



SARA COHEN: Start small, get specialized

Finding their Niche

Are niche practices and “boutique” law firms merely clever branding, or a smart way to make a living?

BY MICHAEL TODD

PHOTOGRAPHY BY SOFIE KINACHTCHOUK

GO ONLINE FOR A DICTIONARY definition of “niche” and you’ll find: “a. situation or activity specially suited to a person’s interests, abilities or nature: found her niche in life,” or “b. special area of demand for a product or service.” The word’s origins lie in Old French, from *nichier* (to nest), or possibly Old Italian, from *nicchio* (meaning seashell).

Google “niche market” and Wikipedia offers this: “...the subset of the market on which a specific product is focusing. ... [Any] highly specialized market aiming to survive among the competition from numerous super companies.”

However you define it, many lawyers and law graduates these days seem to be very interested in the approach – in fact, one legal pundit has dubbed it the “third wave [of] law practice”. The argument follows that if auto makers, condo builders and computer firms can niche market, then why not legal practices? Already, there are lawyers specializing in equine law, cottage law, dental law, wine law (in the Napa Valley), bed bug litigation, veterinary law, geriatric law, and sports and construction law, among numerous others.

Osgoode graduate Jordan Farkas (LLB ’04) has built one such practice. Around the legal community he’s earned the moniker “Mr. Small Claims Court”. Farkas has built his practice around representing people who have \$25,000 or less at stake – amounts he says most lawyers just aren’t interested in dealing with, according to a recent article in the *American Bar Association Journal*. (Perhaps proving the old saying that there are no small cases, just small lawyers.)

Depending on whom you ask in the law community, the concept of “niche” law, or “boutique” practice, is either simply a marketing ploy, or is seen as a bona fide way of making a living through differentiation in a market that’s flooded with legal practitioners who appear to offer more or less the same skills. In some cases, it is a means of providing access to justice and specialized legal services to clients with particular legal issues – often at a lower hourly rate than what’s typically charged by large, full-service firms.

Osgoode Hall Law School Distinguished Research Professor Allan Hutchinson argues that law has always had its specialized areas of practice and this new trend toward specialized labelling is more of a case of the emperor’s new clothes. “I think the phenomenon [of the niche] has always been a feature of the law; the only thing that’s changed is the name. There have always been smaller firms that specialized in intellectual property law, for instance, and often someone within that firm who specialized in patent law,” says Hutchinson. “And there have been firms that do just labour law, and even one side of labour law, so I don’t see this as a new phenomenon.”

A recent *Wall Street Journal* article, “Lawyers Carve Out ‘Divorce for Men’ Niche”, reveals how many U.S. divorce lawyers are actively seeking a competitive edge in a crowded legal marketplace by finding a niche that, they say, pays off in both “good times and bad”. The focus is to target men who fear getting a raw deal in their separation agreements. According to the article, the fees charged by these specialized firms aren’t any higher than regular (or bigger) family-law practices (usually in the \$200-\$350/hour range, plus retainer).

“Now it’s easier than ever before to find such lawyers as firms expand their online marketing profiles with websites and blogs laden with keywords designed to boost them to the top of the Internet search results,” the article’s author states.

Hutchinson’s position is that using larger firms may ultimately save the client time and money. “What is the real advantage of going to a smaller shop that has more of a ‘laser focus’ on things? Well, one is that if they truly specialize, then that might be helpful, but it’s fair to say that lawyers in large firms could actually be more specialized than in smaller ones. The thing about large firms,” he says, “is if certain aspects of your case go above and beyond what you first expect, then there are likely people in-house in a big firm who can quickly offer their expertise. You might not get that in a boutique firm. I think, really, the use of terms like ‘boutique’ or ‘niche’ is just another form of marketing – call it a legal re-branding if you like.”

The trend toward boutique law was being tracked as far back as 2006, when *Canadian Lawyer Magazine* ran a piece called “Canada’s Leading Law Boutiques”, in which the writer, in a two-part series, took a look at “why these smaller, super-specialized firms are becoming so popular” and explained “which ones are leaders in their fields, and why.” The article argues that when it comes to describing Canada’s law firms, terms like “small, medium and big” no longer make sense. The reality, the article states, is that in “a complex, rapidly-evolving landscape, with firms structured around changing client needs; that can mean a handful of international outposts or a raft of lawyers with parallel training in business or applied sciences. [However,] one of the fastest-growing areas is that of the ‘boutique’ firm; usually small (fewer than 20 lawyers)...This practice model is taking off among a certain kind of lawyer – boutique founders are often driven stars who are willing to bear the substantial risks that come with calling the shots.”

YorkU magazine decided to find some niche lawyers of its own and to hear what they had to say about the niche/boutique concept. Was it valid or outmoded? All interviewees are Osgoode Hall Law School graduates who consider themselves (some more, some less) to be “niche” lawyers. They include Sara R. Cohen (LLB ’06), who unequivocally abandoned her Bay Street job to start her own small, specialized practice; Elizabeth (Lisa) DeMarco (LLB ’95), a highly specialized lawyer in climate change law, who works in a larger firm in downtown Toronto; and Brendon Pooran (LLB ’05, who left his job with one of the country’s largest law firms on Bay Street to develop

his own niche practice specializing in disability law, while also combining individual representation with government and management consulting on disability/accessibility issues. Pooran also teaches part-time in York’s Critical Disability Studies program and sits on Ontario’s Consent & Capacity Board.

Cohen, a fertility and surrogacy lawyer, did her stint on Bay Street and loved it, but she always considered going it alone and practising in the area she presently does. “Even when I was articling, I remember thinking about the possibility of doing what I now do,” says Cohen, who may be the only lawyer in Canada who regularly blogs about fertility and surrogacy issues (fertilitylawcanada.com/fertility-law-canada-blog). “But at the time, I felt I just didn’t have the legal experience and confidence necessary to pull it off.”

It was after a few years of doing commercial litigation for one of Canada’s biggest legal firms (and having a baby) that Cohen decided to take the plunge and open her own practice, Fertility Law Canada™, where she is a specialist in both fertility law and surrogacy. She is also a member of the Canadian Fertility and Andrology Society and a legal representative on the Ethics Committee at Lifequest Centre for Reproductive Medicine. She regularly acts on behalf of intended parents, surrogate mothers, egg and sperm donors, donor recipients and people involved with reproductive technologies.

“I’m not one of those people who hated [my] Bay Street [job]. I didn’t. And I think it would be a large generalization to say all those firms are all the same,” says Cohen. “But I also think most people would agree that they are generally geared toward large business. So there’s not a lot of room for the kind of issues that I deal with on a daily basis...the kind that affect the regular person or a regular family.”

Cohen thinks the recession made a lot of lawyers reconsider what they were doing and become more interested in things not so related to corporate or commercial issues. “There’s a lot of talk these days about how we’re becoming highly specialized in law and that that’s the way of the future,” Cohen says. “There are pros and cons to it. Pros are for the clients.”

What’s the most interesting thing about her job now? “I know this may sound cheesy, but there’s a lot of reward in helping people have families. I’m just one small part of the huge puzzle that goes into making one.”

While Cohen agrees that her niche is highly “vertical”, to use a marketing term, she says her specialty also comes with a lot of issues – social, legal, moral and technological – so that it

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BRENDON POORAN:
Fighting the good fight

ELIZABETH DEMARCO: A change in climate



can also be broad. “The law is always playing catch-up as technology changes the playing field,” she says. She admits, however, that there are risks to her style of career path. “[With a niche practice] you’re putting all your eggs in one basket. If the law changes, it’s possible that people might not need you as much in the future.”

On a good summer’s night, energy and climate change lawyer DeMarco gets three to four hours of sleep – but tries for a more respectable seven in the winter, she says, laughing. A quick glimpse over DeMarco’s resume would give most people the impression that her day would need to be 48 hours long. For one, she’s recognized as a leading Canadian expert on emissions trading, the Kyoto Protocol and the evolving area of environmental finance. While DeMarco works for a large downtown Toronto law firm (where she’s a partner), her specific expertise within the firm is in the environmental area, including “cleantech”, energy, environmental issues, and mining and resources. She represents several leading energy clients in a wide variety of natural gas and electricity matters before regulatory agencies and the Ontario Energy Board, and was appointed to the Minister of Energy and Economic Development and Innovation’s Clean Energy Task Force and the (now concluded) Premier’s Climate Change Advisory Panel. On top of all that, somehow she finds time to write not one, but dozens of articles, and do public speaking engagements.

DeMarco inhabits a highly specialized niche. While she describes herself as an “extraordinary specialist” in climate change law, she also says she’s an “extraordinary generalist” too. “Team work is a big thing for me,” she says. “I like to bring together and work with people who have expertise in various areas to find the best solutions for clients. I call it green capitalism, and that means I need to be a generalist to identify other issues (including tax, securities, IP, IT, to name a few) and a specialist to understand the precise details of the over-reaching international, national, provincial and local government laws and guidance relating to climate change. You simply can’t be an expert in everything, and I love learning from my colleagues in their areas of expertise. I couldn’t do what I do in a specialized firm.”

Interestingly, DeMarco comes at her law career with a background in marine toxicology. “When I was a graduate student in science, I found the idea of using markets to achieve an overriding goal of environmental protection appealing. And now my practice includes a significant portion of what I call proactive law and policy development – not strictly reactive problem-

solving. My mantra has always been ‘leave your dogma at the door’, and in that way I get great meaning from working with all types of clients in various sectors. You can’t emotionalize environmental issues because it’s not very productive. One of the key things is to realize that there is never going to be a perfect choice/solution, and we’re going to make mistakes. But it’s important to work together and create long-term solutions that are adaptable and sustainable.”

Pooran knew even before he began his law degree (he did a bachelor of commerce degree first) that he wanted to work in the area of social justice or disability law. He considered it to be both personal and a calling, since two of his siblings have developmental issues. Now, Pooran and his wife have a niche practice in the area of disability law. “I prefer to call it social justice law,” he says, “because [otherwise] many people misinterpret it to mean that we litigate for clients who may have been injured in an accident.” In fact, Pooran does not do any personal injury litigation. Based in Toronto, his firm offers legal services in the areas of will and estates planning for individuals with disabilities and their families, trustee services, government benefits, disability law, employment law and charity law. He also consults regularly with government and human service organizations, which, in large measure, help support the one day per week where he does pro-bono work focused on improving policy and legislation for individuals with developmental disabilities. (Pooran was recently in Ottawa speaking before the Standing Senate Committee on National Finance, advocating for changes to federal legislation affecting the rights of individuals with developmental disabilities.)

“The beauty of having your own niche practice,” says Pooran, “is that it allows us – since we have three children all under the age of five – to be self-directed and have a work/life balance.”

Pooran definitely see his practice as a niche, and promotes it as such. “I’d say we aren’t general lawyers in any sense. Estate planning, for instance, is incredibly complicated in this area, especially when it involves a future plan for an individual with a disability. I went to law school with the intention of providing the best legal supports to this sector of the population. Even within the disability niche, you could say we focus on people with developmental disabilities and mental health issues. It’s a new area of the law that’s really only developed over the past 15 to 20 years. Many people don’t even know it exists,” he says.

“I suppose you could say a lot of what we do is to promote belonging – the common term now is ‘social inclusion’ – for individuals with disabilities. Whatever we call it, it’s a basic human need, and now it’s also a human right.” ■

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