

★★★ TOP BOUTIQUES ★★★



Protection against the state

As police methods continue to evolve, so, too, have the top criminal boutiques

By Aidan Macnab

Protecting clients from the intrusion of an increasingly technologically equipped state has been a preoccupation of many of the firms in *Canadian Lawyer's* top criminal law boutiques.

But a lack of public investment in other areas such as white collar crime enforcement and legal aid, according to Marie Henein of Henein Hutchison LLP, is a challenge.

"No, I don't think [white collar crime enforcement is] a growing market for criminal lawyers at all. And that is because white collar crime requires resources to investigate and prosecute and, though there have been attempts to improve that, it's not done with remotely the same force that you have in the United States," she says. "So, our large white collar crime prosecutions are few and far between actually when you compare us to the United States."

This affects how much work is coming through the doors at criminal firms.

"We're trying, but it's certainly something that really sits with government," she says.

Canadian Lawyer asked our readers to rank firms whose primary focus is

criminal law. The top vote-getting firms shared a culture where the younger associates are expected not to stand aside until they learn from their seniors but hit the courtroom and take on files independently right out of the gate.

"That's a very significant aspect of our firm. We spend a great deal of effort directly mentoring the lawyers that work here. Their development, in terms of their litigation skills, is very specifically addressed. So, you start out by junioring on files and then graduate to junioring on larger files and then depending on where your capacity is you begin to do components of pieces of litigation in court," Henein says.

Frank Addario of Addario Law Group says that when he began the firm, he did not want a bunch of junior lawyers who were good at preparing cases for him; he wanted them in court themselves. He says rookie lawyers at his firm typically work on a major appeal factum, a major charter motion and do three or four trials on their own, all in the first year.

"Beginning on day one, people here start doing trials. . . . So, they learn how to cross-examine and how to address judges from the beginning and I think it is unique for a firm of our size managing complex cases to have lawyers who can switch comfortably back and forth between preparing complex cases and litigating trials," he says.

Brad Greenshields of Greenspan Partners LLP will soon argue *R. v. Reeves* at the Supreme Court of Canada, which will put s. 8 of the Charter under the microscope to show how the court sees protection against unnecessary search and seizure.

"There's some infighting or something that's happening inside the Supreme Court of Canada, so this will be an important case to watch," Julianna Greenspan says of the case regarding seizure of property from a jointly owned home, where only half of a common-law couple consented.

Thomas Reeves was required by court order to stay away from the home he shared with Nicole Gravelle, short of her consent.

In a phone call made to withdraw her consent, Gravelle also reported the family computer had child porn on it.

Without a warrant, the Greater Sudbury Police were allowed by Gravelle into the house and off with the computer, which they held for

Greenspan, who founded Greenspan Partners LLP, had been representing a group of alleged Mafia members from Quebec in a case that blew the lid off an RCMP investigative technique and had significant implications for the law of security and privacy. The case was taken over by Frank Addario of Addario Law Group LLP after Greenspan's death.

Megan Savard, a partner at Addario

nicknames and switch the phones among them. He says the RCMP had to guess who had the phone and when. Addario asked for the data on the communications to be disclosed.

"That's when the fight happened because they were going to have to give us the information about the technology and it had never been before disclosed in Canada," he says. "The judge ordered them to make a disclosure because we demonstrated the existence of potential false positives that could mislead the jury."

When the RCMP balked, stays of proceedings were dealt to Addario's clients and dozens of other defendants whose cases came from Clemenza and the stingray surveillance.

"It turned out there were 40 or 50 other cases for individuals also in Quebec [that] were riding on the same disclosure order and, rather than make the disclosure, the Crown chose to fold its tents so that the police could keep the technology alive," says Addario.

Addario, who is also a vice president of the Canadian Civil Liberties Association, says that the use of new snooping technology needs to withstand scrutiny from the trial process. It could be the technology is sound and reliable, but it could have flaws.

"As with all new technologies, they need to be tested in the crucible of *inter partes* trial. And you can't do that if one party is claiming national security or investigative privilege over the advice or the information," he says.

Addario's challenge led to the first disclosure by the RCMP that they were using these stingray/IMSI-catchers. They later released documents that showed their use could eliminate calls made by other cellphones, including calls made to 911, and their use has subsequently been reformed.

While Addario jousts with the police over surveillance techniques, Alain Hepner's Calgary firm, Alain Hepner Law, was retained by the Calgary Police Service to defend its members. Hepner has also been retained by former Alberta judge Robin Camp as he attempts to get back as a practising member of the law society.

Hepner represented Gladys

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FRANK ADDARIO, Addario Law Group

more than four months, without a warrant and without searching it. After obtaining a warrant and searching the computer, they did not file a report to a justice as is required by s. 489.1(1) of the Criminal Code. They got another warrant to re-seize and search and found the child pornography.

Reeves was charged with possessing and accessing child pornography, but he made a successful pre-trial Charter application under s. 8, which the Crown then appealed.

The application judge said that in the original warrantless search and seizure, there were no exigent circumstances to justify it, that in holding the computer for four months without reporting to a justice, the police were in violation of ss. 489.1 and 490 of the Criminal Code and finally that the information to obtain used to, later, secure a warrant was insufficient.

Commentators say this case is an opportunity for the court to offer clarification on the impact of joint residence on the law of search and seizure and one's reasonable expectation of privacy.

Before his death, Edward

Law Group LLP, says "scrutinizing and challenging police investigative techniques" is a prominent area of the law for her firm.

In Operation Clemenza, the RCMP were using a device called a stingray to capture their correspondences. The stingray, or IMSI-catcher, pretends to be a cellphone tower and attracts the signals of cellphones in the area.

The RCMP's stingray snooping led to the arrests of nearly 50 alleged Mafia associates, some of whom were Addario's clients. Through the technology, the RCMP obtained the IMSI numbers of their BlackBerrys. The RCMP then took those numbers to BlackBerry and was given the data on correspondences between the IMSI numbers identified as those of the suspects.

"When I got involved, we had two questions: Were they fully disclosing all the details to the judge and were they fully disclosing the fails to the judge?" Addario says.

He says the suspects in question never kept their phones for more than a week before they would throw them away and get new phones. When they had the new ones, they'd use

Heavenfire, who on the heels of the Supreme Court's *Lavallee* decision, successfully used the "battered woman" defence to get his client an acquittal for shooting her abusive partner and killing him.

"I was one of the first ones in Alberta to have a jury acquit her of second degree murder for shooting her husband after she was being abused," Hepner says.

With the effects of the *Jordan*

decision on trial delays and new Liberal government justice reforms with the stated intention of expediting the judicial process, the criminal bar will likely continue to see major changes to how they operate. Stay tuned.

TOP 10 CRIMINAL BOUTIQUES



Daniel Brown Law, Toronto **danielbrownlaw.ca**

Going on a decade in business, Daniel Brown Law LLP has a team of four lawyers who defend clients in complex and high-profile criminal cases across Southern Ontario at both the trial and appellate levels. Its founder, Daniel Brown, is among an elite group of lawyers certified by the Law Society of Ontario as a criminal law specialist and acts as one of the Toronto directors of the Criminal Lawyers' Association. The firm is frequently consulted by top media outlets to provide opinions on criminal cases that make headlines and regularly acts for professionals who find themselves in trouble with the law.