



## Nan Berezowski

*Rekai Frankel, Toronto*

**“Businesses are becoming borderless in the way that they define their employees’ obligations.”**

**« Lorsqu’elles doivent déterminer les responsabilités de leurs employés, les entreprises n’ont plus de frontières. »**

Increasingly, the international border represents a minor hurdle, not a roadblock to corporate transactions. Today, meeting the legal requirements of two neighbouring countries is a fact of doing business.

“Businesses are becoming borderless in the way that they define their employees’ obligations,” says Toronto immigration lawyer Nan Berezowski of Rekai Frankel. “They have come to see the role of lawyers as more important in this area, and the growing importance of hiring a lawyer who is

actually licensed to do the work.”

For the client, the advantages include the ability to work with one cross-border firm rather than one firm in each country, smoother and faster financial transactions, and quite often, savings of both time and money. It’s little wonder dual-license status is becoming a hot ticket for practitioners these days.

Accordingly, the legal community is adapting to meet this growing demand. More Canadian firms are encouraging their

### Run for the border

More than ever, Canadian companies are tapping into the giant U.S. market, with its huge pool of consumers and deep-pocket investors. The value of trade between Canada and the United States more than doubled between 1989 (with the implementation of the Canada-U.S. Free Trade Agreement) and 2003, now averaging more than US\$1 billion per day. Canadian direct investment in the U.S. has tripled during that time.

junior lawyers to obtain dual licenses early in their careers, while experienced lawyers with two or even three jurisdictions under their belts have become highly sought-after assets.

Boutique firms with cross-border practices are emerging across the country, with specialties ranging from immigration law to trademark protection. And at least one Canadian firm, Torys LLP of Toronto, has established an office in the United States practising solely American law.

### Integrated approach

“It’s very helpful to understand both legal systems, how they conflict and how they work together, and to be able to explain

that to the client,” says Alexandra Kau in Torys’ New York office. A graduate of McGill’s civil and common law program, she was employed at Torys in Toronto when it merged with the New York firm of Haythe & Curley in 2000.

As part of the integration plan, she moved south, too — into the blue-chip world of corporate finance, mergers and acquisitions, equity offerings, takeover bids and other multi-million dollar deals. Her firm “had spoken to a lot of their significant clients to see what their business was doing, and it was definitely going global,” Kau says. “It is a very good strategy for Canadian law firms to have a vibrant U.S. practice.”

Kau recently assisted with the merger of BFI Canada Income



Fund and a Texas company to create one of the largest non-hazardous-waste collection firms in North America, valued at US\$1.1 billion. With that kind of money on the table, companies are eager to engage a law firm that can oversee the deal from start to finish on both sides of the border.

"It's a perfect transaction for us because we can provide that integrated service," she says. "The client feels well represented. It's integrated, it's responsive, and it's very efficient."

While the flow of money ignores the border as best it can, the flow of employees is another matter, especially with stricter travel and immigration laws implemented by the United States since the 2001 terrorist attacks on the U.S. Increasingly, Canadian companies are turning to dual-license lawyers for advice on positioning their employees in America.

"They could hire a U.S. lawyer in the States, but we happen to be here [in Toronto] where they're headquartered," says Berezowski of her firm. "We're accessible, we're approachable,

## Timothy Briggs

*Smart & Biggar, Vancouver*

"It's very beneficial to have a lawyer who can advise you on IP-related matters on both sides of the border."

« Il est très pratique de pouvoir bénéficier des deux côtés de la frontière des conseils d'un juriste qui s'y connaît en matière de propriété intellectuelle. »

and we're also usually cheaper because we're dealing in Canadian dollars."

A graduate of Osgoode Hall Law School, Berezowski joined forces last year with three other dual-license lawyers to create Re kai Frankel. The new firm markets itself as distinct from the plethora of immigration lawyers who are not licensed to practise in the U.S. Increasingly, she says, clients are respecting that difference.

"In the past, people were able to get away with little white lies or skeletons in the closet," she says. "Since 9/11, the culture has changed. People — and certainly companies — have started to understand that compliance with immigration laws is a necessity."

#### Culture shock

Timothy Briggs was standing before the receptionist of a prominent law firm in Dallas and was fascinated by the sign on the wall behind her. It showed the silhouette of a gun, wrapped in a red circle with a line crossing through it. "I asked her what the heck that was about, and she said in that Texas drawl, "Well, silly, it's a no-gun zone."

"And I thought, "There's an incentive not to have any disgruntled clients," laughs Briggs. After 20 years practising law in the United States, Briggs returned to Canada in 2003 to join Smart & Biggar/Fetherstonhaugh of Vancouver, Canada's largest boutique firm specializing in intellectual property law.

Most of his clients have a product to sell in the U.S., requiring patents, license agreements, trade secret protection, financing, risk management, and other legal services to protect the integrity of their original idea. The products vary, from pharmaceuticals to software to seeds.

Briggs' clients are primarily Canadian companies, but increasingly, his legal colleagues in the U.S. are referring to him American companies that are doing deals in Canada. "There's a recognition in the IP field that if you're going to succeed, chances are you're going to access the U.S. market, so it's very beneficial to have a lawyer who can advise you on IP-related matters on both sides of the border," he says.

Briggs, a graduate of the University of Alberta law school, moved to the U.S. in 1983 when he joined the legal team at Amoco Oil in Tulsa, Oklahoma. Later, he worked for California oil company Unocal. He's licensed to practise in B.C., California and Oklahoma, where he took a second law degree at the University of Tulsa, and is admitted to the U.S. Patent and Trademark Office as a patent attorney.

He still attends the annual meeting of the California State Bar. "It's a great way to network and to stay up on current developments," he says. "In the IP field, there's a lot of interest in what's going on in the United States. It's important to keep up."

#### The cost of doing business

Straddling the border has its advantages, but there are associated costs and risks — not least of which is getting that dual license in the first place. Which state? And how long will it take?

Most states, like Oklahoma, have a residency requirement, but once licensed, lawyers can work in a number of states through reciprocal agreements. A few states, like California and New York, are less restrictive, but their bar exam is so tough that the failure rate

is remarkably high.

"New York and California are known to be among the toughest states to become licensed in, but they're also the most open to people from foreign jurisdictions," says Berezowski in Toronto.

Early in her career, she studied intensively for six weeks for the New York bar exam — a grueling three-day all-or-nothing

**Once licensed, cross-border lawyers must meet the requirements of continuing education in two jurisdictions and keep abreast of two sets of laws. Sometimes, they even need two personalities, so to speak, in order to behave as lawyers do in each jurisdiction.**

marathon — and defied the odds by passing on the first attempt. "For somebody who's practising law, who hasn't been in school, and hasn't been at the library studying for some years, it's a big investment and a big risk to take," she says.

Once licensed, cross-border lawyers must meet the requirements of continuing education in two jurisdictions and keep abreast of two sets of laws. Sometimes, they even need two personalities, so to speak, in order to behave as lawyers do in each jurisdiction. "Each day, I have to deal with the kinder-gentler approach in Canada, as opposed to the more aggressive approach in the U.S.," says Pantalony. "I'm constantly switching back and forth."



Catalyst Consulting  
70 York Street  
Suite 1520  
Toronto, ON M5J 1S9  
Tel: (416) 367-4447  
Fax: (416) 367-4449

Catalyst Consulting  
Montréal, QC  
Tél: (514) 284-0637

E-mail:  
catalyst@catalystlegal.com

MONTREAL • TORONTO

## CONSULTING FOR LEGAL SERVICES

- ▲ Medium-Term Business Strategies
- ▲ Practice Groups That Work
- ▲ Proposals for Legal Services
- ▲ Service Delivery
- ▲ Strategic Compensation Systems
- ▲ Pricing of Legal Services
- ▲ Profitability Improvement
- ▲ Client Relationship Management
- ▲ "Getting Things Done"

The CBA's and the CCA's  
Preferred Supplier for LEGAL SERVICES CONSULTING