

Inside This Issue



3

Challenge For Cause



6

Another Fine Mess



9

Focus On Criminal Law

Quote of the week

"Paul Martin came back from China last January and said that at an official dinner in Beijing he'd sat next to an 'opposition member' of the People's Congress. That came as news to the government of China."

— Richard Cleroux
 See *The Hill*, page 7

Raising the profile of arbitration Competitors band together

BY KIRSTEN McMAHON
 Law Times

A group of Toronto's leading commercial litigators and academics, who can often be found arguing on opposite sides of the courtroom, have banded together with a common goal: to promote the broader use of arbitration in commercial disputes and to promote Toronto as the location to do it.

The Arbitration Roundtable of Toronto is composed of 10 members, and *Law Times* held a roundtable of its own with eight of them to find out more about the project.

"The spirit of it is that it's something we do together. We're normally competitors, and not only just competitors in terms of the practice of law, which is fairly competitive these days, but also since we're litigation counsel we have cases against each other," says William Horton of Blake Cassels & Graydon LLP.

"This is something where we've decided it needs to be done in order to raise the level of consciousness of people of arbitration. People talk about it but very often they don't realize some of the very specific rules and procedures and options that you have in arbitration that you don't have in litigation," he says.

The group was formed in the summer of 2004, and Horton says the idea originated with John Judge of Stikeman Elliott LLP. Besides being litigators and academics, many are involved in the ADR Institute of Canada or have served on International Chamber of Commerce (ICC) tribunals and committees.

"John and I had talked about it probably over the course of a year or so but John was really the



Members of the Arbitration Roundtable of Toronto are: standing, Robert Wisner, Randy Pepper, Brian Casey, Barry Leon, Dave McCutcheon, Don Short; seated, Bill Horton, Janet Walker, John Judge; absent from the photo is Graeme Mew.

one who persisted in thinking it was a good idea to bring together a group of people," says Horton.

Judge says he had been sitting on an ICC arbitration with counsel from the United States, Germany, France, and Canada and was struck by how good the Toronto counsel were.

"The Toronto counsel, I thought, actually stood out and it struck me that Toronto lawyers have terrific skills that are well suited

for international commercial arbitration and we also have the skills to sit as arbitrators," Judge says. "But unfortunately there hadn't been a strong movement within the Toronto community to push commercial arbitration, and that struck me as wrong."

The group gets together monthly, with each member taking a turn at hosting duties, to exchange ideas and best practices.

See *Toronto*, page 4

Toronto touted as a great place for arbitrations

Continued from page 1

"We do usually have an agenda that is loose but there are sometimes invited guests but it is informal. And, as you've probably heard, it consists of this group without substitutions and this group, among other reasons, that it's been so successful is that I think we enjoy each other's company," says Brian Casey of Baker & McKenzie LLP.

Donald Short, of Fasken Martin DuMoulin LLP, says it's a great opportunity to bring his interest and passion for continuing

legal education into the fold.

"When we got to the point where we wanted to move out, it was a situation of trying to figure out how we could put on an education program for our corporate partners to give them a more coherent view on what was the best practices after we had worked it out over dinner," he says.

David McCutcheon, of Fraser Milner Casgrain LLP, says what he finds most impressive about the group is that it covers virtually the entire waterfront of commercial arbitration.

"It's one of those situations where we have people with institutional experience, *ad hoc* experience, and international and domestic experience," he says. "This group really has an amazing range of experience and the ability to transfer that information among the group is absolutely fantastic."

They certainly have their work cut out for them transferring that information to the legal and business communities at large. Casey says the word arbitration is too often lumped with mediation under the umbrella of ADR.

"In fact, at least at the international level and also to a large extent at the commercial domestic level, arbitration is a strictly legal process that gets you to a binding award that's exactly the same as a court judgment," he says.

"People still sense there's this touchy-feely side to it that it's akin to mediation, when at the international level it certainly is not."

Besides holding seminars on arbitration for corporate lawyers, the group also wants to promote

Toronto as an ideal location for arbitration hearings.

"You could fairly say that Toronto is a secret that's been waiting to get out in terms of a seat for an arbitration," says associate dean of Osgoode Hall Law School Janet Walker.

"It's not just skill, it's our approach to dispute resolution generally and the fact that our approach to procedure is quite moderate. It's in between American practices and European practices; we understand both," she says. "Counsel from the States feel comfortable making submissions before us because we're comfortable with their style, but equally counsel from Europe are comfortable making submissions before us because we're comfortable with their style."

Horton says Toronto has a lot of the facilities that would be attractive for people who want to do arbitration, "but we don't always toot our horn on it, whereas, for example, a city like Montreal, they're always promoting

themselves as the centre for international arbitration."


Randy Pepper of Osler Hoskin & Harcourt LLP says because Canada was the first country to adopt the UNCITRAL model law, Toronto has some real advantages over other jurisdictions.

"Canada has and Canadian judges have developed some of the largest set of case law under the model law, and Canadian judges have been remarkably true to the concept of party autonomy," he says.

Barry Leon of Torys LLP says Canadian arbitrators and counsel are known for knowledge of both common and civil law approaches and the country is well-known around the world for its neutrality.

"I found that the perception of Canadians, both as arbitrators and as counsel, as you go around the world is that we are familiar with arbitration, that we're more neutral than people from some other parts of the [world]. We're seeing, in some parts of the world, it's important that we're not Americans. We've got our own litigation culture, yet we're familiar with things in the civil law as well."

Robert Wisner of Appleton & Associates International Lawyers and Graeme Mew of Gowling Lafleur Henderson LLP are also members of the Arbitration Roundtable.

A recent seminar held by the group for corporate partners of its members was in some ways a guinea pig, says Horton, and the group plans to push outward with upcoming seminars for corporate counsel and seminars directed at specific specialties within the law. 

NUANS Reports \$19.95
Minute Book Kits \$84.95

CorpCANADA Services Inc.

1-866-864-3331

<http://www.corpcanada.ca/clb.html>

Canada's service and value leader!

AVAILABLE IN PDF FORMAT!

caseImage.ca

**YOUR
24/7
CONNECTION
TO COPIES OF
ORIGINAL
DECISIONS**