calgary Managing Partner. In 2005, it lost more than a dozen partners in a group poaching by Osler, a move that for many market observers was the most significant development in the Calgary legal market prior to the Macleod Dixon deal. As one competitor observes, "It did two things: it finally gave Osler traction

and gave them real presence in the marketplace. And it showed us that Bennett Jones was assailable and its partners movable.”

As Macleod Dixon inks its deal with Norton Rose, Bennett Jones looks, if not invulnerable – “No one is invulnerable,” says Spitznagel – comparatively stable. It didn’t lose any partners to Torys – and Torys would have had some inside knowledge of who was who within its senior ranks courtesy of those ancient merger talks – nor to the Norton Rose greenfield (it did, however, at press, lose Chip Johnston to Stikeman Elliott LLP). And it knows that for any global entrant eyeing Calgary, it’s the firm of choice.

“They’re always knocking,” Spitznagel says. Is Bennett Jones interested? Spitznagel pauses. “I don’t know what the end game will be, for our firm or for the Canadian legal market,” he says. “But to the extent that a merger is a good idea for any firm, then it has to be a good idea because the whole is greater than the sum of the parts.”

Read into that what you will. McCarthy Tétrault LLP’s Peter Keohane synthesizes the answer that cuts across the market in 2011. “The Norton Rose [deal with Ogilvy Renault] got people thinking, and you need to be positioned appropriately if someone comes.” The Macleod Dixon deal?

It’s got the market wound up like a finely tuned concert piano. Which is good news for global entrants brushing up against Macleod Dixon-style reluctant brides. For Macleod Dixon itself, after years of scorning mergers, the Norton Rose Canada combination is unlikely to be the end of the story. Norton Rose makes no secret that its ultimate goal is a combination with a significant US player (but says it is *not*, currently, in negotiations with anyone, including the 1000-lawyer Fullbright & Jaworski). For a Calgary-based, energy-focused firm, a direct hookup with Houston (New York, like Toronto, isn’t as important), will have as much appeal as a link with Asia — and more than a link with Europe.

The wound up market is good news for recruiters too. As Adam Pekarsky, founding partner of

Pekarsky Stein, puts it, “The new entrants create volatility and tell the generally risk-averse population that is the legal community that there are possibilities and opportunities out there.” In the wake of the new greenfields, the market was experiencing more lateral movement than ever before — and as Johnston’s move, for example, shows, not just to the greenfields. Not that it was moribund before. As Kenneth Warren, the Calgary Managing Partner of Gowling Lafleur Henderson LLP, notes, “This is by far the most fluid, volatile legal services market in Canada. The entry of Norton Rose and Torys only fuelled an existing fire.” (See sidebar: Growing Pains and Musical Chairs). The coming together of Macleod Dixon and Norton Rose OR is almost guaranteed to function like another shot of gasoline. As one lawyer puts it, “Mergers always have collateral damage.”

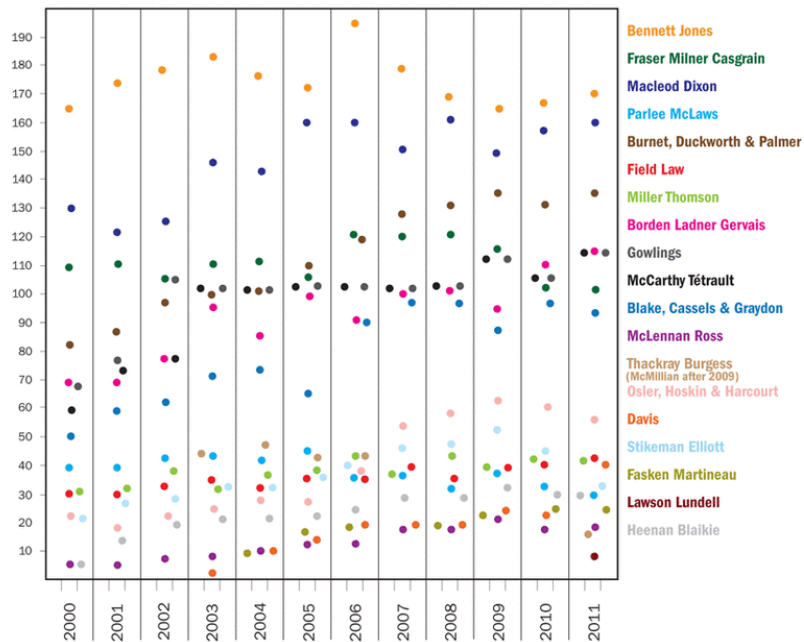
Exactly what — or rather who — the final fallout from the merger will be remains to be seen. An immediate result, however, is the instant elimination of one firm from

the crowded Calgary legal market — probably good news, because this market, full of growth and opportunity that attracts new entrants, is also a mature market.

This maturity is sharply illustrated by the apparent market-set size cap most Calgary law firms hit a decade or more ago. Both Bennett Jones and Macleod Dixon, for example, are today smaller than they were in 2000 (see chart: Calgary by the Numbers). Other firms — notably Gowlings and FMC — have hit 100 or so lawyers and stayed within reach of that boom or bust. Of the bigger firms (that is, firms not starting from zero or single digits), Blakes and Burnet, Duckworth & Palmer LLP are the only ones to register any significant growth — and they’ve levelled off too. “We hit about 135 lawyers, and our analysis was that we should stay there,” says BD&P’s Gary Bugaud. “We could have grown more — but it would have been at the cost of profitability.”

Even after a decade or two of pounding away at Calgary, this is a quality not all Eastern law firms, with home offices of 200- to

••• **CALGARY BY THE NUMBERS:**
••• Law firm size, 2000-2011



300-plus and national numbers passing 700, understand. (Will the multi-thousand lawyer globals?) To succeed in Calgary's top-tier business ranks, you've got to have critical mass, sure – no one's going to give a billion-dollar deal to a four-partner, zero-associate office – but growing just to grow has spelled disaster for Calgary greenfields in the past. "Growth for the sake of growth is what cancer's about," says James Pasieka, Managing Partner of Heenan Blaikie LLP's Calgary office. Heenan Blaikie opened its doors in Calgary with four lawyers back in 2000 and grew very quickly to 22 lawyers. Then a stall, and slow expansion to around 30. And a long stall again. But the office has healthy profits: in terms of the all-important per-partner profits, it is Heenan's most profitable outpost.

The lesson here is, you're not going to be 200 lawyers in Calgary. You'll be lucky to get to 50. And it'll be a hard slog to get to 30 (the target point, right now, of Torys). Little wonder then that Macleod Dixon negotiated its Norton Rose deal "from a position of strength," and that even after investing considerable cash in a greenfield, Norton Rose pursued Macleod Dixon as soon as the reluctant bride expressed interest.

In addition to changing the Calgary legalscape, the Norton Rose deal will necessitate a considerable paradigm shift within Macleod Dixon itself. Yes, the firm has operated as a multi-office platform for many years. But with a solid Calgary governance and power centre. Now, its 300 lawyers (150-plus in Calgary) are part of a 2,900-lawyer global conglomerate. The 700-lawyer subset of Norton Rose Canada will be managed by current Norton Rose OR Managing Partner John Coleman out of Montréal. That's a big change for Calgary-centric Macleod Dixon.

WILL IT BE WORTH IT?

Tuer says yes, and, obviously, Macleod Dixon's remaining partners, after a decade-plus of

saying no, agree. And others in the Calgary market see the case for it as well. "I live in the go-big-or-go-home camp," says Alan Jochelson, a partner with Gowlings in Calgary. Jochelson was a partner at Ernst & Young in another life. "I've lived and seen the power of the machine," he says. And he doesn't think international consolidation will come to the Calgary and Canadian legal market — he *knows* it.

If he's right, will it make a difference to the clients on the ground? Or Calgary law offices pursuing a different strategy? Not if they keep their eye on what's really important, says Gary Rose, Calgary Managing Partner of Fasken Martineau DuMoulin LLP. Regardless of what strategy you end up pursuing, he says, "You can't lose sight of what it's really about: servicing the industry here and the need to service our clients."

BD&P partner Dino DeLuca will second that motion. Mergers, greenfields, globals, locals — what it comes down to in the end, he says, "is the same Calgary lawyers, with the same on-ground expertise and relationships — running around in different T-shirts."

And so, what's next for Calgary? "It's a cyclical thing" has been the local cliché of choice since the first boom-bust cycle. Heenan's Pasieka delivers an alternate one, more fitting to the globally desired Calgary of 2011. "*Plus ça change, plus c'est le même chose*," he says. "To understand this coming decade in Calgary, look back to the past one." 🍷

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• GROWING PAINS AND MUSICAL CHAIRS

• Over the past year, Calgary's legal market has become a hotbed of strategic activity as global suitors prepare to make their move

- **JANUARY 18, 2010** — Ogilvy Renault opens Calgary office, with Scott "Rusty" Miller, former Vice-President and General Counsel at Petro-Canada, as Managing Partner. Founding partners are Nick Kangles (see Stikeman Elliott), Miles Pittman (né Fraser Milner Casgrain LLP), Ben Rogers (né Blake, Cassels & Graydon) and Michael Bennett (né McCarthy Tétrault). The market is interested.
- **OCTOBER 12, 2010** — Fasken Martineau adds Michael Black (Heenan), Lloyd Symons (Heenan), Clarke Barnes (Miller Thomson) and Frank Dearlove (Bennett Jones) to its Calgary roster. The market is underwhelmed.
- **NOVEMBER 15, 2010** — Ogilvy Renault announces it will join the Norton Rose Group as of June 1, 2011. The market is ... interested. And perhaps mildly perturbed. Macleod Dixon is quite interested.
- **JANUARY 4, 2011** — Tax partner Craig Maurice (né Macleod Dixon) joins Ogilvy Renault.
- **FEBRUARY 9, 2011** — Gowlings takes David Lefebvre from Stikeman Elliott. David Taniguchi follows a few days later. The market raises an eyebrow.
- **MARCH 3, 2011** — Torys opens Calgary office, with Tony Cioni (Husky Energy), Scott R. Cochlan (Blakes), Ron Deyhalos (Blakes), Kevin A. Fougere (Blakes), Harold Huber (McCarthy Tétrault), Neville Jugnauth (Macleod Dixon), and Janan Paskaran (Blakes) as founding partners. The market takes note.
- **APRIL 18, 2011** — Kent Kufeldt leaves Macleod Dixon in Calgary for Borden Ladner Gervais in Vancouver.
- **MAY 2, 2011** — Ron Mar, Craig Spurn, Edmund Gill and Kurtis Bond, who left Blakes in March 2010 to form boutique Venn Law, join McCarthy Tétrault. John Eamon, another Venn founder, rejoined Blakes in March 2011.
- **MAY 16, 2011** — David Phillips and tax litigator Bob McCue leave McCarthy Tétrault for Bennett Jones.
- **MAY 20, 2011** — Without fanfare — or public announcement — Nick Kangles quietly replaces Rusty Miller as Managing Partner of Ogilvy Renault in Calgary.
- **JUNE 1, 2011** — Ogilvy Renault becomes Norton Rose OR LLP. Talks between Macleod Dixon and the new Norton Rose OR "get more serious."
- **JULY 14, 2011** — Craig Maurice jumps ship from Norton Rose OR — which he had joined in January — to Torys. The market raises both eyebrows. As it turns out a prescient move.
- **AUGUST 2, 2011** — Barbara Johnston rejoins Fraser Milner Casgrain after five years at Stikeman Elliott, stepping into the role of co-chair of FMC's National Labour and Employment Group.
- **AUGUST 12, 2011** — Macleod Dixon grabs Mark Eade from McCarthy Tétrault. The market thinks it understands. As it turns out, it doesn't.
- **SEPTEMBER 2011** — Negotiations between Macleod Dixon and Norton Rose OR enter the last lap.
- **OCTOBER 4, 2011** — Macleod Dixon and Norton Rose OR announce a merger of the two firms into Norton Rose Canada as of January 1, 2012. Less dramatically, W. Chipman (Chip) Johnston leaves Bennett Jones for Stikeman Elliott LLP. The more things change ...