THE GLOBE AND MAIL

CANADA'S BEST EXECUTIVES

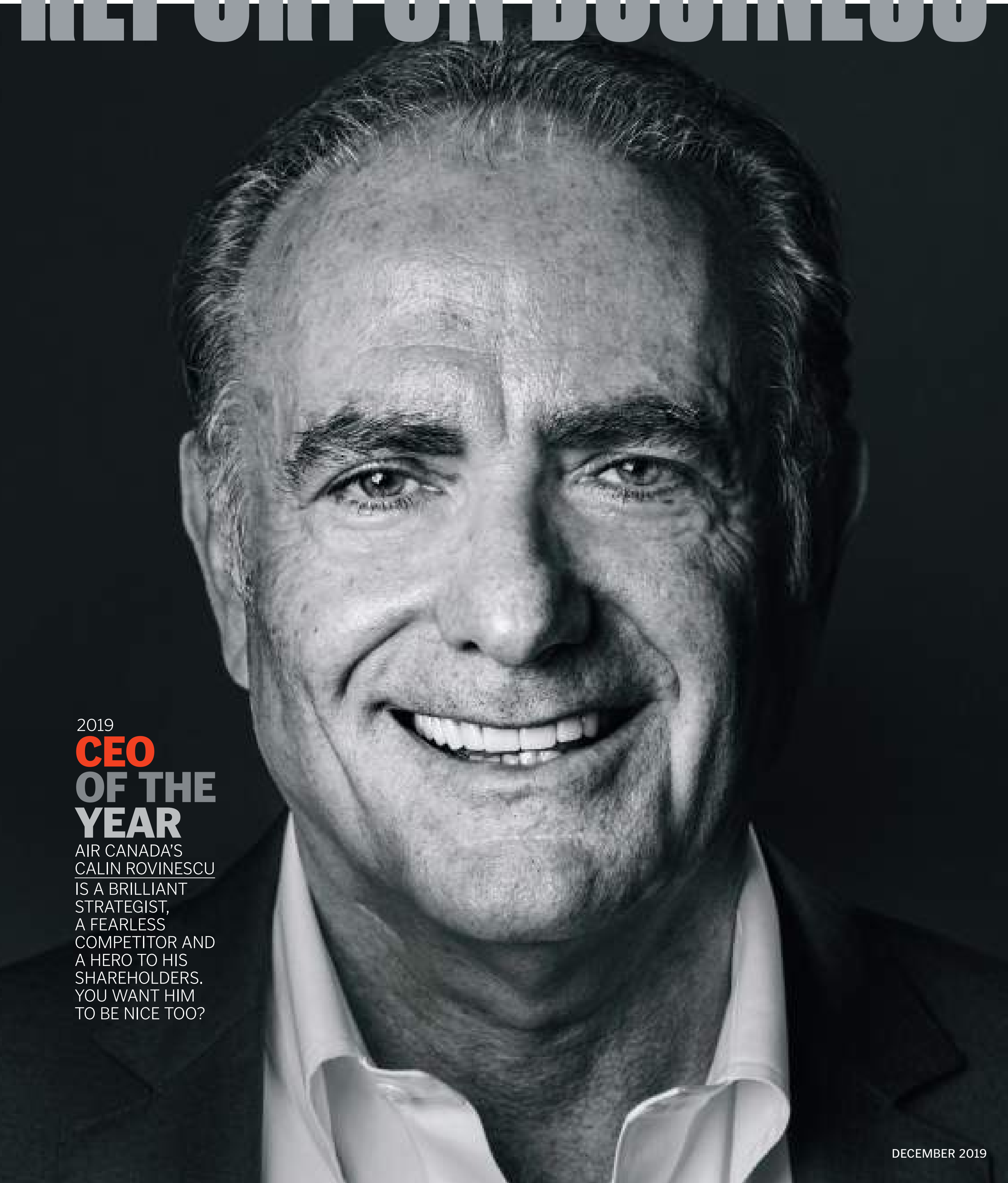
INNOVATOR ON A MISSION
DAX DASILVA OF LIGHTSPEED

A NEWCOMER STEPS UP
SUSAN SENECAL OF A&W

TOP CORPORATE CITIZEN
GEORGE COPE OF BELL

BRINGING US TO THE WORLD
DANI REISS OF CANADA GOOSE

REPORT ON BUSINESS



2019

CEO OF THE YEAR

AIR CANADA'S CALIN ROVINESCU IS A BRILLIANT STRATEGIST, A FEARLESS COMPETITOR AND A HERO TO HIS SHAREHOLDERS. YOU WANT HIM TO BE NICE TOO?

DECEMBER 2019

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COVER AND ABOVE PHOTOGRAPHED EXCLUSIVELY SHOT FOR REPORT ON BUSINESS MAGAZINE BY GENEVIÈVE CARON; BOTTOM CHRISTIE VUONG

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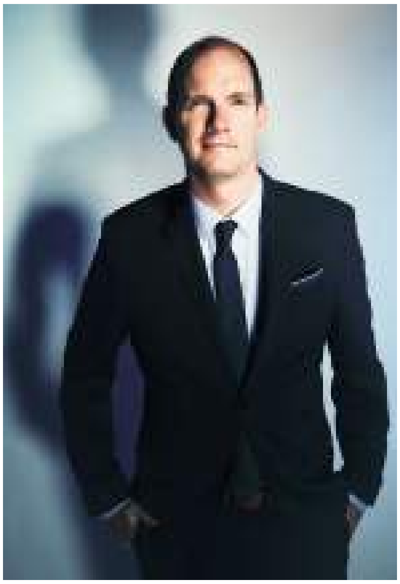

Put a fine point on it

George Cope had been CEO of BCE for just under two years when a Report on Business writer visited him in February 2010. The conversation focused on Bell's turnaround strategy. To illustrate a point, Cope reached into his desk and yanked out a line-by-line expense report for the entire company. "I go through all 121 pages myself," he told reporter Simon Avery.

When I sat down with Cope this fall, I asked if this attention to detail had persisted. It seemed reasonable to check every line in the midst of a company-wide overhaul, but surely, he had climbed out of the weeds by now. But no. Cope still had the report within reach. "It creates a real culture of financial discipline," he told me. "I'm going to ask about page 229, line 67. Because I expect [the person responsible] to know exactly why it's higher than a year ago, or why not."

Our interview took place on the occasion of Cope's recognition as one of Canada's best CEOs by *Report on Business* magazine. Our reporters and editors selected him as Corporate Citizen of the Year, for his leadership of the Bell Let's Talk initiative. In total, we chose five CEOs this year who exemplified the best of corporate innovation, strategy and responsibility. And while the honourees come from disparate backgrounds and industries, they all share Cope's focus on the finer points. Dani Reiss, our Global Visionary of the Year, has built Canada Goose into an international brand by recognizing the subtle shifts needed between cultures. A&W's Susan Senecal, the New CEO of the Year, spent nearly a decade chasing the right veggie burger for her company. Dax Dasilva of Lightspeed, the Innovator of the Year, has a headquarters filled with screens to keep staff abreast of key statistics in real time. And Calin Rovinescu, recognized as both top strategist and overall CEO of the Year, has demonstrated an ability to tweak and hone his tactics, while always building towards a long-term vision.

There is, of course, a danger that a CEO can become too focused on small details and lose sight of the big picture. Marissa Mayer, the ill-fated former CEO of Yahoo, notoriously obssessed over the right shade of purple for the company's logo, even as its core business faltered. A focus on tiny details can also lead to micromanagement, where subordinates feel they have no authority to make decisions, no matter how trivial.

But a truly excellent CEO can use small details to diagnose big problems. Dominic Barton, the former managing director of McKinsey & Co., once wrote successful leaders need to "develop a facility for viewing the world through two lenses: a telescope, to consider opportunities far into the future, and a microscope, to scrutinize challenges of the moment at intense magnification." The real trick is knowing when to swap one lens for the other.

/James Cowan

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THE GLOBE AND MAIL

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PHOTOGRAPH KOUROSH KESHIRI

Simply put

Joe Castaldo wrote about Michael Katchen, the founder of Wealthsimple, and his plan to become a diversified competitor to the big banks

Please start differentiating between financial advice and investment advice. As an ex-CFP, I understand that investing is the last decision you make on your way to control of your money. First is budgeting, then planning for what is important to you, and allocating in your budget, protecting what is important to you and making sure your plans are carried out through wills. Now you have something to invest for. Now, perhaps, a robo-advisor will help. But who will keep your feet to the fire of your plan?
—Hazel Elmslie

Mr. Katchen, you are a pioneer and a good one. But sooner or later, one of the Big Five banks will make you an offer even an idealist like you will not resist.
—Rocheda

"The creative department found an animator in Moscow and a video editor in Los Angeles." Uhm—no one questions this? I get that millennials are digital nomads but a company with cache with Canadian millennials might have shown more loyalty to their customers by using the skills of Canadian millennials to make this commercial.
—JoeBlack13

What they did in general is a progressive thing for the industry, driving fees to near zero and helping consumers save a few bucks. But one can argue that cookie-cutting software that spits out the same set of ETFs is hardly for everyone. The fact that marketing—not the client's long term financial good—was the No. 1 focus is thought provoking.
—BOYZO

A family issue

We also featured a Q&A with Jodi Kovitz, Katchen's sister, prompting our editor to reflect on the successful siblings

Many of today's parents should ponder this statement as they push Johnny and Susie to a level that is not necessary: "Intriguingly, neither parent focused on academic achievement or technical prowess in their recipe for success."
—Anita Perry

Nature or nurture? IMHO, we are not all born with equal abilities or potential. And we do not all have the same quality of a nurturing environment. When a lot of potential is combined with a nurturing environment, the probable result is a successful life. When those with less inherent potential are raised in destructive environments, the result is a lifetime of bad decisions. The test for these siblings is not whether they succeed in business, it's whether they use that success to help others who didn't start halfway up the ladder.
—MK88

Send us your thoughts at robmagletters@globeandmail.com, tweet us @robmagca

Earning their keep

Our annual ranking of CEO pay showed Canada's largest companies are relying on stock awards

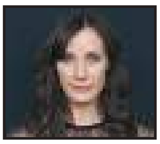
Something is unbalanced beyond the salaries ... Where are the women?
—Mark Bannerman

Hmmm. Only one exec makes more than Kyle Lowry.
—Robert 499

Kudos to Nancy Southern (Atco). In my opinion, she is probably underpaid.
—Left of Right

True visionaries such as Bruce Flatt deserve the money. Almost all the others do not. But they all sit on each others' boards and the old quid pro quo strategy means this anti-shareholder boondoggle continues.
—RSouthward

Contributors



Geneviève Caron says what surprised her about photographing Canadian CEOs is "they all turned out to be far more open, personable, straightforward and quite humble, despite the position they occupy."

Timothy Taylor is a Canadian novelist, journalist and creative writing professor. He is a contributing editor at Vancouver Magazine and a regular contributor at EnRoute Magazine, Walrus, and Eighteen Bridges.

Sean Silcoff is a technology reporter with The Globe and Mail. He previously worked as a columnist and Montreal correspondent for the National Post. He is also the co-author of *Losing the Signal: the Spectacular Fall of Blackberry*.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12/19

TOO LONG; DIDN'T READ

EIGHT IDEAS YOU NEED TO HEAR

1. A STRONG BRAND HELPS WITH SPINOFFS

Morning Consult says the new Disney+ streaming service has the highest favourability rating against other new competitors, thanks in part to its parent company.

CONSUMERS WITH A "VERY FAVOURABLE" PERCEPTION, ACCORDING TO MORNING CONSULT

- DISNEY **41%**
- DISNEY+ **13%**
- APPLE **33%**
- APPLE TV+ **8%**
- HBO **23%**
- HBO MAX **10%**

2. A company's logo should reflect its product

An analysis of 597 brand logos found consumers are more willing to buy from a brand that has a corporate symbol that reflects its product. They also regard these brands as more authentic, according to the Journal of Marketing Research.

DESCRIPTIVE LOGOS / NON-DESCRIPTIVE

3. Want tough directors? Look to the right wing

A paper in Strategic Management Journal compared the political donations of 326 corporate directors with how their boards dealt with financial impropriety by executives. The results show that "more conservative board members are more likely to take serious action, such as CEO dismissal, in reaction to financial misconduct."

4. WOMEN VALUE PRODUCT GUARANTEES

The percentage of women who say they are encouraged to buy online if there is a "money-back guarantee," according to Nielsen.

	MEN	WOMEN
GLOBAL	41%	46%
NORTH AMERICA	31%	42%
EUROPE	35%	45%
ASIA & PACIFIC	42%	45%
SOUTH EAST ASIA	43%	53%
LATIN AMERICA	50%	55%
AFRICA & MIDDLE EAST	45%	55%

5. BOXING DAY WILL BE EXTRA POPULAR THIS YEAR

Because there are only three Saturdays in December before Christmas this year, Boxing Day will likely "play a more prominent role" for U.S. shoppers, according to Sensormatic Solutions.

TOP FIVE PREDICTED U.S. SHOPPING DAYS

DEADLY → MANAGEABLE

- **Black Friday** (11/29)
- **Super Saturday** (Saturday before Christmas) (12/21)
- **Boxing Day** (12/26)
- **Two Saturdays before Christmas** (12/14)
- **Saturday after Black Friday** (11/30)

6. Career setbacks help in the long run

A study published in Nature Communications compared the long-term success of scientists who narrowly won or lost a grant in their early careers. It found individuals who failed were more likely to quit, but those who stuck with their research were able to "systematically outperform those with narrow wins in the longer run. [An] early-career setback appears to cause a performance improvement among those who persevere."

7. Canada exports red tape

American business owners find Canada's regulatory system more challenging to navigate than their own, according to AmCham Canada-Nanos Research.

NAVIGATION OF CANADA'S REGULATORY SYSTEM

- MORE CHALLENGING THAN U.S. **53%**
- LESS CHALLENGING **17%**
- ABOUT THE SAME **19%**
- **UNSURE 11%**

8. HAPPINESS GETS THINGS DONE

"Workers make around **13%** more sales in weeks where they report being happy compared to weeks when they are unhappy."
—Clement Bellet et al., Saïd Business School


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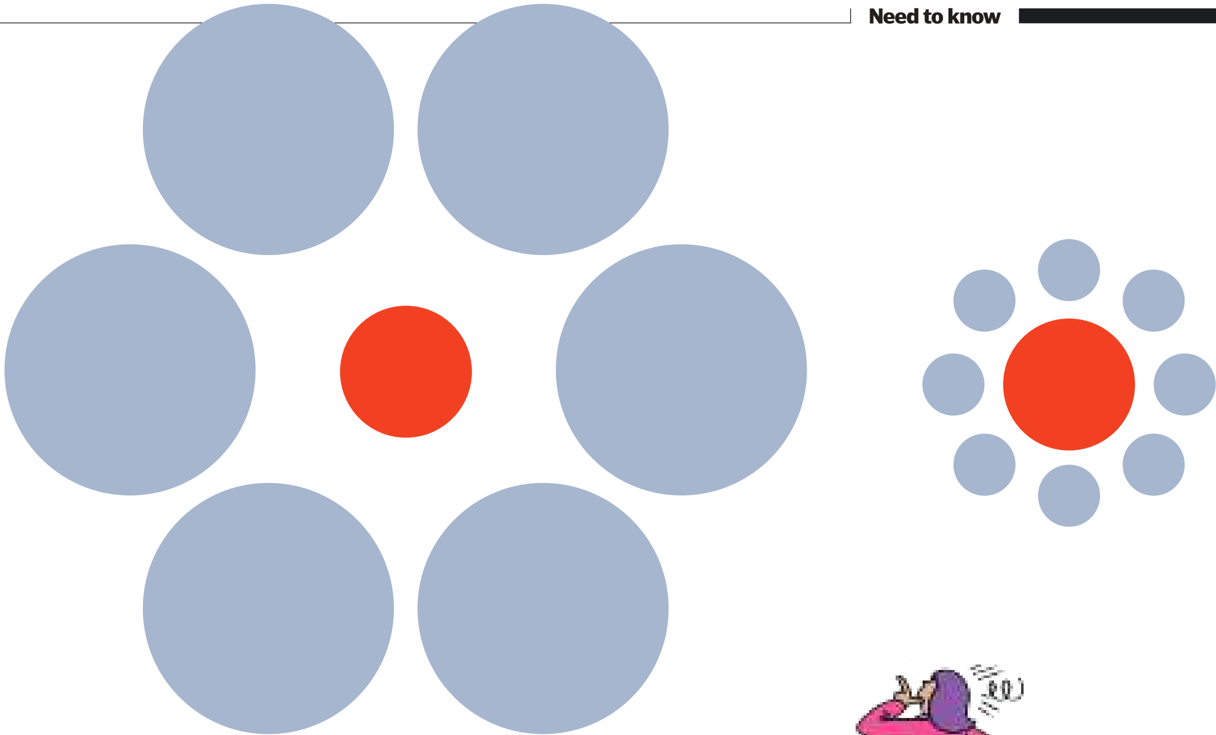
1 Online survey of 1,650 adult Canadian residents from Sept 25–Oct 1, 2019

Need to know



All things being equal...

Being upfront about added fees and surcharges isn't just ethical. It might inspire consumers to pay more for a product

For years, concertgoers complained, with few results, about Ticketmaster's anti-competitive habits, such as giving easy access to bots that would snap up the best seats as soon as they went on sale and then repost them for higher prices on resale sites like StubHub, itself a Ticketmaster subsidiary.

The ticketing giant had already begun to tweak its pricing techniques by the time the Competition Bureau and Ticketmaster Canada released a so-called "consent agreement" last summer to address complaints about its marketing practices.

Part of the Competition Bureau's investigation focused on "drip-pricing," a term for the method of gradually hiking the prices of tickets purchased online as consumers move through the various checkout steps and accumulate fees, surcharges and taxes. These additional costs could add between 20% and 65% to the price of a ticket.

As a result, the company's Canadian subsidiary was slapped with a $4.5-million fine and ordered to be more forthright with its advertised prices, something, in fact, it had already begun to do as the competition investigators closed in. (In the consent agreement, the bureau acknowledged Ticketmaster's voluntary compliance, but the fact of the investigation made it clear that the company was flirting with the laws preventing misleading or deceptive advertising.)

Discontinuing this pricing practice might seem like the only ethical choice available to Ticketmaster, but new research suggests it could actually help

ILLUSTRATION SAM ISLAND

sales, not hinder them.

The regulator's focus on Ticketmaster's pricing tricks underscores one of the most enduring sources of tension in consumer-driven capitalism: the psychology of pricing. Sleights of hand have abounded for generations, from two-for-one bargains to car dealers offering "no-haggle" pricing.

E-commerce, of course, has its own suite of pricing tactics. Travel booking services can now be programmed to boost the cost of a particular flight with each return visit to the site—a psychological pressure tactic intended to hustle consumers to that book-now moment. Some people may claim to know a workaround, such as using a different computer for the research portion of a booking. But the perceived benefit might not outweigh the time required to game the system, says Claire Tsai, an associate professor of marketing at the University of Toronto's Rotman School of Management.

What's more, new research from the University of British Columbia and Nanyang Technological University in Singapore offers marketers a solution to encourage consumers to spend more without running afoul of competition laws. So-called "add-on pricing" shows the base price of an item but also informs consumers that for a specified additional amount, they can get a product with more features. For example, a consumer electronics firm might be selling a $199.99 computer monitor, but it can promote a more elaborate monitor by telling consumers the higher-end version is "just $60 more." Based on a series of experiments with students, the researchers found buyers consistently chose the latter option.

A similar phenomenon is apparent in the telecom sector, which relies heavily on bundled services (such as Internet, cable and mobile). Tsai was part of a team that carried out a trial on bundling for the Competition Bureau. The results, released in August, revealed that consumers do indeed prefer marketing pitches that highlight savings and the convenience of purchasing a service bundle rather than acquiring each individually, even if the final price is the same. "What we found is that consumers are really prone to bundling," Tsai says. "They think it's more cost-effective even if it doesn't save them money in the long run."

"We buy things, in large part, based on how expensive they feel," explains David Hardisty, a professor of marketing and behavioural research at the UBC Sauder School of Business and a co-author of the add-on pricing study. Rational judgments often take a back seat. Add-on pricing works because incremental additions look small compared to both the base price and the price of the premium version.

Yet, as the study concludes, add-on pricing can be seen as an ethical practice, because all the relevant information is revealed at once, unlike Ticketmaster's drip-pricing approach. In fact, the researchers argued that the add-on pricing tactic can even be pressed into service to guide consumers to choose ethically produced goods, such as organic foods or fair trade coffee, which tend to be costlier.

"With this model, there's no withheld information," Hardisty says of the findings. That's the upside for consumers. But from a business perspective, he adds, "it's pretty straightforward. Price framing works to get people to buy more."

And it does so, apparently, without breaking the law. **/John Lorinc**

A SECRET ROBOT ARMY

› Chatbots can be highly effective salespeople, according to new research by Xueming Luo, a professor at Temple University's Fox School of Business. But there's a catch—consumers can't know that they're speaking with a robot. Luo and a team of graduate students worked with a financial-services company, pitting human salespeople against a sophisticated chatbot. Both placed calls to customers of the firm, offering a loan renewal. The chatbot was equally successful as a "proficient" human sales rep and far outperformed an unseasoned employee. But when the robot disclosed its nature before the call, sales rates plunged by 79.7%. "When customers know the conversational partner is not a human, they are curt and purchase less because they perceive the disclosed bot as less knowledgeable and less empathetic," researchers concluded. **/James Cowan**

PUT THE KIDS IN CHARGE

What happens to a family business when it's time to pass the torch to the next generation? Without a succession strategy to guide the transfer of power, there's potential for tumult that can hinder the longevity of a business—but 70% of family businesses across the globe don't have a plan, according to a new study by the Successful Transgenerational Entrepreneurship Practices (STEP) Project, a global research initiative. And yet, there's a compelling reason for older generations to facilitate a change. Certain metrics around firm performance suggest that companies run by millennial and gen X CEOs outperform those headed by baby boomers. Millennial CEOs tend to have more formal education and better work-life balance than older leaders.

"When you have a family firm led by a CEO from a younger generational cohort, it's more likely to introduce new products, invest more in R&D, and be more aggressive toward competitors," says study co-author Andrea Calabro, STEP's global academic director. "It's time to pass the baton to millennial CEOs to boost family business performance." The study also found that female CEOs—which make up just 18% of family businesses across the globe—tend to have less autocratic leadership styles and develop succession plans earlier than their male counterparts. **/ Liza Agrba**

ILLUSTRATION BRIAN STAUFFER

BIG IDEA

The rippling effects of employee abuse

New research shows when supervisors pick on one person, it can break their bonds with colleagues and weaken organizations

President Donald Trump has had an undeniable effect on the tenor of U.S. politics, but it turns out he's transforming workplace culture as well. In a 2017 survey by the Workplace Bullying Institute in the U.S., 46% of respondents said their relationships with colleagues had deteriorated since Trump's election in 2016. The same year, ABC News reported a "Trump effect" encouraging bad behaviour in business was "handicapping" corporate America. Brian Daly, a Toronto-based HR consultant, says there has been an undeniable rise in "Trump-style" supervision in Canadian workplaces as well.

But as the commander-in-chief has made bullying into a fashionable activity, new research from the University of Calgary's Haskayne School of Business demonstrates its insidious consequences in the workplace. Co-authored by Justin Weinhardt, an associate professor in organizational behaviour and human resources, the study was recently published in the Journal of Management.

"This is another paper in a growing body of research showing that, if you mistreat employees, it will have obvious negative consequences on the victim. But it will also have negative consequences on your company," says Weinhardt.

Decades of research has been conducted on how individual workers are affected by workplace bullying and sexual harassment. But few studies have examined how the abuse of one person can also affect their colleagues and the workplace as a whole. Those effects, says Weinhardt, "can spread through a company like a disease."

Victims may engage in counterproductive and unethical work behaviours, including increased absenteeism, theft and not working as hard as they would otherwise, says Weinhardt. A fellow worker's suffering in a toxic atmosphere might also affect other employees, leading to an increase in employee churn and, ultimately, shrinking the corporate bottom line. But the Haskayne study reveals that beyond those issues, treating one employee differently from others can fracture the collegial bonds of a workplace.

In the military, soldiers often go through tremendous abuse during boot camp or combat, notes Weinhardt. When the abuse is inflicted on all of them equally, nearly unbreakable ties of camaraderie can form. However, when abuse happens to some but not others, "that bond is really broken," he says. (Not, of course, that the professor is recommending workplace employees should all be abused equally—or ever.) "People in groups really have a strong need to belong," he says.

Consider Stanley Kubrick's 1987 Vietnam War flick, *Full Metal Jacket*, where a pitiless drill sergeant named Hartman lays into a platoon of recruits starting basic training. He warns: "Here, you are all equally worthless." But the sergeant soon visits particularly cruel and different torment on a chubby, hapless private he nicknames "Pyle" after the naive soldier in the '60s TV comedy series *Gomer Pyle, U.S.M.C.* Among other humiliations, Pyle is forced to parade with his platoon while sucking his thumb with his trousers around his ankles.

One night in the barracks, as solidarity disintegrates, the platoon holds the sleeping Pyle down in his bunk while each soldier beats him with bars of soap packed into towels. "Why? Why?" asks Pyle in muffled cries through a gag.

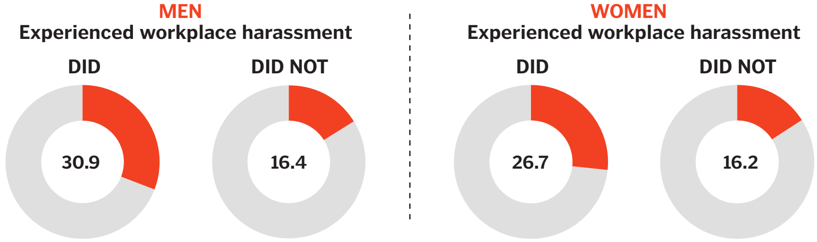
That reaction—victims asking themselves why they've been singled out from the herd for incivility—lies at the core of the Haskayne research into what the study terms abusive supervision differentiation (ASD). Using the results of anonymous workplace surveys and online questionnaires, the researcher argues that ASD "threatens an employee's socio-emotional bond with and reliance on the workgroup for support." A victim of supervisor abuse is best served by remaining in their workplace group. But as ASD drives negative comparisons of an employee's situation to those of fellow workers, it can trigger feelings of envy, jealousy or suspicion. In turn, those feelings often cause abused individuals to isolate themselves from potentially supportive colleagues, explains Weinhardt.

This tendency to retreat into isolation may make colleagues side with the abuser, rather than the victim, says Weinhardt.

"People experiencing mistreatment shouldn't isolate themselves," he says. "It's important for other employees to actually listen to a victim. Even if you don't want to intervene with a person's boss and try to stop abuse, people really need friends at work."

Weinhardt has begun teaching his students about the insidious impacts of ASD on workplace morale and corporate bottom lines. That, he hopes, will begin to create wider awareness about ASD in Canada's corporate world.

THOSE WHO REPORT A 'WEAK SENSE OF BELONGING' AT THE OFFICE



Those findings initially surprised Daly, president of Brian Daly and Associates. Most HR professionals, he says, might predict that the majority of co-workers would tend to sympathize with and support a fellow employee subjected to unfair treatment—not snub them. But he noted the study's findings do resonate with his own personal experience. "Very often, when you are coaching an individual who has been targeted by such behaviour, or at a minimum, perceive that they have been, they do become jealous or maybe envious. 'Why am I the one picked on, while others are actually performing at even a lower level than me?'"

'WHY AM I THE ONE BEING PICKED ON, WHILE OTHERS ARE ACTUALLY PERFORMING AT A LOWER LEVEL THAN ME?'

The effect of office bullying is only compounded by the increased importance of our workplaces in our social lives, Daly says. They "provide an important context for social interpersonal interaction in today's world. And probably more than it might have, say, 50 years ago or so, with the decline of religious institutions or social clubs."

There are antidotes to the ripple effects of ASD, according to the Haskayne study and others. A first step is clearly defining what are considered abusive behaviours at the company and then establishing zero-tolerance enforcement procedures to prevent them. Next, training should be set up to help managers understand the downside of abuse. Executive and management compensation should be tied to eliminating abuse in the workplace. As well, there should be mechanisms in place, such as employee training and anonymous hotlines, so workers can proactively voice complaints against abusers.

Canadian companies are heading in the right direction when it comes to dealing with workplace abuse—"but too slowly," argues Daly. "A lot of organizations do a lot of work around team building, spending thousands on it. But then they fail to address the damage bullying can do." **/Anthony A. Davis**

Big Idea is produced with the support of our advisory panel

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ASK AN EXPERT

Party foul

Our company usually hosts a holiday party, but it's been a rough financial year. How do I cancel the event without facing a mutiny?

Sadly, you can't. "You will put actual fear into your employees, who will ask, 'Are we under financial duress? Am I going to lose my job?'" says Alanna Gross, corporate event planner of Event 2 Event in Toronto. You'll quickly go from boosting morale to doing the exact opposite. So don't cancel like the Grinch; downscale like the Whos. "A sit-down dinner can become a cocktail reception, or skip the fancy venue to bring it back to the office," she suggests. And while hiring a planner might seem like an extravagance, it can actually help, Gross notes. "A professional planner knows how to cut corners and still throw a great party," she says. "That's their job."

How can I get better at remembering clients' names?
Last month, 200 businesswomen gathered at She's Next, a networking event in Toronto hosted by Rebecca Minkoff, the leader of Female Founder Collective. Her plan to remember every name? Non-existent. "It would be beyond impossible to remember 200," she says. "I'd be setting myself up to fail." Since you're neither a robot nor a computer, you need to win where it counts. Prioritize the important people and partners, Minkoff says. Then there are some old tricks when you meet, say, Mary. "I'll say, 'Mary, Mary, Mary' 10 times in my head. Then when I'm talking to them, I'll overly refer to them: 'Hi, Mary! Could you pass me that, Mary?'" Don't go overboard and spook her, but a few repetitions should have Mary's name firmly placed in your brain. Even better? "I find one interesting detail—Mary has red hair or Mary has three kids—and I add that." But don't panic if you come up blank. "I have two moves," says Minkoff. One is formal and requires an accomplice: "If I'm with my colleague Elizabeth, I'll introduce her first, and Elizabeth knows that's my cue that I don't remember a name." The other is casual: "I'll say, 'Nice to see you again! Remind me of your name?'" Far better to be authentic than fake it.

One of my VPs has a habit of drinking too much at industry events. How do I raise the issue with him?
As carefully and sensitively as humanly possible—and only if you absolutely must, cautions Donna Ferguson, a psychologist and addiction specialist at the Centre for Addiction and Mental Health in Toronto. Because you know how this convo will go: "Most people aren't going to say, 'That's so nice! I'm so glad you told me this, and now I'm on the straight and narrow,'" she says. "It's far more likely they'll be upset and defensive." And rightfully so. "You're judging, diagnosing, making assumptions. Some people binge drink but aren't alcohol dependent; some people drink socially but never at home. There are ranges of alcohol issues, but you're not the person to diagnose them," says Ferguson. If the VP doesn't have the drinking problem you've insinuated, you've deeply insulted them; if they do, you've gone about this intervention all wrong.

"First, ask yourself what your real problem is," says Ferguson. "Are you genuinely concerned they have a drinking problem, or do you not like their behaviour while drinking?" If it's the former, you need to go through HR and follow protocol. If it's the latter, consider skipping the see-me-in-my-office approach in favour of some in-the-moment support. Offer to get them a glass of water or inquire how they're getting safely home. "That really says it all," she says.
/Rosemary Counter

Send your questions to **askanexpert@globeandmail.com**

ILLUSTRATION JOE MCKENDRY

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❮ **MARK LETAIN**
President, EQ3
Winnipeg

Company spun out of Palliser Furniture in 2001

70%
Portion of products EQ3 sells that are designed and manufactured in-house

13 YEARS
Letain joined EQ3 in 2006 as a general manager

14
Stores in Canada and the U.S.

TURNING POINT

Modern love

The president of EQ3 on how the friendship between an old-school furniture maker and the founder of a tech startup pushed his company into the digital age

If you're a brick-and-mortar retailer that isn't good at digital, you're dying. And the pure e-commerce guys are realizing consumers trust brands more if there's a brick-and-mortar element to the business. Amazon is opening stores. So are Warby Parker and Everlane. We're a furniture maker that got into retail, and now we've realized we have to be in digital.

EQ3 grew out of Palliser Furniture, which has been in business for about 80 years in Winnipeg. When Peter Tielmann launched EQ3—the name stands for emotional quotient in a three-dimensional space—as a wholesale concept around 2001, it was very well received by retailers. More of them caught on, and from 2005 to 2009, we were in kind of a joint corporate franchise model, not dissimilar to the model La-Z-Boy used to have, while also supplying furniture as a wholesaler.

Then came the Great Recession. We had to shut down some stores, and we were also very exposed to other retailers. We restructured and decided we were just going to own corporate stores. There are not too many companies out there that design, manufacture and sell their own products, so we had a lot to learn about how to be a great retailer. It was only really in 2018 where we thought we'd got the retail side to where we need to be.

E-commerce was one piece we didn't have. Oh my gosh, the customer experience on our website was so terrible—it used to crash all the time, and it was slow. Then our CEO became good friends with Josh Simair, the founder and former CEO of Skip the Dishes, another company based in Winnipeg. At the end of 2018, Josh ended up sending us on a whole different orientation on technology, and he brought some of the guys who used to work with him at Skip into EQ3. We're still not as good in digital as e-commerce startups are, but we're closing that gap quick. We were running off our own internal servers, and the guys from Skip told us we didn't even have the right bandwidth to do what we were trying to do. So they took us to the cloud, and our website is blazing fast. We've got to enhance the front end, for sure, but we've got a Ferrari engine.

Now, we're making a play in the United States. We had some stores there before the recession, but we never paid the American market the attention it deserved. Now, we feel we're good enough to go big in the U.S. We're opening a flagship location in Manhattan. We're opening in Chicago, at the third-most valuable mall in the U.S. We've figured out our supply chain, and we're figuring out the final mile for delivery. Right now, I'm looking to open a distribution centre in Chicago. We're also looking in New York and San Francisco. We want to be represented all over the U.S., to make sure people can experience our furniture in a showroom. We definitely plan more store openings in 2020-21.

Consumer tastes are changing, so even if the overall furniture market isn't growing that much, the modern furniture market is. We want to be there to take advantage of the changing conditions, but we can only do it if we get everything lined up. We've got to go after it now. **/Interview by Susan Krashinsky Robertson**

ILLUSTRATION KYLE SCOTT


VENETIAN
TAO
TAO
TAO

THE EXCHANGE

Skin in the game

John Levy has made some big bets in his career, like selling off theScore's TV assets to focus on digital. His latest gamble: becoming a sports bookie in the newly legalized U.S. market /By Trevor Cole

This is it. This is the chance. This is the moment John Levy has been waiting for. Ever since 1994, when he bought a sports ticker channel and then later won a broadcasting licence for what he called Headline Sports. Ever since 1999, when he sold the Hamilton cable business built by his father, Cecil, in order to focus on television and launch what became theScore. Ever since he started a sports news app that gained a foothold on the first BlackBerrys and iPhones. Ever since he spent $15 million to revamp his brash TV channel and "blow the hell out of those other guys," TSN and Sportsnet. Ever since he abandoned his channel, selling theScore's TV assets to Rogers in 2012 for $167 million to go all in on his app. Ever since he saw it become the second-ranked sports app in the United States behind only ESPN. Ever since...well, ever since John Levy started dreaming of hitting the big one, this is the opportunity he knew would come. In May 2018, when the United States Supreme Court struck down the law that had made sports betting illegal, it opened the door for individual states to legalize sports betting and for Levy to make good. It gave him the chance to leverage his foresight, his chutzpah and his four million app users, and realize the dream embedded right there in his brand—theScore. His company is in the gambling business for real now, and like he tells everyone, "We're all in."

PHOTOGRAPHS MIKAYLA WHITMORE

Are you a betting man?
I could answer that by saying, "That's a silly question."

Are you?
Yes. Not anymore. Which has been an adjustment. Since becoming a bookie, which is what we are—the only sports media company to actually be in the game as an operator, as a licensee—I am not permitted to bet on sports, with certain exceptions. I used to bet on sports a lot.

I'm curious now, because I sense a little tension around this issue—
No tension. No tension.

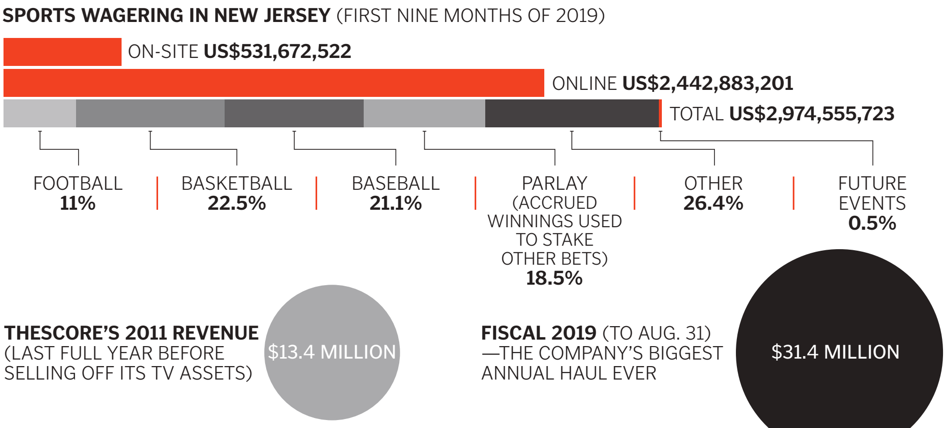
You can't bet, but can you use a proxy?
No. That, for sure, you wouldn't do. There are actual regulations. In terms of our licence in New Jersey, for example, one of the things we have to be very careful about is knowing who's betting with us, and if we suspect somebody's betting on behalf of other people, that's a big no-no.

But you are a bettor in terms of—
Business. Life. Everything!

How much money would you have put on the U.S. Supreme Court reversing the federal law against sports betting? (1)
We always thought that, at some point, governments would wake up. There's a huge business out there, unregulated, and for all the reasons they worry about sports betting, they are actually better protected by regulating it. Not to mention the fact that they're going to make a crapload of money in terms of taxing it and licensing it. So our belief always was that at some point it's going to get real. When? We didn't know. And in that regard we always stayed perfectly clean. We knew our customers were betting on sports. We could have gone grey market, (2) like a lot of the other guys, and probably taken in a lot of money. But we always wanted to stay pristine.

1. In May 2018, the U.S. Supreme Court struck down the Professional and Amateur Sports Protection Act (PASPA) of 1992, which had rendered sports betting largely illegal outside Nevada.

2. A number of online bookmakers, such as William Hill, Bet365 and Betway Sports, set up gambling operations in offshore locations, allowing North Americans to gamble. Even after U.S. lawmakers clamped down, the practice continued to flourish in Canada.



Because when it happened, we wanted to be able to step forward with clean hands.

You were aiming to launch theScore Bet app in New Jersey before the start of football season. How'd that go?

We made it. A Herculean effort by the team here. We'd had discussions before PASPA fell, because it had been in our minds forever. We'd thought about going to Europe and doing something over there. Once PASPA fell, it became real in a hurry. So what do we do? The first thing is, I go to my engineer and say, "Let's create a betting app." He says, "It's going to take me two and a half to three years, and I need $40 million or $50 million." Well, I can't wait that long. That's not sensible. So we started to look at third-party suppliers of betting technology. We went to all the big players and eventually met with the people from Nevada: Bet.Works, David Wang's company. Then we had to get a licence in New Jersey. Bet.Works introduced us to Dennis Drazin, who worked with Governor Christie to get PASPA repealed and get the laws changed in New Jersey. This guy manages a racetrack called Monmouth Park. Under the regulations in New Jersey, each casino owner or racetrack was given three skins apiece.

I've heard the term "skins." Tell me what it means.

I don't know why they call it a skin. It's a licence. The local government ordained that it's good to protect the existing players, being casino and racetrack guys. "We are going to allow you three skins apiece, which you can sublicense or operate on your own or do whatever you want with them." Dennis had already licensed two of his skins. He had one left, and we got it. It was a lot of work to take the Bet.Works back-end technology and create the front end, theScore Bet. And our guys did it.

Where does Penn National Gaming (3) fit into this?

Our view was that New Jersey was just the beginning. A few other states were passing legislation, and there were major operators who were seeing the opportunity—the Hard Rocks and MGMs of the world. We had to get access in other states. So, even as we did our New Jersey deal, we were talking to all the big guys and ended up doing a deal with Penn National, which allows us access to 11 more states as they create their regulations. (4) That gives us coverage of about 30% of the U.S. And we are still engaged in discussions, because we want to cover every state as they come on board. For example, New York and Florida are not part of the deal with Penn.

Your 2019 AGM in January—who was in the audience for that?

Uh, a lot of our staff, because we held it right here. And some of the people we have banking relationships with, like the banks that helped us with the sale of the TV assets.

Investors?

Some investors.

All right. When you got up and said, "Yes, it's true—sports betting is coming to theScore," you got a very tepid response.

Absolutely.

You actually had to goose them and say, "Come on!" and raise your fist. Why?

You know the Canadian market. If you're not oil and gas, minerals or marijuana, nobody gives a sh-- about you, okay? Up here, we are a public company. It's all retail. In retail, people start buying, and then they buy more. People start selling, they sell more. Nothing to do with the business. You're right—I'm up there, excited as hell. I know what's coming. And it was like, "Turn the lights on, nobody's home." And quite frankly, it's still the case. Look what we're trading at today. (5) Nobody gets it up here! Nobody! But it's going to change.

You think so? Based on what?

Based on, eventually we are going to be in the States, where our business is. As the brand grows, as we do more and more in the U.S., ultimately this will be a public company listed in the U.S. When we start to tell the story in the States, it's a different reaction. People get it.

You launched theScore Bet around the same time Fox Sports launched its betting app. Apparently they put $236 million toward it. How much are you putting into yours?

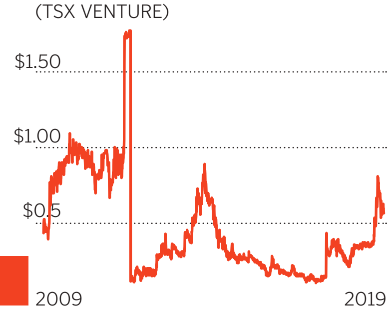
As much as it takes to make it the best app in North America. We get this question a lot. "How are you going to compete with the big guys, who are throwing hundreds of millions of dollars at

3. Penn is the largest regional gaming operator in the U.S. Through a placement of shares, theScore paid Penn US$7.5 million for its licence. Like Monmouth Park, it will receive a percentage of theScore Bet's net gaming revenue.

4. TheScore plans to launch betting operations in Iowa and Indiana sometime within the next year.

5.

SCORE MEDIA AND GAMING INC.
(TSX VENTURE)



this thing?" Our answer is, and I don't mean to be flippant about it, but we've competed in that market forever, and we've got the second most popular sports app in North America. You'll see. We're going to be in the market against these guys, and I think, over time, we're going to beat the heck out of them, regardless of how much they spend.

Can you give me a ballpark of how much you've invested?
We've invested enough to do a deal with Penn National. We're investing enough to do a deal in New Jersey. We've got a skin there. We had to pay up for this stuff. You're going to see, not overnight but over time, that we are going to command a significant share in those markets.

Why are you being cagey?
I don't mean to be cagey. What we spend is publicly released. Our Q1, which ends in November, gets reported early in the new year. So you're going to start to see some numbers from us in terms of how we're doing in the early days in New Jersey and some of our other plans. But there's a lot of competition. I don't want to tell you how much I spent in the first month in New Jersey because I don't want our competitors to know.

Is sports betting the thin edge of the wedge? Do you anticipate moving into other kinds of gaming?
Yeah, we will do that in states where it's legal, where it's kosher. And our deals, for example with Penn, allow us to do that in the States. We have not launched that in New Jersey yet. It's on the road map. Online poker, online blackjack, online slots—all that sort of stuff.

It's been said there's US$5.2 billion in potential net gaming revenue for sports betting operators. Are you targeting 20% of that, 10%?
I gotta be really careful. I don't see any reason why, over time, we can't own 10% of that market. Three years from now, if we're not one of the top players, I'd be very surprised.

6.
$10 BILLION
ESTIMATE OF HOW MUCH CANADIANS BET ILLEGALLY ON SPORTS EACH YEAR, ACCORDING TO THE CANADIAN GAMING ASSOCIATION, WITH MUCH OF THAT MONEY GOING OFFSHORE

How close are we to legalized sports betting in Ontario? (6)
I wouldn't have said this until the past three or four months, but I would think within the next 12 months, you'll probably see it in Canada.

What are you doing to speed that up?
We're lobbying, talking to Ontario government officials. How it's going to open up is a question. Is it going to be through the same pattern they originally used with casinos? Is it going to be through the OLG [Ontario Lottery and Gaming] in Ontario? Or is it going to be directly through independent companies like ours? To be determined. But we have been very involved.

Are there other legal details to be worked out?
Yes. There's one provision in the federal Criminal Code that prevents single-event wagering—i.e. betting on a game. Indications prior to the election were that there was a possibility that might get changed. In Ontario, if you read between the lines of how aggressive the premier is about it, he's saying, "We're going to go even if it doesn't get changed. Because we're going to do everything except single-event betting." (7)

7. This would allow "parlay bets," which can combine multiple games and point spreads in a single bet, or "proposition bets," which involve betting on the occurrence of events within a game.

Gambling is not the innocent fun that being a sports fan is. Are you going to impose limits on betting?
Oh, absolutely. Listen, our brand is on this. I don't want to hurt people. I don't want to abuse people. I want people to have fun and enjoy sports and love our product, and I just want to make it available to them. And to the extent that people are getting hurt, we'll be on that.

You're 66 now. How long are you going to keep going?
Did my kids ask you to ask me this question?

No.
'Cause they ask me this all the time. "When are you going to f---ing slow down?" I'm just having too much fun. There's no limits on this thing. It's going to be tough. We're going to have ups and downs; I'm going to get sh-- from a lot of people, looking at results. Is it working? I mean, I hear it today, right? After four freaking weeks. "Let me see your numbers." Call me in a year.

Is this your way of saying you're not stepping away any time soon?
I can never predict. This is a huge opportunity. I mean, I wish I was 20 years younger, 30 years younger. I know my kids don't. But honestly, this is the beginning of something dramatically different. I mean, I've loved everything we've done, and it was profitable. We made a lot of money. But this thing is mind-blowing. We love to create stuff. And we love to create stuff the other guys don't think is worthy. It's all this underdog sh--, right? I mean, "You can't do this." Okay, sit back and watch. 'Cause we're going to do it.

This interview has been edited and condensed.

Trevor Cole is the award-winning author of five books, including The Whisky King, *a non-fiction account of Canada's most infamous mobster bootlegger.*

Meet the entrepreneurs transforming the cannabis industry

For these three CEOs, principles are at the heart of their work

More than a year after legalization, many cannabis businesses are still working toward financial stability. Finding and retaining customers in a brand-new, fast-changing market has been a major challenge for some, while others have struggled with a complex web of regulations both at home and abroad.

Nevertheless, the sector represents a huge opportunity for entrepreneurs. With recent forecasts predicting it will be worth between $5-billion and $8-billion by 2021, investors are looking for companies with strong leaders to unlock this potential. That's why the cannabis-focused venture capital firm Canopy Rivers is launching a resource hub for cannabis entrepreneurs called *The Rise*.

> **"Growth can't happen alone. It requires connection. It relies on a community. *The Rise* will be that community for disruptive cannabis entrepreneurs. We want to share our collective knowledge and help founders and CEOs grow sustainable businesses,"**
>
> says Narbé Alexandrian,
> President and CEO of Canopy Rivers.

So, what does it take to be a successful leader in this space? *The Report on Business* spoke to three different cannabis entrepreneurs to find out.

Ryan G. Smith
Co-founder and CEO, LeafLink

Putting relationships first

New York native Ryan G. Smith has been part of the startup world since university. After founding a software company as an undergraduate, he teamed up with Limewire and eBay alumnus Zach Silverman in 2016 to launch LeafLink, a wholesale marketplace for the cannabis industry.

Smith attributes his company's rapid growth to its commitment to relationships as much as to its innovative software.

"When we first started, we were flying out to Colorado and it was important for people to know that we weren't just two fly-by-night tech guys who wouldn't deliver or show up again," Smith says.

"For any company, doing what you say you're going to do is important, but in our industry there were some trust issues. We had to over-deliver and over-communicate to prove that we'd be here long-term."

Smith wants to make sure communication and personal relationships remain pillars of the business, even as it continues to expand. In an effort to stay close to clients, the company has distributed its product engineering team across its offices to work alongside its local sales and support staff.

Operating across national, state and provincial borders while expanding rapidly, LeafLink has had to remain nimble and flexible.

"When most tech companies enter an industry, the industry knows what it is," he says. "But we're like an exponential startup, because the whole industry is a startup. Everything is moving very quickly and you really need to be extremely devoted for it to work, because everything is constantly changing."

Melissa Jochim
Founder and CEO, High Beauty

Patience is powerful, from bottle to boardroom

Melissa Jochim swore she would never follow her mother, a salon owner, into the beauty industry.

"I studied chemistry thinking I would fly the space shuttle one day," she laughs.

Instead, Jochim developed a passion for skincare and worked as a formulator before creating a series of natural beauty brands.

In 2013, after exiting Juice Beauty, Jochim was looking for new opportunities. She saw a chance to work with the cannabis sativa plant and hemp seed oil, and soon she launched her skincare company High Beauty.

Having spent her career educating consumers about animal testing, environmental awareness and natural ingredients, it's clear that for Jochim, cannabis is more than a trend. She's a true believer. "I want to be an advocate for what cannabis sativa seed oil can do," she says.

But High Beauty's success didn't happen overnight. Jochim first met with beauty retailer Sephora in 2017, and it took until the end of 2018 for High Beauty products to hit their shelves. She says patience has been the key to steadily building her company.

"Huge retailers move when the timing works," she says. "I've been here before: being told that it'll be 18 months until the customer's going to be ready for what we're doing. But I love being in that position, it says we are doing something meaningful."

Ziad Reda
CEO, Radicle Medical Marijuana

Community is key

For Ziad Reda, being a local business leader has always been the goal. Reda studied business and cut his teeth working at Philip Morris, a tobacco giant, but he never forgot the importance of engaging with his local community. So, when he launched Radicle Medical Marijuana, a medical cannabis producer, in 2014, it was proudly Hamilton-based.

"I grew up here. I love this city. Hamilton has shown tremendous support as Radicle continues to grow and help create more jobs," he says.

The company has now branched out into recreational cannabis. Throughout its growth, Reda has made sure social responsibility remains at the core of the business.

It's a position that reflects his family philosophy. Radicle has policies on ecological sustainability, gender equality and diversity. It's also part of the Ontario Living Wage Network, which Reda believes is not only the right thing to do, but a way to ensure his staff remain invested in the company's mission.

"The best thing about building Radicle is the great people we've hired," he says. "We appreciate our staff and we care about them. In return, they care about the product, the customers and the company."

Now Radicle has approval to expand its growing operations and plans to move into western provinces are afoot. Reda's advice for prospective cannabis entrepreneurs?

"This industry has many challenges and huge opportunities," he says. "Don't be discouraged by the challenges, stay motivated by the opportunity."

This year, Report on Business magazine recognizes five business leaders who have made extraordinary contributions to Canada and its economic prosperity. Our reporters and editors nominated, debated and selected Canada's top strategist, innovator, corporate citizen, global visionary and best new CEO. Then, we picked one of those finalists for the top honour. So, who's our CEO of the year?

The man smiling at you right now

CALIN ROVINESCU

AIR CANADA

When the Canadian government grounded the Boeing 737 Max 8 aircraft this past March, the decision threatened to unleash operational chaos at Air Canada. The company had 24 Max airplanes, making up 20% of its narrow-body fleet, and another dozen slated for delivery later in the year. Guiding the airline's response was one major question: How long could this go on? The question was particularly burning for Mark Galardo, Air Canada's vice-president of network planning, who was charged with overhauling its schedule in real time to maintain order and minimize loss of revenue.

Some of Galardo's colleagues speculated the Max would be back in the air within a couple of months. Calin Rovinescu, Air Canada's CEO, told him something different. "Mark, categorically, I think this is going to go right through the third quarter," Galardo recalls Rovinescu saying. Those summer months mark Air Canada's busiest and most lucrative season. Galardo had to prepare for the worst. "Those were words very few people wanted to hear, but he said them because his instincts and foresight are second to none," Galardo says.

BOOSTED PROFITS DURING ONE OF THE WORST CRISES SINCE 9/11, AND ACQUIRED BOTH AEROPLAN AND AIR TRANSAT—AND THAT'S JUST THIS YEAR

Rovinescu, it turns out, was correct. The Max is still parked, ever since two deadly crashes led aviation authorities worldwide to ban it from the skies. Air Canada has removed the plane from its schedule until February 2020. The grounding is the kind of unexpected cataclysm that could bring an airline down. Rovinescu says it has been more disruptive to the company than the terrorist attacks of Sept. 11, 2001. "9/11 was catastrophic for the industry. It was sudden, it was overnight," he says. "But what we faced with the grounding of the Max was actually much, much more significant and much more complicated for us to deal with."

So far, though, Air Canada has remained relatively unscathed. In the pivotal third quarter, the company managed to complete 95% of its planned flying and earn $636 million. Profit-wise, Air Canada is further ahead than it was at this time last year. The performance is a testament to the strategy Rovinescu set when he joined as CEO more than a decade ago, as the company teetered near bankruptcy for the second time. He has put existential threats far behind Air Canada. Rovinescu's favoured word to describe the company these days is "sustainable."

"We are capable of performing and continuing to thrive in good times and in bad times," he says during an interview at Air Canada's headquarters in Montreal. With his tanned

Photographs by Geneviève Caron


STRAT-
-EGIST
OF THE YEAR

complexion and crisp white shirt open at the collar, Rovinescu has the air of an executive who is very much indulging in a victory lap, fully confident in deploying a word like "sustainable" to describe an airline that has been through bankruptcy before, in a sector where companies regularly go belly up.

Rovinescu, dedicated readers might recall, was named CEO of the Year by this publication in 2013. You may be asking, "This guy? Again?" Some additional questions might come to mind: The guy who enjoys the benefits of a federally protected industry while using all of Air Canada's might to bludgeon new entrants seeking to bring down fares? Whose purchase of a rival sparked competitiveness concerns? Whose strategic manoeuvring hobbled a long-time partner? Whose company has, according to an observer, a "scorched earth" approach to his competitors?

Yes. That guy.

Air Canada might not be the most beloved airline in the world (though representatives will helpfully note that Skytrax rates it the best in North America), and Rovinescu's take-no-prisoners approach rankles the competition, but his results are hard to dispute. Air Canada has $1.98 billion in cash on its balance sheet, a pension surplus, stable labour relations and a global strategy that has rewarded shareholders.

And it might emerge even stronger this year. Rovinescu clinched a $720-million deal for Transat A.T. Inc., the parent company of Air Transat, bolstering the carrier's presence in the vacation market. (The deal still needs approval from the Competition Bureau.) In January, the airline acquired the Aeroplan loyalty program, with a revamped offering set to be unveiled next year. Air Canada's share price has continued to soar through it all, up approximately 80% this year. Over Rovinescu's decade-long tenure, the stock has returned more than 5,900%. Even some of his critics begrudgingly admit it's an impressive act—though not, of course, on the record.

When Rovinescu joined Air Canada in 2000, he was a lifetime lawyer and a partner at Stikeman Elliott LLP, where Air Canada was a client. He forged a deep relationship with the company, serving as lead external counsel on the 1988 privatization, and made himself indispensable when Onex Corp. mounted a hostile takeover bid for the airline in 1999. Rovinescu helped to torpedo the bid and bonded with Robert Milton, then Air Canada's CEO.

Milton was so impressed with Rovinescu he recruited the lawyer as his executive vice-president of corporate development and strategy in 2000. Milton has said he was drawn to Rovinescu's "aggressiveness" and determination, qualities he recognized in himself. Rovinescu coyly dismissed the notion back then, saying both he and Milton were "lambs."

The sensitivity toward being labelled a corporate Machiavelli is perhaps understandable, given Air Canada has long fended off accusations that it abused its market position to crush rivals. Still, he's not above taking shots at competitors. When now-defunct CanJet lobbed a competition complaint against Air Canada in 2000, warning it was in danger of going under, Rovinescu retorted that any problems were "more as a direct result of their business plan."

ROVINESCU REJECTS THE IDEA THAT BREAKING WITH AEROPLAN WAS A DIABOLICAL STRATEGY TO BRING AIMIA TO ITS KNEES. "THIS WAS SIMPLY DOING THE RIGHT THING FOR OUR BUSINESS"

Air Canada had plenty of problems of its own back then. Sunk by the combination of the bursting tech bubble, 9/11, the SARS outbreak and a debt-laden merger with Canadian Airlines, the company plunged into bankruptcy protection in 2003. Rovinescu took the lead as chief restructuring officer, mapping out a strategy to emerge on the other end, but resigned in 2004 when a potential investment deal collapsed. He went on to co-found Genuity Capital Markets, but it wasn't long before he was called back to Air Canada.

In 2009, the airline was again on the brink. The global recession laid waste to the market for air travel, and the firm was struggling with too much debt and a massive pension deficit that would balloon to $4.2 billion. Rovinescu started as CEO on April 1 of that year. It took time to stabilize the company, but he's so accustomed to telling the tale that he can easily rattle off the highlights: securing financing, hammering out long-term labour agreements to reduce liabilities, and plugging the giant hole in the pension plan, which required relief from the federal government on payment terms.

Rovinescu then began expanding Air Canada's international reach—which included a $12-billion capital investment program; building global hubs in Toronto, Montreal and Vancouver; and targeting passengers from the U.S. connecting through Canadian cities. (Half of Air Canada's revenue comes from outside North America, compared to 43% in 2012.) Air Canada, he contends, is now among the world's global champions. "If you consider Google, Apple or Samsung global champions, you can look at some common characteristics," he says. Those include investing in assets and people, instilling an entrepreneurial culture and having an international outlook.

Putting Air Canada in the same sentence as Google and Apple is a very Calin Rovinescu thing to do; confidence is one of his defining traits. But when it comes to his leadership style, consistency is just as important. "He is an incredibly disciplined guy around strategy," says Duncan Bureau, who previously headed Air Canada subsidiary Rouge before leaving earlier this year for personal reasons. "Airline executives around the world get distracted by shiny objects. Calin does not get distracted." When Rovinescu arrived at Air Canada, he identified four broad strategic goals: improving finances, growing internationally, and strengthening customer engagement and corporate culture. Those goals haven't changed.

The financials certainly have, though. The company pulled in more than $18 billion in revenue last year and announced in the last quarter it had slashed its leverage ratio in half from the end of 2018, putting it one level below investment grade. The company's cost per available seat mile (an important metric in the industry that measures the cost efficiency of an airline) is down 8% in the past five years, as Air Canada has spent billions on bigger, more efficient planes, increasing the fleet size from 362 to 404.

Rovinescu's recent moves are really a continuation of the strategy he set out years ago. In January, Air Canada finalized its acquisition of the Aeroplan loyalty program in an episode some say represents Rovinescu's shrewd approach to business. In May 2017, Air Canada announced its intention to break with Aeroplan, which was owned and operated by Aimia Inc., and launch its own loyalty program in 2020. The news sparked confusion and panic among Aeroplan members worried about being able to redeem their points, and turmoil for Aimia, which was about to lose its biggest partner. Aimia's stock price fell by more than half and never recovered. In July 2018, with Aimia struggling, Air Canada teamed with TD, CIBC and Visa to bid for the Aeroplan program with a lowball offer, later upping the price to $450 million in cash, plus assumed debt.

Rovinescu rejects the idea that this was a diabolical strategy to bring Aimia to its knees, gamed out years in advance. "This was simply doing the right thing for our business and for our stakeholders," he says. "We're not running a popularity contest." Owning the program provides Air Canada with a number of benefits, mainly that it no longer has to negotiate with or sacrifice profit margin to a go-between.

The irony, of course, is that Rovinescu began to spin off the loyalty program during his first stint at Air Canada, saying it would unlock Aeroplan's "full potential for profit" and "further enhance shareholder value." (The unit started trading as a public company in 2005.) Back then, the airline also desperately needed cash. "The sale of Aeroplan was a good idea at the time," he says. Only Rovinescu can make selling an asset and buying it back later look like a genius move both times.

The Aeroplan purchase has really just brought Air Canada in line with its competitors; no other major North American carrier has spun out its loyalty program, says Helane Becker, a managing director at Cowen Inc. "It's proprietary information, and it's a meaningful contributor to earnings," she says.

The acquisition of Transat has been as skilful. The launch of Rouge, Air Canada's low-cost subsidiary, in 2013 meant intense rivalry for the Montreal-based Transat, which specializes in leisure travel. After a few years of grinding down the competition, Air Canada opted to buy it. Through Transat, Air Canada can increase its share of leisure travel and its packaged vacations business. "These are not areas that were main areas for us," Rovinescu says, "so that side of the business is an interesting adjunct." Combined, the airlines will also be able to fly some seasonal routes year-round.

The Competition Bureau is currently reviewing the deal, and there are concerns Air Canada could consolidate routes, hike fares and boost its margins. Rovinescu has heard this argument countless times. Air travel is a global business with ample competition, he says. If an airline tries to increase prices more than the market will bear, someone will undercut it. Consumers will always hunt for the cheapest fare, even if it involves a more complicated route. "People need to have a much deeper understanding of the pricing environment than a fairly simplistic point-to-point analysis," he says.

Air Canada's main domestic competitor, meanwhile, is further encroaching on its turf. WestJet Airlines took delivery of its first Boeing 787 Dreamliner aircraft this year, allowing it to fly longer transatlantic routes and provide a premium offering to its customers, a direct challenge to Air Canada's hold on business-class seats. While WestJet isn't know for high-end travel, its global ambitions nevertheless represent a challenge.

"We wish them well," Rovinescu says with a puckish smile that seems to belie the sentiment. "This is a highly, highly, highly—three times—competitive business." He rattles off a number of carriers Air Canada already competes with and says it comes down to price, the quality of the product offering and the breadth of an airline's network. The message seems to be that WestJet is just one more airline—and that it had better know what it's up against.

On a private call with Air Canada management one Sunday night earlier this year, Mark Galardo weighed the implications of the grounding of the Max 8, which looked nearly definite. The company had two dozen of the planes, flying up to 12,000 passengers every day, and another 12 aircraft on the way. How could they replace all of that capacity? On the call, Galardo blurted out, "There's no way we can get through this."

But the company didn't have a choice. It had begun sketching out a plan before Transport Canada officially grounded the planes. Every day for a month, Galardo co-ordinated a daily call with departments across the company and met frequently with senior executives, including Rovinescu. In the end, Air Canada had to cancel some flights while consolidating others onto larger aircraft. The company paid other airlines to fly its passengers, extended leases for some aircraft that were scheduled to leave its fleet, picked up some more from bankrupt Icelandic carrier Wow Air, and leaned on its regional partners to fly extra routes—all of which helped to prevent a logistical meltdown.

"Had this occurred seven or eight years ago, when Air Canada was more fragile, it could have had devastating consequences," Galardo says. "We're a much more formidable company, much more nimble, and the culture change Calin challenged the company to undertake, you can see the results of it through the Max grounding."

There are more challenges ahead, though. The renewed Air Canada has yet to be put to the test through a recession or spike in fuel costs, for example; oil prices are well below 2014 levels, which has eased the financial impact of the company's expansion. Analysts, most of whom have the equivalent of an outperform rating on the stock, say Air Canada is in a much stronger position to endure such shocks this time around. "The balance sheet is the strongest it's ever been," says Chris Murray, a managing director at AltaCorp Capital. "And they've got a very flexible fleet." The company owns more of its aircraft outright these days, so in the event of a reduction in travel, it won't be paying leases on planes that have to be parked.

Air Canada's collective agreements with pilots and flight attendants are up for renewal in a few years, and given the airline's improved financial health, the unions could be looking for more this time. Rovinescu says it's too early to speculate on that and offers a clipped "good" when asked about relations with the unions today. Union representatives declined to comment.

Not everyone has been blown away by Rovinescu's performance. Longtime aviation analyst Ben Cherniavsky, a managing director at Raymond James, has noted Air Canada's increase in capacity came at a cost to its pricing power and operating margins, which are among the lowest of all North American airlines. Pre-tax profits have barely budged compared to three years ago. "They've been pumping more capital into the business to basically generate the same amount of profit," Cherniavsky says. "These arguments that Air Canada deserves a premium valuation make no sense to me."

Rovinescu barely acknowledges the critique. "What do you think the take is of our shareholders? That'd be my answer," he says. "How many companies, Raymond James or other companies, have delivered 6,000-plus shareholder return?"

From his perspective, more routes, more planes and more seats are the best way forward. Legacy airlines need scale in a turbulent industry. "Airlines will grow to sustain," Rovinescu says.

And that's what he'll do, whether anyone likes it or not. **/Joe Castaldo**

CREATED A CAMPAIGN TO HELP FIGHT THE STIGMA AROUND MENTAL ILLNESS, STARTING WITH HIS OWN COMPANY

GEORGE COPE

BELL

It's easy to forget that BCE was in shambolic condition when George Cope took charge. Twelve years ago, the telco giant had bloated costs and archaic infrastructure, and was mired in an ill-fated takeover bid. Cope started his era by cutting 2,500 jobs. But then there was expansion—$15 billion spent on acquisitions including CTV, Astral and the Source, plus a $4-billion-a-year investment in a fibre optic network. You can quantify the success of this overhaul in different ways: 54 consecutive quarters of growth, 15 dividend hikes or one NBA Championship for the Toronto Raptors, partly owned by BCE and enthusiastically cheered by the CEO himself.

Yet the most telling statistic from Cope's tenure might be the 1,013,915,275 texts, tweets and calls made as part of the Bell Let's Talk campaign. The initiative exists because Cope made it a priority; it succeeded because he led it with the same focus he brought to the rest of BCE.

"What has been remarkable is the amount of time, effort, energy, insight and perspective George has brought to this initiative from day one," says Mary Deacon, the chair of Bell Let's Talk and former president of the Centre for Addiction and Mental Health (CAMH) foundation. "Working in philanthropy for 25 years, I've never dealt with a corporation that had such an incredible degree of engagement, right from the very top."

Cope became Bell's CEO—after two years as COO—in July 2008. He took charge just as the financial crisis scuttled a privatization bid by the Ontario Teachers' Pension Plan. So Cope's top priority was a 100-day restructuring plan aimed at slicing its middle-management ranks and refocusing the firm on customer service. By 2009, the CEO was mulling over flaws in the company's charitable giving. "I think he compared it to sprinkling water on dandelions across the country, and not making any difference in any meaningful way," says Thomas

BELLE LOUNGE CHAIR COURTESY NIENKAMPER


CORPORATE CITIZEN
OF THE YEAR

O'Neill, a board member who became chair in 2009. "He was also very concerned about branding. He wanted Bell to be recognized for something."

Bell would buy plenty of tables at plenty of charitable events and give to myriad causes, but with no guiding mission. "Like a lot of what happened in the company—in my opinion—we had lost focus," says Cope. "So we said, we should do this with the same discipline and structure we're bringing to the rest of the company. Let's focus in one area."

The chosen focal point had personal resonance for Cope: His mother suffered from bipolar disorder and was institutionalized for two years when he was young. But there was also a clear connection between the cause and Bell's core business. "I mean, Let's Talk—what a great play on what our business has been for 100 years," Cope says.

Overcoming our reluctance to discuss mental health became core to the program's mission—but first Cope needed to deal with the stigma within his own team. "Before we launched the program, some key people at senior levels asked me not to do it," Cope says. "Our board was very supportive. But I would say supportive of me, yet cautious on what we were about to do."

Cope's proposal was to dedicate 75% of the company's philanthropic activity to this one cause. Objections in the boardroom were limited; O'Neill says the CEO has a knack for getting people onside with a plan. "George is pretty transparent," O'Neill says. "He said, 'This is what we're thinking about.' And he took us through his thinking. And it was rock solid." Recruiting Deacon, a self-described "mental health do-gooder," to lead the program made the plan seem both credible and feasible to the board.

Before pushing ahead with a public campaign, Cope realized that Bell first needed to look at its own approach to mental health. (He describes this as "walking the talk." That's a phrase used by many people associated with the program as well. O'Neill notes when Cope introduces a big initiative, even entry-level employees know what Bell is doing—and why.) The annual "Bell Let's Talk" day and charitable giving might generate buzz, but the company's internal reforms have created a blueprint for other firms to follow. It increased its benefits coverage for psychological care and implemented new training for managers to support employees returning to work. The end result was a 20% reduction in short-term disability claims and a 50% cut in mental health-related relapses. The company estimates for every dollar invested in mental health programs, there has been a return of $4.10.

'LIKE A LOT OF WHAT HAPPENED IN THE COMPANY, IN MY OPINION, WE HAD LOST FOCUS. SO WE SAID, WE SHOULD DO THIS WITH THE SAME DISCIPLINE AND STRUCTURE WE'RE BRINGING TO THE REST OF THE COMPANY'

The company has faced criticism over the years that many of its workers still face high-stress conditions, particularly in call centres, but Cope argues that any large company will always have room to improve. "We'll never be perfect. We've never said that we are. But we know that we're much better than what we were," he says.

The last step in the process is the most well known. In September 2010, the company made a $50-million, five-year commitment to funding mental health projects. (The initiative was renewed in 2015 for another five years.) That money has funded projects large and small across Canada, from endowing research chairs to funding the training of two "mental health first aid instructors" for rural Newfoundland. The following year, Bell held the first Let's Talk Day, donating five cents to the cause for every text and long-distance call made. One misconception is that Bell is fundraising on these days—but all the cash comes from company coffers, which might heighten public participation. "Kids on social media figure out this is how to get back at us for their cellphone bills," jokes Cope.

The program was buoyed in its early days by the support of Olympian Clara Hughes, whom Cope met at the 2010 Winter Games in Vancouver. When she heard about his plan, Hughes offered to speak publicly for the first time about her own battle with depression as the program's ambassador. She was the first high-profile name to sign on, but everyone from Ellen DeGeneres to Anderson Cooper have since pitched in (owning CTV has helped with star power).

But perhaps the biggest name associated with Let's Talk is Bell's itself. "Some people have asked, 'Why does Bell need to put its name on it? Aren't you promoting Bell?' And my answer is, that's the whole magic of it," Cope says. "We're not withdrawing. We're saying one of the largest companies in Canada is going to support this cause." In that spirit, BCE donated $10 million toward the Bell Gateway building at CAMH in Toronto, making it the first company in North America to put its name on a psychiatric hospital.

"That goes a long way to change public attitudes and perception," says Catherine Zahn, the president and CEO of CAMH. "Cope is a pioneer in the idea of corporate social justice and philanthropy. I can't think of anybody else I would point to."

Cope retires from Bell on Jan. 5, two weeks before the next Let's Talk day. In truth, he's simply trading one Bay Street tower for another: He'll become the chairman of BMO in March, replacing the retiring Robert Pritchard. Banks and telcos are two things consumers love to hate. But with Let's Talk, Cope found a way to make people admire a phone company.

"Let's be honest—we provide telecom services. Everyone has to write us a cheque every month," he says. "But this helped people see the values of this company. And our employees know we're doing something beyond what we do every day." **/James Cowan**

DAX DASILVA

LIGHTSPEED POS INC.

BUILT A DATA-DRIVEN BUSINESS FOCUSED ON ALLOWING OLD-FASHIONED STORES TO SURVIVE IN THE DIGITAL ERA

When Lightspeed went public earlier this year, in a wildly popular offering that sold out almost immediately, founder Dax Dasilva raised the software company's red and black banner on the flagpole of the historic building housing its Montreal headquarters.

"We didn't ask permission," he says unabashedly.

None was likely needed. When it moved into the Place Viger hotel in 2015, Lightspeed POS Inc. resurrected the neglected French château originally built for the Canadian Pacific Railway. And these days, the money-making buzz surrounding Dasilva (age 43) and his 800-plus Lightspeed employees (average age, 31) is more than enough to bring any nervous landlord onside.

Lightspeed's colours fly like a symbol of corporate attainment—a declaration that after 14 years of bootstrapping and carefully considered private investment partnerships, its public moment has arrived.

The company has stretched around the planet, adding capability through acquisitions. It rolled out payment processing this year and is now eyeing other offerings, like workforce management. With a client roster of 51,000 businesses across 100 countries, Dasilva says he's barely scratching the surface of revenue possibilities in a global pool of 47 million retailers and restaurants alone.

The Vancouver native, who dropped computer science at university before studying religion and art history, conceived Lightspeed as a way to boost independent businesses as they fight bigger and better-capitalized rivals. His software was initially modelled on Apple Inc.'s iTunes media platform—a clean interface designed to be intuitive. Today the company offers small and medium-sized retailers a growing suite of cloud-based point-of-sale services.

Lightspeed's genius hinges on Dasilva's ability to understand how retailers interact with customers and then engineer quick and easy-to-use operations systems. The spark for the company was lit when Dasilva was 12. An artistic and academic kid from a family of entrepreneurs and intellectuals, he learned how to program a $5,000 black and white Apple Macintosh computer his dad bought for him, becoming obsessed with unleashing the machine's creative power.

All through his teens and early 20s, he wrote code and did tech support for Apple dealers and other companies. He was the employee dispatched to the customers who had the least computer knowledge, because he could humanize the technology. In turn, he used their criticism to build more instinctive digital systems. Dasilva has now built a career on finding novel solutions for people's complex problems. And as small businesses move away from old cash registers and other stationary checkout systems to the kind of Internet-based solutions Lightspeed offers, he's in demand more than ever.

Investors snapped up the initial $200 million in shares the company put up for sale last spring after just the first day of Lightspeed executives' North American tour. Dasilva and his team were hoping to get at least one of the five major investment firms they were targeting. Instead, they got all of them, including Fidelity Investments and Wellington Management. The offering was then upsized, but it was still dwarfed by demand. Total orders received: about $3.6 billion, according to people familiar with the matter. The shares have roughly doubled from their $16 price since March.

Part of the investor excitement about Lightspeed centres on its preoccupation with data. The company's head office is peppered with overhead screens displaying perpetual updates on important performance statistics like new sales, website visits and the number of customers waiting to be helped. This allows Dasilva to get a real-time picture of what's going right and what's gone wrong. That's key for a company trying to grow while pushing toward profitability (a target with an unspecified timeline). The data also gives him insight into the metric that matters most for Lightspeed: the cost to acquire customers versus their long-term value.

Investors are also buying into Dasilva's capability as a leader. And that, while not as easily measurable, is crucial, says John Locke of Palo Alto, California, venture capital giant Accel Partners, an early investor in Lightspeed.

"We loved the market too, but we were mostly betting on Dax," says Locke of the initial investment. The Lightspeed founder had a maniacal drive to have the best product on the market, he says. Over time, Dasilva also honed a keen ability to recruit some of the best software talent in North America and empower them to execute his vision, Locke says.

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Dasilva is unapologetically ambitious while recognizing his own limitations, something that became abundantly clear in his frequent visits to Silicon Valley, Locke says.

"From the get-go, he was a real sponge for feedback," says Locke. "Sometimes you meet people who have all the answers and are not seeking any feedback. Dax is constantly trying to learn."

In 2017, Caisse de dépôt et placement du Québec, along with other investors, bought Accel's Lightspeed stake. The investment marked the pension fund's biggest wager on an emerging Canadian tech firm since the dot-com bubble. It was also largely a bet on Dasilva. At the time, Lightspeed had been approached by several larger tech players for a takeover, but the founder wanted to build something much bigger over time with Caisse's backing.

"A lot of entrepreneurs in Canada would have just said, 'Let's sell the company and cash out,'" says Thomas Birch, who oversees Caisse's private equity venture capital funds and technology investments in Quebec. "But money is secondary for Dax... [He] always takes a long-term view."

Dasilva laughs when asked how the company will grow after retailers have all migrated en masse to cloud-based payment processing. There are always new businesses opening and new retail concepts being developed, he says.

"We think Lightspeed is in the early days of capturing a very large market opportunity," says Thanos Moschopoulos, a Bank of Montreal analyst. The company's cloud-based software can play "an essential role" in helping small businesses maintain their relevancy with consumers in the face of changing consumer expectations, he says.

Lightspeed is often compared to Tobi Lütke's Shopify Inc., the $48-billion titan that's now the face of Canada's tech renaissance. But while there are similarities—both companies play in the e-commerce space—Lightspeed is, for now, much smaller. And Dasilva's firm targets mainly businesses with real-world street addresses, like bike shops and bakeries, that want to access the digital consumer space.

"It's the unique businesses in a city that give Montreal or Toronto or Vancouver or any of our cities their originality," he says. "They deserve to have technology they can access, you know, for $100 a month, that puts them on a level playing field." **/Nicolas Van Praet**

REVIVED A 60-YEAR-OLD BRAND BY LISTENING TO WHAT MILLENNIALS WANT—AND THEN GIVING IT TO THEM

SUSAN SENECAL

A&W FOOD SERVICES

As no one will have missed, A&W Food Services of Canada released its Beyond Meat burger in October 2018, the first plant-based burger in North America from a fast food chain. The patty came from an LA-based company of the same name, but the branding was all from the Canadian firm. The release was so successful that A&W ran out of patties and had to suspend sales for a month before relaunching the product. Since then, they haven't looked back. Today, it's no stretch to say that the company has had more press coverage of its Beyond Meat product (now also available on breakfast sandwiches) than it has received for anything else it ever sold in the 60 odd years since it was founded.

Susan Senecal is 18 months into her role as A&W's CEO, but a company veteran, starting as an area manager in 1992 and doing stints as both chief marketing officer and chief operating officer. But even she doesn't pretend to have seen this all coming exactly as it played out. Visiting her in the A&W headquarters in North Vancouver, she laughs when asks if she might have been a bit surprised. "Well yes," she says. "It was certainly surprising."

But as with all things in the A&W world under Senecal's leadership, that's not because it was an accident either. A&W had done their market research. They knew their customers. They'd spent the better part of three years sampling plant-based products at the A&W Innovation Centre. When they tasted Beyond Meat, Senecal says, they knew immediately the search was over. And they were pretty sure they knew which of their guests would try the new product.

"What surprised us," she says, "is how quickly those guests came back for seconds, with friends, introducing new people to the product."

It's a typical moment in a conversation with Senecal when you realize that while a great deal has happened at A&W under her leadership as the result of the shrewdest plan-

PHOTOGRAPH LUCY LU


NEW
CEO
OF THE YEAR

ning, there's another quality baked into the brand that lends to its success: a readiness on the part of consumers to quickly and warmly embrace its efforts. As with the arrival of the new product, guests feel they've been given exactly what they were requesting.

Senecal certainly seems to operate the company this way. In her personal interactions there is a quiet intensity to the way she listens to a question, as if to be absolutely sure that her answer will be useful. But a visitor to the A&W headquarters couldn't also help but notice the "Guest Connect Screen" that live tabulates the daily results from survey kiosks in hundreds of stores, where customers award a smiley or a frowny face to four metrics: speed, cleanliness, service and food. No employee or visitor walks through that space without knowing how the company is doing that day in meeting guest expectations.

This attentiveness to consumers has a nice synergy with A&W's homey background in Canada. As our very first fast food chain—or as they say in the trade: quick service restaurant, or QSR—A&W had more than 300 drive-in restaurants across the country in the sixties. The effect, Senecal notes, is that when older people today talk about those early visits, they might remember the teen burger and the onion rings they ordered. "But the first thing they remember," Senecal stresses, "is being with mom and dad and eating in the back of the car."

If that's the warm and spontaneous part of the A&W personality—surely given no better emblem than the self-effacing, bumbling mascot Rooty the Root Bear—Senecal is quick in conversation to note that there is a disciplined, even steely side to that character. Because at A&W, it really all does come back to strategy.

"Strategy for us is a blank piece of paper," she says. "We don't make strategy by looking at what we do and how we could improve it. We look at real challenges and opportunities in the world and ask ourselves what we have to take advantage of them."

In looking for challenges, it's hard to imagine a more existential one than the one Senecal focuses on, nothing less than a shift in the cultural and social realities around them.

"We're in a time of rapid change in the world and in life," Senecal says.

Part of what she identified as a challenge is demographic. "[The company was] born in 1956, we are baby boomers" she says, referring to the original A&W drive-thru in Canada which opened in Winnipeg. But while that relationship has sustained the brand now for decades, new generations have taken leadership in our society, and their demands are quite different. As boomers aged, they've accumulated money and made QSR value less of a draw. As they approach retirement, meanwhile, the speed and convenience of fast food has somewhat diminished.

"Who we were seeing a lot in our restaurants though," Senecal says, "were those time-crunched millennials, with jobs and kids, maybe looking after their boomer parents."

'THE IDEA OF INGREDIENTS WAS STARTING TO BE AT THE FOREFRONT. BUT MILLENNIALS ALSO WANT TO FEEL THAT THEY'VE MADE A POSITIVE IMPACT ON THE WORLD THROUGH THE WAY THEY'VE SPENT THEIR MONEY'

But Senecal also began to realize that these were time-crunched millennials who didn't just want fast and cheap. They wanted environmental awareness and they wanted social responsibility. In Senecal's strategic view, that was really the biggest challenge faced by the brand, as well as its greatest opportunity. Here was a demographic cluster bringing kids of their own out for meals, who could themselves become the bedrock of a generational shift for the brand. But as a keen listener, Senecal was also hearing that A&W, and most other QSR brands were not giving these potential new buyers exactly what they wanted.

"Millennials have this increased interest in food," she says. "How it's raised. What's in it. They watch cooking shows. They know celebrity chefs. This idea of ingredients was starting to be at the forefront. But they also want to feel that they've made a positive impact on the world through the way they've spent their money."

Senecal remembers the first discussion of this new dynamic taking place at a strategic planning session in 2012. "And yes, there was a blank sheet of paper involved," she observes wryly.

What began to go down on that piece of paper were the elements of an across-the-table strategy that has transformed A&W's menu offerings in key ways, illustrating Senecal's leadership ethic and her dedication to listening to what this newer generation of guests really wanted. Hormone- and steroid-free beef came first in September 2013. Antibiotic-free chicken and pork followed. Then eggs from hens with vegetarian feed. Fair trade coffee. No more processed cheese or plastic drinking straws, the last 140,000 of which became an art installation out front of Union Station in Toronto, a sculpture in words reading "Change is Good."

"These were big challenges from a supply side," Senecal acknowledges, in reference to the menu changes. Producers had to be convinced. But with reassurances that the market was there for them, they did come around. "And it's opened other doors for them," she says. "Which makes us happy."

If there was a crowning event in this guest-focused surge of innovations, it would be the launch of the plant-based burger from Beyond Meat in 2018, after years of tasting. "We didn't want a product people would settle for," Senecal says. "We wanted a product they would choose."

They found that product in 2017. The first time they heard the burger sizzle, the first time they saw the patty change colour with browning, smelled the meat-like aroma and then sampled the burger itself, they were convinced. And if the transformations prior had been in small increments, there appears to have been a sea change with the introduction of the plant-based product.

"Small differences make big differences," says marketing professor David Soberman of the Rotman School of Business at the University of Toronto. Maybe other QSR players have plant-based products by now. But by being first, A&W made a big difference. "They were the first one that people tried," he says. "And that allowed them in on the circle of restaurants that those first tasters will choose going forward."

If these menu innovations had millennials in mind, Senecal knew that there was a parallel change that A&W needed to make in order to accelerate the positive effects. They needed millennial franchisees. "We'd started to notice that by the time people had raised the equity necessary to invest, they were no longer the same demographic as the guests."

So was born the Urban Franchisee Program, which reduced the equity investment required from a millennial-aged candidate, and combined that with an instore paid internship of up to 18 months. What made sense to the strategist in Senecal translated smoothly into A&W brand language.

"It's gone very, very well," Senecal says. "And we did this with the co-operation of existing franchisees who provide the training. They love having a smart, motivated person who is opening up their own restaurant, looking at things differently. We've had huge success in terms of their performance. So it's been a real win."

Same-store sales growth was up almost 10% in 2018 and is ahead of that pace year-to-date in 2019. There have been 35 net openings in the past year. And if you ask customers, it appears that all of the listening Senecal and her team have done is being noticed. Technomic, a food service research and consulting company based in Chicago, tracks these sorts of things using a brand health-tracking program called Ignite. The program is run by senior manager Robert Byrne, a longtime follower and admirer of A&W. Like a super-sized version of A&W's own Guest Connect Screen, the Ignite program tracks guest experience metrics across 23 QSR brands in Canada including segments such as burgers, sandwiches and pizza. Byrne has been tracking A&W since 2012, he tells me. And some of their numbers are highly notable.

The first statistic Byrne shares measures the degree to which guests agree or strongly agree that a given QSR brand is "socially responsible and good for the environment." According to Technomic data, the average Canadian QSR brand receives 53% by this measure, meaning almost half of the responding guests are buying a product they do not feel has these attributes. A&W is a striking category leader in this regard, at 70%.

The second statistic speaks even more clearly to the degree to which Senecal and her team have made strategic menu changes that are noticed and appreciated. In this case, guests are asked to grade a QSR brand by the job they're doing serving "natural, organic, sustainable, and responsibly sourced ingredients." No question really cuts more to the generational shift that A&W has been trying to address in 2012. And while the QSR brand average is 65% "good or very good," A&W's score of 81% indicates that guests consider the brand less like its conventional burger chain peers, and more like Subway (at 82%) or even Booster Juice (at 89%).

"If you're competing with people who are serving fresh sandwiches, smoothies and juice," Byrne says, "that's impressive."

Looking to the future, it's not immediately obviously how much further A&W can push its menu in the direction of health, environmental and social responsibility. But Byrne doesn't think the wave has crested, either. Sure, these are the kinds of changes that catch the interest of millennials. But boomers aren't getting any younger and will care more and more about health matters as they age. And the real key, Byrne thinks, is that these changes are positioning A&W and others who follow suit for generations that follow both of these.

"When you talk about sustainability, corporate social responsibility, transparency, animal welfare," he says, "these are really the topics that are important to Generation Z. These will only get more important for these younger users. And A&W is responsible for building a lifetime relationship. They're going to have to meet them where they are."

Susan Senecal herself, meanwhile, thinks of the future in this framework as a matter of a partnership and trust. There will be continued innovation, she stresses. But the biggest role for A&W to play will be in matters of sustainability.

"Our guests are looking to us to help us make big changes," she says. "As individuals, we sometimes feel like: what can I do? These are big problems. But I believe a partnership between great brands and their guests can serve to make that difference. And for that, we need to develop a relationship of trust."

One of Byrne's Ignite statistics speaks optimistically to this possibility.

"This is a restaurant I can trust," reads the statement. "Agree or strongly agree?" The QSR brand average in Canada is 69%. A&W is at 79%.

"Ten points above the average," Byrne says. "That's a trustworthy brand."

Senecal might not be surprised to hear this figure. Strategy starts with a blank sheet of paper at A&W, but the process Senecal and her team follow means filling that page in by watching the Guest Connect Screen and by listening to what guests say they want.

"That focus," she says, "has served us in good stead for over 40 years."

/Timothy Taylor

DANI REISS

CANADA GOOSE

If you wanted to start a Dani Reiss drinking game, you could take a shot of premium Canadian rye whisky every time he utters the words "global luxury brand." In 2018, Canada Goose became the first company from this country to land on Deloitte's annual Global Powers of Luxury Goods list, alongside players like Dolce & Gabbana, Chanel and Rolex. The achievement now feels like a pivotal moment in the history of the "global luxury brand," three words repeated by the firm and its CEO like a mantra.

Reiss's origins aren't exactly humble—his maternal grandfather founded the business as Metro Sportswear Ltd. in 1957—but when he took over in 2001 at the age of 27, no one could have predicted a formal entree into the world of LVMH and Hugo Boss. "It's impossible for anyone to imagine being a company the size and scale we are today," Reiss says. "The bigger we got, and the bigger the vision gets, it's a step-by-step thing. It starts with making amazing product and deciding to continue making our product in Canada."

Canada Goose has long been proud of its corporate social responsibility initiatives, which continued through a remarkable international expansion that now sees the firm selling its signature outerwear in about 50 countries. "Who would have thought, 20 years ago, that a company like us could become the only Canadian global luxury brand ever?" says Reiss. "We have defied the odds by doing our own thing."

USED THE IDEA OF THE GREAT WHITE NORTH TO SELL PARKAS AROUND THE WORLD - EVEN WHERE IT NEVER SNOWS

Reiss has proven to be a true sage, not only by recognizing and shaping the growth potential of a business selling highly niche outerwear for Arctic scientists and rangers but also in the promotion of a very specific kind of Canadian mythology connected to the cold.

"Even early on, Dani had a vision for the business as opposed to just making coats," says Harley Mintz, vice-chair at Deloitte, who has had a 20-year working relationship with Canada Goose. He credits Reiss's purposeful, focused and adaptable management style. "[With] many other people, the business goes where the business goes, and they go with it," Mintz says. "Dani set out his path and decided what he wanted it to be: the iconic Canadian brand when there weren't any."

The Great White North aesthetic has won over eager consumers worldwide—tapping into ideas of opulence even in places where it never snows. The notion of cold itself is linked to luxury, according to a recent study in the Journal of Consumer Psychology. Researchers cited marketing literature from around the globe, which used statements like "icy steel Swiss watches" and "cool silk scarves." And Canada, as an idea, also has a bit of luxury sheen. It often tops the charts for positive global perception, according to the Reputation Institute. "People think about our nature and the polar bears and aurora borealis," says Reiss. "It's a very aspirational country for people all over the world."

In 2013, Canada Goose sold a majority stake to Bain Capital Private Equity (Reiss remained a minority shareholder) and used the proceeds to kick off a period of expansion. Last year, the company opened its own stores in Beijing, Shanghai and Hong Kong. Its products are also available in India and Dubai. "Oftentimes, people think it's only cold-weather markets where we do well, but we do well in all markets," says Reiss. He makes the case that cold is relative—women in Hong Kong have been known to break out fur coats when the evenings drop below 15 C. But regardless of their location, Canada Goose stores fully embrace the cold, both physically and conceptually.

In Hong Kong, the company occupies a unit in the luxurious IFC Mall, where nearby streets are landscaped with palm trees and blossoming hibiscus. The boutique's walls are covered in memorabilia, including Inuit art and a photograph of champion dogsledder Lance Mackey, hanging alongside his preferred parka and an inspirational quote: "It's better to do what you can, to the best of your ability, than to not even try at all."

Hong Kong's weather ranges from sort of warm to extremely hot, so there's also a "cold room" in the store, where prospective customers can try on Canada Goose's down-stuffed parkas and imagine they live somewhere else. "I love that store, because people can experience sub-zero temperatures for the first time in their lives," says Reiss.

Reiss says his firm aims to hit a sweet spot in markets abroad: retaining the core brand messaging and culture while integrating local elements. "You have to have consistency across the world, but it also has to feel appropriate

GLO-BAL VIS-ION ARY

OF THE YEAR

at a local level," he says. At the Milan store, which opened in September, the aesthetic is in line with other outlets (perhaps with a more liberal application of marble) but with a regional twist, including elements inspired by famed furniture designer Gio Ponti and a partnership with Italian street artist Alice Pasquini.

In a nod to the growing importance of the Asian market, Canada Goose has also introduced "fusion fit," an alternative sizing framework based on the analysis of over 16,000 Korean, Japanese and Chinese physiques. Twenty-six key body measurements were analyzed to produce coats with smaller hoods, narrower chests, and shorter sleeve and hem lengths.

And the company has also entered into creative partnerships abroad; a recent capsule collection with Korean highbrow street wear designer Juun.J produced oversize unisex parkas and minimalist black hoodies.

But even as Canada Goose tinkers with the brand to make it relevant abroad, its "made in Canada" bona fides are as important as ever. Certain product lines, such as knitwear, are now manufactured in places like Italy and Romania, but Reiss is committed to producing the company's core products in Canada. "It's not about the lowest cost environment; being a luxury brand, it's about finding the best place for the best product," he says.

In February, Canada Goose announced the opening of a new Montreal factory—its second in Quebec and eighth manufacturing facility overall—which is expected to have over 600 workers when operating at full capacity by the end of 2020. Canada Goose employs more than 3,400 worldwide, and Reiss estimates the company hired 1,000 people in just the past year.

The commitment to manufacturing at home, says Reiss, was made in 2000, right around the time he took over as CEO. It was prompted, in part, by the feedback he received while pushing products internationally. "In the early days, it was people abroad who really taught me how important 'made in Canada' is and how central it is to our brand and product," he says. "We took the risk and decided to invest here. Undeniably, we wouldn't be around today if it weren't for that. I think Canada has always been viewed very favourably around the world, and it's as strong today as it's ever been, if not stronger."

'I THINK CANADA HAS ALWAYS BEEN VIEWED VERY FAVOURABLY AROUND THE WORLD, AND IT'S AS STRONG TODAY AS IT'S EVER BEEN, IF NOT STRONGER'

The association with Canada doesn't offer complete insulation from fluctuating international sentiment or geopolitical strife. Late last year, there were reports that the opening of Canada Goose's Beijing store was delayed because of threats of protest and a boycott caused by the arrest of a Huawei executive in Vancouver. But concerns about politicization didn't prevent lineups from forming once the store did open in late December.

Aligning with a country over, say, an individual celebrity, is a great strategy, says Patricia McQuillan, president and founder of Brand Matters. (No country has ever made a sex tape.) "It's smart to be tied to something that has a bigger reputation," she says. "And look at Canada's track record. We're known as a very honest and friendly country. There aren't a lot of negatives with association—other than we're too polite."

The idea of the Great White North has also been central to Canada Goose's corporate social responsibility and outreach efforts. The company recently invited journalists on two press trips, one to Churchill, Manitoba, in partnership with Polar Bears International, and the other to Nunavut, in order to showcase work being done with Inuit seamstresses. Reiss says sustainable philanthropic programs have long been built into the Canada Goose business model. "We've always believed that doing good is good for business," he says. "As I look to the future, it's important to continue to rewrite the book on how companies can not only be good for themselves, but good for shareholders and for the world. That's the direction we want to go in."

Reiss was named a Member of the Order of Canada in 2016. The citation recognized both his entrepreneurial success and "his commitment to the preservation of Canada's North."

Positioning itself as a responsible corporate citizen has also helped raise the feel-good profile of Canada Goose. Countless celebrities—including Daniel Craig, Morgan Freeman, Sarah Jessica Parker, Emma Stone and Drake—have been photographed out and about in its parkas, signifying the brand's evolution from cold-weather essential to status symbol.

Reiss resists the idea that Canada Goose has become a fashion-first brand—perhaps because being "in fashion" connotes the idea that one might fall out of it. "I realize many of our consumers are fashion consumers and many of them shop at fashion locations," he says. "But we can be both classic and extremely differentiated at the same time. The fact that they have become coveted products around the world is a testament to our unique way of doing things."

That unique way of doing things has catapulted Canada Goose into a once-unthinkable stratosphere of global sales. But Reiss says there's still a lot of room to grow—particularly when comparing Canada Goose with some of the other names on that Global Powers of Luxury Goods list. "Now that we are this size, we can look forward and see that there's a lot of opportunity," he says. "We want to keep rewriting the book on what it means to be a company that's good not only for shareholders and employees but for the world. We want to be a company that is here for generations, and we think that is very much our future." **/Sarah Treleaven**


Bell
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THINKING INSIDE THE BOX

WITH HIS STOCK PRICE SAGGING AND THE TRADITIONAL MOVIE BUSINESS UNDER SIEGE FROM NETFLIX, CINEPLEX CEO ELLIS JACOB IS BATTLING BACK BY TRANSFORMING THEATRES INTO FUTURISTIC ARCADES

BY SUSAN KRASHINSKY ROBERTSON

PHOTOGRAPHS BY DANIEL EHRENWORTH

JACOB IN A FORMER 10-SCREEN CINEMA IN BRAMPTON, ONTARIO, THAT CINEPLEX HAS CONVERTED INTO A PLAYDIUM

The air resounds with the bleep-bloop of arcade game soundtracks, animatronic chatter and clanging Wheel of Fortune chimes. But all of this discordant racket is music to Ellis Jacob's ears. "This is part of our whole diversification strategy," the Cineplex CEO says, gesturing around the company's new Playdium amusement complex.

Jacob is showing off a 41,000-square-foot glass and concrete box in suburban Brampton, northwest of Toronto, a former movie multiplex that has been gutted and revamped over the past year. Out went the 10 screens and 2,021 seats. In came well over 100 new attractions, including video games, an overhead ropes course, virtual reality booths and a prize shop full of kid-friendly ephemera such as lunchboxes, candy and smiling poop-emoji plush toys.

But the new Playdium will be more than an indoor playground to extract further disposable income from kids, teens and families. It is also a sign of the daunting challenges confronting Canada's largest cinema chain. Cineplex's movie attendance has been declining nationwide since 2016, and the company had a glut of screens in the Brampton area. Two of its other theatres, both a short drive away, were leeching audiences from this 20-year-old location. It was shut down for a total makeover.

Jacob and his management team have concluded that Cineplex's best investments for the future are not solely in movies. That decision is no whim. Financial markets have sent clear signals that it's time for a fundamental overhaul in strategy. The company's share price plunged in 2017 and has continued to sag, declining by more than half in just over two years.

For a long time, Cineplex's dominance of the movie exhibition sector was a strength. With 76% market share, it is by far the biggest chain in Canada. But that business is past its peak, and investors are alarmed at the astonishing rise of the new competition: Netflix Inc. and other huge online content providers that deliver movies and more right into consumers' homes.

Jacob's coping strategy is twofold: make more money off the people who still go to the movies (and there are a lot of them) and offer up additional forms of entertainment to give Cineplex a buffer against the ups and downs of the Hollywood production slate. The first element includes things like 3D screenings, expanded concession menus and premium tickets to VIP theatres with cushy armchairs, and food and drinks (including alcoholic beverages) delivered to customers' seats.

The second means expanding alternative entertainment offerings. In 2008, Cineplex had no amusement and leisure segment, and revenues from its media division were limited to ads on cinema screens and in its in-house magazine. But over the past decade, the company's non-movie revenues have grown substantially.

One of the alternative offerings is Playdium. The Brampton location is the first built since Cineplex bought the original Playdium in nearby Mississauga, and the company plans to add 10 to 15 more over the next five years.

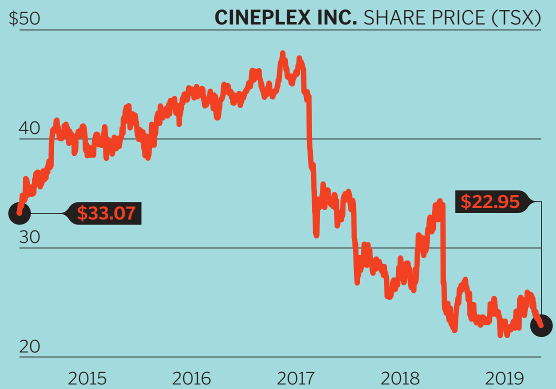
For adults, there's the Rec Room, a chain of seven restaurant-bars the company launched in 2016. The Rec Room features games, live entertainment and other attractions. Cineplex wants to expand the number of these as well. In recent years, the company has also pushed into e-sports, hosting tournaments for games such as Call of Duty for spectators across the country.

But now Cineplex is about to unveil an ambitious hybrid of the two strategies called Junxion. Each location will be a movie theatre where, executives hope, movies will not be the only reason to visit. The first Junxion is under construction in Mississauga and will open in late 2020, with more to follow soon across the country.

Walking in, the first thing visitors will see is not cinemas or popcorn stands but food, entertainment and gaming spaces, with the theatres tucked in behind. And like the Brampton Playdium, many Junxions will be retrofits of underperforming Cineplex locations.

"Going to a movie just to show up and watch the content—it's not enough anymore," says Dan McGrath, Cineplex's chief operating officer. "If we want to get people coming out of the house, we have to create an experience."

INVESTORS WERE RATTLED WHEN THE COMPANY MISSED AN EARNINGS TARGET IN 2017



For years, a movie *was* reason enough to get people out of the house. In 2006, the year after Cineplex acquired the rival Famous Players chain, the company's box offices welcomed 57.4 million people. By 2015, that number had increased by 34% to 77 million. As the firm kept breaking its own records, Jacob boasted about the resilience of a business built on "affordable escapism." Investors applauded. Cineplex's share price climbed from about $14 in 2006 to nearly $50 in early 2016.

Since then, however, movies have brought fewer people through the door. Cineplex's attendance has declined for three years in a row. Last year, it fell to 69.3 million, about the same as in 2010. People's entertainment habits have fragmented as technology has offered a slew of new options. That's true for how they get their news, how they interact with friends and how they watch movies and TV shows.

Netflix reportedly spends millions per episode for its TV series *The Crown*, giving it a movie-like production feel. Even less splashy shows are appealing because viewers can call them up on demand for a flat monthly subscription fee. The rising popularity of gaming, especially among younger people, is yet another draw on a finite supply of leisure hours.

Jacob argues that streaming services and other at-home entertainment won't entirely disrupt the movie theatre business, because people still want to get out of the house and have a social experience. But as online offerings proliferate—behemoths Disney and Apple have launched their own streaming services—so does competition for consumers' entertainment time.

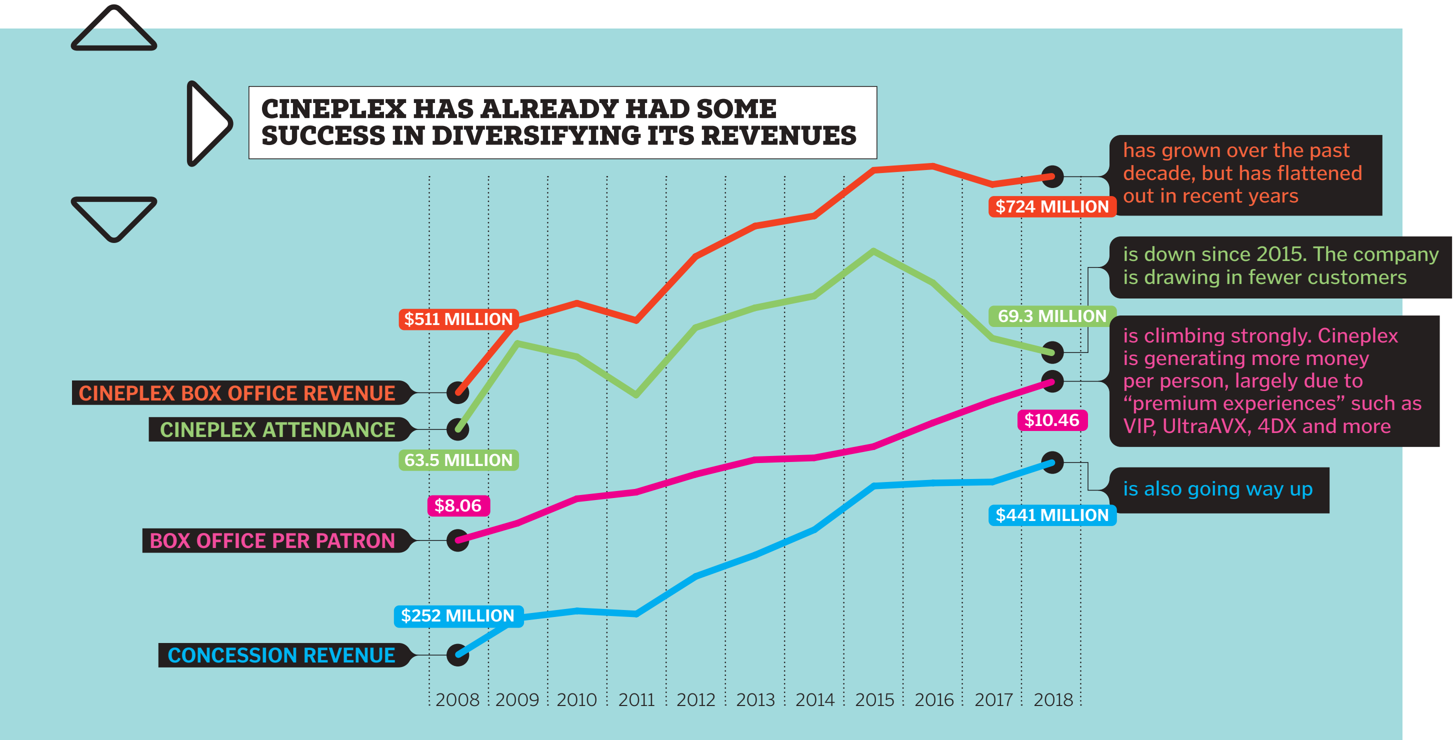
"When there's a good film, people do come. What's happening is that [the movie business] has been much more volatile than usual, because there are other alternatives," says Jeff Fan, an analyst at Scotia Capital. "Think about how quickly you can pick up a show to see if it's interesting and how quickly you can drop it if it's not interesting in the first 10 minutes. You couldn't do that 10 or 15 years ago. Now you're doing it almost every evening."

There's also the problem of box office volatility because of fluctuating movie quality. Sometimes, in what are normally busy seasons, Hollywood just releases a lot of duds. In the summer of 2017, the slate included *Baywatch*, *King Arthur: Legend of the Sword* and the fifth—*fifth*—instalments of the *Transformers* and *Pirates of the Caribbean* franchises.

"One challenge we have with a theatre is we're entirely dependent on the content," says McGrath. "If it's *Avengers* playing, if it's *Lion King*, our theatres are filled. There are people there all the time. But if it's a Wednesday afternoon in the middle of the summer and there's no really big movie, all of a sudden we have all this excess capacity."

Cineplex is not alone in this. Movie attendance in the United States has declined since the early 2000s, and investors have punished the dominant American movie theatre chain, giant AMC Entertainment Holdings Inc., even more severely than they have Cineplex. Over the past three years, AMC's share price has fallen by almost 75%.

In Cineplex's case, missing an important earnings target in the second quarter of 2017 prompted investors to take a closer look at those disturbing long-term industry trends. The company reported a drop in adjusted earnings before



interest, taxes, depreciation and amortization (EBITDA)—a rare setback for Cineplex.

The company attributed the downturn to a decline in its ad business, as well as to increased spending on its diversification strategy. But the market was spooked. Cineplex had long traded at a substantial premium relative to EBITDA, and the earnings miss, combined with greater awareness of the competitive risk from higher-quality TV and streaming, caused some investors to reconsider that premium.

Cineplex's share price nosedived and then kept sliding. Some analysts believe the stock has been oversold. The company's total revenue has continued to grow, and it remains profitable. Its movie theatre business has dominant market share nationwide and is not as vulnerable to pricing pressures as chains that are concentrated in more competitive markets. Jacob also points out that Cineplex has not "overbuilt" theatres the way U.S. chains have. Its multiplexes have an average of 10 screens, while some American peers are closer to 15 or 16 per location. But Cineplex's stock has not bounced back.

Jacob is frustrated. He believes investors haven't given Cineplex enough credit for the steps it has taken to brace itself for the future. "Markets are fickle," he said in an interview earlier this year. "It's the issue of people just focusing on small pieces of information instead of looking at the big picture and saying, 'What's this company going to look like three to five years from now?'"

Cineplex has made a lot of changes already. In 2008, the company's entire business was movie theatres. Last year, by comparison, its amusement business and media division, which displays ads and content on screens in fast-food restaurants and other locations (beyond movie theatres), together accounted for almost one-quarter of its revenue.

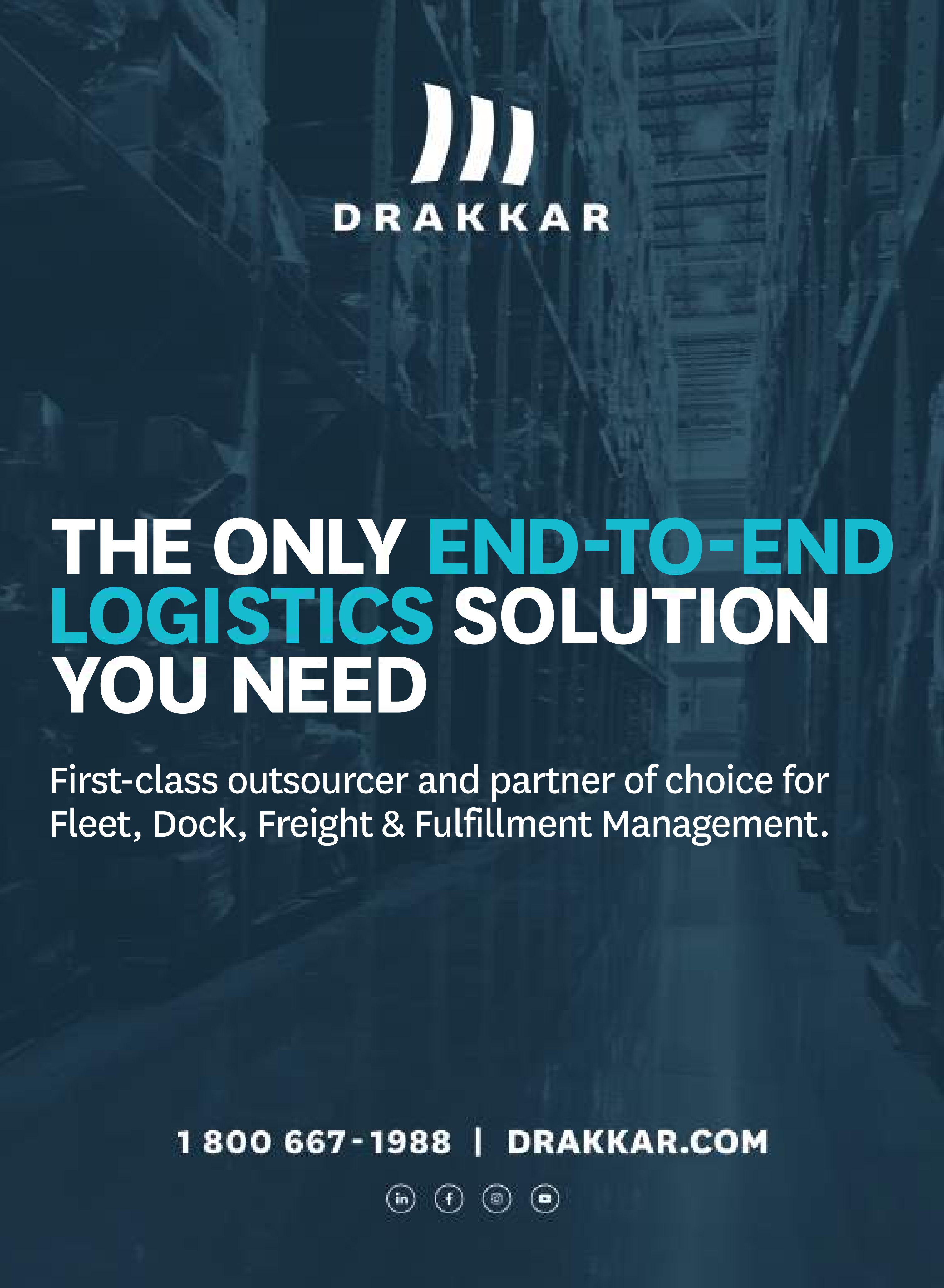
In 2015, the company acquired the half of Playdium it didn't already own from its joint-venture partners, and in addition to installing games in its own venues, it now supplies them to other companies. The following year saw the launch of the Rec Room. In 2017, Cineplex signed a partnership with Dallas-based Topgolf Entertainment Group and will soon open its first high-tech driving range in Canada. Last year, the chain invested in VRstudios, based in Seattle, and is installing the company's virtual reality equipment in theatres and other locations.

Cineplex has also boosted revenues within theatres by making more money per customer. A decade ago, just 3% of the company's box office take came from premium tickets—which, at the time, meant Imax. Today, the bells and whistles include motion-enabled seats, 3D, 4DX (in-theatre effects such as wind, rain and scents) and more. Cineplex has 165 theatres nationwide, with 1,695 screens, and more than half now have at least one high-end feature. Premium tickets accounted for 44% of box office revenues last year.

The chain has expanded its food and drink options as well. As of this past summer, adults could buy alcohol at 83 theatres in three provinces. The average customer spent about $4 on concessions in 2008; last year, that reached $6.36. Total box office revenue per patron has climbed from $8 to almost $11 over the past decade. Those wider offerings should help concession spending to keep growing, wrote RBC analyst Drew McReynolds in a research report in August.

But analysts caution that Cineplex is still highly dependent on content—the appeal of the movies it shows versus the films and series Netflix and other giants offer online. "We believe the secular challenges are going to gain in momentum over the foreseeable future, especially as some of the streaming services start to launch and pick up steam," says Robert Fishman, an analyst covering the U.S. movie business at MoffettNathanson in New York. "That's going to add another pressure to the industry."

In short, Cineplex has to keep diversifying and raising its game. And that is exactly what it's trying to do with Junxion.



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> “MARKETS ARE FICKLE,” SAYS JACOB. “IT’S THE ISSUE OF PEOPLE JUST FOCUSING ON SMALL PIECES OF INFORMATION INSTEAD OF LOOKING AT THE BIG PICTURE”

None of the three basic elements of Junxion—movies, food and drinks, and arcade games and other attractions—is new for Cineplex. The company has tried building gaming sections into cinemas before, including its 34 Xscape locations, which blend movie theatres with entertainment areas. But because of the tiny kitchens in those sites, the restaurants tend to have limited menu options. That means people who really want to play games could be drawn in, but the company has missed out on attracting customers who might prefer to just grab a drink and a bite.

Junxion is designed to address that problem. Roughly one-third of the space will be movie theatres. Another third will be gaming and other entertainment, such as a stage for live events. The final third will be a food hall concept with several stands serving different fare and beverages. It will also have an indoor food truck, where the items will change often, and which could allow for pop-up partnerships with local restaurants.

Construction on the first Junxion is starting soon at the Erin Mills Town Centre in Mississauga, and it will open in late 2020. A second, slightly smaller version will debut shortly after that at Kildonan Place in Winnipeg. Unlike a Rec Room or Playdium, Junxion will have clear Cineplex branding on the building to emphasize that there are still movies inside.

But movies will not be front and centre. In an artist’s rendering that Cineplex COO McGrath shows off, the auditoriums are tucked away, down what the company calls “theatre street.” They will all borrow the VIP concept of in-seat service, with only a small concession stand just outside.

Instead, the Junxion lobby will be dominated by the food hall, a café, a bar and a stage for programming that could include a magician for young families, cooking seminars or live music, depending on the time of day. The amusement area will include video games, traditional lounge options such as foosball and pool, and virtual reality pods.

Many of the locations, such as the one at Erin Mills, will also have rooftop patios, with games like bocce, a lounge and outdoor retro-movie screenings in the warmer months. These could also serve as spaces for presentations or private events, McGrath says.

Strategies such as Junxion could give Cineplex more sway with shopping mall owners. Many are struggling with declining customer traffic, and want to reinvent their spaces to include more destinations and experiences. They are approaching Cineplex more often, McGrath says, and in many cases the company is pitching those mall owners on theatres with other entertainment offerings built in.

Cineplex is not interested in opening any new locations that do not at least have VIP as part of the plan. Many of these will also have Junxion concepts or Playdium add-ons.

The same strategy applies to retrofits of existing theatres. At one in Oakville, Ontario, five screens are currently being converted to VIP, and two are being removed altogether to make room for an expanded kitchen and a lounge.

Depending on the individual market and the space available, Cineplex will evaluate whether a retrofit will mean a Playdium put in where five or six screens used to be; more VIP, Xscapes or VR facilities added; or a full Junxion concept. The company expects to retrofit 20% to 25% of its theatres in those ways in the coming years. The first Junxion in Mississauga is a new build, but it will be a template for other sites, including renovated ones.

Building a new location—whether a movie theatre or another concept—costs about $10 million, McGrath says. Retrofitting an existing location is closer to $5 million, depending on the scope of the renovation. It takes four to five years to make the investment back, he adds.

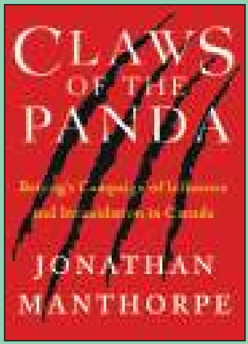
Each concept has a different target: Playdiums do well with families, younger kids and teens. VIP theatres draw in adult audiences. Rec Rooms attract millennials and Generation Z. Junxion is designed for broader appeal—not only families with kids but also teens and people in their 20s and 30s.

“Right now, there’s no reason to come to our theatres unless you’re coming to a movie,” McGrath concedes. “We want to give people a reason to come in those off-peak periods when there’s not necessarily content you want to see.”

Going to a movie theatre just to hang out may not sound all that appealing. Much will depend on how different the look and feel of a Junxion is from a theatre and how good the food is. But McGrath also points out that many Junxions will be in suburban neighbourhoods, where the options to go out and socialize are not as bountiful as they are in city centres. Another part of Junxion’s strategy is to make money from having longer opening hours, when a typical movie theatre might not offer enough to keep customers there or draw in more.

Back at the new Playdium location in Brampton, Jacob shows off a large cabinet housing an arcade version of the popular Halo video game, complete with a 360-degree swivelling gun and wide screens. Young gamers can compete with friends live, in person, rather than holing up in their parents’ houses, talking to one another on headsets, he says, pointing proudly to the sharp on-screen graphics.

“It’s hard to replicate this at home,” he says. Cineplex is betting on it.



JONATHAN MANTHORPE

CLAWS OF THE PANDA

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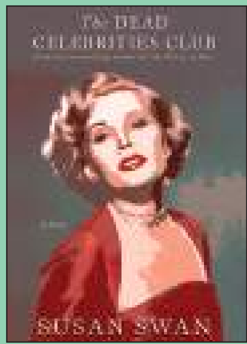
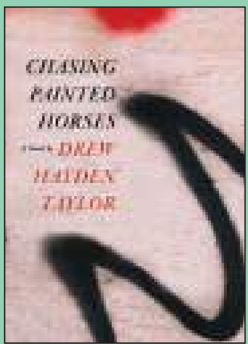


SUSAN SWAN

THE DEAD CELEBRITIES CLUB

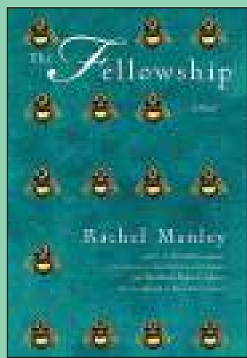
"Susan Swan's salacious new novel is a tale of greed, hubris and fraud — and the fallout that follows. In other words, it's a financial tale worthy of the age." — *The Globe and Mail*



DREW HAYDEN TAYLOR

CHASING PAINTED HORSES

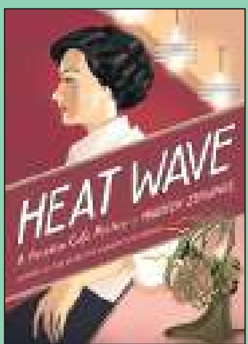
"Drew Hayden Taylor is one of those dangerous writers who knows the potential of humour, and how far it can reach into society, how deep it can cut, how quickly it can heal." — Thomas King, author of *The Inconvenient Indian*



RACHEL MANLEY

THE FELLOWSHIP

"The Jamaican narrator of this novel, Jessica, is funny; her sharp and wry observations of American manners, consumerism, and politics, carry the reader delightfully through this readable book with a mystery at its core."
— Charlotte Patch, *What I'm Reading Tonight*



MAUREEN JENNINGS

HEAT WAVE

"The plotting of this short novel is seamless . . . only 240 pages but we solve not one but *two* mysteries and learn a great deal about the protagonist and the supporting characters in her life . . . the storyline climaxes in a short yet action-packed few pages." — *I've Read This*

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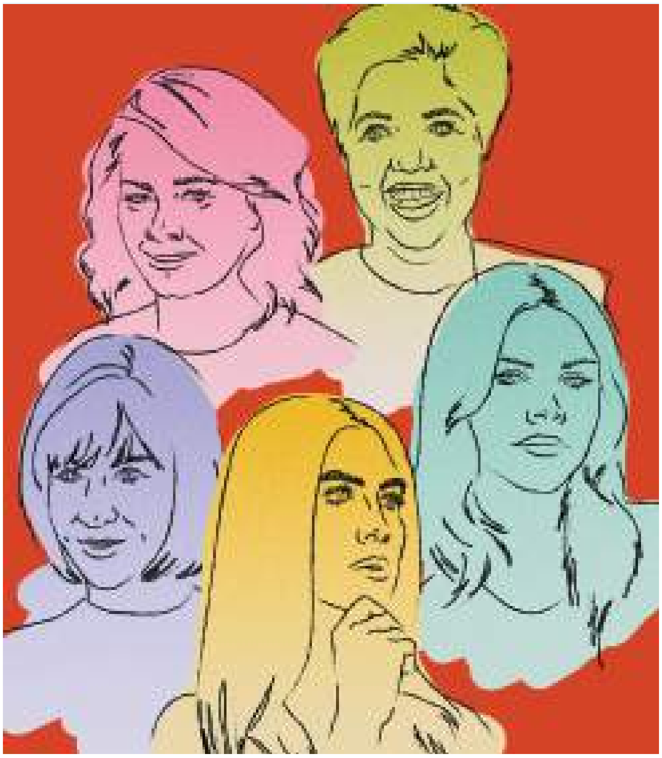


JEANINE BRITO

[THE CASE FOR] *hiring as many female executives as possible*

Hiring more women isn't just about ethics—it's also great for nearly every area of business, from profit to employee satisfaction and more

Carolyn Grant* had a challenge when she took a job as the dean of a faculty at a Canadian university. She was asked to contribute to a plan that would put wrangling for resources to an end and ultimately, create a common vision to guide the administrations. The biggest issue Ms. Grant identified up front was that faculty members weren't aligned on a vision or even a way to get there—and the level of trust required to enter the conversation wasn't established. So, she started including stakeholders (her faculty) in the conversation around a possible solution. Trust grew dramatically; members of the faculty quickly began coming forward with contributions. "What's inspiring here is Grant's willingness to step back from a short-term action request (i.e. contributing to the budget) and her ability to see the larger picture," says Jean Ogilvie, founder of the Aeshna Project, a company that specializes in developing leaders and organizations and a facilitator of the Boundless Leadership Program at the University of Ottawa's Telford School of Management. "Organizations with female executives do better because with a better gender balance, the capacity to take in wider perspectives grows."

Ms. Grant's story is proof of the success that occurs when women step into leadership roles. Yet, a 2018 report found that only 3.3 per cent of TSX-listed Canadian companies had a woman CEO, while 30 per cent of companies reported having only one woman executive officer. Simply put, that's not enough women. And not only for moral reasons—it's just bad business. Companies with female executives boast healthier profit margins, more satisfied employees and increased social responsibility. Hiring more women for leadership roles isn't just good for women, it's good for everyone.

The easiest metric to measure is profit, and there's a clear correlation between improved financial performance and executive teams that are gender-diverse. A 2018 study of 1,000 companies in 12 countries by McKinsey & Company found that organizations that were in the top quartile when it came to gender diversity among executive leadership teams were 21 per cent more likely to outperform on profitability. On the other hand, companies in the bottom 25 per cent for both gender and cultural diversity were 29 per cent less likely to experience above-average profitability. It all comes down to understanding your customers: "A company's leadership should reflect the diversity of consumers so that we better understand how they think, what engages them, what motivates them, etc.," says Tanya van Biesen, executive director of Canadian operations for Catalyst, a non-profit that has been helping organizations create workplaces that work for women since 1962.

But it's not just about money. Healthier profit margins are a direct result of satisfied employees, Ms. Ogilvie says. "The connection is simple: The more engaged people are, the more energy is available to pull off collaboration," she says. "Think of a task you love to do and how easy it is to give your all to it."

Research also tells us that employees are more engaged and trusting of leadership at work when they feel included and see that their employer supports diversity practices when it comes to things like recruiting job candidates.

And, Catalyst's research shows that companies with higher levels of gender diversity and HR practices that focus on gender diversity have lower levels of employee turnover. Having more balanced leadership teams both in terms of gender and ethnicity is also important when it comes to influencing future change, as it means that women, people of color and LGBT employees are more likely to have their ideas endorsed.

As the world grows increasingly concerned about how businesses give back, another connection is emerging between women executives and corporate responsibility. A 2011 Catalyst and Harvard Business School study of Fortune 500 boardrooms found that companies with more female leaders contributed more to charitable funds, on average, than companies without gender-inclusive teams.

At a higher level, companies who have more female leaders are more proactive around narrowing the wage gap (women earn 87 cents for every dollar earned by men and the gap is wider for women of colour, Indigenous women, women with disabilities and those who are new to Canada). "Companies that are truly being proactive will do annual, or even biannual, pay audits" in order to make corrections and ensure they're closing the wage gap that exists within their own structure, Ms. van Biesen says.

It also doesn't hurt a company's public reputation when all of these factors are considered: Organizations that rank high-up on Fortune's 'World's Most Admired Companies' list have twice as many women in senior management than companies with lower rankings.

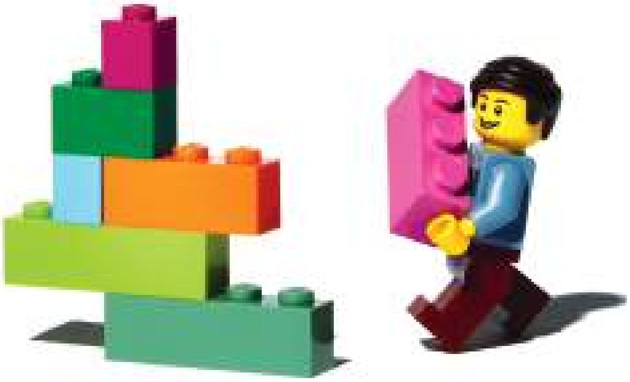
**Name has been changed*

going it alone

SOFTWARE MIGHT BE EATING THE WORLD, BUT PRIVATE EQUITY IS INCREASINGLY EATING SOFTWARE. CAN ONE TORONTO-AREA SUCCESS STORY RESIST AN ONSLAUGHT OF OFFERS AND MAKE IT AS A BOOTSTRAPPED COMPANY ____________?

BY SEAN SILCOFF

PHOTOGRAPHS BY CHRISTIE VUONG



Alok Ajmera had just presented at a conference in Boston last June when he got the offer of a lifetime. For the past year, private equity firms had been heavily courting the president and chief operating officer of Mississauga-based Prophix Software, which makes software used by finance departments for budgeting, forecasting and automating reports. Now, one suitor from San Francisco was putting on the full court press. He offered to fly Ajerma to the Bay Area to watch game six of the NBA championship series between the Toronto Raptors and Golden State Warriors. At courtside. Yes, that game.

The problem was that Ajmera, his wife and two daughters were moving that week. If he had gone, he would have been cheering as Kawhi Leonard and Kyle Lowry won Toronto's first NBA championship. Meanwhile, his family would have been digging out of boxes. After agonizing for hours over how he could make it work, he turned down the trip. "I gave up courtside seats for my marriage," he says. "But I will tell you, I was thinking all night, 'How do I convince my wife to do the move without me?'"

Talk about a difficult choice. Here's another: Ajmera and his boss Paul Barber—Prophix's co-founder, CEO and majority shareholder—haven't sold any part of the company despite the continuous onslaught of interest from would-be investors. Nor do they want to.

"We haven't taken a penny. We are not driven by a short-term investor. We've had the luxury of playing the long game," says Ajmera. Gesturing around Prophix's 10th-storey office, three blocks from Mississauga's Square One mall, he says, "People here are proud about the fact we haven't raised capital." (The lone exception was about $300,000 of startup funding from a handful of angel investors. That was 24 years ago.)

Software may be eating the world, but increasingly, growth equity and private equity firms are eating software companies. Talk to any CEO of a fast-growing Canadian enterprise software company with more than $20 million in annual revenues. They all say the same thing: They're inundated with cold calls from later stage private capital firms. "I get outreached by [private equity] at least three times a week," says Carol Leaman, CEO of Waterloo corporate training software company Axonify, which last raked in US$27 million in venture capital financing. The firms have been raising and deploying capital at unprecedented rates and are looking to invest. Simon De Baene, CEO of Montreal's GSoft, has never raised outside money while building a software firm on track to generate $75 million in revenues this year from products that help corporations migrate their operations to the cloud. He jokes that he gets calls "every single day, every hour. It's crazy. Money is really cheap now."

For Prophix, that means it is one of a dwindling number of players within the corporate performance management (CPM) niche of enterprise software to remain "bootstrapped"—or self-financed. Last year, venture-backed San Francisco-based Anaplan, Inc. went public and is now valued at more than US$6-billion. Prophix's most direct rival—private capital-funded Adaptive Insights—also filed to go public but then sold to payroll processor Workday for US$1.6 billion last year. "All of a sudden, investors are knocking on the door of all these smaller [CPM] firms wanting to throw money at them," says Howard Dresner, founder and chief research officer of Dresner Advisory Services, a Nashua, N.H.-based technology market research firm.

But Prophix simply isn't interested. Ajmera thinks his company can reach $100 million in revenue on its own. "That's very motivating for us. Everyone [else] has the same business model in mind from a funding perspective," he says. That blueprint involves bringing in private investors with expertise and connections who demand conditions and dilute the ownership of founders and management. "It's as if that's the only way to build a successful company," he says, sounding frustrated. "There is a different model and it could be wildly more lucrative for everyone involved. You maintain control of the business, you can create way more enterprise wealth, you can do more disruptive things. You can employ more people and have dramatically way more impact."

But there are tradeoffs. Bootstrapping means being out of the headlines, while companies raising big sums get the news coverage that puts them top of mind with future investors and prospective employees. Going it alone also means relying on your own ability to generate funds, a strategy that can limit growth in the face of spendthrift rivals.

Can Prophix resist outside investors forever, or will competition from heavily financed rivals force it to reconsider? "I would say over a long period of time, most bootstrapped founders get converted," says David Greenberg, general partner with Baltimore-based JMI Equity. "It may take a really long time... but the majority of the time the companies end up not being bootstrapped."

It's not difficult to understand why financiers would be interested in Prophix. The company has increased recurring revenue from software subscribers by more than 45% annually since switching its offering to the cloud in 2016. It should reach $50 million in revenue this year, derived from more than 1,600 mid-market customers (typically companies with between $100 million and $1 billion in annual sales). That makes it one of Canada's largest cloud software providers. Based on the going price for private equity investments, the cash-flow positive company is likely worth hundreds of millions of dollars.

True, Prophix isn't a household name like Facebook or Amazon—or even as well-known as other up-and-coming Canadian tech firms. But research firms Gartner and Dresner rank it, respectively, as a "visionary" and "leader." It leads its sector in "net promoter score"—a measure of the likelihood customers would recommend it. It also has a 9.4 rating from software review site TrustRadius. Barber's 97% CEO approval rating on Glassdoor, a site that tracks workers' views of their employers, is higher than Canada's best-known tech CEOs, including Shopify's Tobi Lütke and David Ossip of Ceridian.

So there's plenty of data suggesting Prophix would be a good investment. And the company's DNA isn't coded to resist outside money. In fact, Barber has twice seriously considered tapping private capital markets during the company's 32-year history.

The first time happened in the late 1990s, when the down-to-earth British immigrant, now 66, did the rounds of Canadian venture capitalists to help finance his company's evolution from a distributor of others' software to a developer of its own "decision-support" tool. But Canada's venture capital industry was young and Barber found the financiers he approached "really didn't understand much at all. We had to constantly educate them about the software business and what our software did." After talking to maybe a half-dozen, he gave up. "We realized there was no way we could ever raise capital from them," Barber says.

Instead, he funded development using the maintenance revenue collected from clients after installing software from the other guys. His view of venture capitalists hasn't changed much; he likens them to speculators who financed railway mania in the 1800s. "It's just the way the world works," he says.

The second time was in 2016. Prophix was in the latter stages of converting its business to offering its software over the cloud. That's a difficult transition, because it requires a software firm to eschew big up-front payments in favour of much smaller monthly sums over multiyear subscriptions.

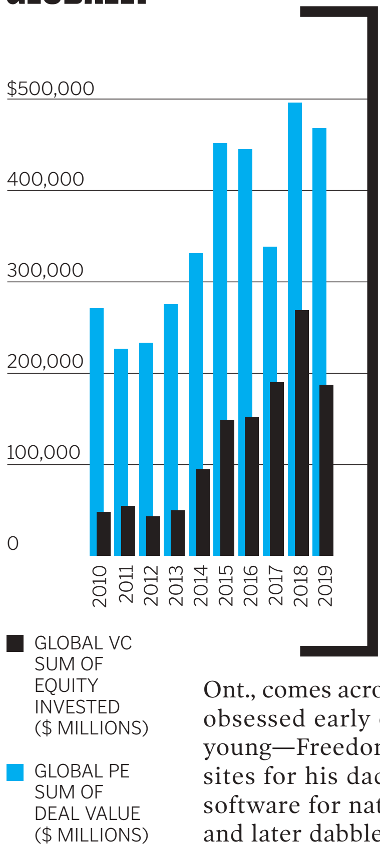
Barber worried his revenues would drop by 25% and he'd need outside funding to cover the transition. But as private equity suitors began probing his books, Barber had doubts. He found their expectations "onerous," he says, with demands for guaranteed minimal returns and preference shares putting their interests above other stakeholders'. "They were asking for too much," Barber says.

By this point, the company was coming to the end of its transition to the cloud. The temporary revenue drop was only one-third of what Barber had expected. Prophix would be fine without the outside capital. Besides, he'd seen other entrepreneurs forced out after selling controlling stakes to private investors. "People who could have made a reasonably good living for the rest of their lives are pushed out because the investors get very impatient and want it to grow faster," he says.

Meanwhile, Barber doesn't seem at all interested in taking any money off the table. "He's not monetarily motivated," says Ajmera. "Sometimes we'll come back from a meeting [with would-be suitors] and he'll say, 'What would we do with that kind of money?' If we were to sell all of a sudden for $500 million, he's like, 'Carol [Barber's wife] is just going to donate it all.'"

Barber's conclusion about strings-attached private capital was: "Well, it's not for us, we don't want to do it, we'll carry on and succeed—and we did."

VENTURE CAPITAL/PRIVATE EQUITY INVESTMENT, GLOBALLY



If Barber is genteel, modest and old-school, Ajmera, the son of Indian immigrants who grew up in Oakville, Ont., comes across as pragmatic and savvy. He was obsessed early on with getting rich and retiring young—Freedom 35 was his motto. He built websites for his dad's friends as a teenager, created software for naturopaths to run their businesses and later dabbled in real estate. He framed dollar bills and contracts to motivate himself. Graduating from McMaster University with twin bachelor degrees in engineering and management as well as engineering physics, he went to work for Prophix in 2004, training new customers to use the product. He thought he'd leave after a couple of years to run his own software business. Instead, he kept landing increasingly senior jobs within Barber's firm. He became COO in 2014 and then president two years later. Today, he owns about 10% of the company and no longer has wanderlust.

Ajmera's tenure running Prophix has coincided with the CPM sector's emergence as a hot software niche. It "was a sleepy backwater for years," says Dresner. "But CPM has gained tremendous interest, especially of late, as investors look for something that is going to deliver." He notes that target customers aren't corporate IT professionals but more conservative finance departments.

It frustrates Ajmera that media spotlight his rivals and their big funding rounds while ignoring Prophix. "Let me ask you directly," he says at the beginning of our mid-September interview,

PRIVATE CAPITAL LIKES CORPORATE PERFORMANCE MANAGEMENT

PROPHIX IS ONE OF A DWINDLING NUMBER OF CORPORATE PERFORMANCE MANAGEMENT SOFTWARE COMPANIES THAT, TO DATE, HAVE SHUNNED OUTSIDE FUNDING TO DATE. HERE'S A LOOK AT SOME OF THOSE THAT HAVE TAPPED PRIVATE CAPITAL MARKETS OR "EXITED" BY GOING PUBLIC OR SELLING OUT

ANAPLAN
(SAN FRANCISCO)
Latest disclosed private funding: US$90-million venture round led by Premji Invest in January 2016. Went public in October 2018, raising US$263.5 million

ADAPTIVE INSIGHTS
(PALO ALTO)
Latest disclosed private funding: US$75-million venture round backed by investor group including JMI Equity, Norwest Venture, Bessemer Partners and Canada's Information Venture Partners. Sold to Workday in 2018 for US$1.6 billion

VENA SOLUTIONS INC.
(TORONTO)
Latest disclosed private funding: $115-million growth equity round led by JMI Equity and Centana Growth Partners

ONESTREAM SOFTWARE LLC
(ROCHESTER, MICH.)
Latest disclosed private funding: $500-million private equity investment from KKR

BOARD INTERNATIONAL
(CHIASSO, SWITZERLAND)
Latest disclosed private funding: 23.4-million Swiss franc growth equity investment by Grafton Capital. Purchased by Nordic Capital in 2019 for undisclosed sum

HOST ANALYTICS
(REDWOOD CITY, CA)
Latest disclosed private funding: US$25-million venture capital investment led by Centerview Capital Technology in 2014. Acquired by Vector Capital in December 2018

JEDOX
(FREIBURG, GERMANY)
Latest disclosed private funding: €20-million venture capital financing backed by Iris Capital, eCAPITAL and Wecken & Cie in April 2018

CENTAGE CORP
(NATICK, MASS.)
Latest disclosed private funding: US$13-million venture financing led by TVC Capital in February 2019

arranged after months of outreach efforts by the company. "If we had just closed a $100-million round of funding, how much more interested would you be in writing about us?" His point is that business media treat those investment dollars as the only points on the board that matter.

Fair enough, but it's not just the media that are biased. Companies that raise outside money have cachet—it's a plot point in their narrative that matters to prospective employees and customers. Some prospective employees have hesitated to join Prophix out of concern the company hasn't inked a big equity financing deal. And when Prophix tried to raise debt financing, Silicon Valley Bank turned it down—the financial institution won't lend unless there's an outside equity partner to hold the company accountable, says Ajmera. "I keep having these conversations where people are like, 'Oh, you haven't raised capital, therefore clearly something is wrong,'" he says. (The company did borrow $10 million this year from CIBC and the Business Development Bank of Canada.)

Of course, companies that raise money also get to spend it. They don't have to be efficient; we live in a growth-at-all-costs era. Software companies are valued more for their ability to expand revenues than turn profits. While Prophix spends about 45% of revenue on sales and marketing, its rivals outlay twice as much.

Competitors also go after Prophix's employees. About five years ago, the company lost 40% of its sales staff to better-paying rivals. One sales rep who was under performance review left for a rival that offered him a $150,000 salary and $150,000 bonus, nearly double his pay. "If I run out and say, okay, I'm going to give everyone a $50,000 to $100,000 raise, I'll put the company out of business," says Ajmera.

But is Prophix being too conservative? "If you're in a cycle of industry hyper-competitiveness, it's a land grab," says Mike Wessinger, CEO of PointClickCare, which has become one of Canada's largest software companies while backed by U.S. private capital firms. "Bootstrapping is fine in the early days when you're figuring out the category and product-market fit. It drives some great discipline in the organization, and not giving up too much control makes sense. But if your rival just raised $100 million to go after the market, and you don't, you're at a serious disadvantage."

David Greenberg from JMI, which backed Adaptive Insights, argues the heavy upfront marketing costs are worth it in the CPM space: "It's a big market, so the cost to win awareness and deals is higher than in other sectors." More important, customers tend to stay with vendors a long time. "Spending two years of revenue to land a customer feels relatively expensive to somebody who's bootstrapping," he says. "But the view would be over time we'll get 20 years of revenue. Effectively the lifetime value of the customer justifies a big investment to acquire them. We, and others, decided it's very worth doing that."

On the other hand, private capital-fuelled growth can hurt company culture. Prophix prides itself on keeping its workforce motivated as competition heated up. Ajmera's employees "are looking for meaningful work, camaraderie, consistency, balance in their lives," he says. There are other ways to attract and retain people as well, he adds, including a pool of profits set aside for donation to employees' pet causes.

Another factor favouring the bootstrapped company: If the economy pitches downward, many of Prophix's high-spending rivals could see revenue growth curtailed, forcing them to cut costs. At that point, Barber says, private equity firms might be more interested in firms like Prophix with decent economics that can sustain slower growth—and maybe the ability to snap up weakened competitors.

That's why he and Ajmera have started attending investment conferences in the past two years. They want to pick up industry intelligence and maintain warm relations with financiers. They may still need to tap those resources—but on Prophix's terms, when the time is right. "They may look up and say, 'Hey, these guys have been going for a long time, there are no other institutional investors, this is a very attractive company for us to invest in,'" says Barber. "It could actually be very positive for us."

IT TAKES 2020 VISION TO SPOT AN OPPORTUNITY

WE ASKED ENTREPRENEURS, CEOS AND THOUGHT LEADERS TO TELL US THE POLICIES, PRODUCTS AND TRENDS THAT COULD GIVE CANADA AN EDGE IN THE COMING YEAR. HERE'S WHAT THEY TOLD US

FOCUS ON COMMERCIALIZATION

Arlene Dickinson, CEO of Venture Communications and investor on Dragons' Den

"Canada has, for decades, been a hotbed for research and innovation. The last four years alone, the federal government has provided more than $10 billion for science and research. The outcomes of this investment speak for themselves—we are delivering world-class research and innovating in industries that have traditionally been ignored.

Where we've lagged is in a focus on commercialization and taking our products to the domestic and international markets. What we're seeing, time and time again, is government-funded research developing a terrific idea and then watching as a foreign [corporation] swoops in, grabs it for a low price, commercializes it and sells it back to Canadian taxpayers who funded it in the first place. The biggest opportunity for Canadian businesses in 2020 is to hone in on commercialization. Spend as much time and money on getting your product to consumers as you are developing it."

Grow globally

Mallorie Brodie, CEO of Bridgit, maker of workforce management software

"Canadian companies have typically been more conservative than their European or American counterparts when expanding to other parts of the world, but prioritizing a global strategy and stepping outside your comfort zone going into next year can present a major growth opportunity. My advice to businesses with competitors in one of those two markets would be to really focus on a global plan because businesses in Europe and the U.S. are already tapping into that part of the market."

THINK ABOUT HIGH-TECH FARMING

Michael Litt, CEO of Vidyard, a video platform

"Despite Canada's land mass, we actually have a fairly small portion of land—about 7%— dedicated to agriculture. This is in part due to soil quality, climate, and geology, which means we need to extract more efficiency from the land for food. I'm seeing a wave of companies in this space, some of which are combining a deep understanding of the internet of things and machine learning to drive outsized efficiency in things like the supply chain. A good example of this is systemizing the way feed mills accurately determine when farmer feed supply (for livestock) is, or isn't, waning."

Use inclusive marketing

Joanna Griffiths, founder and CEO of intimates brand Knix

"The biggest opportunity for Canadian businesses in 2020 is inclusive marketing. To truly connect with your customers, it's imperative that they feel seen. In particular there is one group that is often overlooked and underrepresented, especially in categories like apparel—baby boomers. Not only do they outnumber every other generation in Canada—they have spending power, are interested in new products and services and are often overshadowed in favour of the millennials and Gen Xers."

EDUCATE YOUR WORKFORCE

Bharat Masrani, group president and CEO, TD Bank Group

"It's all about talent. We have a huge opportunity in Canada to lead in the next decade. We are innovating at scale and creating new, high-paying jobs that are powering Canadian businesses on the world stage. However, to maintain our momentum and capture future growth we must invest in building a future-focused, competitive workforce, with the skills and expertise needed for tomorrow. Canada's world-class schools and universities are a strength we should leverage, and while these institutions and our governments naturally have a role to play, businesses can't sit on the sidelines and hope

PHOTOGRAPHS (GRIFFITHS) GALIT RODAN/THE GLOBE AND MAIL; (MASRANI) GALIT RODAN/BLOOMBERG; (VERKINDT) MARK BLINCH/GLOBE AND MAIL; (RAFATI) PETER HOLST

MIX MEDICINE AND MACHINE LEARNING

Dr. Joshua Landy, co-founder and chief medical officer at Figure 1

"My suggestion is to find types of [medical data] that have a rules-based approach—for example, sleep studies or stress tests—and develop machine learning approaches that take the load from doctors. With an aging population and increasing demands on our health care system, a tool that can quickly point out the abnormal from the normal could save clinicians hours collectively in their day. Sell your software as a service to let doctors do a day's work in an hour. The doctors win with reduced workload, the patients win with more face time in clinic, and you win because you had an amazing idea and knew how to capitalize."

See our advantage in artificial intelligence

Ed Clark, chair of the Vector Institute for Artificial Intelligence

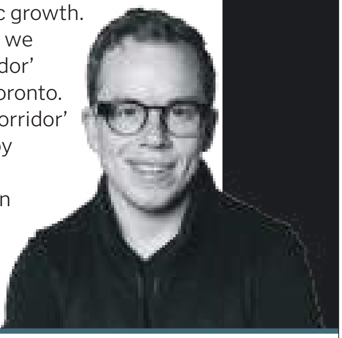
"Canadian companies can enhance their productivity by participating in one of the most transformational shifts in business: the application and development of machine learning. Companies—regardless of sector—will find that machine learning provides a new, automated solution to many challenging problems that require radically enhanced prediction, classification, detection or optimization capabilities. They should also take advantage of one uniquely Canadian edge: proximity to world-leading AI centres. Toronto, Montreal, Edmonton and Vancouver are full of enthusiastic machine-learning researchers and students who love data and problems. Getting involved in these communities will accelerate learning, provide exposure to possibilities, and help companies grasp the greatest opportunity of 2020 and the next decade."

INVEST IN HIGH-SPEED RAIL

Stephen Lake, CEO of Focals by North

"Much has been made of the transportation of natural resources across the country. However, very little attention is paid to the transportation of human resources. Canada needs a massive investment in electric high-speed rail between key population centres. Connecting cities like Calgary and Edmonton or Kitchener and Toronto could have a hugely transformative impact on economic growth.

Where I live in Kitchener, Ontario, we often talk about a 'technology corridor' between Kitchener-Waterloo and Toronto. However, it is foolish to call this a 'corridor' when the two cities are separated by a 100-km parking lot known as the 401. Without modern transportation infrastructure we will never build a modern economy with the quality of life to which we aspire."



BUILD AN ETHICAL SUPPLY CHAIN

Nicole Verkindt, CEO of Offset Market Exchange (OMX)

"The biggest opportunity for Canadian businesses will be to really know who is in their supply chains and to be leaders around the world on environmental, social and governance (ESG) goals. Consumers and investors in particular want to know who the suppliers are in the organizations that they buy from and invest in. Over 70% of most companies' spend is in their supply chain, so they can have significant leverage by using their buying power to have an impact."

this challenge solves itself. For example, we need to help mid-career employees —the millions of Canadians who have helped us build our leading corporations—transition through this time of change, acquire new skills, and continue their active and successful participation in the economy of tomorrow. This will both maintain institutional know-how and create new career paths for hundreds of thousands of Canadians."

Close the pay gap

Shahrzad Rafati, founder & CEO, BroadbandTV

"It gives me great pride to say that equal is equal in our business. The pay disparity across our male and female employees is 0%. Forty-three percent of our employees are female, and 46% of our managers are female managers. Unfortunately, there aren't enough Canadian businesses that can say that, and 2020 is the year to make it a reality. In Canada, it could add $150 billion to Canada's GDP by 2026 if women played an identical role to men in the labour market. Our company is proof that gender balance isn't just the right thing to do morally, it's also good for business. We owe a lot of our success to our diverse workforce, and we've managed to create a balanced team within the media technology sector, which historically has struggled with gender balance. In 2020, business leaders should create annual equality goals, in the same way they set financial goals. It's time to close the gap."

WILL DANOFF

VICE-PRESIDENT AND PORTFOLIO MANAGER
FIDELITY INVESTMENTS, BOSTON

It isn't easy to be nimble when you're running one of the world's largest mutual funds. Yet Will Danoff, who manages the sprawling US$116-billion Fidelity Contrafund (for American investors) has beaten the index handily since taking over as manager in 1990. In Canada, his Fidelity Insights Class fund of mostly U.S. stocks has also outperformed over its nearly three-year life. We asked the 59-year-old manager why he's still a fan of Facebook Inc., despite controversy over data-privacy breaches, and what draws him to gold stocks and other astute plays.

What's your strategy for beating the market over time?
I run Contrafund with a growth bias. I invest in companies that are going to have better earnings per share in three to five years, and I like to cast a wide net. I also look for turnarounds where there is a catalyst, such as new management, that can accelerate earnings. My Canadian fund is run similarly, but some of the same names, such as software companies Okta and MongoDB, are bigger bets.

Unicorn IPOs have had a rough reception this year. What drew you to Pinterest when it was private?
I first invested in Pinterest in 2013, at around a US$3-billion valuation. Users pin pictures of things they find attractive, such as fashion or housewares. Monthly active users were growing rapidly, and I felt the CEO was building an enduring brand. There was commercial intent [from ads] that caught my eye. However, Facebook's Instagram is now a competitive threat. Pinterest's valuation has grown fivefold, so we are looking good. But it is still not profitable, although it is growing.

Where do you see opportunities now?
I like technology companies that are global, are highly profitable and generate a lot of free cash flow. Microsoft, Facebook, Amazon and Salesforce are big commitments. Health care, particularly medical devices, is another opportunity. The Chinese want world-class health care, so they are paying for analytical instruments from companies like Danaher, and other devices from Abbott Laboratories and Baxter International.

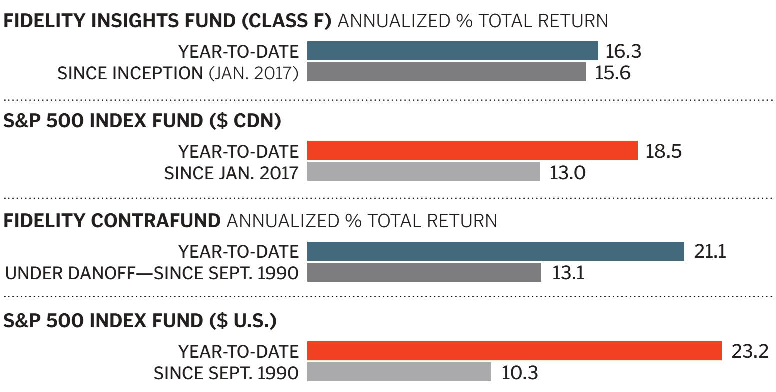
Facebook is a big holding. What's the attraction?
I don't know if I would be as bullish if it didn't have Instagram, which is a white-hot asset. Between Facebook, Instagram, WhatsApp and Messenger, the company has something like 2.7 billion monthly active users. I understand that politicians want to break up Facebook, but if it's so bad, why do so many people go into its properties? It is approaching over US$70 billion in annual [advertising] revenue in 2019 and is still growing at 30% a year. That's impressive.

Why do you own gold stocks?
Investing in gold pays off once in a while. Gold is a tough industry, so I want to own the best of breed. I like companies with really good management teams that can grow earnings regardless of the commodity price. I met Pierre Lassonde and Seymour Schulich, who co-founded Franco-Nevada, in the early 1990s. They are two of the best gold executives I have ever met. The company does a good job negotiating lucrative royalty deals. I own the stock, as well as Kirkland Lake Gold, B2Gold and Barrick Gold.

What have been your best and worst investments?
Apple has been a big contributor to Contrafund. Its turnaround was phenomenally powerful after founder Steve Jobs returned in 1997. The iPhone turned out to be a revolutionary product. Apple became a big position, and I rode it for most of the ride. I did cut back [on the shares] after he died, but that was a mistake. His successor, Tim Cook, has done a phenomenal job. When I was an analyst in the 1980s, one of my biggest mistakes was to recommend Campeau Corp. It used leveraged buyouts to acquire department stores, but it went bankrupt. When business is good, leverage accelerates your earnings. When business is bad, it crushes earnings.

Do you have a mentor?
I was an analyst on the Fidelity Magellan Fund when it was run by Peter Lynch. He is a great investor and wrote *One Up on Wall Street*. When my fund got beaten up recently, I reached out to him. He always says, "Stay on the offensive. Your best ideas are in the fund. It's just a matter of doubling down on the good stories."

/Shirley Won



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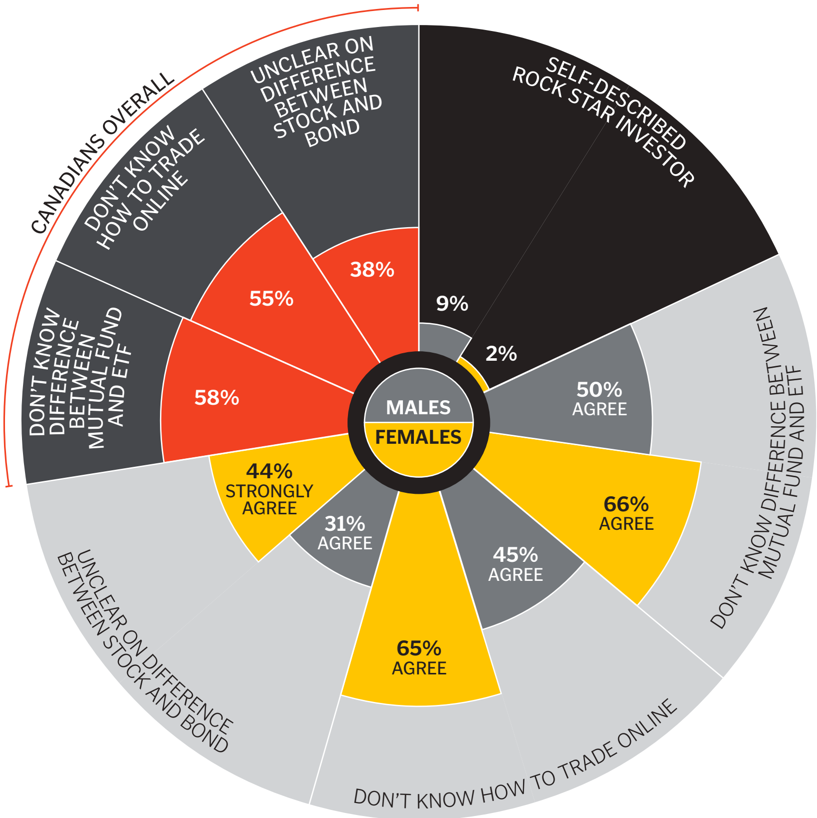

DECODER

WHY IT'S BETTER NOT TO INVEST LIKE A ROCK STAR

Are women and men different when it comes to assessing their own investing abilities? A recent survey by TD Bank probed confidence levels among Canadian investors and found that the answer is a resounding yes. But confidence and success aren't necessarily linked.

Overall, just 6% of respondents identified themselves as "rock star" investors. Break the survey's numbers down by gender, and a profound split emerges. Among males, 9% think of themselves as rock stars, compared with just 2% of females.

The survey also underscored different perceptions of knowledge: 44% of women said they didn't know the difference between a stock and a bond, but only 31% of men acknowledged this gap in their understanding.

The differences aren't a surprise to Ingrid Macintosh, vice-president and head of sales enablement at TD Asset Management. "There are a number of reasons women's financial literacy and confidence aren't where they could be," she says.

She can rattle off several possible factors. When women are married to a man, investment decision making is often left to the husband. And when women are single, they are less likely to have a source for advice and knowledge. If they leave the workforce to raise children, they often step away from financial matters as well. Women can also approach investing with different goals.

"Women are more likely to be concerned with how their investment decisions are going to allow them to reach their goals: 'This is the level of comfort I want to have. This is how I want to provide for my family.' Whereas men tend to be more focused on, 'What is my rate of return?' There is a competitiveness there," Macintosh says.

Curiously, though, some evidence suggests women are better investors. The more often you trade, the lower your returns—and women trade less frequently because they are less likely to overreact to short-term concerns.

In a 2001 paper in The Quarterly Journal of Economics, Brad Barber, a finance professor at UC Davis Graduate School of Management in California, and Terrance Odean, a finance professor at the Haas School of Business at UC Berkeley, found that men trade 45% more often than women and generate returns that are nearly a percentage point lower, per year.

The professors wrote: "We believe there is a simple and powerful explanation for high levels of trading on financial markets: overconfidence." **/David Berman**

GAME PLAN

Do you need a private foundation?

Who should start a foundation?
They're not just for the ultra-wealthy. Most private foundations have less than $5 million in assets, according to James Temple, chief corporate responsibility officer for PwC Canada and a member of the Philanthropic Foundations Canada (PFC) board.

What's a private foundation?
Private foundations are funded by a single person or family who wants to be actively involved in the entity's governance. Foundations require charitable status from the Canada Revenue Agency, an application process that typically takes between six and 12 months and, according to PFC, can cost $5,000 to $25,000, depending on the complexity of the foundation.

What's the upside?
Foundations don't just offer a way to give back to the community—they can provide tax benefits. Foundations also make it possible to extend your charitable gift planning over months, years or even decades, says Jennifer Button, head of philanthropic advisory services at RBC Wealth Management.

Is there another option?
You can also decide to give to a public foundation. In this case, you can create a donor-advised fund (DAF) that the foundation manages for you. You would open a DAF with an organization like Tides Canada or Canada Gives, make a donation and receive an immediate tax deduction. Then you determine which charities to support, and an investment manager or adviser handles the work.

The benefits of a public foundation are speed, ease and cost: It doesn't take long to get set up, you don't have to worry about any administration, from due diligence to tax receipts, and startup fees are smaller—or sometimes non-existent.

Once I've chosen, do I have to stick with my decision?
No. Choosing one doesn't mean the other is off the table. "Often, [clients] will start with a public foundation as a tax-planning approach," says Button. "If they need a tax receipt by the end of 2019, then that's something they could get set up this year and get the tax benefit this year. And then they may still want to explore a private foundation down the road." **/Stacy Lee Kong**

LEXPERT®

SPECIAL EDITION
DECEMBER 2019

CANADA'S LEADING LITIGATION LAWYERS

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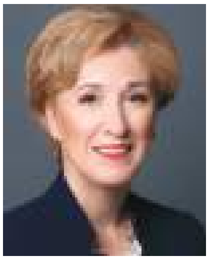

Jean Cumming
Editor-in-Chief

NEW WAYS OF RESOLUTION

In this *Lexpert/ROB Special Edition on Leading Litigation Lawyers,* we endeavour to keep you up to date on trends and issues in litigation and dispute resolution more generally. You as a client, however, may be more focused on how to get through the conflict successfully, rather than the methods and techniques your lawyers employ. Fair enough, and if that is the case for you, we invite you to go straight to the short biographies of Lexpert-ranked lawyers in this edition, and contact them as needed.

However, you might take a second look at the articles. In class actions, technology, and mediation/arbitration particularly, so much is changing that absent a degree of current awareness it would be difficult to know what questions to ask your litigation lawyer.

The ranked lawyers noted here are themselves keeping up to date, even future-oriented. Rather than fixate on the end-of-an-era aspect to change, they are embracing new methods of dispute resolution and even Artificial Intelligence in certain situations (it is perhaps hardly surprising that AI has come to Tax Litigation given the depth of data involved).

Litigation lawyers at their best are also highly skilled at effective negotiation and settlement where warranted. That may be the best reason of all for you to contact them.

LEXPERT
fortuna favet fortibus

DECEMBER 2019
Special Edition on Litigation

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KEY MEDIA

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THE ADR INSTITUTE OF CANADA HAS DRAFTED A FRAMEWORK FOR MEDIATION-ARBITRATION (MED-ARB) PROCESSES AND IS CREATING A DESIGNATION FOR MED-ARB PRACTITIONERS

By Elizabeth Raymer

The Med-Arb Option

Last July, the ADR Institute of Canada announced it had drafted a framework for mediation-arbitration (Med-Arb) processes and is creating a designation for Med-Arb practitioners, the first in Canada and believed to be the first in the world. The new framework and requirements for Med-Arb designation was expected to be revealed at ADRIC's annual conference in Victoria in November.

Med-Arb — a hybrid approach to dispute resolution that begins with mediation and, if that does not result in a settlement, sees the mediator assume the role of arbitrator and moves to a binding decision — has largely been used in family law cases, but in the past several years there has been an uptick in its use in business disputes as well.

"Over the last two years, I've done maybe 12 to 15 Med-Arb cases, compared to only a half-dozen in

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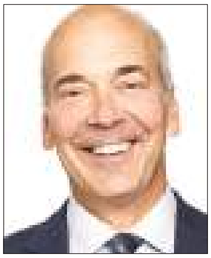

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"OVER THE LAST TWO YEARS, I'VE DONE MAYBE 12 TO 15 MED-ARB CASES, COMPARED TO ONLY A HALF-DOZEN IN THE PRECEDING 18 YEARS."

COLM BRANNIGAN
Brannigan ADR

the preceding 18 years," says Colm Brannigan, a chartered mediator and arbitrator at Brannigan ADR in Brampton, Ont.

That change has been driven by a number of factors, he says, "including lawyers who are really innovative" in looking for the best process for the best outcome for their clients. Med-Arb "allows the parties to really craft it, and maximize the potential for dispute resolution," he says, including avoiding the cost of full-blown litigation.

One characteristic of Med-Arb is that "it dramatically increases the clout of the mediator," says Linda Rothstein, a litigation partner in Paliare

Roland Rosenberg Rothstein LLP in Toronto.

"As it is often explained, it gives the mediator/arbitrator a 'hammer,'" she says. "Either the parties accept his or her recommended settlement or they will likely be worse off because the same person who is telling them they should settle will adjudicate the dispute. It increases the likelihood of settlement at mediation."

Lauren Tomasich, a litigation partner at Osler, Hoskin & Harcourt LLP in Toronto and the key contact and lead for the firm's Commercial Arbitration group, says she believes Med-Arb is a concept that's not particularly well understood.

"Some practitioners are a bit hesitant to use it," she says, for fear that disclosures that may have been made during mediation, such as potential offers, will be seen by those ultimately making the final decision, as the mediator becomes the arbitrator.

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But the more flexible approach, and arbitrators who may press settlement opportunities or procedures to narrow the issue, "help parties reach the best decisions," Tomasich says, adding that she sees Med-Arb as offering an advantage on the whole. All parties engaged in the process "have the objective to resolve clients' disputes in an efficient and effective manner."

Med-Arb can help in a situation where there are several smaller disputes, or a few key issues, which may be hived off in advance or need a merits-based consideration, says Tomasich. "Working with one individual who's both the mediator and arbitrator, and knows all the issues" can be helpful, and Med-Arb can also provide a decision in a shorter timeframe.

> **"[MED-ARB] DRAMATICALLY INCREASES THE CLOUT OF THE MEDIATOR. AS IT IS OFTEN EXPLAINED, IT GIVES THE MEDIATOR/ ARBITRATOR A 'HAMMER.'"**
>
> LINDA ROTHSTEIN
> Paliare Roland Rosenberg Rothstein LLP

"The mediator is up to speed on the facts, and for an arbitration hearing [where] evidence needs to be adduced, you can plan everything in advance," she says. "You have a decision-maker who's up to speed, and you have agreement as to how to move things forward regarding evidence and consideration on the merits. You can structure the process."

In a large construction dispute, for example, involving significant numbers of issues and much money at stake, "you could potentially figure out what might be hived off, [and] at the same time get the decision-maker up to scratch in making a decision in arbitration."

In a case where a compromise can't be achieved, moving straight to a determination is best, says Tomasich. "With a number of issues at play, and if speed is important, then I think Med-Arb could make sense."

In the business sphere, construction, condominium and commercial disputes are all well-suited to Med-Arb, Brannigan says. "Those are areas where you have a lot of cases that would be significant financially, but not necessarily enough for full-blown litigation."

It has also become common to use arbitration in shareholder disputes, Brannigan says. In many such disputes, it makes sense for clients to combine the process, which holds out the opportunity for parties to sort the dispute out, he adds.

In general, Brannigan believes that Med-Arb benefits ongoing, supplier and fixed relationships. "It's almost impossible to continue a relationship at the end of a litigation process."

Some counsel have expressed concern that the person who does the mediation should not be the arbitrator. "It's far too intimate a relationship, in mediation," to have the same person then arbitrate the matter, says litigator James Woods of Woods LLP in Montréal.

"The mediator's goal is to get the two sides to agree, and the mediator uses all sorts of strategies to get the parties together; that requires a lot of disclosure, sometimes made on the basis that it won't be disclosed to the other side," he says. "But if you've already disclosed it to the mediator," it will still be in that person's mind during arbitration.

"That person has too much baggage to act as an independent arbitrator, to decide on evidence in arbitration as opposed to what was said in mediation; there'll always be an overlay," says Woods.

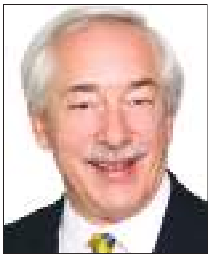
In the few times he has used Med-Arb, however, he says it has been successful for his clients.

Lawyers rightly are concerned with due process, and mixing information that is provided during mediation with evidence presented during arbitration, says Brannigan. "That can cause concern. But ... if I've gone forward [with Med-Arb] and the bulk of the dispute resolves in the mediation phase, it never goes beyond that." If it does, the mediator can work to structure the process efficiently, he says, but the parties and their lawyers must be prepared to get involved in the design.

Each situation is different and can involve different options, Brannigan notes. The first Med-Arb model is to hire a mediator-arbitrator who is the same person; the second is to hire two different people, which may be somewhat more costly but has the advantage, if desired, of separating the mediator and arbitrator functions.

The third is the opt-out model, developed in Australia, where one person acts as mediator, then as arbitrator, unless one party objects; for example, if a party believes the mediator has shown bias. In this model, even the mediator may opt out of the arbitration; but an arbitrator would already have been selected as a backup. "You've designed all that at the front end.

"I started in the 'more disadvantages than advantages' camp," Brannigan says, "but over the years I've seen that it shouldn't be used in every case, but should be looked at as an option. Pick an arbitrator who has the knowledge and experience to do this. There is lots of potential. The costs of



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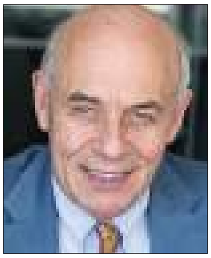

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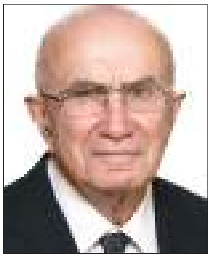

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going through full mediation and full arbitration, or litigation in court, are disproportionate to the potential gain."

Arbitration when it's well-designed can be very effective, Brannigan says, but the two processes — mediation and arbitration — when put together are even better: "effective, positive and encouraging people in their arbitration."

Seventy to 80 per cent of cases settle in the mediation phase of Med-Arb, he says, and the process can be achieved in six months as opposed to potentially years of litigation in court. "Almost anywhere you can mediate or arbitrate … you put together a process that's more efficient, with less human cost and a speedier process. Most people are looking for a common-sense resolution to a dispute."

> **"YOU HAVE A DECISION-MAKER WHO'S UP TO SPEED, AND YOU HAVE AGREEMENT AS TO HOW TO MOVE THINGS FORWARD REGARDING EVIDENCE AND CONSIDERATION ON THE MERITS. YOU CAN STRUCTURE THE PROCESS."**
>
> LAUREN TOMASICH
> Osler, Hoskin & Harcourt LLP

If rules are put in place to govern Med-Arb, "you might even see more of it, because people have a ready-made process they can use going forward," says Tomasich.

"It's an interesting initiative, and quite novel; in circumstances where I've seen Med-Arb used, it's been rather ad hoc, and has come about as a dispute has progressed," she says. But if there was an established body of rules and individuals who were formally recognized as skilled in mediation and/or arbitration, "I could see this [Med-Arb] then being proposed up front: an effective result for the client, [done] as cost-effectively as possible. The more options you have, the more strategic you can be in the dispute resolution process."

Describing herself as a proponent of arbitration, Tomasich says she has seen judges on the Commercial List bring in individuals prior to hearing a case and tell hem how they think things should be done.

"I actually think I've gotten to a better resolution based on the initiative of judges," she says. "To the extent we can be as strategic and flexible as possible, it's [simply] a question of identifying when [Med-Arb is] appropriate."

A NATIONALLY COORDINATED CLASS-ACTION SYSTEM REMAINS ELUSIVE AS PROVINCIAL CLASS ACTIONS CONFLICT AND COME TO DIFFERENT CONCLUSIONS

By Lexpert

Class Division

As lawyers Robert Carson, Olivia Dixon and Jessica Harding wrote in Osler, Hoskin & Harcourt LLP's "US Guide to Class Actions in Canada": "Most class actions in Canada are litigated in provincial courts, and there are differences among the provincial approaches, particularly regarding the class certification procedure, the opt-in or opt-out mechanisms and the potential for adverse costs awards."

Predicting which provincial jurisdiction is more sympathetic for plaintiffs — or defendants — has been going on since Canadian class-action litigation was brought into force. It is too close to call. And really beside the point. For critics of the system, the fact that these actions can go on relatively independently puts pressures on litigants and slows down the course of justice.

In early September, the Law Commission of Ontario's (LCO) *Final Report, Class Actions: Objectives, Experiences and Reforms* is the first independent, evidence-based and comprehensive review of class actions in Ontario since the enactment of the *Class Proceedings Act* (CPA) in 1992. Included in its recommendations was that there be "New provisions to better manage carriage hear-

PHOTO: SHUTTERSTOCK

ings and multijurisdictional class actions."

Sounds sensible enough. In the view of John Campion of Gardiner Roberts LLP, "Cross-border provincial class-action litigation, like inter-province free trade, is a much-desired goal. It is possible to design a system to meet all local distinctions without doing injustice. The blockage is self-interest but the benefits are huge for business and citizens variously seeking justice, compensation and exoneration."

According to law firm Lenczner Slaght's "Class Actions in Canada 2019," "While certain provinces including Ontario have a disproportionate share of class actions in Canada, class actions legislation exists across the country. National classes that include residents from across Canada are

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"AS MATTERS NOW STAND, MULTIJURISDICTIONAL CLASS ACTIONS ARE INEFFICIENT AND LEAD TO DELAY AND SUBOPTIMAL OUTCOMES. CAUTION SHOULD BE HAD HOWEVER TO EXPECT TOO MUCH FROM A SUBSTANTIVE LAW PERSPECTIVE GIVEN THE LIMITS ON PROVINCIAL JURISDICTION."

CRAWFORD SMITH
Lax O'Sullivan Lisus Gottlieb LLP

possible and often advanced. However, it is also common for plaintiff's counsel to advance parallel claims in different courts across the country. This can give rise to coordination problems."

And yet the achievement of a nationally coordinated class-action system eludes us.

Says Katherine Kay of Stikeman Elliott LLP in Toronto, "there seems to be no solution to it" as yet, even though "there is a protocol from the CBA." Cases move forward in more than one province that overlap substantially.

The CBA Protocol to which Kay is referring was described by the Canadian Bar Association in the 2011 "Class Actions: Baby Steps Towards National Coordination" by Colin Stevenson: The CBA "created the National Class Action database in 2007 in an attempt to deal with issues arising from multijurisdictional class actions. Initially this was a two-year pilot project by the Civil Litigation Section based on a recommendation by the Uniform Law Conference of Canada's working group on multijurisdictional class actions. It has now been extended indefinitely.

"The concept was that counsel initiating a class action anywhere in the country would register their pleadings on a CBA regulated national database. The database would allow counsel involved in class actions, and the public, to more easily determine whether the issues to be litigated

were already before a court, whether in another province or the same one.

"Counsel could then determine how best to coordinate potentially overlapping actions. The database would, in theory, also allow members of the public to determine more readily in which jurisdiction their interests were being looked after and reduce confusion about where an individual could file for compensation, whether in a settlement or otherwise.

"Although the database contemplates plaintiffs will file pleadings and the certification motion, there has not been universal acceptance of this requirement, notwithstanding practice directions requiring these steps to be taken in BC, Alberta, Ontario, Québec, Saskatchewan, Yukon, Newfoundland and the Federal Court. This lack of compliance has yet to be addressed by the Task Force."

In 2018, the CBA re-affirmed its Protocol, in summary urging courts to follow the coordination steps in it (see www.cba.org/getattachment/Our-Work/Resolutions/Resolutions/2018/Class-Action-Judicial-Protocols-(1)/18-03-A.pdf).

Not surprisingly, the American experience with class actions is longer and has more of a federal angle. Lawyers Margaret Zwisler, Christopher Yates, William Sherman, William Rawson and William Rinner of Latham & Watkins LLP explain: "After many years of growth in the use of the class action device in both federal and state courts, the US Congress and US Supreme Court have both acted to attempt to limit class actions, and additional bills are pending before the US Congress that would impose further limitations.

"In 2005, the US Congress passed the Class Action Fairness Act, 28 U.S.C. § 1332(d) (CAFA). CAFA expands federal jurisdiction over class actions, to reduce inconsistency among class actions litigated in the individual states, and provides for greater scrutiny of class action settlements and the payment of attorneys' fees.

"In addition, recent decisions of the US Supreme Court have addressed the requirements for class certification. For example, in *Wal-Mart Stores, Inc. v Dukes* (131 S. Ct. 2541 (2011)), the Supreme Court overturned a grant of certification to a nationwide class of 1.5 million female Wal-Mart employees because the class failed to show that the suit involved common issues where there was no single discriminatory policy, but rather numerous independent decisions."

According to the Lenczner Slaght LLP report: "Importantly, there is no Canadian analog to the American multidistrict litigation system, which allows US Federal Courts to

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coordinate and case manage a variety of proceedings from across the country relating to the same subject matter. In addition to allowing for coordination of class actions, the American MDL system can also allow for case management of large numbers of individual cases in parallel. By allowing plaintiff's counsel to advance large numbers of similar cases in parallel, challenging or complex cases that would not be cost effective in isolation, particularly mass torts cases, become economically feasible.

"In Canada, because there is no equivalent to the MDL system, it is much rarer for plaintiff's counsel to bring large numbers of individual cases in mass torts situations. Rather, such cases are typically brought as class actions; a failure to obtain certification often results in the end of the proceeding."

Kay and her colleagues aren't commenting on the effectiveness of the Protocol in the US system one way or another. But she and others are saying maybe it is time for more coordination among

"THE CURRENT SYSTEM MAY NOT BE PERFECT, BUT A NATIONAL REGIME TO MANAGE CLASS ACTIONS MIGHT JUST ADD ANOTHER LAYER OF BUREAUCRACY TO THE MANAGEMENT OF CLASS ACTIONS."

SONIA BJORKQUIST
Osler, Hoskin & Harcourt LLP

class actions in various jurisdictions.

Even if plaintiffs' counsel select a jurisdiction on which to focus, there is a fair amount of randomness and unpredictability to the process. Moreover, class actions in Canada often follow upon US actions.

According to Kirk Baert of Koskie Minsky LLP in Toronto, "Various committees across the country have discussed this problem numerous times. No changes have ever been made that have accomplished anything. The same problems occur again and again. The US does not have the same problem. Most American class actions of any size or complexity are litigated in their federal courts where their jurisdiction is nationwide. Most Canadian class actions are litigated in the provincial superior courts, which do not have nationwide jurisdiction."

Where is the harm in not having a nationwide program? Luis Sarabia of Davies Ward Phillips & Vineberg LLP in Toronto says: "Dealing with class actions on a province-by-province basis is expensive, inconvenient and inefficient for both Plaintiffs and Defendants alike. It would be far better to have a national approach to these types of legal proceedings. Unfortunately, our Constitution arguably does not allow for the creation of a mandatory, nationwide process like the process that exists in the United States.

"The only way to deal with this in a comprehensive and predictable manner is to have all of the provinces voluntarily enter into an agreement for the conduct of these types of proceedings. An example of a similar effort is the emerging agreement among some provinces for the creation of a national securities regulator. The difficulty has proven to be getting all the provinces on side with a common approach. Unfortunately, there does not seem to be an adequate solution in sight at this time."

Most class actions settle. And they do so with practical cooperation among provincial actors and with a view to what is occurring in the US and other jurisdictions. After all, the issues are largely the same throughout. As the Lenczner Slaght report sets out: "While common issues trials are becoming more common in Canada, most class actions still settle at some stage of the proceedings. Because the representative plaintiff is advancing claims on behalf of an entire class of persons, the representative plaintiff has no power on his or her own to compromise those claims. Rather, any settlement agreement reached must be approved by the Court hearing the proceeding."

Crawford Smith of Lax O'Sullivan Lisus Gottlieb LLP in Toronto offers this comment: "I agree with the Law Commission of Ontario's final report on Class Actions that improvements need to be made. As matters now stand, multijurisdictional class actions are inefficient and lead to delay and suboptimal outcomes. Caution should be had however to expect too much from a substantive law perspective given the limits on provincial jurisdiction."

Would a reformed Canadian system start with a nod to the US regime? Smith says: "I generally agree with the LCO that the CPA should be amended to reflect the Uniform Law Conference of Canada's *Uniform Class Proceedings Act* 2006, and to harmonize with Alberta, BC and Saskatchewan multijurisdictional class-action legislation."

But he cautions that training needs to come with that: "There will also need to be considerable judicial training as the expertise with these types of cases varies widely across the country."

Sonia Bjorkquist of Osler, Hoskin & Harcourt LLP in Toronto puts forward by email ex-

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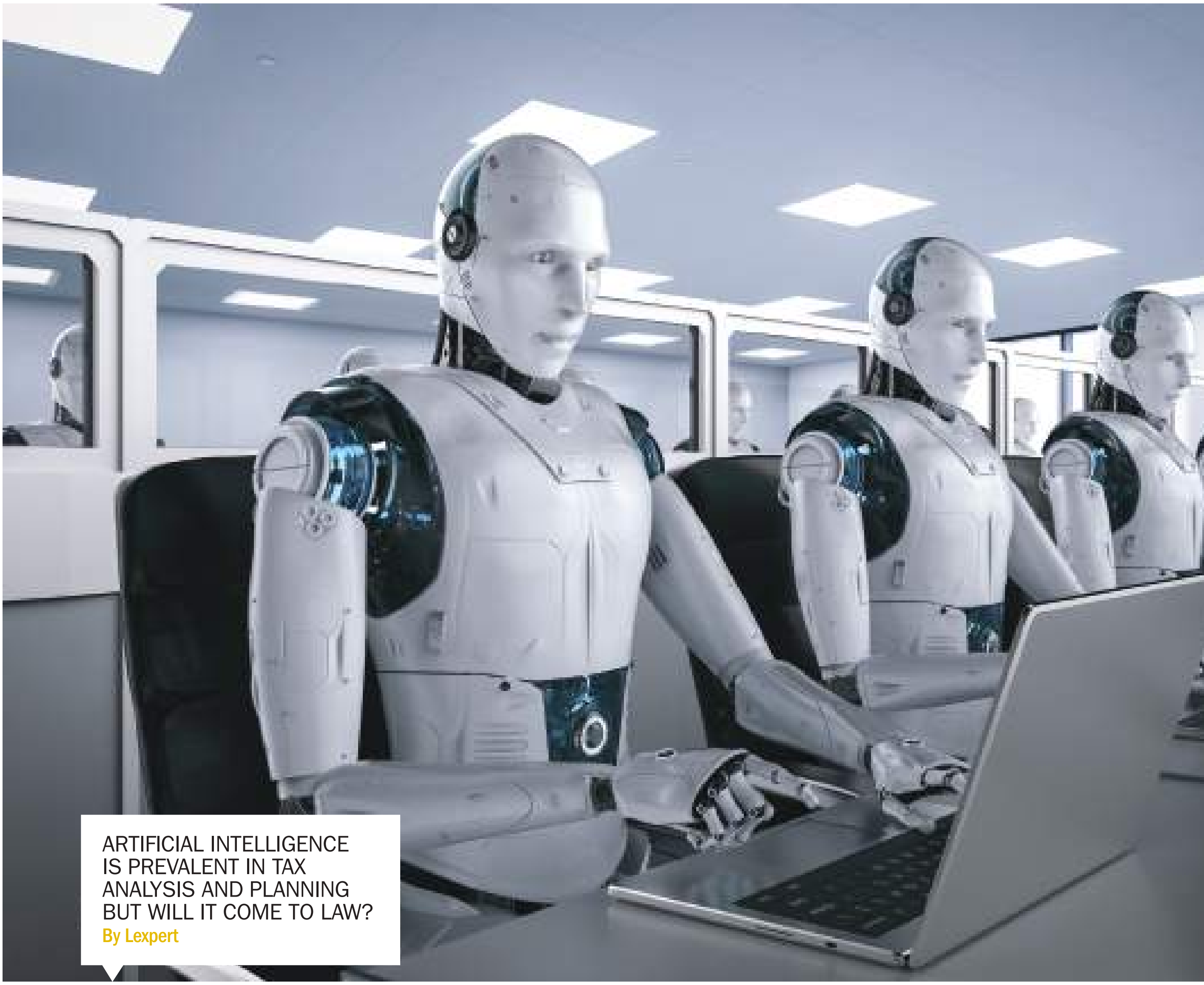
"VARIOUS COMMITTEES ACROSS THE COUNTRY HAVE DISCUSSED THIS PROBLEM NUMEROUS TIMES. NO CHANGES HAVE EVER BEEN MADE THAT HAVE ACCOMPLISHED ANYTHING. THE SAME PROBLEMS OCCUR AGAIN AND AGAIN."

KIRK BAERT
Koskie Minsky LLP

amples of ways in which the Canadian system has adapted and cautions that adopting a US-like system might potentially add a layer of bureaucracy: "As the class-action landscape in Canada has matured, the Canadian courts have adapted reasonably well to the challenges of managing multijurisdictional class actions:

- Courts are using the tools available to manage national class actions and avoid overlap with other provinces. These include:
  – Joint settlement approval hearings like in *Endean* (three judges heard settlement together).
  – Judicial protocols from the Canadian Bar Association that facilitate court-to-court communications. The 2018 revised protocol promotes greater coordination of class-action proceedings.
- Superior courts in the provinces have been vigilant about preventing forum shopping — for example in *BCE Inc. v. Gillis*, the Nova Scotia Court of Appeal permanently stayed a class action when a similar class action had already been litigated in Saskatchewan.
- The current system may not be perfect, but a national regime to manage class actions might just add another layer of bureaucracy to the management of class actions.
- A truly national system could not ignore the division of powers and the provinces' legislative authority over many matters affecting class actions. If it's not sufficiently nuanced, a national system could actually complicate issues where separate class actions are necessary and appropriate, in light of differences in legislation.
- The US MDL system is far from perfect as well, and now it is overburdened.
  – It does not have a screening mechanism for weeding out unmeritorious cases (though there is of course the screening mechanism of certification).
  – It has morphed from a pretrial management process to a platform for national settlements, with the unintended consequence of encouraging plaintiff firms to advance unmeritorious claims."

In other words, to be continued, but cautiously.



ARTIFICIAL INTELLIGENCE IS PREVALENT IN TAX ANALYSIS AND PLANNING BUT WILL IT COME TO LAW?

By Lexpert

AI in Tax Law

Revenue Canada acknowledges it is using Artificial Intelligence: "Artificial intelligence (AI) technologies offer promise for improving how the Government of Canada serves Canadians. As we explore the use of AI in government programs and services, we are ensuring it is governed by clear values, ethics, and laws" (www.canada.ca/en/government/system/digital-government/modern-emerging-technologies/responsible-use-ai.html).

What's more, Revenue Canada has a mission statement and four guiding principles with respect to the use of AI: "The Government of Canada has released the Strategic Plan for Information Management (IM) and Information Technology (IT) 2017 to 2021, an update to the inaugural Government of Canada Information Technology Strategic Plan 2016-2020, published in June 2016 ....

"It creates a framework and sets direction for the GC to become an open and service-oriented organization that provides programs and services to citizens and businesses in simple, modern and effective ways that are optimized for digital and available anytime, anywhere and from any device.

"Consistent with the GC's first Strategic Plan, the following 4 strategic goals

PHOTO: SHUTTERSTOCK

frame the direction for the GC: service, value, security and agility.

"Four strategic areas of action will achieve these goals over the next four years and beyond. Each area of focus — Service, Manage, Secure, and Community — details specific actions and activities that are underway or that represent new enterprise directions.

- Service focuses on building and evolving IM-IT foundational elements, including processes, practices and infrastructure, to enable implementation of current capabilities, technologies and solutions.
- Manage addresses how the management and governance of IM-IT across government ensure that IM-IT investments take advantage of economies of scale, demonstrate value and are sustainable.
- Security focuses on safeguarding sensitive government data and ensuring that Canadians who access online services can trust the government with their personal information.
- Community focuses on building a high-performing IM-IT workforce that has the skills and mindset needed to work effectively in an open digital environment and ensuring that public service employees have a modern workplace, professional development and the IM-IT tools they need to do their jobs."

If Revenue Canada is using AI, what about taxpayers, especially corporate taxpayers? Let's start with an academic premise: The abstract for academic Blazej Kuzniacki's "The Marriage of Artificial Intelligence and Tax Law: Past, Present, and Future," (available at SSRN: https://ssrn.com/abstract=3323867) goes as follows:

"According to recent research's prediction, global GDP could be up to 14% higher in 2030 as a result of various artificial intelligence (AI) applications, which is the equivalent of an additional $15.7 trillion. It makes AI oriented sectors the

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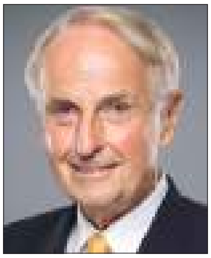

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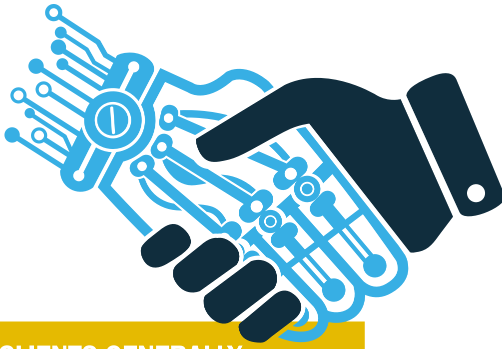
biggest commercial opportunity in the currently supersonic fast changing economy. This contribution, perhaps surprisingly, does not aim to propose how to tax profits generated by AI industries. The author rather takes an attempt to depict a potential of AI technologies to be applied to tax law. Let us see if AI can be happily married with tax law in order to get the best of both worlds."

Arguably, Tax Law is one of the areas most susceptible to AI solutions. This may owe to the availability of AI solutions in Tax administration



"CLIENTS GENERALLY DON'T COME TO US TO DETERMINE WHAT THE RIGHT ANSWER IS, THEY COME TO US TO FIGURE OUT HOW TO GET TO THE ANSWER THEY WANT. THAT INVOLVES A WHOLE HOST OF SKILLS INCLUDING UNDERSTANDING THE POLICY AND INTENT OF THE LEGISLATION, UNDERSTANDING DIFFERENT WAYS TO ACHIEVE DIFFERENT RESULTS, AND A WHOLE LOT OF LATERAL THINKING."

ROBERT KREKLEWETZ
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and management itself. As Deloitte LLP's website says: "To manage the changing tax landscape, alongside the increased use of analytics, tax authorities and tax advisors are starting to explore the possibilities for deploying sophisticated data analytics and Artificial Intelligence (AI) in tax to facilitate compliance and assist professionals and their clients with commonly encountered questions. While data analytics has received a lot of attention, Artificial Intelligence in tax is a relatively new phenomenon."

Not everyone is jumping on this bandwagon. Kuzniacki wrote on January 25, 2019: "All of the features that are indispensable to lawyers ... have until recently also appeared to be extremely resistant to AI. That is to say, the complexity, uncertainty and dynamic nature of legal reasoning have presented significant barriers to the development of commercial AI applications. On the supply side, moreover, developing an AI program applicable to law is very time consuming and extremely expensive. On the demand side, the cost-effectiveness of a stand-alone computer equipped with the traditional applications for the legal professions (e.g. statutory and case law databases, commentaries to laws and cases) far exceed the potential gains of investing in the development of an AI program capable of applying the law."

Kuzniacki addressed the "Present and the Future: Hopefully just Augmenting but Never Replacing of Tax Lawyers" accordingly: "In September 2013, Frey and Osborne from the University of Oxford published the results of their research on the probability of computerisation (i.e. job automation by means of computer-controlled equipment) in 702 detailed occupations in the US, including legal professionals (lawyers). To estimate probability they used a novel methodology using a Gaussian process classifier, which appears in many contexts such as statistics, probability theory and machine learning. Pivotal to the current study is their finding that lawyers are generally not fully computerisable, or, so to say, they belong to the group of least-computerisable occupations with a probability of only 3.5 per cent of being more or less replaced by automatized computer systems.

"By comparison, tax examiners and collectors, and revenue agents were classified as fully computerisable with 93 per cent probability, which is more than for taxi drivers (89 per cent) or parking lot attendants (87 per cent). Recreational therapists, in turn, were classified as the least-computerisable occupation.

"More specifically, Frey and Osborne observed that occupations that involve complex perception, creative intelligence tasks, and social intelligence tasks (i.e. cognitive non-routine tasks) are likely to be supplemented rather than substituted by AI "over the next decade or two." Their research confirms current ideas that AI is best suited to play a complementary role in tasks performed by lawyers."

In other words, other tax professionals are likely to use AI — or be replaced. How then could lawyers avoid the prospect? We turn to Canadian lawyers to ask them for their view on the capacity of AI to interpret, let alone analyze, Tax Law.

According to Robert Kreklewetz of Millar Kreklewetz LLP in Toronto: "The potential constraints of AI appear to be its linear thinking and blindly following past precedents in conducting its analysis and generating its predictions. While

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it might be able to identify the relevant past cases, really good tax lawyers are sought after for their non-linear (lateral) thinking and their ability to argue for results which might even be at odds with past precedents.

"Clients generally don't come to us to determine what the right answer is, they come to us to figure out how to get to the answer they want. That involves a whole host of skills including understanding the policy and intent of the legislation, understanding different ways to achieve different results, and a whole lot of lateral thinking. I'm not sure the AI, as we presently understand it, can replicate or predict that."

His partner, John Bassindale, meanwhile says, "I wonder what real application this AI has to complex high-end tax litigation. I expect AI's reliance on past cases means it would be unable to make an accurate prediction where no prior case law exists (as is often the case in high-end tax litigation). While I can understand why the Department of Justice might want to use this AI to evaluate their high volume of simpler tax cases, I wonder how they are using these predictions? For example, if the software predicts the Department of Justice will lose a case, do they settle that case 100 per cent in favour of the taxpayer, or do they try to settle the case for 70 per cent or 80 per cent?"

Blake, Cassels & Graydon LLP's Mark Tonkovich adds context to this discussion: "Media reports last year indicated that a segment of the Department of Justice's tax personnel was taking part in an AI pilot project: using predictive software to help analyze tax cases. It's not clear how the government is using the new software — to supplement traditional case law research, screen new tax appeals, improve efficiencies in settlement negotiations, decide what facts to focus on in court, or for some other purpose. But as today's software continues to grow in sophistication and

> **"WHETHER THERE WILL SOON COME A DAY WHEN SOME TAX APPEALS ARE DECIDED PRIMARILY BY FEEDING A SUMMARY OF THE CASE INTO AN AI IS HARD TO SAY, BUT KNOWING THAT THE TAX ADMINISTRATION IS ALIVE TO THESE NEW TOOLS HAS UPPED THE STAKES FOR STAYING ON TOP OF THE DEVELOPING TECHNOLOGY."**
>
> MARK TONKOVICH
> Blake, Cassels & Graydon LLP

expands to cover more hotly disputed tax issues, we can expect both the public and the private sectors to increase their use of the new technology.

"Whether there will soon come a day when some tax appeals are decided primarily by feeding a summary of the case into an AI is hard to say, but knowing that the tax administration is alive to these new tools has upped the stakes for staying on top of the developing technology."

David Chodikoff, a partner and national leader within the tax litigation and customs disputes resolution group at Miller Thomson LLP in Toronto, discussed AI in Tax Law on *Canadian Lawyer*'s website: "In today's competitive legal landscape, clients are demanding bulletproof advice at a reasonable cost. Firms that adopt AI-backed legal research software are taking proactive measures to ensure that clients walk away knowing they've received the highest quality legal advice without paying exorbitant fees.

"'At the end of the day, clients care about results and costs,' says Chodikoff. 'Clients want excellence of service, problem solving at the highest level, and cost efficiencies. In addition to the obvious time-saving benefit, AI-based legal research tools offer lawyers a quick way to access data-backed support for their professional hunches.

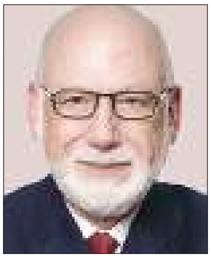
"'Artificial intelligence adds a dimension to your thinking,' says Chodikoff. 'The analysis identifies insights that you might not have thought of and may lead you to a case that adds to your approach to a particular issue. That's invaluable — you can't put a price on that.'

"The AI tool that Chodikoff mentions is Tax Foresight, a joint effort between Blue J Legal and Thomson Reuters. The software applies AI to all relevant past judicial decisions in an effort to help lawyers and other tax professionals determine the strength of their position on issues like real estate, taxable benefits, carrying on business, worker classification, and many others. The software also has an advanced search function that finds cases by specific factors, rather than by keyword or boolean searches.

"'With Tax Foresight, you can find a case that helps with an argument and you never know if that's going to be the winning argument before a court,' says Chodikoff.

"On top of making lawyers more efficient, Chodikoff says that Tax Foresight is comprehensive and acts as 'additional blanket coverage' by considering every relevant case in the selected area of tax law.

"'Prior to the availability of Tax Foresight and the rapid analysis of information that it enables, I'd either conduct my own research or rely on the assistance of an associate or student of law to conduct that research.'"



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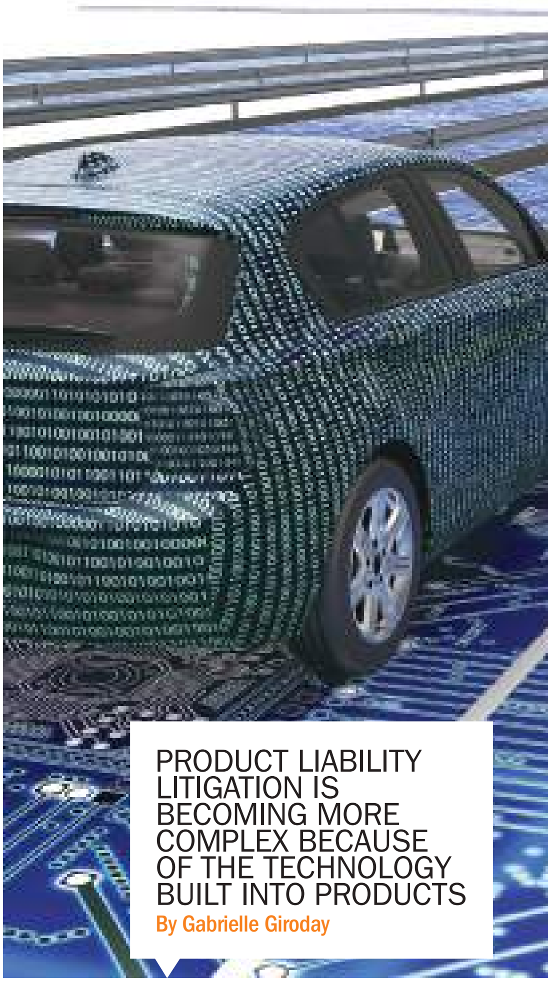

PRODUCT LIABILITY LITIGATION IS BECOMING MORE COMPLEX BECAUSE OF THE TECHNOLOGY BUILT INTO PRODUCTS

By Gabrielle Giroday

Liability for Connected Devices

Lawyers who are involved in product liability litigation say more cases relating to connected devices may emerge.

Product liability litigation usually involves parties such as product designers, suppliers, manufacturers, wholesalers, distributors, retailers, and end users and their insurers. These parties can become involved in civil proceedings due to a product's alleged defects.

Glenn Zakaib, National Co-chair of the Class Actions Group at Borden Ladner Gervais LLP in Toronto, says litigation related to connected devices is a "potential area [of growth in litigation] for the future.

PHOTO: SHUTTERSTOCK

"It's existing now, but it's not really picked up as yet and it's coming more in the future." He adds that lawyers whose practice intersects with product liability may have to become familiar with different areas when it comes to the use of connected devices.

"We're now looking at issues about potential regulation of connected devices, whether something, if you're going over a network, is it regulated by the [Canadian Radio-television and Telecommunications Commission] in Canada? Are there regulatory schemes that are now going to require greater cyber-security with these connected devices?"

Zakaib points to California, for example, where, by 2020, manufacturers of internet-connected

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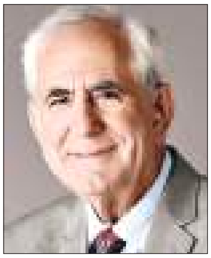

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Mr. Le Vay's bilingual practice focuses on commercial litigation and arbitration, civil and regulatory securities litigation, class actions, professional disciplinary proceedings, civil claims involving professionals and internal investigations. He is a Fellow of the American College of Trial Lawyers and of the International Academy of Trial Lawyers and a member of ComBAR.

devices are required to ensure the device has "reasonable" security features.

Michael Peerless, a Partner at McKenzie Lake Lawyers LLP in London, Ont., says product liability litigation that relates to the "internet of things" is almost certainly to be expected. Peerless points to emerging technologies such as autonomous vehicles and drones.

"Vehicles are probably one of the main product liability areas in litigation in North America, in one way or another, because they are so ubiquitous," he says. "Autonomous vehicles, at least at the beginning — even to the extent that they're safer than human-driven vehicles — they're going to seem new enough that they're going to spawn litigation any time there's an injury or a product problem."

Peerless says anyone working in the business of connected devices is going "to have to be very careful with anything to do with safety," and he

"[LITIGATION RELATED TO CONNECTED DEVICES EXISTS] BUT IT'S NOT REALLY PICKED UP AS YET AND IT'S COMING MORE IN THE FUTURE."

GLENN ZAKAIB
Borden Ladner Gervais LLP

notes that connectivity issues may also spawn product liability litigation.

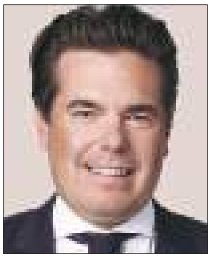
This could extend to more traditional areas, such as vehicles, and less traditional areas, such as children's toys.

"Things like even non-autonomous vehicles that are internet-enabled probably have some vulnerability to hackers," he says. "There's already litigation in the United States in several different areas involving cars that have some kind of vulnerability to hacking."

Michael Eizenga, Co-chair of the Class Actions Practice at Bennett Jones LLP in Toronto, says lawyers need to give careful advice.

"The bottom line is that companies have to do what they continue to do, which is not only comply with all regulatory requirements, but they also have to make sure they meet an appropriate common-law standard of care as well," says Eizenga.

Zakaib says one of the main issues that com-



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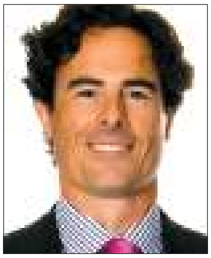

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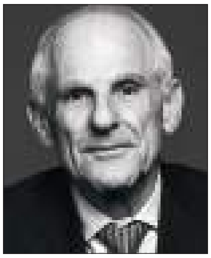

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Co-head of the firm's litigation department, Mr. Lenz largely focuses on insolvency and restructuring matters, including representing companies, receivers, monitors, acquirors, creditors and financial institutions in managing corporate reorganization and the realization of assets. He also has extensive experience in a broad range of commercial litigation.

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Mr. Maidment is a leading litigator with extensive experience at the trial and appellate level. He is one of Canada's most experienced class-action advocates, with expertise in product liability and pharmaceuticals. He is described as a "superb advocate," an "impressive presence in the courtroom" and a "quite brilliant strategist." He currently serves as President of The Advocates' Society.

panies need to consider is, if their product is hacked or if information gathered by the product is shared, whether that could potentially infringe upon privacy rights.

"If you have a vehicle and it has a vehicle identification number and somehow that's identified with a particular piece of connected information, do you run the risk of exposing that personal information when you collect that data if you don't take it and make it more generic so you can't identify the individual or the product from which it's coming?" he says. For example, in the case of the hack of a product, there could be a class proceeding, he says.

The issue of general causation "basically would be is a product in and of itself vulnerable to an attack? And if it is, is it vulnerable to an attack

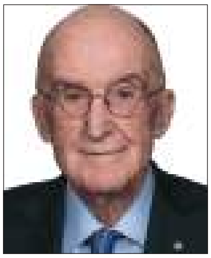
"VEHICLES ARE PROBABLY ONE OF THE MAIN PRODUCT LIABILITY AREAS IN LITIGATION IN NORTH AMERICA, IN ONE WAY OR ANOTHER, BECAUSE THEY ARE SO UBIQUITOUS."

MICHAEL PEERLESS
McKenzie Lake Lawyers LLP

across the board and does that require either a forced recall of that product or some kind of enhancement to the product security? What risks does that create? If the product is susceptible to being hacked, can that hacking manipulate the product in a way that could be harmful?" he says.

Zakaib adds that, in general, product liability litigation is becoming even more complex because of the technology built into products.

"It becomes very costly for plaintiff's counsel to take on an individual product's claim. The products themselves are far more technologically advanced," he says. "There is a lot of computer technology that goes into products these days, which means more complex analysis. Experts are expensive, you have to hire more experts, you've got to deal with so many issues."



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The Honourable Mr. Major, retired Supreme Court of Canada judge, rejoined Bennett Jones LLP as a consultant in 2006. In that role, he provides strategic and tactical reviews of significant matters for the firm's clients and is a senior mentor to the lawyers and staff of the firm. His present areas of practice include mediation, arbitration, corporate governance and consultation.

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DECISIONS
OF SIGNIFICANCE

Compiled by Aidan Macnab

Big Suits

REFERENCE RE ENVIRONMENTAL MANAGEMENT ACT (BRITISH COLUMBIA)

DECISION DATE: MAY 24, 2019

The British Columbia Court of Appeal decided unanimously that amendments proposed by British Columbia to the *Environmental Management Act* (BC) that would have required

PHOTO: SHUTTERSTOCK

the Trans Mountain Expansion Project (TMX Project) to obtain a permit from the BC government were unconstitutional. The Court's decision will have important implications for all provincial regulation of any works and undertakings, such as pipelines or railways, which cross provincial boundaries. It also has an important impact on Canada's energy industry and is at the centre of one of the most signifi-

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Mr. Nahmiash currently represents numerous manufacturers and finance companies in various consumer protection and product liability class actions. As well, he is currently involved in various antitrust and securities class actions. He has successfully defended various auditors, D&O and pharmaceutical class actions and has been retained to defend multiple class actions involving pension plans.

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Mr. Nathanson is one of Canada's top trial and appellate litigators. He recently achieved notable success defending Hong Leong Oei in respect of a claim brought by Concord Pacific in excess of $350M. He has assembled a team of highly skilled litigators, including James MacInnis, Kevin Loo, Karen Carteri and Peter Senkpiel. This talented group makes NST one of Canada's top litigation boutiques.

cant political issues in Canada.

The Court held that the purpose and effect of the proposed amendment was to regulate interprovincial undertakings like the TMX Project. As a result, it was outside BC's constitutional authority. The Court found that the TMX Project is "not only a 'British Columbia project'" but one that "affects the country as a whole and falls to be regulated taking into account the interests of the country as a whole."

British Columbia's Attorney General has filed an appeal of the decision to the Supreme Court of Canada.

The proposed amendments sought to regulate the possession of "heavy oil" in British Columbia, including the type of heavy crude and diluted bitumen that will be transported through the TMX Project. The amendments applied only to persons who possessed more heavy oil in the province than they had between 2013 and 2017. It prohibited such possession unless the person obtained a permit from a provincial official. Using the permit, the official could place a variety of conditions on the person's possession of heavy oil.

As a result, the Court reasoned that "it is simply not practical — or appropriate in terms of constitutional law — for different laws and regulations to apply to an interprovincial pipeline (or railway or communications infrastructure) every time it crosses a border." The Constitution gives the federal Parliament authority over interprovincial undertakings so that "a single regulator [may] consider interests and concerns beyond those of the individual province(s)."

The interested persons, Consortium of Energy Producers (Suncor et al.), were represented by **Blake, Cassels & Graydon LLP**, with a team

comprised of William Kaplan, QC, Cathy Beagan Flood, Ben Rogers, Peter Keohane, Joanne Lysyk, Laura Cundari and Christopher DiMatteo.

Attorney General of British Columbia was represented by Joseph Arvay, QC, Catherine Boies Parker, QC, and Derek Ball of **Arvay Finlay LLP**, and Gareth Morley of the BC Ministry of Justice.

The Attorney General of Canada was represented by Jan Brongers, B.J. Wray, Christopher Rupar and Jonathan Khan of Justice Canada.

The interested person, Attorney General of Alberta, was represented by Peter Gall and Andrea Zwack of **Gall Legge Grant Zwack LLP**.

The interested person, Attorney General of Saskatchewan, was represented by Thomas Irvine and Katherine Roy of the Ministry of Justice (Saskatchewan) Constitutional Law Branch (Regina).

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The interested person, City of Burnaby, was represented by Gregory McDade, QC, and Michelle Bradley of **Ratcliff & Company LLP**.

The interested person, Ecojustice Canada, was represented by Harry Wruck, QC, and Kegan Pepper-Smith of Ecojustice Canada Society.

The interested persons, the Council of the Haida Nation, were represented by David Paterson of **Paterson Law Office** (Surrey) and Terri-Lynn Williams-Davidson of **White Raven Law Corporation**.

The interested persons, The Heiltsuk First Nation, were represented by Lisa Fong of **Ng Ariss Fong, Lawyers** and Katherine Webber of the Ministry of Attorney General (BC).

The interested person, The Assembly of First

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Mr. O'Sullivan practises civil and commercial litigation with a focus on business disputes, financial institution litigation, class actions, defence of regulatory charges and professional discipline matters. He also acts as a mediator and an arbitrator and holds an MCIArb designation. He is a Fellow of the ACTL and a Fellow of the IATL, and a past President of The Advocates' Society of Ontario.

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The interested persons, The Little Shuswap Lake Indian Band, were represented by Arthur Grant of **Grant Kovacs Norell**.

The interested person, Trans Mountain Pipeline ULC, was represented by Maureen Killoran, QC, and Olivia Dixon of **Osler, Hoskin & Harcourt LLP**.

The interested persons, Beecher Bay First Nations, Songhees First Nation and T'Sou-Ke Nation, were represented by Robert Janes, QC, and Aria Laskin of **JFK Law Corporation**.

The interested persons, Lax Kw'alaams Band, were represented by Christoper Harvey, QC, and Robert Wickett, QC, of **Mackenzie Fujisawa LLP**.

Counsel for the interested person, Canadian Association of Petroleum Producers, were Brad Armstrong, QC, Will Shaw and Lewis Manning of **Lawson Lundell LLP** (Vancouver); as well as Nicholas Hughes of **McCarthy Tétrault LLP**.

The interested person, Canadian Fuels Association, was represented by Geoffrey Cowper, QC, and Daniel Byma of **Fasken Martineau DuMoulin LLP**.

Counsel for the interested person, Canadian Energy Pipeline Association, was Michael Marion of **Borden Ladner Gervais LLP**.

The interested person, Enbridge Inc., was represented by Maureen Killoran, QC, and Sean Sutherland of **Osler, Hoskin & Harcourt LLP**.

The interested persons, Coalition of Interested Parties, were represented by Alyssa Tomkins of **Caza Saikaley LLP**.

The interested person, Railway Association of Canada, was represented by Nicholas Hughes, Emily MacKinnon and Sarah Blanco of **McCarthy Tétrault LLP**.

KARRAS V. SOCIÉTÉ DES LOTERIES DU QUÉBEC

DECISION DATE: MAY 9, 2019

In *Karras v. Société des loteries du Québec*, the Court of Appeal of Québec dismissed an application for authorization to institute a class action against Loto-Québec. In its decision, the appellate court reviewed the principles governing authorization of a class action and confirmed that the authorization judge, in exercising his role as a filter, must dismiss any action that has no reasonable chance of success in light of the evidence tendered.

The plaintiff had been buying lottery tickets for over 20 years when she sought authorization to institute an action in damages against Loto-Québec on the grounds that it failed to disclose to lottery ticket buyers the actual odds of winning a jackpot.

The plaintiff also alleged that Loto-Québec was making false representations since its advertising suggested the existence of a life of luxury while failing to disclose the actual odds of winning the lottery.

The plaintiff claimed that Loto-Québec violated various provisions of the *Civil Code of Québec* (CCQ) and the *Consumer Protection Act* (CPA), which provide that merchants have a duty to inform consumers about important facts likely to influence their decision about whether or not to purchase a product.

As a result, the plaintiff sought damages equal to the profits Loto-Québec generated on lottery ticket sales over the previous three years, as well as $150 million in punitive damages.

In a unanimous decision, the Court of Appeal upheld the trial judgment and dismissed the action in its entirety. The Court pointed out that the evidence filed by Loto-Québec clearly showed that it provides lottery ticket buyers, on its website for example, with all relevant information regarding the odds of winning for each type of product available. The Court added that the information on the odds of winning can be lengthy and that it would be unreasonable to reproduce the information on the back of every ticket. The Court also found that the information on the back of the lottery tickets was in all respects compliant with the applicable regulations.

The Court found that Loto-Québec's advertising contained no false or misleading representations. According to the Court, the mere fact that their ads convey an appearance of happiness does not violate the provisions of the law prohibiting false or misleading representations. According to the Court, Loto-Québec is not required to reproduce on each of its ads the statistics on the odds of winning.

The Court also issued certain comments regarding the plaintiff's role and her ability to represent the interests of all class members. The Court mentioned that, during her examination on discovery, the plaintiff acknowledged that she believed her chances of winning were around one in five million (in reality, her chances were one in 14 million). According to the Court, the important fact for the consumer is the low likelihood of winning rather than the specific mathematical statistics. The Court added that the plaintiff had no individual claim since consumers are required to inform themselves and that she failed to do so even though the relevant information was fully available. The Court added that the representative had not shown any interest in the issues raised in this matter until the attorney ad litem suggested she act as a representative.

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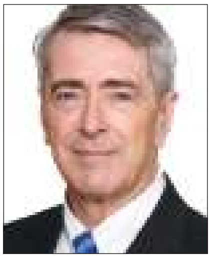

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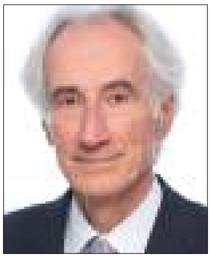

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Lastly, the Court found that the alleged causal connection was, at the very least, problematic in this case and that the very existence of the proposed class seemed vague. In light of such circumstances, the Court of Appeal dismissed the motion for authorization to institute a class action.

The Court of Appeal's decision confirms that it is possible to have a class action dismissed at the authorization stage when the defendant files evidence in the Court record (with its authorization) to establish that the key allegations of the motion are false and are nothing more than mere assumptions, opinions or inferences of facts that the Court should not assume to be true at the authorization stage.

Loto-Québec was represented before the Court of Appeal by Olivier Kott and Dominic Dupoy of **Norton Rose Fulbright Canada LLP**. Loto-Québec's in-house lawyers were Dominic Gourgues, Director, Legal Affairs and Regulatory Compliance, and Erika De Almeida.

Karim Renno and Benjamin Dionne of **Renno & Vathilakis** represented the appellant.

KAPLAN V. CASINO RAMA SERVICES INC.

DECISION DATE: MAY 6, 2019

Justice Edward Belobaba of the Ontario Superior Court of Justice dismissed a motion to certify a privacy class action arising out of a cyberattack on Casino Rama that included allegations of breach of privacy, breach of contract and negligence. This was the first contested certification hearing relating to a cyberattack against an Ontario company.

The plaintiffs have filed notices of appeal of the decision with the Ontario Divisional Court and the Ontario Court of Appeal.

The proposed class proceeding related to a criminal cyberattack in 2016 in which an anonymous hacker accessed Casino Rama's computer system and stole data relating to customers, employees and suppliers. When ransom demands proved futile, the hacker posted the stolen data on the internet. Casino Rama and the Ontario Lottery and Gaming Corporation promptly responded to the cyberattack by, among other things, notifying all appropriate authorities and implementing a broad notice program for patrons and employees, including offers of free credit monitoring services in appropriate circumstances. By the time of the certification motion, there was no evidence that anyone had experienced any compensable financial or psychological loss as a result of the cyberattack.

The Court held that "[t]he fact that there are no provable losses and that the primary culprit, the hacker, is not sued as a defendant makes for a very convoluted class action. Class counsel find themselves trying to force square (breach of privacy) pegs into round (tort and contract) holes." Justice Belobaba held that the proposed class action ultimately "collapse[d] in its entirety" under the common issues certification criterion. In so finding, he stated: "I agree with the defendants that on the evidence before the Court the scope and content of the personal information that was stolen by the hacker varies so widely for each person that any assessment of the plaintiffs' claims quickly devolves into individual inquiries. Any common issues are completely overwhelmed by these individual investigations, such that commonality is not established and a class action cannot be justified as the preferable procedure."

The plaintiffs were represented by Theodore P. Charney and Tina Q. Yang of **Charney Lawyers** and David Robins of **Strosberg Sasso Sutts LLP.**

The defendants, CHC Casinos Canada Limited, the Ontario Lottery and Gaming Corporation, Casino Rama Services Inc., and Penn National Gaming, Inc., were represented by **Blake, Cassels & Graydon LLP**, with a team led by Cathy Beagan Flood and Nicole Henderson, and including Anne Glover, Wendy Mee, John Tuzyk, Bryson Stokes, Jessica Lam and Christopher DiMatteo.

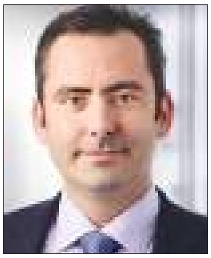
HUGHES V. LIQUOR CONTROL BOARD OF ONTARIO

DECISION DATE: APRIL 17, 2019

On December 12, 2014, an action captioned *David Hughes and 631992 Ontario Inc. v. Liquor Control Board of Ontario, Brewers Retail Inc., Labatt Breweries of Canada LP, Molson Coors Canada and Sleeman Breweries Ltd.*, No. CV-14-518059-00CP was commenced in Ontario.

Brewers Retail Inc. (operating as the Beer Store) and its then shareholders, as well as the Liquor Control Board of Ontario (LCBO), were named as defendants in the action. The plaintiffs (a beer consumer and the restaurant he owns) alleged Brewers Retail Inc. and the LCBO improperly entered into an agreement to fix prices and allocate markets for the sale and distribution of beer in Ontario to the detriment of licensees and consumers.

The plaintiffs further alleged that Brewers Retail Inc. and its brewer shareholders were unjustly enriched for breach of the Uniform Price Rule of the *Liquor Control Act*. The plaintiffs sought to have the claim certified as a class action on behalf of all Ontario beer consumers and licensees and, among other things, dam-



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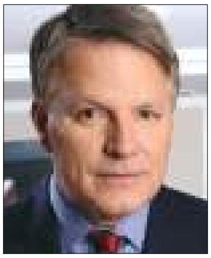

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ages in the amount of $1.4 billion.

Brewers Retail Inc. operates according to the rules established by the Government of Ontario for the regulation, sale and distribution of beer in the province. Prices are independently set by each brewer and are approved by the LCBO, the Crown agency empowered by provincial legislation to control virtually every aspect of the sale and delivery of liquor in Ontario. As such, all the defendants believed the claim was without merit.

Motions for summary judgment were heard in the Ontario Superior Court of Justice. On March 15, 2018, the plaintiffs' motion for summary judgment was dismissed. The defendants' motions for summary judgment were granted, and the action was entirely dismissed.

The plaintiffs appealed the dismissal order and, along with the Law Foundation of Ontario, sought leave to appeal the order to pay costs to the defendants of approximately $2.4 million in total. On April 17, 2019, the Court of Appeal for Ontario dismissed the appeal and upheld the summary dismissal of the proposed class action.

The Court of Appeal agreed with the motion judge that, pursuant to the regulated conduct defence, the plaintiffs' various competition law claims were without merit — even before the province enacted retroactive legislation that expressly authorized the LCBO and Brewers Retail Inc. to specifically enter into the 2000 framework that was the basis for the plaintiff's claim.

In finding that the regulated conduct defence applied, the Court of Appeal rejected the plaintiffs' argument that the regulated conduct defence is not available to defend civil claims under s. 36 of the *Competition Act*. The Court of Appeal agreed with the motion judge and defendants that if the regulated conduct defence is available as a defence to a prosecution under s. 45(1) of the *Competition Act*, the defendant's conduct is not contrary to the criminal conspiracy provisions and therefore cannot form the basis for a civil claim under s. 36.

With respect to the plaintiffs' unjust enrichment claim against the Beer Store and the brewers, the motion judge had agreed with the defendants that the law always permitted the charging of different beer prices between licensees and retail home consumers, which was a complete answer to that claim. To the extent there was any doubt about that, the legislature clarified the law in 2015 through a valid declaratory amendment to the *Liquor Control Act*.

The Court of Appeal upheld the motion judge's decision, finding that the 2015 legislative amendments were valid, had retroactive effect and removed any doubt that different prices for beer could be charged to licensees, as long as prices within each channel were uniform across the province.

The Court of Appeal also denied leave to appeal the summary judgment costs award. The Court reiterated that leave to appeal costs awards should be granted sparingly and only in obvious cases where there are strong grounds that the judge erred in exercising his or her discretion. The Court held that the motion judge did not fail to consider any relevant factor, that a reasonable litigant would expect the defendants to devote significant resources to respond to a $2-billion claim alleging a criminal conspiracy, and that this was therefore not a case that warranted granting leave to appeal.

Bennett Jones LLP was counsel to Brewers Retail Inc., with a team including Michael Eizenga, Randal Hughes, Ranjan Agarwal, Preet Bell and Ilan Ishai.

Siskinds LLP was counsel to the plaintiffs, with a team that included Linda Visser, Tyler Planeta and Paul Bates (**Bates Barristers**).

Stockwoods LLP was counsel to the Law Foundation of Ontario, with a team including Aaron Dantowitz and Justin Safayeni.

Counsel to the Liquor Control Board of Ontario was **Davies Ward Phillips & Vineberg LLP**, with a team including Kent E. Thomson, Matthew Milne-Smith, Michael H. Lubetsky, John Bodrug and Anthony M. C. Alexander.

Blake, Cassels & Graydon LLP was counsel to Labatt Brewing Company Limited, with a team that included Jeff Galway, Catherine Beagan Flood and Nicole Henderson.

Counsel to Molson Coors Canada and Molson Canada 2005 was **McCarthy Tétrault LLP**, with a team including Paul Steep, Adam Ship and Katherine Booth.

Counsel for the intervenor Attorney General of Ontario was Michael S. Dunn and Ravi Amarnath.

DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS V. TELUS COMMUNICATIONS INC. AND DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS V. BELL CANADA

DECISION DATE: APRIL 12, 2019

Two recent Court of Québec decisions found newly enacted provisions of the Québec *Consumer Protection Act* to be constitutionally inapplicable and inoperative for telecommunications services providers facing charges of penal offences.

On June 30, 2010, *An Act to amend the Consumer Protection Act and other legislative provisions*, S.Q. 2009, c. 51, added numerous new provisions to Québec's *Consumer Protection Act* (CPA). In the wake of these provisions com-

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ing into force, Québec's *Office de la protection du consommateur* instituted hundreds of penal infractions against Telus Communications Inc. and Bell Canada, claiming that their terms and conditions of service were contrary to several sections of the CPA. Any person who purportedly contravenes the CPA can be prosecuted under its penal provisions.

Sections 11.2 and 11.3 of the CPA respectively prohibit certain contractual stipulations pertaining to the unilateral modification or cancellation of a contract, while s. 13 prohibits imposing charges, penalties or damages upon the non-performance of an obligation. Sections 214.1 to 214.11 dictate that a "contract involving sequential performance for a service provided at a distance" must contain and establish various limitations in the performance of any such contract.

The defendants, relying on ss. 91 and 92 of the *Constitution Act, 1867* and Parliament's exclusive jurisdiction over telecommunications, challenged the CPA provisions in dispute at trial as being *ultra vires* of the provincial legislature as intended to regulate telecommunications service providers. In the alternative, the defendants sought that the CPA provisions in dispute be declared inapplicable and inoperative through the application of the doctrines of interjurisdictional immunity and federal paramountcy.

Given the importance of the issues in dispute and the specificities of these penal prosecutions, the Court found that it would be inadvisable to interpret the provisions of the CPA at issue without first ensuring that they apply to the defendants from a constitutional standpoint. Under ss. 92(10)(a) and 91(29) of the *Constitution Act, 1867*, Parliament has exclusive jurisdiction over telecommunications. The *Telecommunications Act* offers the main legislative framework applicable to telecommunications undertakings, in addition to the broad regulatory and adjudicative jurisdictions it extends to the CRTC in relation, *inter alia*, to the conditions of the provision of telecommunications services.

Conversely, the CPA seeks to restore contractual equilibrium between merchants and consumers by prohibiting certain commercial practices considered deceptive and regulating certain aspects of their contractual relations. Historically, telecommunications contracts were specifically excluded from the ambit of the CPA, as the Supreme Court of Canada ruled in *Alberta Government Telephones v. Canada* (C.R.T.C.), [1989] 2 S.C.R. 225 and in *Téléphone Guèvremont v. Québec (Régie des télécommunications)*, [1994] 1 S.C.R. 878 that such contracts were outside a provincial legislature's purview.

The Court came to the conclusion that the CPA provisions in dispute, while broadly drafted, were enacted for the intent and purpose of regulating the telecommunications industry, and dictate the conditions for the commercialization of telecommunications for Québec to enact its own contractual standards and requirements for such services. As a result, the Court found that the National Assembly was directly regulating the content of federal jurisdiction over telecommunications with the CPA provisions in dispute.

Unlike a Superior Court, the Court of Québec has only a subject-matter and no inherent jurisdiction; it thus lacks jurisdiction to declare that a legislative provision is invalid by virtue of s. 52 of the *Constitution Act, 1982*.

In that context, the Court of Québec considered it unnecessary to rule on the validity of the CPA provisions in dispute, having regard to their pith and substance to determine if they were *ultra vires* of the provincial legislature, and exercised judicial restraint in that regard. However, the Court may rule on the constitutionality of a legislative provision in the course of exercising its jurisdiction over a penal matter.

Applying the interjurisdictional immunity doctrine, the Court found that the CPA provisions are intruding on the core of Parliament's jurisdiction over telecommunications, which includes the conditions for the commercialization of telecommunications services. The Court concluded that the CPA provisions were constitutionally inapplicable in relation to the offences. As for the federal paramountcy doctrine, the Court found that the CPA provisions were frustrating the purpose of the federal legislative scheme and the national telecommunications policy, notably by regulating rates, the provision of services and the conditions of commercialization of telecommunications services.

As a result, the Court concluded that the CPA provisions were constitutionally inoperative in relation to the offences, and it acquitted the defendants of all charges against them.

On May 10, 2019, the Director of Criminal and Penal Prosecutions and the Attorney General of Québec filed an appeal of the judgments.

Telus Communications Inc. was represented by Yves Martineau and Marjorie Bouchard of **Stikeman Elliott LLP**, and Mathieu Quenneville and Samuel Bachand of **Prévost Fortin D'Aoust LLP** (on constitutional questions), with the assistance of in-house counsel Delbie Desharnais.

Bell Canada was represented by Vincent de l'Étoile of **Langlois Lawyers LLP**, with the assistance of in-house counsel Mélissa Beaudry.

The Director of Criminal and Penal Prosecutions was represented by Simon Lajoie.

The Attorney General of Québec was represented by Charles Gravel of Bernard Roy (Justice Québec).

Tarnowsky, QC, Gordon

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Mr. Tarnowsky is Co-lead of Dentons' Litigation and Dispute Resolution Group. His practice focuses on the resolution of corporate, commercial and energy industry disputes. He has served as counsel in numerous domestic and international arbitrations and in the private and judicial mediation of commercial disputes.

Taylor, Ashley John

Stikeman Elliott LLP
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Mr. Taylor is a Partner in the Litigation & Dispute Resolution Group. His practice focuses on insolvency law and represents debtors, court-appointed officers, secured lenders and purchasers. He has frequently appeared before the Ontario Superior Court of Justice and the Court of Appeal, focusing on *Companies' Creditors Arrangement Act* proceedings, court-appointed receiverships and bankruptcies.

Thacker, Lawrence E.

Lenczner Slaght Royce Smith Griffin LLP
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Recognized as one of Canada's leading trial and appellate counsel, Mr. Thacker has extensive experience and a proven track record in complex and cross-border litigation, including mergers and acquisitions, securities disputes, class actions, commercial litigation and arbitrations, insolvency and restructuring, and intellectual property cases.

Theroux, Michael P.

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(403) 298-4438 therouxm@bennettjones.com

Mr. Theroux's practice involves complex commercial litigation and arbitration matters with a focus on energy disputes, including those involving oil sands and LNG projects in western Canada and major offshore oil and gas projects. He has also acted on appeals and judicial reviews of decisions of regulatory tribunals and on various environmental matters.

Thornton, Robert I.

Thornton Grout Finnigan LLP
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Mr. Thornton, an IIC Director, is named "Lawyer of the Year" in the 2018 edition of *Best Lawyers in Canada*. Euromoney's *The Best of the Best 2018* recognized him as one of the top five insolvency and restructuring lawyers in Canada, while *Chambers Global* ranks him as a Band 1 Leading Individual in Restructuring. He is described as "a leading light" and "one of the most innovative in the field."

Trépanier, Christian

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Mr. Trépanier is an expert in class actions and specializes in civil and commercial litigation, penal law and administrative law, as well as municipal law. In addition to appearing before all levels of court, he also acts in arbitration and mediation matters. He has successfully pleaded two cases before the Supreme Court of Canada.

Valasek, Martin J.

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Mr. Valasek's international practice embraces both commercial and investor-State arbitration (including NAFTA Chapter 11), in sectors such as aerospace, construction, forestry, mining and energy. He also advises on cross-border litigation matters.

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Ms. Waddell is a founding partner of Waddell Phillips Professional Corporation and leads the Class Action practice group. She is a recognized leader with particular experience and expertise in class actions, acting on cases involving consumer protection, securities fraud, product liability and institutional abuse. Ms. Waddell represents plaintiffs and defendants.

Walwyn, Frank E.

WeirFoulds LLP
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Mr. Walwyn is known for his versatility in litigating some of the most challenging business cases in Canada, the Caribbean and Central America. He acts on complex multijurisdiction commercial litigation matters, financial crime and extra-territorial restraint/freezing order issues, as well as offshore trusts and estates litigation. He is called to the Bar in Ontario and across the Caribbean.

Wardle, Peter C.

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Mr. Wardle is a member of the Commercial & Business Litigation Group of Singleton Reynolds. He has been involved in a large number of trials and court applications involving shareholder and partnership disputes, securities, banking, competition, professional negligence, wrongful dismissal, estates, construction, real estate and environmental issues, and a wide variety of contractual disputes.

Williams, David B.

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Mr. Williams is considered to be one of Ontario's most respected civil litigators. A specialist in civil litigation, his practice is focused on personal injury, medical malpractice, class action and complex commercial litigation matters. Inducted into the American College of Trial Lawyers, his career has brought him before the Trial Division, the Court of Appeal and the Supreme Court of Canada.

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Thorsteinssons LLP
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Mr. Williams' practice focuses on all aspects of taxpayer representation. He has appeared before the Tax Court of Canada, the Federal Court of Canada, the Federal Court of Appeal, the Ontario Superior Court and the Supreme Court of Canada on a wide range of issues, including the general anti-avoidance rule.

Other Lexpert-Ranked Lawyers

Abitan, Sandra; Osler, Hoskin & Harcourt LLP
Aitken, David W.; Aitken Klee LLP
Amyot, AdE, Bernard; LCM Attorneys Inc.
Arvay, QC, Joseph J.; Arvay Finlay LLP
Audren, AdE, Marie; Audren Rolland LLP
Awad, QC, Michelle C.; McInnes Cooper
Bach, Daniel; Siskinds LLP
Baert, Kirk M.; Koskie Minsky LLP
Bailey, QC, Kenneth F.; Parlee McLaws LLP
Barrack, Michael E.; Blake, Cassels & Graydon LLP
Barsalou, Pierre; Barsalou Lawson Rheault
Barton, Sandra L.; Gowling WLG
Batner, Sarit E.; McCarthy Tétrault LLP
Beagan Flood, Catherine; Blake, Cassels & Graydon LLP
Beckett, QC, Clarence A.; Patterson Law
Bélanger, Louis P.; Arnault Thibault Cléroux
Bélanger, Philippe H.; McCarthy Tétrault LLP
Bell, Derek J.; DLA Piper (Canada) LLP
Belleau, Daniel; Belleau Lapointe, s.e.n.c.r.l.
Bennett, James H.; Madorin, Snyder LLP
Benoit, Patrice; Gowling WLG
Berg, Bradley E.; Blake, Cassels & Graydon LLP
Berman, Wendy; Cassels Brock & Blackwell LLP
Bernier, Jacques; Baker & McKenzie LLP
Bernstein, Andrew E.; Torys LLP
Biringer, Monica E.; Osler, Hoskin & Harcourt LLP
Bishop, David C.; Gowling WLG
Bjorkquist, Sonia L.; Osler, Hoskin & Harcourt LLP
Blair, QC, John D.; Borden Ladner Gervais LLP
Block, Eric; McCarthy Tétrault LLP
Block, QC, Randall W.; Borden Ladner Gervais LLP
Block, Sheila R.; Torys LLP
Blom, Chris T.J.; Miller Thomson LLP
Boisvert, Joëlle; Gowling WLG
Bomhof, Scott A.; Torys LLP
Boutin, Marc-André; Davies Ward Phillips & Vineberg LLP
Boyle, Sean K.; Blake, Cassels & Graydon LLP
Brasil, Luciana P.; Branch MacMaster LLP
Bredt, Christopher D.; Borden Ladner Gervais LLP
Breedon, Ryan S.; Breedon Litigation
Brock, QC, Brian J.E.; Dutton Brock LLP
Brock, AdE, William; Davies Ward Phillips & Vineberg LLP
Brown, Alexandra K.; Blake, Cassels & Graydon LLP
Burke, Andrea L.; Davies Ward Phillips & Vineberg LLP
Buttery, Mary I.A.; Cassels Brock & Blackwell LLP
Byrick, Katharine L.; Borden Ladner Gervais LLP
Callaghan, John E.; Gowling WLG
Cameron, Cara; Davies Ward Phillips & Vineberg LLP
Cameron, Donald M.; Bereskin & Parr LLP
Casavant, Jean-Pierre; Casavant Mercier
Casey, FCIArb, J. Brian; Bay Street Chambers
Chênevert, Karine; Borden Ladner Gervais LLP
Cheng, May M.; Osler, Hoskin & Harcourt LLP
Chiasson, Craig R.; Borden Ladner Gervais LLP
Chua, Chia-yi; McCarthy Tétrault LLP
Cicchetti, Tina; Cicchetti Arbitration
Clarke, Cynthia (Cindy) D.; Borden Ladner Gervais LLP
Conway, Thomas G.; Conway Baxter Wilson LLP/s.r.l.
Cooper, George L.; Cox & Palmer
Crain, Kirsten T.; Borden Ladner Gervais LLP
Creber, Anthony (Tony); Gowling WLG
Dacks, Jeremy; Osler, Hoskin & Harcourt LLP
De Vita, QC, Bruno; Alexander Holburn Beaudin + Lang LLP
Deane, Robert J.C.; Borden Ladner Gervais LLP
Di Paolo, David; Borden Ladner Gervais LLP
Dietrich, Jane; Cassels Brock & Blackwell LLP
Dimock, Ronald E.; DLA Piper (Canada) LLP
Donnelly, Thomas J.; Thomas Gold Pettingill LLP
Doris, James W.E.; Tyr LLP
Douglas, James D.G.; Borden Ladner Gervais LLP
Du Pont, AdE, Guy; Davies Ward Phillips & Vineberg LLP
Duchesne, Marc; Borden Ladner Gervais LLP
Duguid, QC, FCIArb, Bryan; Jensen Shawa Solomon Duguid Hawkes LLP
Earnshaw, Ross F.; Gowling WLG
Effendi, Nadia; Borden Ladner Gervais LLP
Eljarrat, Stéphane; Osler, Hoskin & Harcourt LLP
Evans, QC, LSM, John F.; Gowling WLG
Fabello, John; Torys LLP
Fanaki, Adam F.; Davies Ward Phillips & Vineberg LLP
Feasby, Colin; Osler, Hoskin & Harcourt LLP
Feder, Michael A.; McCarthy Tétrault LLP
Ferland, Denis; Davies Ward Phillips & Vineberg LLP
Fitch, Jack F.; Lamont Law
Fitzsimmons, Timothy S.; PwC Law LLP

Forbes, Sandra A.; Davies Ward Phillips & Vineberg LLP
Fortier, QC, CC, L. Yves; Cabinet Yves Fortier
Frapporti, Louis A.; Gowling WLG
Fric, Laura K.; Osler, Hoskin & Harcourt LLP
Galway, Jeff W.; Blake, Cassels & Graydon LLP
Gelowitz, Mark A.; Osler, Hoskin & Harcourt LLP
Girard, Julie; Davies Ward Phillips & Vineberg LLP
Giroux, François M.; McCarthy Tétrault LLP
Gleason, Mary Lynn; Borden Ladner Gervais LLP
Glendinning, Deborah A.; Osler, Hoskin & Harcourt LLP
Gold, Ian H.; Thomas Gold Pettingill LLP
Goyette, Nathalie; Davies Ward Phillips & Vineberg LLP
Green, Michel J.; Robinson Sheppard Shapiro, s.e.n.c.r.l.
Grenon, Gerald A.; Osler, Hoskin & Harcourt LLP
Groia, Joseph; Groia & Company Professional Corporation
Groleau, Jean-Philippe; Davies Ward Phillips & Vineberg LLP
Gunn, QC, FCIArb, Angus M.; Eyford Partners LLP
Haigh, QC, David R.; Burnet, Duckworth & Palmer LLP
Halfnight, Jamieson; Lerners LLP
Hall, Geoff R.; McCarthy Tétrault LLP
Halt, QC, Edward W.; Peacock Linder Halt & Mack LLP
Hawkes, QC, Robert J.; Jensen Shawa Solomon Duguid Hawkes LLP
Hayes, Matthew T.; McInnes Cooper
Heintzman, QC, OC, Thomas G.; Heintzman ADR
Henry, Patrick; Robinson Sheppard Shapiro, s.e.n.c.r.l.
Hickey, QC, Marjorie A.; McInnes Cooper
Hilliker, QC, Gordon G.; Gordon Hilliker – Barrister & Solicitor
Hitchman, Carol V.E.; Smart & Biggar Intellectual Property Law
Hodson, QC, Douglas C.; MLT Aikins LLP
Horne, L.E. Trent; Aird & Berlis LLP
Horton, CArb, FCIArb, William G.; William G. Horton Corporation
Houston, Donald B.; McCarthy Tétrault LLP
Huff, Pamela L.J.; Blake, Cassels & Graydon LLP
Iacobucci, CC, QC, Frank; Torys LLP
Iatrou, Nikiforos; McCarthy Tétrault LLP
Innes, William I.; Rueters LLP
Jackson, Lara; Cassels Brock & Blackwell LLP
Jackson, Patricia D.S.; Torys LLP
Jensen, QC, FCIArb, Carsten; Jensen Shawa Solomon Duguid Hawkes LLP
Johnston, Bruce W.; Trudel Johnston & Lespérance
Jolliffe, R. Scott; Gowling WLG
Kandestin, Gerald F.; Kugler Kandestin, L.L.P.
Kapusianyk, QC, Brian G.; Gowling WLG
Kenny, QC, William J.; Miller Thomson LLP
Killoran, QC, Maureen E.; Osler, Hoskin & Harcourt LLP
Kreklewetz, Robert G.; Millar Kreklewetz LLP
Krüger, QC, Josef G.A.; Borden Ladner Gervais LLP
Kugler, Gordon; Kugler Kandestin, L.L.P.
Kugler, Robert; Kugler Kandestin, L.L.P.
Kugler, Scott M.; Gowling WLG
Kuski, QC, Gordon J.; McDougall Gauley LLP
Kwinter, Robert E.; Blake, Cassels & Graydon LLP
Laing, Andrea; Blake, Cassels & Graydon LLP
Lally, Michelle; Osler, Hoskin & Harcourt LLP
Lalonde, PC, OC, QC, AdE, Marc; Marc Lalonde – Barrister & Solicitor
Larochelle, Jacques; Jacques Larochelle, Avocat
Lawrie, Jill; Blake, Cassels & Graydon LLP
Lawton, Dean P.J.; Carfra & Lawton
LeBlond, QC, Charles A.; Stewart McKelvey
Lee, QC, Jeffrey M.; MLT Aikins LLP
Legendre, Céline; Osler, Hoskin & Harcourt LLP
Lespérance, André; Trudel Johnston & Lespérance
Linder, QC, Peter T.; Peacock Linder Halt & Mack LLP
Lindsay, Matthew; Rose LLP
Lindsay, Patrick L.; PwC Law LLP
Lipkus, Nathaniel; Osler, Hoskin & Harcourt LLP
Loranger, Julie-Martine; McCarthy Tétrault LLP
Lortie, Jean; McCarthy Tétrault LLP
Love, Robert L.; Borden Ladner Gervais LLP
Lowenstein, Larry P.; Osler, Hoskin & Harcourt LLP
MacFarlane, Robert H.C.; Bereskin & Parr LLP
Mack, QC, Perry R.; Peacock Linder Halt & Mack LLP
Mallett, Tristram J.; Osler, Hoskin & Harcourt LLP
Markwell, Jason C.; Belmore Neidrauer LLP
Marseille, AdE, Claude M.; Blake, Cassels & Graydon LLP
Mason, Steven G.; McCarthy Tétrault LLP
McArthur, Joseph C.; Blake, Cassels & Graydon LLP
McCarthy, Todd J.; Flaherty McCarthy LLP
McCullogh, QC, Kenneth B.; Stewart McKelvey
McDonald, QC, Daniel J.; Burnet, Duckworth & Palmer LLP
McElman, CM, QC, Frederick C.; Stewart McKelvey
McElman, Josh J.B.; Cox & Palmer
McFee, QC, Robin N.; Sugden, McFee & Roos LLP
McInnis, Douglas H.; Lloyd Burns McInnis LLP
McKee, Gordon; Blake, Cassels & Graydon LLP
McLennan, QC, Graham; McLennan Ross LLP

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Mr. Wilson is a prominent Canadian IP litigator. He has led several precedent-setting trademark and trade secrets (breach of confidence) actions and regularly acts in copyright, patent, design and other IP matters at trial and on appeal. His practice encompasses a wide range of industries, from retail and consumer products to electronics, IT, wine, beer and spirits, and manufacturing.

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Highly ranked in the US, UK and Canada, Mr. Winsor's practice focuses on commercial, class action, multijurisdictional and insurance litigation. He has extensive trial and appellate experience in areas such as governmental, professional, aviation and environmental liability and civil conspiracies. He is a frequent speaker and has published widely, including texts on good faith in contract and insurance.

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Mr. Wisner's practice focuses on international dispute resolution and corporate litigation. He has argued numerous cases before arbitral tribunals and the Ontario courts involving matters of international law, shareholder remedies or complex commercial contracts. Legal directories have consistently recognized his work in the areas of international arbitration, business litigation and mining law.

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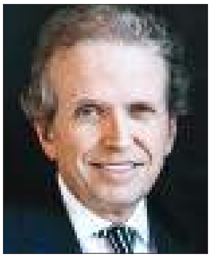
Ms. Woodin, Co-head of the Class Actions practice, is a skilled litigator who specializes in the defence of class actions and complex multi-party litigation. She works with clients to manage cross-border litigation and litigation occurring in regulated areas. She defends clients in cases involving consumer products, automotive parts, medical devices and environmental contamination, among other areas.



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Mr. Woods is senior partner with 40+ years of experience in the fields of litigation and arbitration. Considered to be one of the best lawyers in Québec and Canada, he has pleaded before all federal, Québec and Ontario provincial tribunals and the SCC. During his career, he has also acted as an arbitrator, either as president or as a member of a panel, both ad hoc and under the rules of the ICC.

Wotherspoon, David

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Mr. Wotherspoon is a Partner and Lead of Dentons' Litigation and Dispute Resolution Group in Vancouver. With a focus on corporate and commercial disputes, his practice encompasses all areas of litigation and dispute resolution. He brings more than 25 years of experience and has acted for large institutional clients in a range of industry sectors, with particular experience in technology and IP.

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Mr. Yorke-Slader is a Partner in Bennett Jones' litigation department and Vice-Chair of the firm. An ACTL and IATL Fellow, he is a leading practitioner in high-stakes corporate/commercial litigation and arbitration with an active trial and appellate business and energy practice. He was recently recognized by *Benchmark Canada* as Canada's 2019 Trial Lawyer of the Year.

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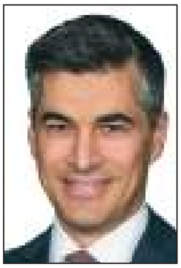
Mr. Zych focuses on loan workouts and judicially supervised restructurings under the CCAA and CBCA and has led client engagement teams on Tervita, Bellatrix, Connacher Oil, Lone Pine Resources, Sino Forest, Nortel, Sanjel, Nelson Education, Algoma Steel, Quicksilver Resources, Toys R Us, Ainsworth Lumber, Smurfit-Stone, Trident Resources, NCSG Crane, US Steel and Concordia Healthcare.

Other Lexpert-Ranked Lawyers

Meghji, Al; Osler, Hoskin & Harcourt LLP
Milani, QC, Michael W.; McDougall Gauley LLP
Mills, Douglas G.; Burnet, Duckworth & Palmer LLP
Milne-Smith, Matthew; Davies Ward Phillips & Vineberg LLP
Mitchell, Douglas C.; IMK s.e.n.c.r.l./LLP
Mogerman, Reidar; Camp Fiorante Matthews Mogerman LLP
Morrison, F. Paul; Miller Thomson LLP
Nathanson, QC, David C.; DLA Piper (Canada) LLP
Naudie, Christopher P.; Osler, Hoskin & Harcourt LLP
O'Connor, QC, Dennis R.; Borden Ladner Gervais LLP
O'Neil, QC, Thomas G.; McInnes Cooper
O'Neill, Louis-Martin; Davies Ward Phillips & Vineberg LLP
O'Reilly, QC, Thomas J.; Cox & Palmer
Osborne, W. Michael G.; Cassels Brock & Blackwell LLP
Outhouse, QC, S. Bruce; Blois, Nickerson & Bryson LLP
Parthev, QC, Shaunt; MLT Aikins LLP
Peebles, Dana M.; McCarthy Tétrault LLP
Peerless, Michael J.; McKenzie Lake Lawyers LLP
Piché-Messier, Mathieu; Borden Ladner Gervais LLP
Plumpton, Linda M.; Torys LLP
Poltak, Celeste; Koskie Minsky LLP
Potter, AdE, Simon V.; McCarthy Tétrault LLP
Pratte, Guy J.; Borden Ladner Gervais LLP
Préfontaine, Éric; Osler, Hoskin & Harcourt LLP
Prophet, Clifton P.; Gowling WLG
Ptak, Jonathan; Koskie Minsky LLP
Reeson, QC, Rick T. G.; Miller Thomson LLP
Ricci, Derek D.; Davies Ward Phillips & Vineberg LLP
Richler, FCIArb, Joel; Bay Street Chambers
Ritchie, Lawrence E.; Osler, Hoskin & Harcourt LLP
Robb, Michael G.; Siskinds LLP
Rodrigo, Nick; Davies Ward Phillips & Vineberg LLP
Rodrigue, Sylvie; Torys LLP
Rose, QC, James W.; Rose LLP
Rouleau, Francis; Blake, Cassels & Graydon LLP
Russell, QC, Charles P.; McLennan Ross LLP
Sainsbury, Caitlin; Borden Ladner Gervais LLP
Saint-Onge, AdE, Jean; Borden Ladner Gervais LLP
Samworth, Philippa G.; Dutton Brock LLP
Sandler, Daniel; EY Law LLP
Santini, Pasquale; Kelly Santini LLP
Sarabia, Luis G.; Davies Ward Phillips & Vineberg LLP
Sasso, William V.; Strosberg Sasso Sutts LLP
Sharpe, Jeffrey E.; Burnet, Duckworth & Palmer LLP
Shaughnessy, Andrew M.; Torys LLP
Sirivar, Junior; McCarthy Tétrault LLP
Skodyn, Andrew; Blake, Cassels & Graydon LLP
Smockum, D. Keith; Smockum Zarnett LLP
Smye, QC, David F.; Mackesy Smye LLP
Stainsby, Jonathan; Aitken Klee LLP
Steep, R. Paul; McCarthy Tétrault LLP
Sterns, David L.; Sotos LLP
Stieber, Steven; Stieber Berlach LLP
Stratton, Bruce W.; DLA Piper (Canada) LLP
Stringer, QC, John D.; McInnes Cooper
Strosberg, QC, Harvey T.; Strosberg Sasso Sutts LLP
Strosberg, Jay; Strosberg Sasso Sutts LLP
Tassé, Louis; Osler, Hoskin & Harcourt LLP
Taylor, Roger E.; EY Law LLP
Terry, John A.; Torys LLP
Thérien, Dominic; McCarthy Tétrault LLP
Thomson, Kent E.; Davies Ward Phillips & Vineberg LLP
Thomson, Mary M.; Gowling WLG
Tick, QC, Stanley M.; Stanley M. Tick & Associates
Torralbo, Robert J.; Blake, Cassels & Graydon LLP
Tory, James C.; Torys LLP
Trudel, Philippe H.; Trudel Johnston & Lespérance
Tupper, David; Blake, Cassels & Graydon LLP
Tushinski, Paul; Dutton Brock LLP
Urbas, Daniel; Urbas Arbitral
Vallis, QC, FCIArb, Jeffrey D.; Borden Ladner Gervais LLP
Van Barr, Christopher C.; Gowling WLG
Visser, Linda; Siskinds LLP
Wachowich, QC, David J.; Rose LLP
Wilcox, Peter R.; Belmore Neidrauer LLP
Woods, Seumas; Blake, Cassels & Graydon LLP
Wright, Charles M.; Siskinds LLP
Wright, J. Kevin; DLA Piper (Canada) LLP
Wright, Janice L.; Wright Temelini LLP
Zakaib, Glenn M.; Borden Ladner Gervais LLP
Zayid, Caroline R.; McCarthy Tétrault LLP

Congratulations to these recent appointees

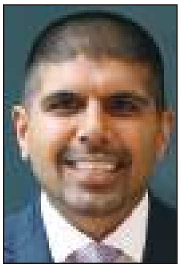
Phillip Crawley, Publisher & CEO of The Globe and Mail, extends best wishes to the following individuals who were recently featured in the Report on Business Section of The Globe and Mail newspaper. Congratulations on your new appointments.



Jordan Fremont
to Partner, Toronto Office
Bennett Jones LLP

Daniel Ratushny
to Partner, Toronto Office
Bennett Jones LLP

Josh Thomson
to Senior VP, Development
Cadillac Fairview



Sahezad Pardhan
to Executive VP and Chief Financial Officer
Cadillac Fairview

Stephen Yau
to Senior VP, National Retail Leasing
Cadillac Fairview

Mike Stollery
to Chairman
Canadian Automobile Dealers Association

Wendy Doane, CPM
to Board Chair
The Canadian Payroll Association

Dona Eull-Schultz
to Senior VP and Portfolio Manager
Cardinal Capital Management, Inc.

Douglas Kee
to Senior VP and Portfolio Manager
Cardinal Capital Management, Inc.

Patrick Manahan
to Senior VP and Portfolio Manager
Cardinal Capital Management, Inc.

Catherine Wood
to Chief Strategy Officer
Coast Capital

Patrick Van Bakel
BA, CIP
to Chair, Board of Governors
Insurance Institute of Canada (IIC)

Gordon Stephenson
to Chief Financial Officer
PCL Construction

Farah Mohamed
to Senior VP, Strategic Initiatives, Policy & Public Affairs
The Toronto Region Board of Trade

Geordie R. Walker
to President and CEO
Walker Industries Holdings Limited

Annette Verschuren

One-time dairy farmer. Former CEO of Home Depot Canada. CEO of NRStor. Mental health advocate. Officer of the Order of Canada

My parents were Dutch immigrants who treated my sister and I equal to our three brothers. That was a big advantage.

My father had a heart attack at 42. The doctor said we should give up the farm, but it's all we had. So he started to innovate. He was the first dairy farmer in Nova Scotia to use the liquid manure system, because he didn't want us kids to have to do all the labour. We still milked those cows, brought in the hay and, oh my God, we worked our asses off. But he tried everything to make it easier for us.

I worked in the coal mining business for nine years. The cost of producing coal underneath the sea was economically difficult, and I really wanted to do something else. So my first husband and I went to Toronto. I remember looking up at these buildings—I'd never seen a freaking escalator before—and saying, "I'm going to own this city."

When I was first at Home Depot, the Aboriginal people in northern B.C. started to strike against us, because we were allowing companies to clear-cut, and we were buying stuff from the Amazon. That was wrong. And so, we said, "In the next two years, suppliers all have to be part of a third-party forest management practice." And it changed everything.

Can you imagine if the Government of Canada said: "Every large company that is bidding on big stuff, you have to bring in one or two innovative products and bring in Canadian companies?"

"There is no true prosperity unless it's sustainable. Otherwise, it's a short-term victory—we're going to pay the price dearly"

Particularly to women, I say: Don't be afraid of failure. Don't be afraid to take a risk to become an entrepreneur. It's not as scary as it looks. A farm girl from Cape Breton could do it.

I was divorced in 2000, the same year my mom died. In 2008, I met Stan [Shibinsky] at a party. He kept calling to take me out, and I kept saying no. One day, my assistant said, "You know, I really like this guy. You should give him a chance." Not everybody gets it right the second time, but boy, it's good.

When I left Home Depot in 2011, I didn't want to go back into retail. Taking a company from $600 million to $6 billion and 28,000 people—it was hard to leave, but it was the right time. Stan and I travelled the world, and I saw the environmental challenges we have. When I started thinking about what I wanted to do next, that's when we founded NRStor.

We can store water and we can store food, but we ain't so good at storing energy, which will help us reduce the need to use gas plants to balance peaks. It will deliver energy when it's needed. This is the future.

Of the top 100 clean-tech companies in the world, I think Canada has 13. But we don't brag much. We're a bit more skeptical, and we talk more about the challenges. I'm into solutions.

We have 4,000 people a year die of suicide in our country. Most people have mental health issues. Me too—I used a psychologist during periods of my career, and I am not afraid to say that.

I'm inspired by people who want to make money and do good. I've made money all my life, but I think it can be done with a responsible filter that recognizes you have to replenish and take care of the planet and its people. More and more, I think capitalism is moving in that direction.

/Interview by Kristy Woudstra

PHOTOGRAPHKAILEE MANDEL

REFINED OVER TIME

THE REINVENTED 2020 LEXUS RX

There's always room for refinement. It's this belief that set the next iteration of the RX into motion. With a striking exterior refresh, standard LSS+ 2.0, cutting-edge technologies including touchscreen display with Apple CarPlay™ and Android Auto,™ the new 2020 Lexus RX is the pinnacle of function and form.

LEXUS RX