

Big-firm model pitfalls drive Hayes off Bay Street

BY ROBERT TODD
Law Times

Toronto commercial and litigation lawyer Mark Hayes says he left Bay Street after 25 years to start his own firm due to concerns about the big-firm model, which he says many companies are railing against in these lean times. "So far, the really gratifying thing is that clients have been very pleased, both with the move and with the work we've been doing," says Hayes. "That's really what it's all about, in terms of a practice going forward."

Hayes specializes in commercial and litigation matters in the areas of copyright, entertainment and media, information technology and privacy, and access to information. He is one of the few Ontario lawyers certified both in civil litigation and intellectual property

He recently left Blake Cassels & Graydon LLP to open the new firm, Hayes eLaw LLP, and previously practised with Fasken Martineau DuMoulin LLP, Davies Ward & Beck LLP, and Ogilvy Renault LLP. Hayes now sees pitfalls in the model firms adopt.

"Number one, the costs are too high. I think the billing rates are too high, and in particular I'm really concerned the billing rates for junior people are just too high, he says. "And the big firms were just too dependent on big transactions and that kind of thing, which basically disappeared."

Hayes says he was also concerned that "what I was bringing in wasn't really being reflected in what I was taking out."

He wasn't interested in moving to another firm, and concluded that he could operate with less overhead and lower rates than he was

at Blakes while still taking home "as much or more" money.

"The big advantage though, now that I've done it, is really that it simplifies your practice so much, because really I just have to please my clients. And I've been pretty good for the past 25 years of pleasing my clients," he says. "I think what I've found more difficult is understanding exactly what my partners were looking for. And that can be a lot more complicated."

Hayes is joined by his wife, Debra Montgomery, at the new firm, on Queen Street West in Toronto. She mainly acts as a "part-time, in-house counsel" for companies that don't need a full-time lawyer on staff, he says. Hayes also recently hired a law clerk from Blakes.



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He says he named the firm Hayes "eLaw" LLP because of the e-commerce, technology, privacy, and data protection aspects of his practice. Plus, the term meshes with his business model, which he describes as "experience, expertise, excellence."

The "eLaw" term has been confusing to some though — Hayes says the Law Society of Upper Canada originally thought he had a partner named "Elaw"

While the work has been steady so far, small-firm challenges have arisen. Hayes admits to missing the social interaction that comes with life at a big firm, and says the administrative side has taken its toll.

"It's very demanding in terms of your time, and I'm finding I'm spending a lot of evenings and weekends," he says. "That's a real challenge, and hopefully as time goes along that's going to smooth itself out."

While many lawyers would likely shudder at the idea of opening their own shop during a recession, Hayes believes the slump has helped his firm thrive.

"What I've found is that general counsel are looking for ways to get more bang for their buck. And so what I've been able to offer is the kind of experience and expertise that they're looking for, but in a lower-cost package."

Hayes says he is able to offer companies experience and "specialized knowledge" to prop their in-house counsel. He has been working in a format in which he provides senior leadership to an in-house team, which then is able to focus its attention on work that big firms would assign to junior lawyers or students. "I think it is an opportunity, and certainly, based on the first couple of months ... I've been far busier than I expected," he says.

Hayes says he doesn't fear that work will dry up once

the economy turns. "My feeling is, and this is one of the strategies when I looked at making this move, is that as long as I had a strategy that I thought would work well during the down period, that once things start to go backup, you know this year, next year, whenever it's going to come back, I think it'll ride that back up."

His web site www.hayeselaw.com will be operational shortly.