

## Article

### Q&A with Jeffrey Elkinson, Director in the Litigation Department

In the November edition of the Private Client & Trust Bulletin, we sat down with Conyers Director, Jeffrey Elkinson. Jeffrey has been with the Bermuda office of Conyers for 33 years and is a well-known arbitrator and counsel. He has three law degrees, is admitted to practise in seven jurisdictions, is a Special Assistant Attorney General for Massachusetts and sits as an Assistant Justice of the Bermuda Supreme Court. He is also a past president of the Chartered Institute of Arbitrators, the pre-eminent global training organisation for dispute resolution. Here, Jeffrey speaks about career highlights, the push for global corporate taxation and why firewall legislation is important.



#### What does a typical workday look like for you?

In Litigation, there is no predicting what lies ahead in the course of a week, never mind a day. That being said, a typical day is where in the early part you get paperwork done, drafting of pleadings, letters. Advising clients either in person or by conference or Zoom call is always part of the day too, and it can be on subjects ranging from restructuring of a trust or resolution of a dispute between shareholders, to advising on Production Orders made pursuant to Tax Information Exchange Agreements. Lunch ideally involves exercising on the nearby sports field. A Supreme Court hearing in the afternoon sitting as a judge of the Supreme Court and then back to the office. Late afternoons can be chairing meetings of either the Bar Professional Conduct Committee or the Police Complaints Authority.

#### If you had to pick one career highlight, what would it be?

There are a few cases where it is the people you work with that make them memorable, especially when you become lifelong friends: Lord Irvine of Lairg, who became the Lord Chancellor the year after we did the first case together on tax treaties in Bermuda, and Lord Pannick, who is undoubtedly one of the best advocates of his generation. In terms of sheer complexity, the “Megafon litigation”, which is widely written about, must be number one. It had a global dimension, high value and human drama — including murder. It had great clients and solicitors on our side. The case involved Russian oligarchs, highest level Russian ministers and lawyers in at least six jurisdictions. There were hearings in the Eastern Caribbean Supreme Court, both at High Court and Court of Appeal level, Bermuda Supreme Court and Court of Appeal, the Privy Council and arbitrations in Geneva, Zurich and Stockholm. What started off in 2004 as a dispute over shares held by a Bermuda Mutual Fund, IPOC, of the telecom, Megafon, which was then listed on the Moscow Stock Exchange, ended up with the Bermuda Supreme Court making an Order on

29 November 2007, declaring that the shares were legally owned by our client, then worth US\$3.5 billion. The present majority shareholder of that restructured entity remains a client of Conyers.

**What development do you see as having the most impact on Private Client & Trust Litigation practice in 2021?**

It is hard to ignore the latest push for global corporate taxation which brings with it renewed energy on the part of the OECD to make sure that there is transparency across the board. This is to be measured by the use of the TIEA regime which gives tax authorities in most jurisdictions the ability to reach out to another jurisdiction and find information about taxpayers whom they decide to audit and their structures. This regime exposes all providers to the obligation to provide the information as requested. Those providers can include banks and trust providers, including family offices and accountants.

**There have been comments in the leading professional reference directories about you as “a fighter” and “nothing can faze him” and “great fun to work with.” What do you think is your biggest strength in representing clients?**

I want to do the best I can for a client and part of that is being realistic early and speaking frankly about the strengths and weaknesses of any position that may have been taken. This can extend to what are the realistic possible outcomes if the matter is to proceed to its full course in litigation and having a sense of what are the possible alternatives to get to a satisfactory resolution.

**What trends in Private Client/Trust Litigation will be influential in 2021/2022?**

HNWIs and their advisors choose a jurisdiction for the establishment of a trust where they have formed a view that it offers the best services and best protection for the vehicle chosen to hold their assets or conduct business. The thinking that goes into that decision will include an assessment of the quality of local providers and the local law. A question which is often asked is whether the local law can exclude the application of any foreign laws, particularly confiscatory ones. The concern is not a new one as forced heirship, by way of example, has been an issue which has surfaced on several occasions in Bermuda; foreign laws could have a serious impact on the structure. The trend is to ensure local laws are effective in excluding the application of foreign laws by the improvement of firewall legislation where it exists, and in jurisdictions where it doesn't exist, introduce it.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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