



Left to right: Douglas Elliott, Peter Roy and David O'Connor, REO Law LLP, Toronto.

## Legal trailblazers

*A commitment to social justice and a strong stomach for risk has made REO Law LLP one of the best class action firms in Canada.*

By Rose Steele

**L**ike many idealistic young lawyers, the partners of REO Law LLP in Toronto had big ambitions when they started their legal careers: They wanted to change the world. Peter Roy, Douglas Elliott, and David O'Connor wanted to defend the defenceless, blaze a trail for human rights, and shared a strong sense of social justice. Unlike many young lawyers, their idealism never faded: in fact, some might say that changing the world — or at least their corner of it — became their *modus operandi*.

Consider their track record: *Hislop v Canada*, which sought benefits for spouses of same-sex marriages, was the first class action trial award to be upheld by the Supreme Court of Canada, and the largest class action trial judgment in Canada (more than \$50-million); the firm successfully represented the Metropolitan Community

Church of Toronto in the Ontario Court of Appeal in *Halpern v. Canada* and in the Supreme Court of Canada on the Marriage Reference, leading Canada to become the first country in the Americas to legalize same-sex marriage; the Hepatitis C plaintiff class action resulted in a \$1-billion settlement for claimants. These are just a few of their landmark cases, all considered to be game changers in this country. Some would say they're not just blazing trails; they're scorching the legal landscape for generations of Canadians to come.

"Lawyers have played a large role in creating change in this country," muses Elliott, but not without some trepidation. Despite the stunning changes he has witnessed in Canada over the past 10 years, he admits that public complacency is always a problem.

"Many people today don't understand what all the fuss is about. There is a tendency to fall prey to our smugness. It wasn't that long ago when Canadians were without a Charter, and life at times could be terrifying for minority groups," he says, pointing to the Toronto bathhouse raids of the early 1980's, one of the largest peacetime arrests in Canadian history.

While many Canadians today feel protected by the Charter of Rights and Freedoms, others struggle to exercise their basic rights. "Even with the Charter, a right is meaningless unless you can get a remedy," says Roy. "One of the best tools lawyers have to achieve a broad-reaching remedy is the class action. Class actions have revolutionized justice for ordinary Canadians."

As effective as class actions can be, they also carry enormous risk for law firms. Large sums of money, time and resources are on the line, though the average citizen has little insight into this reality. "In the media, you only hear about the wins, but when a class action is lost, so too are countless hours of work. It is a big hit for any law firm to bear," says Roy. "A loss could easily destabilize a firm, which is why many simply won't take the risk."

But without lawyers willing to take on risky cases, the rights and freedoms of some Canadians will continue to be more dream than reality.

"Access to justice has a long way to go in Canada," says Elliott. "It's as though the courts have no concept of the practical impact of these cases. The cost awards and fee approvals just don't accurately reflect the risk involved."

For example, in Charter cases, there is no award for damages. Even winning *Hislop v. Canada* was no guarantee of a pay day for the law firms involved. Millions of dollars were denied to counsel after s.65(1) of the *Canada Pension Plan Act* superseded Ontario's *Class Proceedings Act*, 1992, which guarantees lawyers are paid first from any class action settlement or award. Although this decision did not cancel their legal fees, it meant going after each class member individually for monies owed — something

a class action lawyer is not typically required to do.

Elliott, Roy and O'Connor all agree that their clients were very supportive and honourable, with many voluntarily paying their share of the costs. But on the whole, the decision to deny lawyers first charge on the proceeds was not a good day for constitutional class actions in Canada. With no guarantee of getting paid even with a win, constitutional class actions have gone from risky to outright perilous.

Based on their track record and reputation as one of the best class action firms in Canada, one might assume that the partners of REO Law thrive on risk. Though there may be some truth to this, their real source of energy and inspiration is a strong belief in what they do. The human element of their legal work has touched each of them profoundly. When countless clients send personal letters of gratitude, it affirms how their chosen profession has the amazing ability to affect people's lives in a positive way. A former client, the Canadian AIDS Society, awarded REO Law its 2009 Corporate Leadership Award.

The firm successfully represented CAS during the Commission of Inquiry on the Blood System in Canada (Krever Inquiry) and also supported CAS in *Vriend v. Alberta*, a case involving a teacher who had been dismissed by a college because of his sexual orientation.

"It is the first time the award has been given to a law firm," explains executive director Monique Doolittle-Romas.

"What we have paid them doesn't come near to what they have accomplished."

But the firm is not content to rest on its laurels.

Presently, O'Connor is one of the lead counsel (along with Louis Sokolov of Sack Goldblatt Mitchell) in the unpaid overtime class actions against CIBC and Scotiabank, two of the largest employment-related proposed class actions ever in Canada. The CIBC action was not certified as a class action but an appeal was argued in March of this year and the parties are currently awaiting a decision on the appeal from the Divisional Court. The Scotiabank case has been certified, and alleges that the bank failed, as a result of systemic issues, to pay various employees at retail branches for overtime work to the tune of millions of dollars. Many legal experts, employers and employees alike are following both cases closely, as they could have far-reaching implications for Canadian workers.

Even the firm's detractors admit they're good at what they do. Not long ago, an unlikely client approached REO Law for counsel. On the face of it, it seemed an improbable match, with the client admittedly unsupportive of their human rights work. Yet in their time of need, the client entrusted their best interests to REO Law, underscoring the firm's undeniable track record of excellence. That may have been the greatest compliment of all. ■

Rose Steele is a writer for *National*.

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— Monique Doolittle-Romas —  
Canadian AIDS Society

## Pionniers en droit

REO Law LLP s'est taillé une niche en recours collectif au pays en s'engageant dans la justice sociale. Portrait d'un cabinet qui n'hésite pas à prendre des risques.

En jeunes avocats idéalistes, les associés de REO Law LLP à Toronto voulaient changer le monde au début de leur carrière. Mais contrairement à d'autres motivés par le même esprit, leur idéalisme n'a jamais été altéré avec les années, Peter Roy, Douglas Elliott et David O'Connor partageant un sens aigu de la justice sociale.

Il suffit d'examiner les antécédents de REO Law pour s'en convaincre. Ils se sont fait remarquer dans la cause *Hislop c. Canada*, une affaire qui s'intéressait aux allocations de partenaires de même sexe qui ont finalement été reconnues par la Cour suprême du Canada. Le procès a été le plus coûteux de sa catégorie, atteignant plus de 50 millions de dollars. REO Law a également représenté avec succès la Metropolitan Community Church of Toronto à la Cour d'appel de l'Ontario dans l'affaire *Halpern c. Canada* et à la Cour suprême. Le Canada est ainsi devenu le premier pays en Amérique à légaliser le mariage de partenaires de même sexe. Un

recours collectif des plaignants concernant l'hépatite C s'est soldé par une victoire et un règlement d'un milliard de dollars. Autant d'exemples qui démontrent l'influence du trio Roy, O'Connor et Elliott.

Alors que les Canadiens sont nombreux à croire que leurs droits sont naturellement protégés par la Charte canadienne, il demeure que d'autres luttent encore pour les exercer véritablement. Mais d'après Peter Roy, même si la Charte existe, un droit n'a aucun poids à moins d'être assorti d'un remède légal, notamment les recours collectifs, qui ont révolutionné la justice pour des citoyens ordinaires.

Mais les recours collectifs mobilisent des montants astronomiques et font prendre d'énormes risques aux cabinets, une réalité souvent occultée par les médias. Pourtant, il suffirait d'une défaite pour déstabiliser les cabinets.

C'est parce que certains avocats acceptent de prendre de grands risques que les droits et libertés de certains Canadiens peuvent être exercés concrètement. Même dans le

cas de la victoire à l'issue du procès *Hislop*, le remplacement du Régime de pensions du Canada par la *Loi de 1992 sur les recours collectifs* a annulé l'avantage que les avocats avaient d'être payés en priorité. Désormais, chaque membre du recours collectif doit réclamer son dû individuellement.

Malgré cela, les partenaires de REO Law continuent de croire dur comme fer en leur capacité d'avoir un impact positif sur la vie des gens. Le Prix du leadership 2009 de la Société canadienne du sida, un ancien client du cabinet, leur a d'ailleurs été décerné pour leur importante contribution.

REO Law ne s'endort pas sur ses lauriers pour autant. Actuellement, Peter O'Connor participe à deux procès portant sur les heures de travail supplémentaires non rémunérées de travailleurs de la CIBC et de la Banque Scotia. Une décision a déjà été rendue concernant la Banque Scotia tenue de rembourser des millions de dollars à certains de ses employés. Une décision est attendue concernant la CIBC. La conclusion de ce procès aura certainement des répercussions sur la vie des travailleurs canadiens. REO Law continue bel et bien à changer le monde. ■

— Yasmina El Jamai