The WASP law firms that stand at the centre of the Establishment: how they operate and how you get into them. By Jack Batten

Also:
The surprising side of Joe Clark, by Sandra Gwyn
The servants who run the Establishment

A small battalion of lawyers greases the wheels that ease the flow of power. They're discreet, distinguished, and decidedly WASP

by Jack Batten

What made the moment so exquisite was that, but for a decision of thirteen years earlier, the prosperous man on the other side of the desk might have been me. Dressed in a three-piece suit as immaculate and navy pin-striped as his tailor could conceive, face set in lines of confidence and authority, office in an imposing corner of a building that hovered over King and Bay Streets—the man behind the desk exuded the unspoken credentials of the partner in the big downtown Toronto law firm. And at this moment he was holding out to me in a deliberately throw-away gesture a small card that, he hinted, would explain the gorgeous sense of what his downtown life was all about. The card had a short quotation typed on it, the words of Robert Jackson, the late justice of the United States Supreme Court. “Lawyers are the chief instruments of power in our society,” the quotation read. “Struggles over power that in Europe call out regiments of troops, in America call out battalions of lawyers.”

“Quite accurate,” the partner said, sliding the card back into his desk drawer. “Entirely true.” He offered me, just for the record, a soft smile. “And you could have joined in the struggles down here.”

I had been a law school classmate of the partner. And after graduation, I, too, had moved downtown to a venerable and respected firm and practised commercial law for almost four years. But a different ambition had taken me over, and I left law to make my way as a writer. Now, thirteen years later, I was back as an eavesdropper and journalist, looking into the atmosphere and organization and style of the big downtown firms, into the ways they operate, and the power they preside over.

In those thirteen years, old classmates like the partner across the desk had begun to ease into a share of control. Several were Queen’s Counsel. One was a bencher, one of forty lawyers elected by the 8,000 who practise in Ontario to run the profession as an officer of the Law Society of Upper Canada. And many others had risen through the ranks of Osler, Hoskin & Harcourt and Blake, Cassels & Graydon. They lived in Rosedale, belonged to the Albany Club, and took breakfast with Premier Bill Davis.

Life had changed and grown significant for my law friends, and so it had, too, for the firms they were responsible to. When I practised in 1963, my firm’s fourteen or fifteen lawyers marked it as respectably large. But in 1976, Blake, Cassels & Graydon boasts seventy-one lawyers, including six counsel. Osler, Hoskin has sixty-seven lawyers and three counsel, McCarthy & McCarthy seventy-two lawyers and three counsel. Those three firms are the kingpins, the biggest and the mightiest, in size beyond the imagination of the early 1960s, and right behind them lurk other
The lawyer in embryo: at 22, comes equipped with the right name, the right face, the right grades to make it into the right law school, the right girl, and a line into a major party

The firms are huge, and they're sophisticated. Work in them is no longer a straightforward matter of torts and contracts. One youngish lawyer at McCarthy & McCarthy, I discovered, devotes his entire talent to the law of computer leasing, and another is a specialist in presenting applications to the Canadian Radio-Television Commission. And the corporate experts in all the big firms have lately been boning up on the legal exotics of Euro-dollar financing in order to guide Canadian industry through its recent love affair with the monster European money-lenders.

"A lawyer who thinks he's going to come out of school and work as a jack of all trades won't survive today," a corporations man in one of the Big Three told me. "It's tough enough to keep up-to-date with the law of just one field. In my end of things, you have to grasp foreign investments and combines legislation and anti-inflation regulations and god knows what else. Any ordinary general practitioner, if such a thing still exists, who gets a piece of heavy tax work, for example, had better farm it out. Either that or he'll be giving his client very bad advice."

In inevitable company with the size and the sophistication, there looms the third member of the downtown triumvirate, power. Ah power—a tricky concept to catch hold of, I found in talking to the old classmates, a reality shot through with ambivalence. The prosperous partner's quotation from Mr. Justice Jackson, I'd noticed, pigeon-holed lawyers as "the chief instruments" of power, and another lawyer in a big firm got at the same point when he argued that lawyers are, in the end, servants. They move behind the scenes. They grease wheels. They ease the flow of power. And as with all servants who respect the
appearance as much as the quality of their service, lawyers embrace discretion. They crave invisibility. Take note of Inco if you must, but never mind Osler, Hoskin & Harcourt who are merely Inco's solicitors.

It seems true enough that the strength of the giant firms, maybe even the reason for their size, lies in their ability to provide service, specifically service to corporate clients. “Fifty per cent of our time,” an Osler, Hoskin partner said, “is given over to commercial work of one kind or another.” Professor John Willis, the distinguished law teacher once of the University of Toronto's Law Faculty, put the situation in pretty succinct perspective in his 1969 graduation address at Queen's University: “Most of the well-known firms in Toronto now do mainly what is called commercial work which means, in plain English, that they spend their lives in pushing the interests of large corporations or, using still plainer English, finding legally respectable ways of doing what their clients want done.” What does General Motors fancy? Their law firm, McCarthy & McCarthy, tends to it. Osler, Hoskin looks to Eaton's needs, Fraser & Beatty to Massey-Ferguson's, Blake, Cassels to Brascan's, Tory, Tory, DesLauriers & Binnington to Abitibi's.

This relationship, big law firm to big corporation, is especially crucial for the firm when the client is a bank. “You want a lesson in a big firm’s base of strength?” a Queen's Counsel in a small litigation firm said to me over lunch at Wellington's Court. “I'll show you. All very visual.” He finished the chicken salad and white Bordeaux and led me out of the maroons and browns of the restaurant through the bright Toronto autumn to a spot about dead-centre of the white-tiled plaza in front of the fifty-seven-storey Commerce Court West at the southeast corner of Bay and King.

“Right behind us, that skyscraper, that’s the head office for the Canadian Imperial Bank of Commerce,” the Queen’s Counsel said, waving his well-tailored sleeve and launching into a virtuoso performance. “And one of their biggest tenants is Blake, Cassels & Graydon. Why? Because Blake’s is the bank’s lawyer. It is probably the foundation of the firm’s practice. Same thing across the street, the Bank of Nova Scotia Building and inside you’ll find Tilley, Carson & Findlay. Down there on King to the east, it’s the Royal Bank Building and McMillan, Binch. Over the other way, King west of Bay, the Toronto-Dominion Centre’s got two biggies for tenants—McCarthy & McCarthy and Fasken & Calvin—because the T-D Bank divides its business. Across the street from them, north side of King, there’s the new Bank of Montreal building and that gets tricky. When the building is completed next year, you’ll find Fraser & Beatty there. It’s done Montreal’s business for years. But you’ll also find Lang, Michener because lately it’s cut in for some of the Montreal market. Maybe Lang, Michener has a quiet push going on. A bank can make or break a big firm’s practice. Get the message?”

I got it, and it still left me with trouble in squaring the big firms, allies to those influential Canadian corporations that stretch their business and authority into every corner of the country, with the image of lawyer as servant. Lawyers may seek anonymity, but if we’re looking for metaphors, maybe the firms are growing more to resemble the servant of the 1963 Joseph Losey movie, The Servant. In it, the servant of the piece played by Dirk Bogarde, discreet and subservient at first, gradually assumes the dominant role in the household and blurs the original master-servant distinction. So it may be with some downtown firms, appearing ever larger and more ubiquitous.

Certainly roles and relationships tend to blend, obscuring categories of lawyer and client, when partners in law firms turn up on the boards of directors of banks and other corporations. Who is wielding the power anyway? Senior partners from big Toronto firms compose a hefty percentage of the group that Peter C. Newman labels “The Professional Directors” in his book The Canadian Establishment, men who “float between various board rooms offering advice and collecting directors’ fees.” The group takes in Alexander MacIntosh of Blake, Cassels; Donald McIntosh of Fraser & Beatty; John Godfrey of Campbell, Godfrey & Lewtas; and, perhaps definitively, Beverley Matthews of McCarthy & McCarthy. Matthews sits on the boards of the Toronto-Dominion Bank, Gulf Oil Canada, TransCanada PipeLines, Westinghouse Canada, Canada Life Assurance, and Canada Niagara Power, where he’s chairman of the board. For good measure, he also holds a brigadier’s rank, was made a CBE, and is a member in good standing of White’s in London.

“That is a big part of Mr. Matthews’ job—to sit on boards and be social,” a former McCarthy & McCarthy lawyer told me. “In a firm like McCarthy’s, you might say there are two kinds of lawyers. One kind is the working lawyer, Jim Walker, Jack Blain, John Clarry, brilliant legal technicians. The second kind is the social lawyer, the man who never seems to practise in the conventional sense, but he sits on boards, slaps backs, and acts as the public relations guy for the firm. Matthews fills the job, and so does Don McIntosh at Fraser & Beatty. He used to handle all the Argus work, a first-rate mind for law, but as senior partners like him get older, they want to do less slogging in the law and function more like elder statesmen. It’s advantageous for the firm—and for the client, I suppose.”

There’s a connection between, say, Beverley Matthews’ seat on the board of TransCanada PipeLines and McCarthy & McCarthy’s legal work for the
corporation in the 1960s as the pipeline burrowed across the country. The task on McCarthy’s side, dull and grinding, called for meticulous attention to real-estate and corporate law, but the fees to the firm nudged into the neighbourhood of $500,000. “That’s where the money is,” a partner in another of the downtown giants explained. “It’s in good corporate clients.” When a large company goes into a financing of $5-million, the legal fees could run from $25,000 to $75,000. The same goes for bond mortgages and for Euro-dollar finagling. “But there’s a catch before you lock into that sort of lucrative work,” the partner in the downtown giant said. “First your law firm must have a good reputation, and it must have senior partners who’re out there pushing the reputation.”

Partners from the big firms make their push in other circles, too, political circles. They function as the ultimate backroom boys. They organize. They raise money. They’re bagmen. Thus, Pierre Genest of Cassels, Brock administers Liberal clout. Eddie Goodman, “Fast Eddie” to some, an astute developers’ lawyer at Goodman & Goodman to others, is a Conservative mover and shaker. Senator John Godfrey of Campbell, Godfrey & Lewtas is a chief Liberal Party fund raiser. McCarthy & McCarthy once sported two bagmen, though both are in slight eclipse today, Beverley Matthews for the Tories and Senator Salter Hayden for the Grits. That senatorial title, sneered at as it may be in Ottawa insider groups, carries weight in downtown Toronto law offices, especially when the senator, as was the case with Senator Hayden and the banking and finance committee, heads a parliamentary committee that’s respected at Bay and King. So the designation in front of the name on the letterhead—Senator Hayden, Senator Godfrey, Senator David Walker, a Tory of Walker, Ellis—goes some distance in underlining a firm’s political tug.

“The question whether politics generates business for a law firm is hard to answer,” a lawyer in one big firm said. “It’s never really clear to me if the client comes in because a partner is Liberal or because the two of them meet inside the party. The point is that the partner is on the scene, whether it’s a political scene or a business scene. The other, larger point is that all the connections mesh together.”

Mesh is the operative verb, probably the perfect descriptive because it serves to wash over the relationships without tipping anyone’s hand. A partner in a big firm sits on a corporate board of directors, raises funds for a political party, and handles legal work all round, but is he calling the shots? Who’s holding the power? Has the servant taken over the board room?

“A lawyer may be on a board and be providing the corporation with some important service,” a downtown counsel told me. “Or he may be on the board just as a showcase. But here’s a key: if you’re a lawyer at, say, Borden & Elliot and you’re looking after the Weston people who are one of Borden & Elliot’s big clients, then the last thing you’re ever going to do is tell a Weston’s executive to go screw himself. That ought to show the way priorities are ordered when you’re talking about clients and law firms, no matter how big and powerful the law firms are supposed to be.”

“In the last analysis, this is still a profession,” my prosperous old classmate, the partner in the immaculate three-piece suit, said as he sat in his corner office and looked for the bottom line in his view of legal power. “We’re supposed to know the law, and the client doesn’t. That’s why he keeps us around. We may have a hand in shaping corporate policy if that’s the way the client wants it. But what a lawyer has to offer is the stuff he gets from books and laws and study and precedent and experience. That’s why a lawyer’s in business—for his service back of the scenes.”

The partner retreated behind a smile. A discreet smile. As a matter of fact—inscrutable expression, spruce appearance, irresistible air of authority—he looked to me rather like a Toronto WASP Dirk Bogarde.

When Alexis de Tocqueville was tracking about North America in the 1830s on the lookout for signs of civilization, he wrote that “if I were asked where I place the North American aristocracy, I should reply without hesitation that it is not among the rich who are united by no common ties, but that it occupies the judicial bench and the bar . . . . Lawyers form the most cultivated portion of society.”

If the partners in the big downtown Toronto law firms of the 1970s are not properly aristocratic, then they fit into the next best category, resolutely distinguished. The perfect suits, the conversation with the low-volume button punched on, the utter self-confidence bestowed by the formidable education (three or four years of arts, three years of law school, fifteen months at articles, seven more in the bar-admission course)—all of these converge to mould a presence that leaves an outsider, by automatic response, unnerved. Brains count, too. Look down the list of partners at McCarthy & McCarthy, and before you reach the eighth name, you’ll have passed four scholars of record: Beverley Matthews (Osgoode Hall gold medal for 1930), John Robinette (gold medal, 1929), John Blain (silver medal, 1941), and John Clarry (silver medal, 1950). Such men don’t hire dummies, and the intelligence at work in all the big firms surges smartly beyond the range of your average Brascan or Bell Canada executive. And with the brains inevitably goes another terrifying commodity, unshakeable cool.

“Big firms are unfailingly courteous,” a lawyer in
a medium-sized general-practice firm told me. "Dealing with them, you don't have to look over your shoulder to see if somebody's about to stab you. It's what they call 'playing the game.' I think the reason for the absence of guerrilla tactics with them is that they're able to carry on a detached sort of practice. They never get personally involved."

The atmosphere in the offices where these legal technocrats work is, in a word, hushed. Important lawyers toil more silently than the rest of us. It helps that in the big firms clients are kept under wraps. This circumstance is explained by Morley Torgov, a Toronto lawyer, whose book, *A Good Place To Come From*, won the 1975 Stephen Leacock Humour Award. Torgov has analyzed, accurately, the phenomenon of the invisible client in an article for *Chitty's Law Journal*: "In the waiting rooms of Toronto's largest and most successful law firms, you'll never find so much as a footprint on the broadloom or a fingerprint in the ashtray. Business—big business, that is—is done almost exclusively over the telephone. The typical senior corporate executive simply cannot afford the strain of a twelve-mile drive from his suburban plant to his lawyer's office. If he does venture downtown, he is immediately ushered into the firm's board room and never left to cool his heels in the outer reception area."

That empty waiting-room—actually waiting-rooms, since most big firms, spread over two, three, and four floors, have more than one—as well as the rest of the firm's quarters shimmer in understated elegance. The furnishings and decor tend to be low key and worth a fortune: lots of walnut in the panelling, sleek-lined coffee tables, easy chairs in nubby fabric, broadloom, and a king's ransom in art work. When William Ronald, the important Canadian painter, was due to pay a bill at Osler, Hoskin last summer, two partners visited his studio and accepted a splendid oil that closed the account. The rest of the Osler, Hoskin collection has
The lawyer as powerhouse: at 42, has a partnership in his firm, a seat on its major client’s board, a $250,000 house, and the promise of a senatorship.

been selected—before approval from the firm’s committee in charge of art, furnishings, and other physical trappings—by two young matrons who make a part-time business out of casing galleries on behalf of well-heeled clients. As a result, while Osler, Hoskin hangs its share of reproductions of Gray’s Inn cartoons, most walls gleam in the best of taste with Canadian watercolours, prints, and drawings that any serious collector would envy.

The operation of the big firms, from the choosing of paintings on upwards to more weighty matters, has grown increasingly democratic in recent years. “As late as the early 1960s, the senior partners controlled McCarthy & McCarthy with an iron fist,” explained a lawyer who worked there for many years. “But by the 1970s, partnership meetings had become real, and now management decisions are being made by all partners.” At Osler, Hoskin an executive committee, composed of members who are both appointed and elected from among the partners according to a carefully devised formula (three-year term for each member, two members retiring every year), takes on the burden of the firm’s day-to-day operations. It is assisted by a flock of special smaller committees, the student committee, the community law committee, even the staff salary committee. But it’s the partnership as a whole that gets together to arrive at major decisions. The biggest in recent years revolved around the firm’s move in 1977 from the Prudential Building at King and Yonge, hardly as classy as it once was, a block west to First Bank Tower, the mighty new Bank of Montreal building that forms the heart of First Canadian Place. It probably helped in making the decision that the firm does some business for Olympia & York, the company that built First Canadian Place.

The big firms glide through the routine of greasing power for their clients by applying brains, organization, training, and sophistication. But curi-
ously enough one of their tools that is in decline, at least relatively speaking, is work. Lawyers don’t labour as long and hard as they once did. “When I started at McCarthy & McCarthy,” the ex-lawyer from that firm said, “a senior man like John Clarry would set the pace, get into the office by nine every morning, not home till ten at night. On Saturdays, it was from ten to six, and Sundays, big deal, only two in the afternoon till ten or so. That was the life, week in and week out, but now you’ll find most offices clear of people by 6:30 any evening except for guys who are dealing with special projects. Things started to change with the young lawyers who came along in the middle 1960s and didn’t see the need for all those hours. They’re more socially oriented now, getting into outside interests, more community projects whether it’s politics or charity, that sort of thing. Lawyers have become slightly less remote, you might say, less aristocratic.”

Less aristocratic? Ah there, de Tocqueville.

The route from law school to a corner office in a big Toronto firm follows a straight line. “All you have to do when you join a firm,” one former classmate told me, “is get one of the senior partners to like you, and you’re fixed for life because he’ll hold your hand till you’re on the way up.” The classmate, I remembered just in time, had been the class cynic, and while his analysis no doubt holds some truth (he also said, “every big firm has three or four dolts in it, but other partners accept that as a fact of the business and nobody would ever do anything as crass as fire them”), the conventional path from junior associate to corporation-law eminence is more complicated though equally single-minded. All it takes is brains, the ability to concentrate on hard and sometimes boring legal points, and a talent for nifty footwork at a couple of crucial career junctures along the way.

The right law school counts, and what’s right in the 1970s is the University of Toronto Faculty of Law. Downtown, they rate Osgoode second and Queen’s third. “If a man comes to us from Western or Ottawa or Windsor,” a partner in one big firm said, “we tend to circle him cautiously.” A partner in another firm felt that “bright people are graduating from every law school. That’s because it’s so bloody hard to get into law all over the province these days that a student has to be good just to be accepted by a school, even Windsor. But the overall average level is highest by far at Toronto.”

Good marks are essential. Late last spring, more than 300 students, anticipating graduation from law schools, applied for articling positions at Osler, Hoskin & Harcourt. The firm’s students committee immediately cut the list to 147, eliminating those who didn’t show higher than a B average. The committee checked out the remainder in “long, searching, detailed interviews.” The quest for good students, according to one lawyer I talked to, is “like rushing time at university fraternities—McCarthy & McCarthy gets competitive to beat out Blake’s for the top people and vice versa.” Out of the 147 remaining applicants, Osler, Hoskin took on ten students. Not more than five of the ten, after they’ve articulated and received their call to the bar, can expect invitations to join the firm as associates.

Once past those long odds, once inside a big firm, a young lawyer is usually faced with a move in one of six directions. The big firms divide their work into departments according to the six basic legal disciplines: litigation, real estate, taxes, estates, labour, and corporation law. And in most cases, they’ll fit a new man into a department depending on current need; if real estate is crying for a fresh hand, the junior heads in that direction. At this point, a young lawyer’s gift for footwork comes into play. Real estate is not a department suited for anyone with a lust for power. Neither, essentially, is labour or estates, and litigation is a legal realm unto itself. Good money in each field, interesting responsibilities, but not where the heavy action lies. To get close to what one big-firm partner described to me as “the heat that association with power gives off,” our young lawyer must make his way into tax or corporations law.

“If you’re going to specialize today,” a partner in Osler, Hoskin & Harcourt explained, “then you ought to go into taxes. Very few young people are qualified for this kind of work, but the ones who are find themselves in big demand, and they can sell their services at a premium. The trouble is that the work is very mathematical, really more suited to a chartered accountant than a lawyer, but if you can stand it, you’ve got yourself on the inside with the big corporations.”

Which is where any rising lawyer wants to find himself and his fortune. Practising tax and corporate law in a big firm is a complex business—two lawyers at Osler, Hoskin are spending all their office time in tending to anti-inflation legalities for corporate clients—but the partners in that end of the firm are the ones who turn up on boards of directors. Corporate lawyers have the nose for power. The “social” partner in any large firm comes out of the corporate department, and so, most of the time, does the political lawyer. As McCarthy & McCarthy’s Beverley Matthews, director of a dozen or more large corporations and long-time Tory bagman, unloads some of his responsibilities, he is grooming Pat Vernon, another McCarthy & McCarthy partner, to take on the burden of cultivating power. Vernon is already chairman of the Progressive Conservative Canada Fund. And when McMillan, Binch
(forty lawyers, solicitors to the Royal Bank) decided last spring that it could stand a boost from a new front man, a social lawyer, it successfully pursued John Turner. He was wanted not for his legal expertise but for his potential for seats on boards of directors and for the possibilities he presented to other McMillan, Binch partners to murmur reassuringly to corporate clients with hard money problems that, “Hmmm, we’ll have John look at this one for you.”

“Taxes, corporate structures, the influence of people in Ottawa where they can legally and legitimately help,” my old classmate in the corner office said. “Don’t you see? They all come together in the corporate department of one of the firms on this street.”

And then he told me the story about the Tory firm. It seemed that thirty or so years ago, the late J.S.D. Tory presided over an important King Street firm, below the rank of Osler, Hoskijn and McCarthy & McCarthy, to be sure, but still a firm of the upper-middle rank with such worthy clients as Massey-Ferguson and Sun Life. Tory was a formidable presence at the bar until, as the years took their toll, he lost his zest for practice. The firm declined. Clients, notably Massey-Ferguson, deserted to other legal advice. Tory’s was no longer a force. Then on to the scene sprang the dynamic duo, Jim and John, old J.S.D.’s twin sons. Brilliant students (Jim won the Osgoode silver medal in 1956), personable and industrious, they set to work to revive the firm. They recruited bright young lawyers, men like Art Binnington and Bill DesLauriers (Osgoode’s 1955 silver medalist). They wooed corporate clients, among them Wood, Gundy and Abitibi and Thomson Newspapers. They absorbed new personnel from the old Kimber & Dubin firm, a group that included one of the city’s most admired counsel, Charles Dubin, before he went to the bench. And in the end the dynamic duo triumphed. Today, Tory, Tory, DesLauriers & Binnington (thirty-three lawyers and one counsel) rank close to the very top of corporate work for pure legal capability.

The moral of the story?

“The Tories, smart guys, know where the power is centred for lawyers,” my classmate said. “People have come downtown and started litigation firms and had fun and made money. But that isn’t where the real clout is, and the Tories understated the fact. Hell, John Tory is even president of the Thomson Corporation, which is part of the point. The whole point is that lawyers who practise corporate law know where to push the buttons to the real power. Mind you, I’m not saying who does the pushing. I’m saying we know where the buttons are and what they do.”

My classmate slid into what I’d come to think of as his Dirk Bogarde smile. “Down here,” he said, “we’re always close to the power.”

Litigation law: The specialty for mouthy, flamboyant idealists

In a passage from The Partners, a 1974 novel by Louis Auchincloss (a New York lawyer as well as fiction writer), a clear-eyed patrician named Beekman Ehninger who is the managing partner of a Wall Street law firm is overheard discouraging a young lawyer in the firm from electing to specialize in litigation.

“Tha’t's passe,” Beeky lectures, “all silly motions and endless appeals to get settlement. We have to have a litigation department only because clients don’t believe we’re really a law firm without one.”

Beeky is clearly not himself a litigation man—a counsel, a lawyer who practices his law in court arguing cases before judges—but litigation specialists in Toronto firms will tell you that Beeky's attitude is all too common among their real-life non-litigation partners. It’s a back-of-the-hand attitude. Litigation lawyers are seen to be handy people to have around when their services are required on behalf of a corporate client who is temporarily in litigious difficulties, but for the rest of the time they’re merely tolerated. They are recognized as somehow different, more mouthy, flamboyant, and idealistic than other partners. McCarthy & McCarthy maintains a fairly large, active, and gifted litigation department, but, more typically, Osler, Hoskin and Blake, Cassels keep their litigation groups smaller and low-profile. Counsel are summoned when needed. All of which may have something to do with the remarkable fraternity that exists among all Toronto litigation lawyers, crossing over firm lines and reaching from the litigation departments of the mightiest law factories to the young beginner who’s sweating to build a counsel practice. Litigation people acknowledge themselves to be special and to be brothers under the gown. “Within the litigation bar,” according to one experienced counsel, “there is an open-class society. In corporate work, I’ll bet that a partner in the corporation department at Blake, Cassels would do business with no more than ten other firms. Those are all he’d see as existing in his sphere, and that makes for a closed world, very myopic. But in litigation you don’t have to be a guy from McCarthy’s and a guy from Osler’s to get along. Litigation people move in a world that’s open to everybody who practices litigation law.”

There is, to be sure, a dash of snobishness in the litigation attitude. “We don’t care for lawyers who dabble at our work,” one counsel says. “Sometimes a commercial lawyer can come into court and be respected, but he has to be very, very good. There’s no such thing as keeping your hand in. You’re in litigation or you’re not. You’re one of us or you’re not.” At the same time, such elitism seems earned and deserved. Corporate lawyers are the custodians of power, but counsel move in the realm
of romance and ethics and flavour. “The litigation lawyer is one of the last free people left in our society,” the counsel goes on. “Citizens still have problems and still need counsel to argue the problems in court. And the problems and the clients change every week. A counsel never has all his eggs in one basket the way a corporation lawyer does, the guy who spends one hundred per cent of his time servicing a Loblaw’s or a General Motors. Our potential clientele is made up of a million different people.”

The closeness of the Toronto litigation bar makes for a busy market in reputations. And the style and fortunes of the litigation departments in the major firms are relished gossip among all counsel. Oslery, Hoskin & Harcourt, it’s known, set out a dozen years ago to rebuild a small and faltering litigation group and has largely succeeded: no superstars, but enough solid people. Fraser & Beatty were once woeful in litigation. It was used to send its tough cases over to John Arnup, the counsel at Mason, Foulds (now Weir & Foulds), until it brought in Barry Pepper, a clever counsel at McMillan, Binch, to juice up its litigation service. Fraser & Beatty has thus grown respectable, but litigation has never been as formidable as Weir & Foulds since John Arnup went to the bench a few years ago. One counsel like Arnup can shape the reputation of a firm if he’s splendid enough. That’s the case at Faskin & Calvin where Walter Williston has brought along a generation of counsel in his brand of excellence, at once strengthening the firm and establishing himself as one of the much revered counsel around town.

McCarthy & McCarthy is the firm with the recognized powerhouse of a litigation department. “It’s unique among old-line firms in the city,” says Alderman John Sewell, a lawyer and leader of the Reform Caucus on Toronto City Council, “the only one with the strength and confidence to take on a radical cause.” Thus a bright young McCarthy & McCarthy counsel named Dennis Woods acted for two citizens’ groups once, with Sewell and once with a ratepayers’ organization, in resisting developers who were out to build apartment complexes in residential neighbourhoods. McCarthy & McCarthy doesn’t mind the occasional anti-establishment matter, and it doesn’t shy away from matrimonial actions, the kind of sticky lawsuits that other downtown firms tend to shun. “Say a highly placed corporate executive gets into a marital Jackpot,” explains a small-firm counsel who specializes in matrimonial litigation, “the big law firm that acts for the corporation doesn’t want to risk screwing up the executive’s lawsuit and thereby losing the client. So the firm farms the action out to people like me.” McCarthy & McCarthy doesn’t farm out. In a vividly contested four-day divorce and custody action in January, 1976, a McCarthy & McCarthy lawyer, Ron Slaght, took the absolutely unprecedented step of appearing on behalf of two infant children whose custody was at issue in the case. Slaght’s appearance unsettled the presiding judge, Mr. Justice Reid of the Ontario Supreme Court. “It is no reflection upon Mr. Slaght,” the judge later wrote in his judgment, “who did his best in difficult circumstances and did it with considerable care and competence, to say that I have grave misgivings about this form of procedure.” In the gentlemanly world of the courts, the judge’s words were interpreted as tearing a strip off Ron Slaght.

McCarthy & McCarthy has more than its allotted share of litigation hotshots, counsel like George Finlayson and Doug Laidlaw who attract clients to the firm on their own reputations, but the man who sets the tone in skill and style for McCarthy & McCarthy in particular and the litigation bar in general is John Josiah Robinette.

Robinette’s adventures in court would legitimately make up a fat volume of Great Court Cases belonging on a shelf alongside Marshall Hall and Clarence Darrow and Louis Nizer. He has defended seventeen clients facing the gallows (only one, a cop killer named Suchan, was hanged). He prosecuted the espionage cases following Igor Gouzenko’s defection. He acted for Leitch Gold Mines in the Texas Gulf Sulphur case of 1964; the most expensive action—$450 million was at stake—ever fought in Canadian courts. He defended the Government of Canada in a suit against the Official Languages Act and Maple Leaf Gardens president Harold Ballard on charges that he hoisted the Gardens’ till. And in 1970, when Robinette was sixty-four, he appeared successfully for a citizens’ group opposing extension of the Spadina Expressway into downtown Toronto, a case according to Robinette that “rejuvenated me at a point when I might have become stodgy and old-fashioned.”

“Robinette is in a class by himself,” says a younger counsel from another firm who worked with Robinette on a case that stretched over three years. “In preparation and cross-examination, he rates as the master, the standard for the rest of us. But there’s something in a way more important about him—he’s the most civilized man I ever met. You want to talk about the novels of Willa Cather, okay, he’s read them. He has an amazing breadth of mind. McCarthy & McCarthy may be a den of corporate, reactionary power, but Robinette is different, a genuine liberal. And his sort of class has gone a long way to making the Toronto litigation bar a separate and better place.”

It was Robinette in 1965 who helped found the Advocates Society, which stands as a handy symbol for the apartness of litigation lawyers. Only lawyers who practise in court are admitted to membership, and the society carries on an industrious programme of educational updating in litigation matters, in maintaining links with the bench, in making appropriate representations to the provincial legislature. But the real whiff of the style that counsel embrace emanates from the society’s extracurricular carryings-on. Ah Campbell House! Ah the solid-gold tea service! The luncheons!

Members of the society threw themselves into rescuing Campbell House—a lovely Georgian home that was built in 1822 by Chief Justice Sir William Campbell of the Upper Canada King’s Bench—when it stood in peril of the wreckers’ hammer in the 1960s. Nine hundred thousand dollars the job cost, but the society moved the house to a new location across University Avenue from Osgoode Hall, restored it with meticulous devotion, furnished it to the period, and established in the basement, closed to the public from noon to 2:30 p.m., an intimate space for members to lunch. Expensive, of course, and that accounts for the lottery held through late 1976, $100 per ticket for a solid-gold tea service fit for royalty to sip from. But merely the ambience of the place, so gorgeously restful and antique at lunch, makes it all worthwhile. A nice curry, a flagon of beer, a strawberry fool, and muted fraternal conservation about motions and appeals—enough to silence forever Beckman Ehninger and his real-life like.