

## Nortel judge joins Thornton Grout Finnigan and Arbitration Place in Canada

Benjamin Clarke, 13 June 2017



Justice Frank Newbould Thornton Grout Finnigan

After sitting on the bench in the Ontario Superior Court of Justice for more than 10 years, **Justice Frank Newbould QC** has returned to private practice in Toronto.

Justice Newbould – who stood down from the court on 1 June – will start new roles as counsel at Toronto-based restructuring and litigation boutique Thornton Grout Finnigan (TGF), and as a member arbitrator at the international hearing centre and arbitrator's chambers Arbitration Place, on 1 July.

During his time at the bench, Justice Newbould has been at the forefront of some of the largest and most important cross-border restructurings and insolvencies in Canada, including in the insolvency proceedings of global telecoms giant *Nortel Networks*.

Together with **Judge Kevin Gross** of the US Bankruptcy Court for the District of Delaware, Justice Newbould presided over the first cross-border trial by video link between a Canadian court and a foreign court, after which the pair issued complementary decisions allocating US\$7.3 billion in liquidation proceeds between Nortel's competing debtor estates and global creditors.

The complementary decisions and subsequent mediation helped push the competing estates and creditors into a global settlement agreement, which Justice Newbould and Judge Gross finally approved at a joint hearing on 24 January this year.

Justice Newbould was also the Canadian representative who helped create the Judicial Insolvency Network's "Guidelines for Communication and Cooperation Between Courts in Cross-border Insolvency Matters", which were drafted in October.

Since then, the guidelines have been adopted by courts in Singapore and Delaware on 1 February, the Southern District of New York and Bermuda on 17 February and 9 March respectively, and last month, the British Virgin Islands.

First called to the bar of Ontario almost 50 years ago, Justice Newbould practised with Toronto-based firm Tilley Carson & Findlay from 1969 until 1988 when he moved on to Borden Ladner Gervais legacy firm Borden & Elliot.

He was appointed to the Superior Court of Ontario in October 2006, and later served as team leader of the Commercial List in Toronto, Canada's first specialised commercial court.

Describing TGF as "by far the best restructuring firm in Canada", Justice Newbould tells GRR that he has known the firm for about 20 years, after first dealing with partners there when he a lawyer working on a Companies Creditors Arrangement Act (CCAA) case in which they were advising the monitor, Ernst & Young.

Similarly, he labels Arbitration Place as "simply the best" arbitration chambers in the country. "I am looking forward to getting back into the arbitration field that I was involved in before becoming a judge," he says.

Before pursuing a legal career, Justice Newbould completed an undergraduate degree in mathematics and economics – an endeavour that TGF partner **DJ Miller** says was "invaluable" as he dealt with the complex financial issues at play in the *Nortel* proceedings.

Faced with the expert testimonies of some of the world's top economists he was able to "drill down on what really mattered, question their assumptions and determine the relative strength of their theories," Miller tells GRR.

Justice Newbould is "a bold, creative thinker" which makes him a "perfect fit" for TGF, she adds. "He has the ability to create a dynamic among parties that very often leads to settlement of the most contentious issues, or at least a narrowing of the issues requiring judicial determination... Clients of the firm will benefit from his unique perspectives as a leading litigator and as an internationally-respected judge."

**Kimberley Stewart**, CEO and founder of Arbitration Place, also tells GRR that Justice Newbould's "ground-breaking and innovative work in adjudicating cross-border insolvency disputes" and his experience resolving disputes "should translate wonderfully into arbitrating all forms of international and domestic commercial disputes with the efficiency and effectiveness that is high on most lists of the Top 10 attributes and qualities desired" in an arbitrator.

"As the use of arbitration rises on the radar screen in insolvency and in restructuring, and in the arbitration world, Frank is one of the most qualified people anywhere to be at the forefront," adds Stewart: "Frank is a great addition to Arbitration Place's roster of leading arbitrators and mediators, of which I am extremely proud."

Justice Newbould's most recent rulings include a landmark DIP-extension decision last month where he rejected bankrupt steel producer Essar Steel Algoma's attempt to extend a debtor-in-possession (DIP) loan, saying he was "concerned" that the interests of the DIP lenders and the term lenders were "too closely aligned".

He also made another ruling in the ongoing *Nortel* saga last month – alongside Judge Gross in Delaware – finally putting the Chapter 11 and CCAA plans into effect, which should see the first distributions of the US\$7.3 billion liquidation proceeds early next month.

“After more than a decade on the bench, Frank’s legacy as one of Canada’s leading commercial judges is well-earned,” says former Chief Justice of Ontario **Warren Winkler QC**.

“I have no doubt that he will bring enormous value to TGF’s lawyers and clients, and to the parties and counsel appearing before him in his new role as arbitrator and mediator,” he adds.