

Student Life #4: Barrister or Solicitor?

In this section, we discuss some aspects of the practice of law, particularly, how some areas of the law are categorized and operate in practice. In the legal profession, there are many terms used to describe lawyers and their practices, such as “business law”, “insurance lawyer”, “solicitor”, “barrister” and “litigator”. This can be confusing, especially for those who have had no exposure to the practice of law. The practice of law is as dynamic as the substance of the law, and classifications of the areas of practice are constantly changing. While the following discussion is only cursory, we hope it provides you with some insight to help you investigate and make more informed decisions about the areas of practice in which you are interested.

Why are some lawyers barristers, some solicitors, and some both?

All Canadian lawyers can call themselves both “barristers and solicitors”, although many define their practices as either one or the other.

A barrister is a litigator, i.e. a courtroom lawyer. Traditionally, the Bar was the place in a courtroom where counsel stood to address the court. These days, in Canada, the term “litigator” is more often used than “barrister”. That is not to say that all litigators spend all their time in court. In fact, today many litigators do not go to court often or at all. However, a litigator’s work is associated with the court process, as well as arbitration, mediation, and administrative tribunals. This can include drafting pleadings, attending examinations for discovery, preparation for hearings and, of course, advocacy.

On the other hand, a solicitor’s work is usually not tied to the courts and instead

involves assisting clients with all other legal matters. This work is diverse and can include drafting contracts or wills, handling real estate transactions, incorporating and maintaining companies, making applications to protect intellectual property rights, and filing securities prospectuses. Accordingly, solicitors are often referred to as “business lawyers”.

Both litigators and solicitors meet with clients, provide legal advice, prepare legal opinions, and negotiate on behalf of their clients, although they do so on different issues. In this regard, some would say that a solicitor assists clients in making deals and avoiding or preventing problems, whereas a litigator assists clients once problems have arisen, especially where litigation is likely or underway. Although this litigator-solicitor distinction is not always true, it does provide an interesting perspective on the differences between the two branches of the profession.

For the most part, the distinction between a barrister and solicitor has been more apparent in larger firms, where the advantage of having many lawyers has allowed individual lawyers to take on a more specialized practice as a litigator or solicitor while the firm overall can still offer clients a full range of legal services. Many smaller firms or sole practitioners have had a more generalized practice, where the lawyers take on both litigation and corporate matters.

Ironically, however, as the practice of law is becoming more specialized along substantive lines, the traditional distinction between barrister and solicitor is breaking down. Some lawyers are doing work associated with both solicitors and barristers, but in specific substantive

areas of the law. This has always been the case for many lawyers who specialize in labour and employment law, as they assist clients with employment contracts, workplace policies and manuals, and related litigation or arbitration matters. However, you will also find these distinctions being blurred in other fields, such as construction law, estate law or entertainment law. This is because the substantive knowledge these lawyers gain in the course of day-to-day practice can be used to assist clients with all of their legal issues.

Ultimately, then, while it is important to understand the difference between barristers' and solicitors' practices, it is also important to realize that this is not always a clear distinction. As a student interviewing with a law firm, you may wish to clarify what the specific practices entail, to ensure that you will gain exposure to the type of work in which you have an interest.

How does a firm divide itself into practice groups?

In the course of investigating and interviewing with law firms, you will hear a great deal about "practice groups" or "departments". These are generally internal divisions created along both procedural and substantive areas of the law, i.e. a "litigation department" or a "municipal law practice group". Law firms usually create these divisions for three purposes: (1) to assist in the internal administration of the firm; (2) to develop and strengthen relationships with clients (in other words, marketing); and (3) to capitalize on and grow the synergies among the lawyers in the group. Lawyers in the firm will be assigned to work within one or more of these groups, depending upon the strengths and interests of each lawyer.

When selecting a firm, you may wish to

find out more about a law firm's departments or practice groups, namely why the firm designates such groups, how they operate within the firm, and how lawyers are assigned to a specific practice group. Not all firms are the same in this regard. Moreover, you will also want to know whether such a group has a thriving practice or whether it is something in its initial stages. Because "departments" or "practice groups" can serve a marketing function, some firms will quite properly indicate that they have lawyers who can perform services in a certain area although they do not yet have a thriving practice in that area. If you have a specific interest in an area in which a firm has a "department", you should find out what this group does and how active it is, to ensure that you will gain some exposure to this area of practice in your articles.

What is a "full service" law firm?

The obvious answer to this question is a firm that can provide clients with all legal services. However, given the increased specialization in legal practice, not all firms that claim to be "full service" can actually do so. Accordingly, it is probably more accurate to say that a full service firm will provide *most* legal services to clients. Many "full service" firms that have varied practices do not perform services in areas such as criminal law, intellectual property, or tax law; these services will often be sent out to boutique firms. For that reason, students with a specific interest in a field will always want to find out if law firms have actual practices in those areas of the law.

What is "business law"?

When most firms talk about "business" or "corporate" law, they refer to the type of clients being serviced. Business law is the provision of legal services to clients that are businesses themselves.

Although many firms have a business or corporate law practice, the majority of services provided to businesses are by solicitors. For that reason, a practice in “business law” is generally synonymous with a solicitor’s practice. Litigation relating to business disputes is usually called “commercial litigation” and is seen as a form of litigation rather than solicitor’s work.

In your search for a law firm, if you tell a firm that you are interested in their “business law” practice, you are really saying you have an interest in their overall solicitor’s practice, unless you specifically indicate something else. If, for instance, you are really interested in wills, it would be better to avoid the term “business law” and instead be specific about your interest in wills.

What does an “insurance lawyer” do?

This is a question we at Alexander Holburn hear all of the time, likely because we have such a well-known and substantial “insurance law” practice.

A practice in insurance law can be incredibly diverse. In law school, a course in insurance law will usually involve the review of insurance policies and the specific laws of contract that apply to insurance contracts. While that is certainly one aspect covered by an insurance lawyer, that is not the whole picture.

In the real world of the legal profession, an insurance lawyer is typically someone who is retained by insurance companies, to act for the insurer or for its insured. Insurance law can include reviewing and drafting insurance policies, and dealing with insurance coverage issues (i.e. interpretation of the insurance policy), but “insurance law” also includes, acting for an insurance company’s client – an “insured” who has taken out an insurance

policy -- in a claim brought against them.

Thus, an “insurance lawyer” might well be found defending a defamation lawsuit or defending a manufacturer of an allegedly defective product and might, at the same time, not be concerned with the insurance policy at all.

Given the vast array of insurance available, the substantive areas of the law at issue in an insurance law practice can include almost all matters of contract, tort, and equity, e.g. property damage, professional liability, fiduciary duty, product liability, municipal, personal injury, construction, transportation, motor vehicle, etc. In fact, many of the cases you study in your law school classes have an insurance aspect to them, although that is not something you would necessarily know from the case itself.

We invite students to ask us what our insurance law practice entails, as the students we talk to find it much more diverse and exciting than they would otherwise expect.

Some parting advice

During the articling selection process, do not be afraid to ask questions of law firms about specific areas of the law and how they operate in practice. Find out more about what each firm means when it says it has a “department” or “practice group” in an area of the law in which you have an interest. You might be surprised by the answer you receive. And, when looking for articles, do not talk about a specific practice area, i.e. “business law practice”, if you do not know what the law firm means by such a term. You will look ill-informed and, even worse, might inadvertently express an interest or disinterest in something.