

LEXPERT®

SPECIAL EDITION ON CANADA'S LEADING CORPORATE LAWYERS

MAY 2019



Lexpert Magazine's Top 10 Deals

Starting with the Gordie
Howe International Bridge

CLOCKWISE: Linda Brown; McCarthy Tétrault LLP
Chris Bennett; Osler, Hoskin & Harcourt LLP
Brian Kelsall and Tom Barlow; Fasken Martineau DuMoulin LLP
Vicky Tuquero; Windsor-Detroit Bridge Authority
Mark Johnson; Blake, Cassels & Graydon LLP
Greg Southam; Davies Ward Phillips & Vineberg LLP

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LEXPERT-RANKED CORPORATE LAWYERS

Welcome to the *Lexpert® Special Edition on Canada's Leading Corporate Lawyers*. In this issue, alongside the biographical information about Lexpert-ranked lawyers, we bring you articles on Cryptocurrency (p. 20), Cannabis (p. 32) and Insolvency (p. 26). As for our cover story, we bring you *Lexpert® Magazine's* Top 10 Deals of 2018 (p. 4). This Top 10 list is based on commentary from Lexpert-ranked lawyers. The quantum of the deal is important, but not the governing factor. Lawyers tell Lexpert about the challenges they faced on particular deals — challenges that stood in the way of their clients' goals.

To be a Top 10 deal, these challenges were met, and resolved. Usually, there was compromise involved; the resulting transaction may look quite different than the initial announcement. M&A, Corporate, Tax and many other lawyers flex their skills on these Deals. And can't wait for the next opportunity to do so again.


Jean Cumming
Editor-in-Chief

LEXPERT

fortuna favet fortibus

MAY 2019
Special Edition

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Lexpert Magazine: Top 10 Deals

THIS WAS A YEAR IN WHICH LAWYERS SUPERBLY EXERCISED THE ART OF NEGOTIATION... AND OPENED A NEW FRONTIER...AND SET OUT TO BUILD A BRIDGE

BY JEAN CUMMING

THE 2018 DEAL YEAR was full of consolidation — both domestically and globally. In the Cannabis sector, that theme promises to continue, perhaps with some casualties. Moreover, the complications in the Canada-US relationship last year came up on a few of the Top 10 Deals and on several of the Honourable Mentions. Here are the Top 10 Deals and More from *Lexpert* Magazine based on Lexpert-ranked lawyer feedback.

1

Gordie Howe International Bridge Project

It had long occurred to observers that having the Windsor-Detroit road bridge between the two countries owned and controlled by a private US citizen presented a vulnerability — especially for Canada. Plus, there were issues with the state of repair and location of the Ambassador Bridge. Then Prime Minister Stephen Harper wanted a change; and so did Governor Snyder of Michigan — despite opposition.

According to Brian Kelsall, who, with Tom Barlow, led the Fasken Martineau Dumoulin LLP team: “with strong leadership on both sides of the border, the concept of a crossing agreement between Canada and the United States was developed. This agreement would mandate the creation of an international authority, the Windsor-Detroit Bridge Authority (the “WDBA”) to be overseen by an international board (the “IA”) with representatives from both countries. Canada would pay for the GH Project in its entirety, hence avoiding the legislative pitfall in Michigan and in return Canada would receive all of the tolls until it had recouped its investment.

“In addition, and importantly, it was recognized by both Canada and Michigan that the procurement methodology for the GH Project would be a P3 following the

Canadian model. This model was seen to be the most effective in allowing all of the various constituents, the two countries, Detroit and Windsor, all of the various municipalities, First Nations, border security, etc. to have a voice while at the same time mandating an independent authority to drive the project to completion. Fasken was hired to represent Canada, the WDBA and the IA for the GH Project in 2010. The Crossing Agreement took shape in around 2012 with amendments through to 2017. With this document in place along with the Presidential Permit, the project was ready to commence procurement.”

The WDBA announced on September 28, 2018, that “we have signed a fixed-priced contract with Bridging North America to design, build, finance, operate and maintain the Gordie Howe International Bridge project. The announcement also signified that all contractual steps have been completed and construction can begin.

“The fixed-priced contract is valued at \$5.7 billion (nominal value), which includes the design-build (DB) phase and the operation, maintenance, rehabilitation (OMR) phase. Bridging North America will receive progress payments during construction and a substantial completion payment at the end of construction. They will also receive monthly payments for operations and maintenance over the 30-year concession (operating) period.

“Bridging North America has presented a 74-month construction schedule to com-

plete the four components of the project with the bridge scheduled to be in service by the end of 2024.”

There had been myriad legal challenges over those years, not the least of which was the consistent and litigious opposition of the private citizen owner. There was also the issue of situating the legal border between the two countries. As Kelsall wrote, the border between the two countries was by law in the middle of the river. “Thus, the WDBA and its counsel had to contend with the fact that there were two sets of laws applicable to the construction of the entire project. Picture a truck driving from the Canadian side to the American side and doing work on the American side and then returning. Which *Construction Lien Act* rules apply, which taxes, which environmental laws?

“To deal with these multiple jurisdictional issues the team had to take cognizance of all of the applicable laws applying to the entire construction site. It was also necessary to seek enabling legislation such as the *Bridge to Strengthen Trade Act*, a federal statute that was put in place to streamline certain requirements under various types of law for the Canadian side.”

The many lawyers and their stakeholder clients were determined to speak with one voice as they engaged in the bid process. According to Kelsall, at the recent Canadian Council for Public Private-Partnerships’ annual conference, Nuria Haltiwanger, Global CEO of ACS (part of the winning consortium) “identified that the ability to deal with the WDBA and know that that Authority spoke for all of the various constituents behind the scenes was an absolute imperative without which the transaction could not have been done.”

When it comes to the Canadian-US relationship in 2018, *Lexpert* and other Canadian publications wrote in worried tones about the break-up of NAFTA, the imposition of stern tariffs, and the Buy American position of the current President. And so we take notice when Kelsall describes this Deal of the Year:

“Lastly, it’s a story of friendship. The project would not have been completed without the friendship and trust that was developed between the two countries and their working teams. It’s a great example of what can be done when friends help each other.”

Windsor-Detroit Bridge Authority and Her Majesty the Queen in Right of Canada were represented by Fasken Martineau Dumoulin LLP with a team led by Tom Bar-

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Brookfield Infrastructure acquired Enercare Inc.

low and Brian Kelsall, that included Ella Plotkin, Marc Lefler, Doug R. Scott, Barbara Miller, Sean Morley, Kathleen Butterfield and Zackary Burashko, together with Rosalind Cooper, Daniel Fabiano, Gordon Hunter, Louise Kennedy, Alison Lacy, Michael Round, Ryan Schnier, Scott Ma, Neil Smiley, Sean Stevens and others. Windsor-Detroit Bridge Authority was led in-house by Vicky Tuquero and Kathleen Roberts. Advice on US law matters was provided by Warner Norcross + Judd LLP with a team that included Timothy Horner, Charlie Goode, Christopher Meyer and others.

Bridging North America General Partnership and BNA O&M General Partnership were led in-house by Marc Aron, Chief Legal Officer, Mark Platteel, General Counsel, Greg Walters, Vice President, Legal, and Meno Tessema, Associate Vice President, Legal, for ACS, by Steven J. Pascoe, VP Law, for Fluor and by Yonni Fushman, Executive Vice President & Chief Legal Officer for Aecon. Blake, Cassels & Graydon LLP acted as counsel to Project Co with a team that included Catherine Doyle, Mark Johnson, Aaron Palmer, Kathleen Penny, Samantha Rossman and Catherine Youdan, together with Christine Ferguson, Chris Flood, Robert Frazer, Laura Gagnon, Megan Shaw, Aletha Utley, Jon Viner and Joe Zed. Advice as to US Securities Law matters was provided by Skadden, Arps, Slate, Meagher & Flom LLP with a team that included Riccardo Leofanti and Annabelle Gardere.

BNA Constructors Canada GP was represented in-house by Adam Brody, General Counsel for Dragados Canada Inc., Jonathan van Ginhoven, Senior Counsel for Fluor, and Patricia Skringer, Director, Operations Legal – East for Aecon, with support from DLA Piper (Canada) LLP with a team that included Andrew Burton, Elizabeth Mayer and Natasha Rana.

The underwriters, lenders and hedge providers were represented by McCarthy Tétrault LLP with a team that included Linda Brown, Morgan Troke, Samantha Cunliffe, Robin Mahood, Liezl Behm, Ailbish Skinner and Brianne Paulin.

Alternate bidders that did not ultimately prevail were represented by Osler, Hoskin & Harcourt LLP led by Chris Bennett; and Davies Ward Phillips and Vineberg LLP led by Greg Southam. Stikeman Elliott LLP acted as underwriter's counsel to the Ellis Don/Bechtel Consortium with Jamie Templeton.

Cameron Belsher of McCarthy Tétrault LLP called Brookfield's acquisition of Enercare the "largest go-private this year by a Canadian champion doing a deal in their own backyard." Oliver Borgers, McCarthy Tétrault, wrote that the "transaction was a very large and complex matter that drew on pretty much every area of expertise among legal counsel. It stands out as a major deal that was flawlessly executed."

On October 16, 2018, Brookfield Infrastructure and its institutional partners, (collectively, "Brookfield Infrastructure") completed the acquisition of all the issued and outstanding common shares of Enercare Inc. for \$29.00 per common share or, in the case of certain electing Canadian resident shareholders, 0.5509 of an exchangeable limited partnership unit ("Exchangeable LP Unit") for each common share elected. The Exchangeable LP Units are exchangeable, on a one-for-one basis for non-voting limited partnership units of Brookfield Infrastructure Partners L.P. ("BIP"). The transaction was valued at \$4.3 billion, including debt. Enercare's common shares were subsequently delisted from the Toronto Stock Exchange and Enercare has ceased to be a reporting issuer under applicable Canadian securities laws.

BIP is a global infrastructure company that owns and operates high-quality, long-life assets in the utilities, transport, energy and data infrastructure sectors across North and South America, Asia Pacific and Europe. Enercare Inc. is one of North America's largest home and commercial services and energy solutions companies, as well as the largest non-utility sub-meter provider in Canada.

McCarthy Tétrault LLP advised Brookfield Infrastructure with a core team led by Jonathan See, Jake Irwin and Isabel Henkelman, which included Cameron Belsher, Robert Richardson, Scott Bergen and Nicole Chiarelli, and included Patrick McCay and Yaroslava Nosikova (Tax), Ian Mak and Noel Chow (Financial Services), Sarit Pandya and Andrejs Mistiouk (Real Property and Planning), Catherine Samuel, Andrew Armstrong, Shauvik Shah, Paulina Bogdanova and Andrea Schneider (Corporate), Oliver Borgers and Jonathan Bitran

(Competition/Antitrust), George Veghand Heloise Apestéguy-Reux (Energy Regulatory), Joanna Rosengarten (Environmental), Adam Ship and Paul Kunynetz (Franchise and Distribution), Nancy Carroll (Insurance), Trevor Lawson, Patrick Pengelly and Matthew Demeo (Labour and Employment), Ana Badour (Regulatory), Eric Block and Kosta Kalogiros (Litigation), Deron Waldo and Kelleher Lynch (Pensions and Benefits), John Boscariol and Robert Glasgow (Trade) and Ryan Prescott (Technology and Intellectual Property). White & Case LLP advised Brookfield Infrastructure in the US with a team that included Oliver Brahmst, Samuel Raboy and Adam Cieply (Corporate), and Binoy Dharia and Shana White (Financial Services).

Enercare was led in-house by John Tofolletto, Senior Vice-President, Chief Legal Officer and Corporate Secretary with a team that included Chelsea Provencher, Senior Legal Counsel and Monique Lampard, Legal Counsel. Enercare was advised by Davies Ward Phillips & Vineberg LLP with a team that included Bill Ainley, Brett Seifred, Ha Nguyen, and Todd Wierenga (Corporate/M&A), Anita Banicevic and David Feldman (Competition) and Paul Lamarre (Tax).

The acquisition was financed, in part, through a new credit facility entered into between Brookfield Infrastructure and a syndicate of lenders and the Toronto-Dominion Bank ("TD Bank"), as administrative agent and as issuing bank. TD Bank was advised by Stikeman Elliott LLP with a team that included Craig Mitchell, Kelly Niebergall and Laura Von Heynitz.

Stikeman Elliott LLP represented The Toronto-Dominion Bank with a team that included Craig Mitchell, Kelly Niebergall, Laura Von Heynitz (Banking), Sean Vanderpol (Securities), Paul Collins (Competition), Glen Zacher (Regulatory) and Andrea Boctor (Pensions); and in the US, Milbank, Tweed, Hadley & McCloy LLP with a team including Mike Bellucci and Ben Eisenstein.

Osler, Hoskin & Harcourt LLP acted for one of Canada's largest pension investment managers in connection with the equity co-investment that supported the funding of the acquisition with a team led by John Groenewegen and Sébastien Savage.

Torys with a team led by Karrin Powys-Lybbe acted as counsel to Brookfield Infrastructure, as part of a consortium, including advice on the negotiation of the

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Mr. Abraham's practice embraces mining exploration, development, production and reclamation. He acts domestically and internationally for explorers, developers, producers, consultants, prospectors, syndicates and financiers. He has also participated in background studies for mineral legislation and has advised foreign governments regarding the preparation and implementation of mining legislation.



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Mr. Allard practises in the areas of M&A, corporate and commercial, and corporate finance and securities law. He advises private and public companies on purchase and sale transactions, significant strategic and general corporate commercial matters and corporate structuring (through joint ventures and reorganizations), as well as public company governance and compliance issues.



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Mr. Anderson's practice includes all areas of Canadian taxation law, with a particular focus on M&A, corporate reorganizations, and international tax planning. He also assists clients in resolving disputes with the Canadian tax authorities. He was admitted to the Alberta Bar in 2004 after articling at the Supreme Court of Canada, and has been a Partner of Felesky Flynn LLP since 2010.



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Mr. Antonopoulos acts for companies in the energy sector, focusing on the planning, drafting, negotiation and completion of complex energy transactions and project work in both the upstream and midstream oil & gas sectors, including advising clients on M&A, joint-venture arrangements, commodity transportation, storage arrangements, corporate re-organizations, and energy project development.

inter-consortium arrangements, the offering of an exchangeable security option, as well as all HSR filings for the transaction.

3

Algoma Steel Inc.

Essar Steel Algoma Inc. concludes a three-year restructuring under the CCAA and sale of substantially all of its assets to Algoma Steel Inc.

On November 30, 2018, Essar Steel Algoma Inc. (ESAI) concluded its comprehensive restructuring under the *Companies' Creditors Arrangement Act* by way of the sale of substantially all of its assets to Algoma Steel Inc. (ASI), a company sponsored by ESAI's existing senior secured term lenders and 9.5% senior secured noteholders (the Secured Lenders) pursuant to a restructuring support agreement. In connection with the sale, the Secured Lenders exchanged their existing secured claims for equity in ASI and certain Secured Lenders backstopped and funded a US\$285 million exit term loan facility. ASI also obtained a US\$250 million revolving ABL facility from a syndicate of third-party lenders led by Wells Fargo Capital Finance Corporation Canada. In addition to ESAI's assets, ASI also purchased the port assets used at the company's port facility in Sault Ste. Marie to effectively unwind a 2014 transfer of the port assets which the CCAA court found to be oppressive earlier in the proceedings. Through the restructuring ASI also implemented revised collective bargaining agreements with the hourly and salaried local unions and obtained certain pension relief through legislation and regulations enacted by the Province of Ontario.

Stikeman Elliott LLP represented ESAI in Canada with a team of Ashley Taylor, Maria Konyukhova, Lee Nicholson, Sanja Sopic (Restructuring/Insolvency); John Ciardullo, Billy Rosemberg (Corporate), Peter Hamilton, Meaghan Obee Tower (Banking); Andrea Boctor (Pensions); Larry Cobb, Patrick Duffy (Environmental); John Lorigo, Margaret Nixon, Eryn Fanjoy (Tax); Michael Kilby (Competition); Eliot Kolers, Daniel Murdoch, Patrick Corney (Litigation); Andrew Elliott, Neil Shapiro (Real Estate); Lorna Cuthbert, Nancy Ramalho (Labour and Employment); and Justine Whitehead (Intellectual Property). Weil, Gotshal & Manges LLP represented ESAI in the United States with a team of Ray Schrock, Kelly DiBlasi, David Cohen (Restructuring/Insolvency); and Sasha Shulzhenko (Banking). FTI Consulting Inc. acted as Chief Restructuring Advisor to ESAI with a team of John Streck and Robert Del Genio and Evercore Group L.L.C. acted as financial advisor

to ESAI with a team of Daniel Aronson, Bo Yi and Akshay Natarajan.

Ernst & Young Inc. acted as Monitor of ESAI and other affiliates with a team of Brian Denega, Sharon Hamilton, Allen Yao, Matt Kaplan, Fiona Han, Matt Budd (Restructuring); Jay Patel, Moshe Deutsch, Robert Stall, Terrance Yeung (Valuations); Brendan Gallagher (Capital Equipment Valuation); Uros Karadzic, Faisal Siddiqi (Pensions); Craig Roskos, Charanjit Girm (Transaction Tax); Sean Kruger (Transfer Pricing); Jan Pedder, Lynne Sangster (Indirect Tax); and Garth Marshall (Geology) and Gowling WLG represented the Monitor with a team of Derrick Tay, Clifton Prophet, Nicholas Kluge, Dom Glavota (Restructuring/Insolvency); Kathleen Ritchie (Corporate); Ash Gupta (Tax); Chris Alam, Kelby Carter (Banking).

Osler, Hoskin & Harcourt LLP represented ASI and certain senior secured term lenders in Canada with a team led by Marc Wasserman and Kevin Morley, Michael De Lellis, Andrea Lockhart, Martino Calvaruso and Sean Stidwill (Restructuring/Insolvency); John MacDonald (Litigation); John Groenewegen, Charlie Zilvytis (Corporate); Laurie Barrett, Jason Pearlstein, Jeremy Burgess (Banking); Paul Litner, Jon Marin (Pensions); Sven Poysa (Labour and Employment); Jennifer Fairfax, Patrick Welsh (Environmental); Firoz Ahmed, Greg Wylie, Alex Klyguine (Tax); Shuli Rodal, Kaeleigh Kuzma (Competition); and Ryan Nielsen (Real Estate). Davis Polk & Wardwell LLP represented ASI and certain senior secured term lenders in the United States with a team of Damian S. Schaible, Christopher Robertson (Restructuring/Insolvency); Stephen Salmon, Bryan M. Quinn, Donald K. Lang (Corporate); J.W. Perry, Jonathan B. Brown, Louis Labriola (Banking); Lucy W. Farr and Tracy L. Matlock (Tax). Rothschild & Co. US Inc. acted as financial advisor to the senior secured term lenders and ASI with a team of Stephen Antinelli, Nic Hooper, Michael Speller, Kevin Glodowski and Rolf Arnold. PricewaterhouseCoopers Inc. also acted as financial advisor to the senior secured term lenders and ASI with a team of John McKenna and Ian Dunlop.

Goodmans LLP represented the ad hoc committee of 9.5% senior secured noteholders in Canada with a team consisting of Robert Chadwick, Joseph Latham, Bradley Wiffen, Andrew Harnes (Restructuring/Insolvency); Tim Heeny (Corporate); Jeff Citron, Dan Dedic (Banking); David Conklin (Litigation); Glenn Ernst and Alan Bowman (Tax); Ken Herlin (Real Estate); and David Rosner (Competition).

Lenczner Slaght Royce Smith Griffin LLP, Blake, Cassels & Graydon LLP, and Brauti Thorning Zibarras LLP represented GIP Primus, L.P. and Brightwood Loan Services L.L.C. in connection with the sale of the port assets with a team



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Mr. Archer focuses on debt and equity public and private financings, mergers & acquisitions, reorganizations and purchases and sales of businesses and assets. He has led or co-led a number of the largest energy-related transactions in Canada and is consistently recommended by *Lexpert*® for Corporate Finance & Securities, is recognized by Best Lawyers for Securities and was an Acritas Star for 2017.



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Mr. Bakshi represents clients in the energy, natural resources and infrastructure sectors. He specializes in the structuring, negotiation and documentation of natural resource projects and related financings, and in domestic and cross-border mergers & acquisitions in the oil, gas, water and power sectors. He has considerable international experience in London, Tokyo and more.



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Mr. Biberdorf was appointed Queen's Counsel in 2014. His practice covers a broad range of business and personal taxation matters, with emphasis on M&A, corporate tax planning, resource taxation, reorganizations of public and private corporations, estate planning, and dispute resolution with taxation authorities. He has been a frequent speaker at conferences of the Canadian Tax Foundation.



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Mr. Boislard has leading expertise in commercial law, primarily in the areas of mergers & acquisitions, corporate financing, investment funds and securities. He also advises clients from the high technology and biotechnology sectors. Numerous public and private corporations trust him to represent them during complex domestic and international cross-border transactions.



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Mr. Braithwaite is a senior partner and was Chair of the firm from 2012 to 2018. He practises primarily in mergers & acquisitions and corporate finance. He has acted as counsel to major Canadian corporations, boards of directors, and institutional shareholders, and various governments and regulatory authorities. He was ranked as one of the Top 25 Most Influential Lawyers in Canada in 2018.

consisting of Peter Griffin, Monique Jilesen, Scott Rollwagen, Matthew Lerner, Chris Trivisonno, Robert Trenker (Litigation), Steven Weisz, Caitlin Fell (Restructuring/Insolvency), Michael Harquail, Charles McRoberts (Banking); Jamie Koumanakos and David Kruse (Corporate); Chris Huband (Real Estate); Paul Stepak and Allan Gelkopf (Tax).

McMillan LLP represented the exit term lenders and exit ABL lenders in Canada with a team of Wael Rostom, Tushara Weerasooriya (Restructuring/Insolvency), Jeff Rogers, Don Waters, Darcy Ammerman, Alex Ricchetti, Julie Han, Emily Csiszar, Rob Scavone (Banking), David Ross, Jennifer Mandel, Alma Borojeni (Real Estate), David Wentzell (Pensions), Ralph Cuervo-Lorens (Environmental), Michael Friedman, Jamie Wilks (Tax), Mary Flynn-Guglietti (Municipal Law), Mike Richmond, Sharon Groom, Paul Boshyk, Geoffrey Kubrick, Paul Davis, and Lyndsay Wasser (Corporate, Energy, and Labour and Employment). Simpson Thacher & Bartlett LLP represented the exit term lenders and exit ABL lenders in the United States with a team of Justin M. Lungstrum, Stephanie A. Rotter, Jeffrey S. Herscott, Juan J. Gonzalez, Michael Peragine, Janet M. Nadile, Jonathan S. Pall (Banking); Sandeep Qusba (Restructuring/Insolvency); Genevieve Dorment (Intellectual Property); Timothy J. Mulvihill (Environmental); Timothy Gallagher (Real Estate); Abram J. Ellis, Mark B. Skerry (Anti-Corruption/Sanctions); Nicole M. Humphrey (Tax); and Jeanne M. Annarumma (ERISA).

Paliare Roland Rosenberg Rothstein LLP represented the USW and its Local 2724 with a team of Massimo (Max) Starnino, Kenneth T. Rosenberg, Lily Harmer, Emily Lawrence and Lauren Pearce (Restructuring/Insolvency and Labour and Employment). Davies Ward Phillips & Vineberg LLP provided transactional legal support, with a team of Robin Schwill and Christopher Anderson (Corporate). FTI Consulting Canada Inc. acted as financial advisor to the USW and its Local 2724 with a team of Paul Bishop, Jim Robinson and Patrick Kennedy and Prism Economics Inc. also acted as financial advisor represented by Ken Delaney.

Cavalluzzo LLP represented USW Local 2251 with a team of Michael Wright, Tracey Henry, Amanda Darrach and Alex St. John (Litigation and Labour and Employment).

Ursel Phillips Fellows Hopkinson LLP acted as representative counsel for certain of ESAI's retirees with a team of Susan Ursel, Karen Ensslen, Katy O'Rourke, Ashley Schuitema and Erin Epp (Litigation and Pensions).

Osler partner Kevin Morley wrote that the deal involved "virtually every major Bay Street firm as well as NY advisors, counsel and investors. Both the federal and provincial governments, includ-

ing the change of governments with the latter and the punitive US tariffs impacting the former, were critical constituents in a resolution which resulted in the salvation of one of two major remaining steel producers in Canada and the City and people of Sault Ste Marie.”

McMillan LLP added, “As counsel to exit lenders we needed to provide the lenders comfort that all restructuring efforts made by Algoma and Buyer work for exit lenders and provided appropriate structuring advice.”

Torys, with a team led by Tony DeMarinis and including David Bish (Restructuring), and Patricia Jackson, Andrew Gray, and Jeremy Opolsky (Litigation), acted for Essar Group of companies, headed by Essar Global Fund Limited and managed by Essar Capital Americas, Limited, as the sole owner/shareholder of, and provider of key services to, Essar Steel Algoma Inc. in its restructuring proceedings under the CCAA and Chapter 15 of the US Bankruptcy Code.

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Teck Resources Limited (“Teck”), closed the sale of its two-thirds interest in the Waneta Dam in British Columbia to BC Hydro for \$1.2 billion cash

As of July 26, 2018, according to Teck’s press release: “Teck will record an after-tax gain of approximately \$820 million as a result of the sale, with no cash tax payable on the proceeds.

“As part of the sale, Teck Metals Ltd. (“Teck Metals”) holds a 20-year lease to use the two-thirds interest in Waneta to produce power for its industrial operations in Trail. Annual payments will begin at approximately \$75 million per year and escalate at 2% per annum, equivalent to an initial power price of \$40/MWh based on 1,880 GWh of energy per annum. Teck Metals has an option to extend the lease for a further 10 years at comparable rates.”

Teck was represented in-house by Peter Rozec (Senior VP, Commercial and Legal Affairs), Nick Uzelac (Corporate Counsel) and Doug Powrie (tax), and was assisted by a team from Fasken Martineau DuMoulin LLP led by Ron Ezekiel, and comprised of Kai Alderson, Steven Catania and Sarah Martin (M&A/Energy), Chris Sharpe (Real Property), Don Dalik (Competition), Brent Lewis (Financing), David Both (Regulatory) and Michael Coburn and Hardeep Gill (Tax). Pamela Anderson (Energy), Michael Carr (Corporate) and Jeff Wyszynski (Real Property) of Perkins Coie LLP also assisted with respect to certain US legal matters.



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Ms. Breen is a partner in the Mergers & Acquisitions, Capital Markets, Banking & Finance and Private Equity Groups. Her practice focuses on mergers & acquisitions, debt and equity financings, and other major transactions. She has acted for a significant number of foreign investors in respect of their Canadian strategic objectives.



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Mr. Burkett is a partner in the Mergers & Acquisitions Group whose practice focuses on advising public and private companies and private equity investors on complex domestic and cross-border mergers & acquisition transactions, divestitures, going-private transactions, as well as public company governance and compliance issues.



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Mr. Carelli is a partner in the Securities Group and Head of the Montréal office’s Corporate Group. His practice is focused primarily in the areas of securities, capital markets, public and private mergers & acquisitions and governance. He advises issuers and underwriters on public offerings and private placements, boards of directors and private equity funds.



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Mr. Carfagnini heads Goodmans’ Corporate Restructuring Group. He has particular expertise in corporate reorganizations and transactions involving Canada, the US and UK. *Best Lawyers in Canada* named him Toronto Insolvency & Financial Restructuring Lawyer of the Year in 2011 and 2019. He is recognized as one of the top 30 insolvency/restructuring lawyers worldwide by *Euromoney’s Best of the Best*.



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Mr. Castiel is a partner in the Corporate Group and a member of the firm’s Partnership Board and Executive Committee. His practice primarily focuses on cross-border mergers & acquisitions. He has extensive expertise in advising private equity funds, sovereign wealth funds and leading public and private companies in connection with acquisitions, divestitures and investments.



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Mr. Castiglio specializes in business law, more specifically in mergers & acquisitions of private and public corporations, securities, and corporate governance. Large public and private corporations trust him to handle complex purchase, sale, financing and restructuring transactions of companies in Canada and internationally.



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Mr. Cattanach practises primarily in the areas of securities, corporate finance, corporate governance corporate/commercial, M&A, and banking law. He acts for a variety of early stage and mature technology, biotechnology, telecom and traditional economy companies (both Canadian and international) and has been involved in numerous public and private financings and secured lending transactions.



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Mr. Chadwick focuses on corporate, banking, private equity, insolvency, reorganizations and related litigation and M&A on national, cross-border and international matters. He represents a diverse client group including debtors, monitors, noteholders, industry regulators, governments, private-equity firms, and lenders in high profile restructurings across Canada's key industry sectors.



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Mr. Chamberland is responsible for the Québec Region Securities and Mergers & Acquisitions practice group. He practises business law and helps clients achieve their strategic and commercial objectives. He specializes in securities and financing, mergers & acquisitions, governance, structured products and commercial transactions.



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Mr. Chatwin is a partner in the Capital Markets and Mergers & Acquisitions Groups. His practice involves a broad array of securities and general corporate transactions, ranging from public and private debt and equity financing to mergers & acquisitions, corporate restructuring and recapitalizations, and shareholder activism and defence.



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With his CA designation and LLB, Mr. Cherniawsky's practice involves providing ongoing income tax planning advice to private corporations and their shareholders on business expansion and business sale transactions, and owner-manager compensation. He teaches for CPA Alberta and CBA Tax Law For Lawyers, with a focus on recently enacted, significant legislative changes.



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Mr. Chernin has over 25 years' experience in Canadian and international M&A, public company and private-equity transactions. He has acted for issuers and underwriters in connection with public offerings including debt and cross-border offerings. He has provided advice on many significant M&A transactions, plans of arrangements and take-over bids, and advised special committees of public companies.

BC Hydro was represented in-house by Vicki Antoniadis (Project Manager, Power Acquisitions and Contract Management), and was assisted by a team from Lawson Lundell LLP led by Lana Shipley, and comprised of Gordon Craig, Jeff Scobie and Jada Tellier (M&A/Energy), Christine Kowbel (Environmental), Ed Wilson (Real Property), Valerie Mann (Competition), Jeff Christian and Clara Ferguson (Regulatory), Keith Bergner (Aboriginal), and Mandeep Dhaliwal and Brenda Lightbody (Financing). Deanna King of Bracewell LLP also assisted with respect to certain US legal matters.

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BSR Real Estate Investment Trust IPO

BSR Real Estate Investment Trust completed its initial public offering of 13,500,000 trust units at a price of US\$10.00 per unit for gross proceeds of US\$135 million.

In connection with the offering, the REIT indirectly acquired a 48-property portfolio of multifamily garden-style residential properties (one of which is to be acquired following closing of the offering) located across five bordering states in the Sunbelt region of the United States, held indirectly by BSR Trust, LLC (BSR). The net proceeds of the offering were used by the REIT to repay approximately US\$122.3 million of indebtedness owing by BSR and to fund transaction costs associated with the offering.

The offering was underwritten by a syndicate of underwriters led by BMO Capital Markets, and included CIBC Capital Markets, RBC Capital Markets, Scotiabank, TD Securities Inc., National Bank Financial Inc., Raymond James Ltd., Canaccord Genuity Corp., Desjardins Securities Inc., Industrial Alliance Securities Inc. and Echelon Wealth Partners Inc. The REIT granted the underwriters an over-allotment option, exercisable in whole or in part at any time up to 30 days after the closing of the offering, to purchase up to an additional 2,025,000 units at a price of US\$10.00 per unit which, if exercised in full, would increase the total gross proceeds to US\$155,250,000.

The net proceeds of the over-allotment option, to the extent exercised, will be used by the REIT for capital expenditures on the initial properties, to repay indebtedness or for future acquisitions.

On closing of the Offering, existing members of BSR retained an aggregate approximate 66-per-cent ownership interest in the REIT and will retain an aggregate approximate 63-per-cent ownership interest in the REIT if the over-allotment

option is exercised. Certain of these holders are members or affiliates of the Bailey family or are members or affiliates of the Hughes family (collectively, the Bailey/Hughes Holders), who together founded BSR. The Bailey/Hughes Holders together own 17,210,733 class B units of BSR, which are economically equivalent to and redeemable for units of the REIT on a one-for-one basis, and 3,037,159 units of the REIT, together representing an aggregate approximate 51-per-cent ownership interest in the REIT, and an aggregate approximate 49-per-cent ownership interest in the REIT if the over-allotment option is exercised.

Goodmans LLP represented the REIT in Canada with a team led by Stephen Pincus and Brad Ross (Corporate/Securities) that included Emily Weizel and Tara Hunt (Corporate/Securities), Jon Northup and Ken Saddington (Tax) and Francy Kussner (Insurance); and by Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the United States with a team that included Harry Hamlin and Melissa Bandy (Real Estate), Nicole Lovell (Corporate/Securities), Jennifer Pierce (Tax) and Nate Read (Employment).

Blake, Cassels & Graydon LLP represented the Underwriters in Canada with a team that included William Fung, Eric Moncik, Neelu Toor and Raees Nakhuda (Corporate/Securities), and Andrew Spiro and Sabrina Wong (Tax). The Underwriters were represented by Greenberg Traurig LLP in the United States with a team that included Andy White and Barbara Jones (Corporate/Securities), Neil Oberfeld, Nicholas Dyer and Christina George (Real Estate), and Bob Simon and Jennifer Weiss (Tax).

6

Canadian Tire acquisition of Helly Hansen

As of July 3, 2018, Canadian Tire Corporation closed the acquisition of the company that owns and operates the Helly Hansen brands and related businesses. Helly Hansen is a leading global brand in sportswear and workwear based in Oslo, Norway. Canadian Tire explains that it:

“is a family of businesses that includes a Retail segment, a Financial Services division and CT REIT. Our retail business is led by Canadian Tire, which was founded in 1922 and provides Canadians with products for life in Canada across its Living, Playing, Fixing, Automotive and Seasonal & Gardening divisions. PartSource and Gas+ are key parts of the Canadian Tire network. The Retail segment also includes Mark’s, a leading source for casual and industrial wear; Pro Hockey Life, the



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Mr. Chevrette is the Co-Chair of McMillan’s Private Equity Group and Technology Group and the Office Management Partner of McMillan’s Montréal office. He is a market leader in private equity, venture capital, mergers & acquisitions (M&As), as well as in sophisticated cross-border transactions. He is particularly active in IT, telecom and the financial services sector.



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Mr. Christian is a litigation partner at Lawson Lundell LLP, with a practice focused on energy and regulated utilities. He represents utilities, power marketers and consumer groups in proceedings before administrative tribunals such as the BCUC, the AUC and the NEB. He was named Energy Regulatory Law Lawyer of the Year in Vancouver for 2013 by *Best Lawyers in Canada*.



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Mr. Ciardullo is a partner and Head of the Corporate Group. He is also former Head of the Capital Markets and Public Mergers & Acquisitions Group. He has significant experience in a wide range of corporate and securities transactions, with a particular emphasis on complex merger & acquisitions transactions, proxy contests/contested meetings and corporate finance transactions.



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Mr. Clifford’s practice is focused on private company mergers & acquisitions, complex commercial transactions and reorganizations, and advising on competition compliance matters. He has extensive experience advising a diverse range of clients on domestic and cross-border matters across many industries, and he is recognized internationally for his expertise and experience.



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Mr. Colborne’s practice focuses on corporate and international tax planning, regularly advising Canadian and foreign-based multi-national groups on a variety of matters, including financing, mergers & acquisitions and natural resource taxation. He also has considerable experience in handling tax controversy issues in Canada and a number of other countries.



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Mr. Corbett is a partner in the Banking & Finance, Mergers & Acquisitions and Capital Markets Groups. His practice focuses on the corporate-commercial area and he acts in public and private financing and other capital markets transactions, including corporate and investment banking transactions, share and asset acquisitions and dispositions, securities transactions and other M&A activity.



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Mr. Cusinato is a partner practising corporate and securities law, with a focus on cross-border M&As and capital markets transactions. He has advised leading public and private companies and private equity groups on domestic and cross-border mergers & acquisitions, divestitures, leveraged and management buyouts, going-private transactions and other private equity transactions.



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Ms. d'Anglejan-Chatillon is a partner and Co-Head of the Financial Products & Services Group. She practises principally in the areas of investment management, the regulation of capital markets and derivatives. She frequently lectures on derivatives, hedge funds and financial products regulation.



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Mr. Davies practises energy law, with a focus on the regulatory and litigation fields. He has acted for both proponents and intervenors in many applications for the approval of pipeline facilities and for the determination of pipeline tolls and tariffs. His cases typically involve complex environmental, Aboriginal, constitutional, jurisdictional, economic and financial issues.



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Managing Partner of Wildeboer Dellelce, one of Canada's leading business transactions law firms, Mr. Dellelce practises in the areas of securities, corporate finance and M&A, offering legal and corporate finance experience combined with hands-on business experience across a range of sectors including financial services. Recognized by *Lexpert*® for Technology Transactions and Global Mining.



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Mr. Dubé has extensive public markets experience in corporate finance and M&A transactions in the domestic and cross-border context. Industries have included real estate, medical cannabis, mining and technology. He regularly assists with strategic decisions by boards and often acts for special committees and financial advisors in the context of change of control and related-party transactions.



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Mr. Durand is a senior counsel to the firm with respect to tax matters and a former Head of the Tax Group. He has been involved in numerous divestitures, mergers & acquisitions, reorganizations, corporate restructurings and financings.

world's largest hockey centric retailer; and FGL (Sport Chek, Hockey Experts, Sports Experts, National Sports, Intersport and Atmosphere), which offers the best active wear brands. The approximately 1,700 retail and gasoline outlets are supported and strengthened by our Financial Services division and the tens of thousands of people employed across the country by the Company and its local dealers, franchisees and petroleum retailers."

The cross-border transaction was led for Canadian Tire by Norton Rose Fulbright's Walied Soliman, Terence Dobbin and Troy Ungerman, and included Chris Pearson, Jon Perry, Pierre Dagenais, Bruce Sheiner, Seemal Patel, Trevor Zeyl, Robert Corbeil, Saskia Blokland and Jasper Geerdes (Corporate, M&A and Securities), Adrienne Oliver, Brian Milne, Dominic Stuttaford and Remco Smorenburg (Tax), Kevin Ackhurst and Anastasia Kastelskaya (Competition/Anti-trust), Chris Hunter (Intellectual Property), Robert Percival (Information Technology), Mike Knapper (Regulatory), Lisa Cabel and Senka Grahovac (Employment & Labour), Matthew Findley (Employee Benefits and Executive Compensation), Michael Lieberman and Alex Fane (Real Estate), Noah Schein (Finance), and Sara Josselyn (Insurance).

Osler advised the underwriters on Canadian Tire's debt offering to partially fund the acquisition with a team led by Michael Innes.

Torys with a team led by Laurie Duke acted for Ontario Teachers' Pension Plan as Canadian counsel in its sale of Helly Hansen to Canadian Tire Corporation, Limited.

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Coca-Cola sale to Kilmer

On September 28, 2018, Coca-Cola Canada Bottling Limited ("CCCBL"), a joint venture established between prominent business person and philanthropist Larry Tanenbaum, OC, and Junior Bridgeman, a former NBA player, renowned entrepreneur and owner of Kansas City-based Heartland Coca-Cola Bottling Company, completed its previously announced acquisition of Coca-Cola Refreshments Canada Company ("CCRC") from Coca-Cola Refreshments USA, Inc., a subsidiary of The Coca-Cola Company (NYSE:KO).

CCCBL continues to employ 5,800 CCRC employees and is responsible for all Coca-Cola bottling and distribution operations across Canada, including the operation of five production

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facilities and over 50 sales and distribution centres. CCCBL will continue to offer a wide variety of beverages, including some of the most popular brands in Canada such as Coca-Cola®, Diet Coke®, Coca-Cola® and vitaminwater®.

The Coca-Cola Company was represented internally by a team led by John Uyham (Senior Counsel - Mergers and Acquisitions) and Brian Henry, VP and Senior Managing Partner, as well as its Canadian in-house counsel Scott Kirkpatrick (General Counsel) and Andrew Brock (Legal Counsel).

The Coca-Cola Company was externally led by transaction counsel, DLA Piper (Canada) LLP. The M&A team in Canada was led by Russel Drew (Toronto) and included Mackenzie Clark, Grace Latimer, Sandra Appel, Mitchell Smith, Melissa Gaul, Christopher Pejovic, Quinlan Winton, Matylda Makulska, Stephanie Blakely, Lauren Storwick, Ryan Walter and Daniel Zajac. The DLA Piper (US) LLP team was led by Jeff Baglio (San Diego).

Blake, Cassels & Graydon LLP provided Tax advice to The Coca-Cola Company in connection with the transaction, with a team led by Jeffrey Shafer and including Zvi Halpern-Shavim. McMillan LLP provided Competition Law advice, with a team led by Casey Halladay and including Neil Campbell and William Wu. Cassels Brock & Blackwell LLP provided Regulatory, Environmental, Real Estate, Employment, Trade and Licensing advice, with a team that included Chandimal Nicholas, Alison Manzer and Richard Ngo (Regulatory/Licensing), Signe Leisk, Adrianna Pilkington and Meghan Rourke (Environmental and Real Estate), Laurie Jessome and Caitlin Russel (Employment) and Brenda Swick (International Trade). Bennett Jones LLP, with a team comprising Leonard Griffiths (Environmental), Jane Helmstadter and Alla Segal (Real Estate), Susan Seller (Pensions and Benefits) and Carl Cunningham (Employment), also advised.

CCCBL was represented internally by Genady Ferenbok, Vice President Legal, Kilmer Group, and Shellie Clausen, General Counsel, Heartland Coca-Cola Bottling Company, LLC, and externally by Goodmans LLP. The Goodmans team was led by Neil Sheehy and Kirk Rauliuk, and included Laura Magisano and Bryan Flatt (corporate/M&A), Ken Herlin, Tyler D'Angelo and Lisa Hawker (Real Estate), Jeffrey Citron, Christopher Payne and Danielle Knight (Finance), Alan Bowman and Michael Royal (Tax), Michael Koch (Competition), John Alton (Pensions and Benefits) and Kate Lyons (Environmental).

Fasken Martineau DuMoulin LLP represented the Lenders (The Bank of Nova Scotia, Bank of Montreal and National Bank of Canada), with



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Mr. Engbloom advises clients on M&A, transactional, governance and general business matters. He has acted as lead counsel on a wide variety of significant transactions and has extensive experience in providing advice on mergers & acquisitions, reorganizations and related-party transactions, as well as advising boards and special committees on both governance matters and substantive transactions.



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Ms. Estep assists major oil & gas companies through all stages of the regulatory process including representation before the NEB, the Alberta Utilities Commission, and the Alberta Energy Regulator. She has appeared at various levels of court on energy-related appeal and judicial review matters. She also advises energy clients on land acquisition and compensation matters.



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Mr. Ezekiel is co-leader of Fasken's Global Energy Group. Clients seek him out for his depth of expertise and his creative and practical problem-solving skills. His industry knowledge, ability to navigate complex negotiations and broad business transaction background make him an ideal choice for counsel on projects and M&A transactions in the energy and natural resources sectors.



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Mr. Feldman practises corporate/securities law with a focus on M&A. He has been involved in a number of contested shareholder matters, including proxy contests representing both dissident shareholders and boards of directors, and is also often asked to participate in litigation matters where strategic advice is sought and knowledge of corporate/securities law is required.



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A senior tax partner of Fillmore Riley LLP, Mr. Fien practises primarily in the areas of taxation and trust law. He has extensive experience in corporate tax planning, corporate reorganizations, estate planning, trust law, and tax litigation. He taught corporate tax and estate planning courses at the Faculty of Law at the University of Manitoba for over 20 years.



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Mr. Forte has extensive experience representing the principal participants in Canadian and cross-border corporate restructurings, insolvencies, and distressed M&A. Since 1987, his practice has spanned all aspects of distress situations, including extensive involvement on behalf of creditors, investors and corporate clients, including strategic board and committee representation.



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Mr. Freeman practises M&A, corporate finance and securities law advising on a wide range of domestic and cross-border matters, including acquisition and defence strategy, transaction structuring and all relevant legal considerations. He also acts on a broad range of capital markets transactions and advises on corporate matters ranging from formation to shareholder disputes and liquidity events.



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Mr. Gagné specializes in corporate, commercial and real estate law, as well as corporate and project financing. A large part of his practice is devoted to mergers & acquisitions, financings, joint ventures and reorganizations. He represents clients operating in various industries such as natural resources, specifically the mining, forestry, and oil & gas sectors.



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Mr. Gamble represents several corporate clients in the mining, forestry, telecommunications, oil & gas, energy and real estate sectors. His corporate and international tax practice includes merger & acquisition structuring, tax opinions, CRA audit and transfer pricing defence, and tax appeals.



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Mr. Gibson practises in numerous facets of taxation law. She has extensive experience in the resolution of income tax and GST disputes including criminal tax evasion matters and focuses on getting results in a timely and efficient manner. She advises on pension matters and has prepared opinions on numerous tax and GST topics.



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Mr. Gorman's practice focuses on domestic and cross-border corporate finance and M&A. He represents public companies and underwriters in the energy sector in a range of transactions including initial public offerings, debt and equity financings and mergers & acquisitions.



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Ms. Grant's practice focuses on public and private corporate finance (including private equity) and M&A. She works with national and international clients across all industries, with a focus on technology (including fintech and AI) and life sciences (including digital healthcare, therapeutics, devices, diagnostics and agribusiness). Co-Director of the Osgoode Hall LLM programme in business law.

a team led by John Torrey and including David Ferris and Dan Conrad (Banking), Allyson Roy (Real Estate), Brad Freelan (Securities) and Chris Steeves (Tax).

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Scotiabank acquisition of Jarislowsky, Fraser Ltd.

On May 1, 2018, Scotiabank announced the completion of its \$950 million acquisition of Jarislowsky, Fraser Ltd. to create the third-largest Canadian active asset manager with \$166 billion in assets under management (as of December 31, 2017).

Scotiabank is Canada's international bank and a leading financial services provider in North America, Latin America, the Caribbean and Central America, and Asia-Pacific, with a team of more than 88,000 employees and assets of over \$915 billion (as at October 31, 2017).

Jarislowsky, Fraser is one of Canada's leading independent investment management firms, managing the portfolios of pension funds, foundations and endowments, corporations and individuals in Canada, the United States and internationally — representing more than \$40 billion in assets under management.

Scotiabank was represented internally with a team that included Ian Arellano (EVP & General Counsel), Anita Mackey (SVP & Associate General Counsel), Alex MacMillan and Doug Robertson (Senior Counsel, Strategic Transactions). Torys LLP provided external legal support with a team led by (Ricco) A.S. Bhasin and which also included Susan Nickerson, Richard Johnson, Cameron Koziskie, Robert Fatt, Michael Meguid and Marko Trivun.

Stephen A. Jarislowsky (founder of Jarislowsky, Fraser Ltd.) and S.A. Jarislowsky Investments Inc. were represented by Davies Ward Phillips & Vineberg LLP with a team that included William Rosenberg, Justin Vineberg, Brian Bloom, Olivier Désilets, Adam Fanaki and Christina Sauro.

Jarislowsky Fraser Ltd. was represented by Blake, Cassels & Graydon LLP with a team that included Peter MacGowan, Navin Joneja, Howard Levine and Kathleen Penny.

The partners of Jarislowsky Fraser Ltd. were represented by Stikeman Elliott LLP with a team that included André Roy, Michel Gélinas (then at the firm), Julien Robitaille-Rodriguez, Luc Bernier, Adam Drori, and Hélène Bussièrès.

Stephen A. Jarislowsky (founder of Jarislowsky, Fraser Ltd.) and S.A. Jarislowsky Investments Inc. were advised by Richard Lewin from

Wildeboer Dellelce LLP on Tax matters relating to the sale.

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Boat Rocker Media Inc., included for its acquisition of a majority stake in Insight Productions

Boat Rocker Media Inc. has come to describe itself as “a global entertainment company that creates, produces and distributes premium media content for all platforms and develops brands and IP for worldwide monetization. Under its banner are Boat Rocker Studios (which includes Temple Street, Crooked Horse, Proper, Jam Filled Entertainment and Radical Sheep), Boat Rocker Rights (which includes Boat Rocker Brands), and Boat Rocker Ventures (which includes investments in Industrial Brothers, MarcoPolo Learning, Serial Box, The Outline, and CAA Creative Labs). A selection of its recent projects includes *Orphan Black* (BBC AMERICA, Space), *Killjoys* (Syfy, Space), *X Company* (CBC), *Being Erica* (CBC, SOAPnet), *Masterchef Canada* (CTV).” It was pleased to join with Insight, a leading television production company headquartered in Toronto, in announcing: “Effective immediately, this investment enables Insight to increase and diversify its content offerings and move more aggressively into digital content while signifying Boat Rocker’s continued growth in the Canadian market and around the world.”

Goodmans represented Insight Productions with a team that included Jonathan Feldman, Emily Ting and Sarah Macchione (Corporate/M&A), Tara Parker (Entertainment), and Mitch Sherman (Tax).

Stikeman Elliott acted for Boat Rocker Media (on Matador Content, LLC; and FremantleMedia’s Kids & Family Entertainment division deals) with a team led by Simon Romano, Marie Garneau and including Paul Neville and Martyna Wolska.

10

The Cannabis sector is Deal #10

Most notably, Constellation Brands, the maker of Corona and Modela beers, increased its stake in Canopy Growth by an additional \$4 billion (on top of its acquisition of a smaller stake earlier in the year). CNBC reported:

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Mr. Graves advises clients on mergers & acquisitions, corporate finance, commercial and securities law matters. With a particular focus on cross-border transactions, he works mainly in the mining and natural resource industries and, in particular, is considered an authority on metal streaming transactions.



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Mr. Gregory’s practice focuses on personal and corporate taxation, corporate reorganizations, syndications and international tax planning. He advises a number of private business groups and high net worth families on tax matters. Their businesses are involved in various sectors including real estate development and investment, hospitality, agriculture and entertainment.



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Mr. Grieve is an internationally recognized insolvency and restructuring lawyer, with a focus on advising major companies on complex commercial reorganizations. As the immediate past Chair of the Firm’s Global Insolvency and Restructuring group, (from 2007 to 2017), he has a wealth of experience in regional, national and international insolvencies and restructuring.



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Mr. Gropper’s practice focuses on complex transactions focused on corporate finance, reorganizations, M&A and commercial real estate. He has advised boards of directors on take-over bids, going-private transactions and other corporate matters.



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Mr. Halperin was named among the top 30 M&A, capital markets and governance lawyers worldwide by Euromoney (only Canadian in all three categories). He is a peer-selected Toronto corporate governance lawyer (2019 and four times previously), M&A lawyer (2017) and corporate lawyer (2015 and once previously) of the year in *Best Lawyers in Canada*, and has the highest ranking for the past 18 years in *Chambers*.



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Senior partner Ms. Harrison, QC, practises in the corporate, M&A, and securities fields. She has represented boards of directors, investment bankers and public corporations in M&As, prospectus offerings, private placements, take-over bids, open market transactions, acquisitions of control, related-party transactions, privatizations, proxy contests and other securities-related matters.



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"With this latest investment and the execution of some warrants, Constellation says its stake will become 38 percent of Canopy. Constellation also received an opportunity over the next three years to buy up to 139.7 million in new shares, which represents up to \$5 billion in additional funding. If Constellation utilized those warrants, it could raise its total stake in Canopy to more than 50 percent."

"Over the past year, we've come to better understand the cannabis market, the tremendous growth opportunity it presents, and Canopy's market-leading capabilities in this space," Constellation Brands CEO Rob Sands said in a statement.

"We think the premium paid as well as the size of [Constellation's] investment reflects the long-term attractiveness of the global cannabis opportunity," Cowen analysts said in a note Wednesday. The firm says Constellation's expectation for the deal to be accretive by fiscal year 2021 is also encouraging.

LaBarge Weinstein LLP acted as sole legal counsel to Canopy Growth Corp. with a team led by Shane McLean and Debbie Weinstein, and including Brigitte LeBlanc-Lapointe and Tayyaba Khan; Davies Ward Phillips & Vineberg LLP, led by Patricia Olasker, advised Canopy on *Competition Act* and *Investment Canada Act* matters. Osler, Hoskin & Harcourt LLP represented Constellation Brands, led by Manny Pressman and James Brown.

On September 5, 2018, Canopy had completed its acquisition of Hiku Brands Company Ltd. (Hiku) by way of plan of arrangement.

Pursuant to the Arrangement, Canopy acquired 100% of the issued and outstanding common shares of Hiku and Hiku shareholders received 0.046 of a Canopy common share in exchange for each Hiku share held immediately prior to the closing. Hiku is focused on building a portfolio of engaging cannabis brands with a national retail footprint led by Tokyo Smoke.

Cassels Brock & Blackwell LLP acted for Canopy with a deal team that included Paul Stein, Jeffrey Roy, Jamie Litchen, Jonathan Sherman and Miriam El Ofir (Securities, M&A and Cannabis), Carla Potter (Financial Services), Ardy Mohajer and Kwaku Tabi (Real Estate), Chris Hersh (Competition), James Morand (Tax) and Brigeeta Richdale (Litigation).

Dorsey & Whitney LLP acted as United States counsel for Canopy.

Wildeboer Dellelce LLP acted for Hiku with a deal team that included Jeff Hergott, Rob Wortzman, Rebecca Cochrane and Amir Torabi (Corporate and Securities) and Katy Pitch (Tax).

Blake, Cassels & Graydon LLP acted as Competition and Litigation counsel for Hiku with a deal team that included Navin Joneja and Jim Robson

(Competition) and Sean Boyle (Litigation).

But there were other transactions that made the news in the cannabis space. Particularly those done by Aurora Cannabis, one of the world's largest and leading cannabis companies with sales and operations in 14 countries across five continents.

On May 2, 2018, Aurora Cannabis completed its \$1.23 billion (US\$950 million) take-over bid for all of the outstanding shares of CanniMed Therapeutics Inc. In addition to product synergies and broader product portfolio, the combination also provides for expanded geographies. The CanniMed Shares were acquired for consideration of approximately 72.7 million Aurora shares and \$140 million in cash. The CanniMed Shares were de-listed from the Toronto Stock Exchange at the close of business on May 1, 2018.

McMillan LLP acted as counsel to Aurora Cannabis with a team led by Desmond Balakrishnan and comprising Cory Kent, Leo Raffin, Paul Davis, Ravipal Bains, Leila Rafi and Kosta Kostic (Capital Markets and M&A), Herb Ono (US Securities), Geoff Moysa, Brett Harrison and Charlotte Conlin (Litigation), Peter Botz (Tax), François Tougas and Ryan Gallagher (competition), with assistance from Dorsey & Whitney LLP (US Tax and Securities).

Borden Ladner Gervais LLP acted as counsel to CanniMed Therapeutics with a team led by Philippe Tardif and comprising Jason Saltzman, Andrew Powers, Mark Wheeler, Colin Cameron-Vendrig, Pierre Permingeat, Joseph Di Ponio, Rocky Swanson (Capital Markets and M&A), Denes Rothschild (Competition), Danny Lang (Tax), Jim Douglas, Cait Sainsbury, Graham Splawski and Ashley Thomassen (Litigation), with assistance from Dickinson Wright LLP (US Corporate and Securities).

Stikeman Elliott LLP acted a counsel to the special committee of the board of directors of CanniMed Therapeutics with a team led by Donald Belovich and comprising Simon Romano, Mihkel Voore, Ryan Kirvan, Logan Copen, David Tardif, Victor MacDiarmid, Spencer Burger, Peter Buckles (M&A and Securities), Peter Howard, Samaneh Hosseini, Sinziana Hennig, Zev Smith (Litigation), Michael Kilby (Competition) and Dean Kraus (Tax).

Not much later, on July 25, 2018, Aurora Cannabis Inc. completed the acquisition of MedReleaf Corp. in a transaction valued at US\$2.5 billion. The transaction was supported by certain key shareholders of MedReleaf and announced in May 2018. The friendly all-stock acquisition was finalized pursuant to a court ordered plan of arrangement in the Ontario Supreme Court of Justice.

The new entity has more than 1,200 employees and is designed to become the largest Canadian



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cannabis producer with presence across Canada and internationally.

MedReleaf is an R&D-driven company focused on the production of top-quality cannabis and is Canada's most awarded licensed producer of medical marijuana.

Aurora has established a uniquely advanced, consistent and efficient production strategy, based on purpose-built facilities that integrate leading-edge technologies across all processes, defined by extensive automation and customization, resulting in scale production of high-quality product at ultra-low costs.

McMillan LLP acted as counsel to Aurora Cannabis with a team led by Desmond Balakrishnan and comprising Cory Kent, Stephen Wortley, Ravipal Bains, Michael Reid, Morgan McDonald, Lindsay Dykstra, Maneesha Dhaka, Brandon Deans, Sandra Zhao (Securities) with support from Herb Ono (US Securities), Peter Botz and Michael Friedman (Tax), François Tougas and Ryan Gallagher (Competition), and Brett Harrison (Litigation).

Dorsey & Whitney LLP acted as US Tax counsel to Aurora Cannabis with a team led by John Hollinrake.

Stikeman Elliott LLP acted for MedReleaf Corp. with a team comprising Stewart Sutcliffe, Sean Vanderpol, Sidney Horn, Daniel Borlack, Katarina Zoricic, Chres Lee, Billy Rosemberg, Peter Buckles and Patricia Joseph (Securities) and Dean Kraus and Jonathan Willson (Tax), Michael Kilby and Megan MacDonald (Competition), Neil Shapiro (Real Estate), Andrea Boctor (Benefits), and Kathleen Chevalier and Alex Lemoine (Employment).

Davies Ward Phillips & Vineberg LLP acted as legal counsel to shareholders of MedReleaf with a team led by Patricia Olasker and including Ghaith Sibai.

Expert[®] also notes that MedMen Enterprises became a publicly traded company through a reverse take-over. OutdoorPartner Media Corporation is an unlisted Canadian public company. BLG represented Eight Capital in that deal with a team led by Andrew Powers that included Philippe Tardif, Cameron MacDonald and Ben Keen.

McCarthy Tétrault LLP's Ranjeev Dhillon predicts that 2019 will see more consolidation, as companies from other sectors, and strictly cannabis companies, will need to demonstrate that they can execute on their strong business plans, or face the threat of competition. Victor Liu, at Goodmans LLP, strikes a similar chord: there are more refined US companies coming forward now, with a history of profitability. General predictions are that marijuana will not be fully, federally legalized in the US before the next election. But after that, all bets are off. 🎲

Honourable Mentions

There were many Deals from 2018 that qualified as Honourable Mentions. We've included them here in alphabetical order. We attempted to stick with those that met our criteria on closing date. The distinction between being in the Top 10 and Honourable Mentions reflects the Lexpert legal community's commentary.

- Airbus SE, Bombardier Inc. and Investissement Québec closed their C Series transaction as of July 1, 2018. By this transaction, Airbus acquired a majority stake in the C Series Aircraft Limited Partnership (CSALP) as was initially announced in October 2017.
- In September 2018, ATCO acquired 40% interest in Neltume Ports, a leading port operator and developer in South America, for approximately \$450 million (US\$340 million). Neltume Ports, a subsidiary of Ultramar, operates in 16 port facilities and three stevedoring businesses mainly situated in Chile and Uruguay.
- As of January 2, 2019, trading began on Toronto and New York exchanges in the shares of the new company created by the merger of Barrick Gold and Randgold Resources.
- BASF announced in August 2018 that it had closed its acquisition of a range of businesses and assets from Bayer. The transaction is a strategic complement to BASF's crop protection, biotech and digital farming activities and marks its entry into seeds, non-selective herbicides and nematocidal seed treatments (this deal is in the context of Bayer's acquisition of Monsanto).
- Closing in May 2018, Blackstone Property Partners, the Core+ real estate investment unit of Blackstone, and Ivanhoé Cambridge, a subsidiary of CDPQ, acquired all of the issued and outstanding trust units of Pure Industrial Real Estate Trust. Blackstone Property Partners and Ivanhoé Cambridge will own respectively 62% and 38% of the Trust.
- Canaccord Genuity Acquisition Corp., a SPAC, completed its qualifying acquisition and merged with Spark Power Corp. CGAC was renamed Spark Power Group Inc. Spark Power provides electrical power services and solutions to North American industrial, commercial, institutional, renewable and agricultural customers, as well as utility markets including municipalities, universities, schools and hospitals. Spark Power also maintains and operates over 2,000 solar and wind energy assets. It has over 600 megawatts of renewable power under management and manages two of the largest renewable energy co-ops in Canada.
- Canacol Energy Ltd. (TSX:CNE) (OTCQX:CNNEF) (BVC:CNEC) announced in May that it had completed its offering of US\$320 million aggregate principal amount of 7.25% senior unsecured notes due 2025. It intends to use the net proceeds from the offering to repay all outstanding amounts borrowed under its credit facility.
- The Canadian Medical Association sold MD Financial Management to Scotiabank for \$2.59 billion.
- Empire acquired Farm Boy from Berkshire Partners and Farm Boy's management shareholders based on a total enterprise value of \$800 million.
- Enbridge sold a 49% interest in a portfolio of renewable power assets to the CPPIB for \$1.75 billion.
- On May 31, 2018, an affiliate of Fairfax Financial Holdings Ltd. acquired all of the share capital and business of Toys "R" Us (Canada) Ltd. Toys "R" Us (Canada) Ltee (Toys Canada) for a purchase price of \$300 million subject to certain working capital adjustments. The share transaction, which was completed in connection with Toys Canada's emergence from restructuring proceedings under the CCAA and Chapter 11 of the US Bankruptcy Code, has enabled Toys Canada to continue as a going concern without compromising creditor claims and preserved Toys Canada's position as Canada's leading toy and baby retailer.
- On July 31, 2018, Galaxy Digital Holdings Ltd. (Galaxy) completed an arrangement transaction pursuant to which Bradmer Pharmaceuticals Inc., Galaxy Digital LP and First Coin Capital Corp. combined to form a new enterprise in the blockchain, digital asset and cryptocurrency space.
In connection with the completion of the arrangement transaction, escrowed funds from a previously completed subscription receipt financing of approximately \$305 million were released to Galaxy. GMP Securities L.P acted as sole agent in the offering of subscription receipts.
- In November 2018, GFL Environmental Inc. completed its merger with Waste Industries, which was valued at an enterprise value of US\$2.825 billion.
- The Government of Canada and Canada Development Investment Corp. acquired Kinder Morgan's Trans Mountain Pipeline and expansion project. This was not included in the Top 10 because there are so many questions that are unresolved. We intend to follow these developments in Lexpert in 2019.
- Grande Cache Coal was acquired by CST Canada Coal Ltd. for US\$430 million.
- Innergex Renewable Energy Inc. completed its acquisition of Alterra Power Corp. by way of an arrangement agreement pursuant to which Innergex acquired all of the issued and outstanding common shares of Alterra for an aggregate consideration of \$1.1 billion, including the assumption of Alterra's debt.
- METRO INC. completed its acquisition of The Jean Coutu Group, which becomes a wholly owned subsidiary of METRO, combining all its pharmacy operations.
- NextEra Energy Partners, LP sold a portfolio of four wind and two solar generation projects in Ontario to an affiliate of Canada Pension Plan Investment Board ("CPPIB") for approximately US\$1.27 billion, including assumption of existing debt.
- In June 2018, Nouvelle Autoroute 30, s.e.n.c. closed a \$1.2 billion bond refinancing for Montreal highway Autoroute 30 (A-30) concession project. The bonds included approximately \$828 million in long-term bonds, due 2042, priced at roughly 4.11% and approximately \$390 million in medium-term bonds, due 2033, carrying a coupon of approximately 3.75%. The long-term bonds and the medium-term bonds are senior-secured and consist of two classes of bonds each.
- Novolex, a portfolio company of The Carlyle Group, in the packaging choice and sustainability sector, acquired The Waddington Group from Newell Brands, Inc.
- The Slate Canadian Real Estate Opportunity Fund I acquired a portfolio of real estate assets from Cominar Real Estate Investment Trust for \$1.14 billion, through Slate Asset Management L.P. It includes 95 assets totalling 6.2 million square feet of office, retail and industrial properties located in the Greater Toronto Area, Atlantic Canada and Western Canada.



Cryptocurrency Uncertainty

IF ONLY LAW AND COMMERCE evolved in tandem, on a parallel timeline that yielded the certainty that business craves. Unfortunately, that hopeful yearning — at least as it relates to the emerging cryptocurrency conundrum — may be more wishful than ever.

In an era where rapid technological advancement is the order of the day — and seemingly becoming more so each and every day — the law, reactive by necessity and restrained in its development by the need for balance among competing societal forces, cannot hope to keep up. This is especially so in the early stages of progress, where lawmakers, regulators and courts can only watch as innovation lunges and lurches at its commercial promise, frequently turning to capital markets to sustain its development as it seeks the forms and outlets that will give it stability and a meaningful bottom line.

It's not surprising, then, that investor euphoria frequently reaches boiling points in regulatory vacuums, only to dampen when regulators first step in. Of necessity, these initial steps are usually tentative and transitional measures aimed at the bad apples in the capital markets, but lacking the guidance that creates the certainty that propels investor confidence. In the meantime, as investors blink, the pace of innovation can suffer.

So it is with cryptocurrency and its underlying blockchain platform. Consider, for example, that Canada was the first nation to confront the legal issues surrounding cryptocurrency when it amended its money-laundering and terrorism-financing legislation to compel cryptocurrency dealers to register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), keep detailed records and report suspicious transactions. Almost five years later, final regulations have not been published,

AS CANADIAN REGULATORS AND LEGISLATORS GET UP TO SPEED ON CRYPTOCURRENCY TECHNOLOGY, UNCERTAINTY REMAINS ABOUT HOW TO APPLY EXISTING LAWS TO IT

BY JULIUS MELNITZER

PHOTO: SHUTTERSTOCK



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the rules have not yet come into force and may not come into force until 2020.

Even core questions about the nature of blockchain assets remain unanswered.

"We still don't have a formal position by several regulators as to the nature of digital assets and whether or when blockchain-based offerings such as tokens are securities as opposed to currencies," says Usman Sheikh in Gowling WLG's Toronto office. "If there's a lack of clarity on this most basic issue, we can see how uncertainty continues to reign in many areas of the law."

It is true that 2018 saw domestic and foreign regulators take longer, harder looks at cryptocurrency regulation and enforcement. In 2018, both the Canadian Securities Administrators (CSA) and the US Securities and Exchange Commission (SEC) confirmed that most initial coin offerings (ICOs) were subject to their jurisdiction. Later in the year, both regulators cautioned stakeholders about the potential unlawfulness of online platforms for trading digital assets. The CSA also issued a staff notice emphasizing the importance of token purchasers' reasonable expectation of profit in acquiring tokens as a sign that the ICO was an investment contract subject to securities laws.

There's little doubt that the increasingly focused regulatory atmosphere and the accompanying investor uncertainty — both of which represent a moving dot on the continuum from the "Wild West" atmosphere that prevailed to propel Bitcoin to a market high near \$20,000 in December 2017 — is at least partially responsible for the fall in Bitcoin's value to about \$3,600 in January 2019.

"We were taking three calls a day in this space until about June 2018, when the OSC issued Staff Notice 46-308, which essentially said that almost all token offerings would be treated as securities," says Allan Goodman in Goodmans LLP's Toronto office. "After that, interest dropped off tremendously."

In other words, the regulatory action that has been taken to date may have done more to fray investors' nerves as opposed to quelling them.

"The guidance given so far hasn't been particularly helpful," Goodman says. "It's true that the regulators have been going after the bad actors, but the vast majority of stakeholders, who aren't in that category, are still waiting for authorities to come out with formal policies and rules."

Daniel Fuke in Fasken Martineau DuMoulin LLP's Toronto office maintains that regulatory postures so far have amounted to little more than a knee-jerk initial reaction that securities laws apply to cryptocurrency offerings.

"All the regulators have done is punt the question of when a token is a security," he says. "On

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the whole, there is absolute acknowledgement in industry circles that a token will often be a security, but at the same time there's a significant space in which a token could be a currency or a utility."

As it turns out, the idea that a unit of exchange can take different forms is not a unique concept. US dollars or any other established international monetary units could be currency for people who use it to pay for goods and services at the same time that they represent a securities investment for those participating in the currency exchange market.

As well, and perhaps more importantly — because cryptocurrency's potential as a ubiquitous decentralized currency has many naysayers — part of cryptocurrency's uniqueness is in creating economic incentives to participate in a platform that benefits the whole network. Bitcoin, for example, uses cryptocurrency to reward "miners" who provide network security by validating transactions.

Interestingly, it's a Canadian company, Waterloo-based Kik Interactive, that may be the first to have the US courts pronounce on the characterization of cryptocurrency. After the OSC came to a preliminary conclusion that the company's 2017 offering of about \$100 million in digital tokens constituted a securities offering, Kik decided to limit its offerings to the US. But when the SEC came to the same conclusion as its Canadian counterpart, Kik advised that any enforcement action would be challenged in the US courts.

"It's important for the industry that regulators' interpretations of the law are being challenged," Fuke says. "The SEC's test for whether an offering is a 'security' is outdated and didn't contemplate the emergence of digital assets when the test was formulated. This challenge is clearly needed."

Kik's position is that the tokens are intended for use as a currency on its platform, a social networking enterprise aimed at interconnecting a variety of third-party apps that integrate Kik's messaging app into their software. Services that do so or otherwise promote Kik's app will be rewarded in "Kin," digital tokens that can then be spent in the interconnected network.

According to Fuke, the company has strong supporting arguments for its position that Kin tokens are not securities, including the fact that only small amounts were sold to individual purchasers.

"Kik wants people to spend Kin and circulate it in the network," Fuke says. "It's not intended as an appreciating investment nor does Kik intend to be responsible for anyone else's money."

Vern Krishna, a tax lawyer at TaxChambers LLP in Toronto, says tax authorities are no further along than their securities brethren. But unlike many securities lawyers, he believes that cryptocurrency should be treated as a speculative commodity rather than a currency for tax purposes.



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"It's a sinkhole that no one knows anything about, a highly risky commodity in respect of which gains or losses should be treated as income rather than capital," he says. "I don't see any new principle emerging from this particular asset."

Despite the uncertainty, however, pretty well everyone interviewed agreed that good regulation takes time.

"We're dealing with novel and complex developments," Sheikh says. "Regulators and legislators need time to get up to speed on exactly what this technology is about and how to apply existing laws to it."

Compounding the problem is the shifting landscape. "The markets have been changing so rapidly that it's difficult for anyone to catch their breath and figure out rules that meet everyone's needs," Fuke says.

Meanwhile, it's not as if securities regulators are standing still. Apart from the guidance that securities regulators have offered, the CSA has established its Regulatory Sandbox, aimed at gaining "a better understanding of how technology innovations are impacting capital markets, [at assessing] the scope and nature of regulatory implications and [at determining] what may be required to modernize the securities regulatory framework." Several provincial commissions also have dedicated teams to help startups.

To its credit, the Regulatory Sandbox has been the conduit through which authorities have provided exemptive relief to two token offerings and allowed four registered firms to act as investment fund managers for a private cryptocurrency investment fund.

Arguably, however, CSA members haven't gone quite as far as other regulators in soothing cryptocurrency startups and potential investors.

"FINTRAC will answer certain questions, the SEC will issue 'no action letters' and the Canada Revenue Agency has long issued advance rulings," Fuke notes.

In response, CSA spokesperson Ilana Kelemen advises that "our views on/approach to the cryptocurrency space are in line with most international regulators."

But CSA, through Kelemen, offered little in the way of assuring investors that greater certainty is on its way.

"The CSA continues to closely monitor the regulatory issues surrounding cryptocurrencies in Canada," she wrote in an email. "We continue to assess the scope and nature of regulatory implications, and review applications from businesses in the cryptocurrency sector that are subject to securities law."

As Krishna sees it, that's not surprising. "Government and regulators rarely lead," he says. "They're more inclined to follow." ▀

Protecting Canadian Directors: The Role of D&O Insurance

This article highlights some of the key points that Canadian corporate directors need to keep in mind as they consider the adequacy of their Directors and Officers (“D&O”) liability coverage in Canada’s increasingly litigious environment.



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D&O insurance exists because all corporate directors are potentially subject to personal liability claims, not only for their own conduct as board members (e.g. conflicts of interest) but — in some cases — for the company’s conduct (e.g. with respect to taxation and environmental issues).

Should a claim arise, a director should first refer to the indemnification provisions under Canada’s corporate laws, the corporation’s organizational documents and any contractual agreements in place between the director and the corporation. This will help to determine what, if any, legal obligations the corporation has to compensate the director with respect to the claim. The director should also familiarize themselves with the scope of any D&O insurance policies that the corporation has in place, which policies may be used by the corporation both to satisfy any of its legal indemnification obligations discussed above and to compensate directors for claims that may in fact be above and beyond any such obligations.

D&O insurance coverage comes in several distinct types. The main category that is personally relevant to directors is “Side A” coverage, which is directly available to directors for matters that the corporation is not legally required to indemnify. In addition to this, there is also “Side B” coverage, which reimburses the corporation for amounts paid as indemnification to directors or corporate officers and is more traditionally used to cover matters that the corporation is legally required to indemnify. Lastly, “Side C” or “entity” coverage is also available to corporations to assist them when they are sued alongside their directors and officers.

While D&O policies are generally tailored to each company’s needs, there are certain common issues on which directors should focus as they assess the adequacy of their coverage. Six of these are discussed below, with additional information available in the publications mentioned at the end of this article.

1. Severability

New directors are typically added to an existing group D&O policy that was issued on the basis of an application submitted by existing or past directors. Because the insurer is often permitted to rescind a policy on the basis of inaccuracies in the application form, this means that a new director could theoretically lose their coverage because of someone else’s misstatements. To prevent this, many D&O policies include a “severability” clause that limits denials of coverage on this basis to board members who knew of the misstatements.

2. Dilution

D&O insurance policies often cover not only the directors and officers but also the corporation itself. Because each policy is capped at a certain aggregate amount, it is important from a director’s standpoint that the policy clearly gives the Side A coverage precedence, with respect to payouts, over the Side B and Side C coverage.

3. Former and related directorships

The definition of “insured person” will typically include former directors. Those who also serve on the boards of subsidiaries or affiliates should confirm that they are also covered in those roles.

4. Exclusions

D&O policies generally contain exclusions for fraud, dishonesty or criminal conduct. While these may broadly speaking be non-negotiable, there may be aspects of them that are important to discuss (e.g. from a director’s perspective, the insurer should not be able to deny coverage simply on the basis of an allegation).

Download Stikeman Elliott’s
*Directors and Officers
in Canada* guide at
stikeman.com/directors

5. Insolvency

Directors should consider how their policies deal with insolvency situations, including general carve-outs that may permit their insurer to cancel coverage on insolvency or bankruptcy.

6. Top-up policies

D&O insurance is purchased in towers. In other words, there is a primary policy that is supplemented by multiple levels of excess insurance coverage that can be used as back-up. The corporation’s suite of insurance can almost always be topped-up — for a price — by obtaining additional coverage from another provider. A new director concerned about the level of coverage in the current policy may wish to request this.

For further information

Stikeman Elliott’s publication *Directors and Officers in Canada* is available to provide additional information on D&O insurance, visit stikeman.com/directors

Our complete library of publications is available on our Knowledge Hub at stikeman.com/kh

Stikeman Elliott

Insolvency Becomes Customized

IT'S BEEN CALLED a “bespoke solution” to insolvency proceedings: Canada’s *Companies’ Creditors Arrangement Act* (CCAA) or, indeed, “Canada’s other insolvency proceedings.” Canadian insolvency lawyers call it more flexible than other international regimes, and more principles- rather than rules-based, allowing for faster and more efficient outcomes.

“The Canadian Act [has] an important section that says a judge can make any order that he or she sees fit, [that] she thinks appropriate in the circumstances,” says Robert Thornton of Thornton Grout Finnigan LLP in Toronto, a boutique firm practising exclusively in the areas of litigation and restructuring.

By comparison, says Thornton, the US bankruptcy system “has developed over many decades, and is now, I believe, thousands of sections and subsections long, and if you can’t fit within a particular section or subsection, then the idea is that it can’t be done. The philosophy behind the two regimes are dramati-

PRACTITIONERS SAY THE FLEXIBILITY AND PRACTICALITY OF THE COMPANIES’ CREDITORS ARRANGEMENT ACT LEADS TO FASTER AND MORE EFFICIENT OUTCOMES FOR INSOLVENCY PROCEEDINGS

BY ELIZABETH RAYMER



PHOTO: SHUTTERSTOCK

LEXPERT-RANKED LAWYERS



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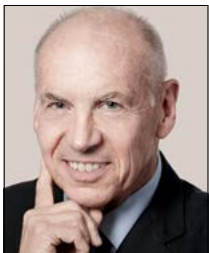
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cally different.”

In November 2016, Pacific Exploration and Production Corp., a Canadian company that was the largest non-state oil producer in Latin America, announced it had successfully implemented a restructuring plan under the CCAA, even though it largely operated in Colombia. This was novel in Colombia, says Melaney Wagner, a partner in the Corporate Restructuring Group at Goodmans LLP in Toronto, as “Colombia recognition proceedings had never been used with the CCAA” before. (Goodmans was counsel to the ad hoc noteholders in the proceedings.)

However, she says, a unique feature of the CCAA proceedings is the court-appointed monitor, who in this case built a connection with the office of the superintendent of bankruptcy in Colombia and worked closely with it. This avoided Pacific being taken over by the superintendent, says Wagner. The court-appointed monitor “was instrumental ..., so because of that, and all of the flexibility under our statute, the Pacific [restruc-

“OUR REGIME HAS A LOT TO COMMEND IT. BUT CLIENTS IN PARTICULAR ARE RELUCTANT TO GO INTO AN UNCERTAIN REGIME AS OPPOSED TO ONE [SUCH AS THE US REGIME] WHERE THEY CAN PREDICT THE RESULT — EVEN IF IT TAKES LONGER AND COSTS MORE.”

- ROBERT THORNTON,
THORNTON GROUT FINNIGAN LLP

ting] was completed in a time-effective and cost-efficient manner.” In June 2017 the company changed its name to Frontera Energy Corp. and is listed on the TSX.

While insolvency lawyers don't see a general swing to using the Canadian insolvency regime in international restructurings, they see its advantages and aren't surprised when it is favoured over other regimes.

“Our regime has a lot to commend it,” says Thornton. “But clients in particular are reluctant to go into an uncertain regime as opposed to one [such as the US regime] where they can predict the result — even if it takes longer and costs more.”

Perhaps the greatest foreign player in Canadian insolvency proceedings is the United States, where investors are often located. The US Bankruptcy Code is more codified and rules-based, insolvency practitioners agree, though one that allows players to show up at the last minute, on the courthouse steps, to make a deal; it's described as results- rather than principles- and process-driven.

“The Canadian system is more flexible and practical,” says Alex MacFarlane, a partner in Borden Ladner Gervais LLP’s Toronto office and national co-chair of BLG’s Insolvency & Restructuring Group. “It leaves more discretion with the sitting judge and allows others to come up with solutions.”

However, he says, “the systems work pretty smoothly together.”

Wagner agrees that “the CCAA is a lean and flexible statute with fewer codified rules,” which allows courts to adapt to unique circumstances. “We aren’t tied to a lengthy code, like the US Bankruptcy Code, and multiple first-day papers and motions that significantly increase the cost of the proceedings,” she says. “Under our CCAA, we have one initial order that covers all first-day relief” in proceedings. “And that’s based on a model order that was developed with the assistance of our judges and the insolvency Bar for efficiency.

“Relief after the first day is driven by principles as opposed to rigid rules,” Wagner adds. There is more flexibility under the inherent jurisdiction of the CCAA courts for third-party releases, and which are sometimes key to resolution of a case. “We don’t have unsecured creditors’ committees that are statutorily mandated and very active in the United States that can lead to increased costs and lengthier proceedings,” she says. What the CCAA provides for is a court-appointed monitor to look out for the interests of stakeholders in a fair and efficient manner.

Challenges can arise when a Canadian company is a debtor in processes under Chapter 11 of the US Bankruptcy Code and in Canada under the CCAA, she says. “It’s more cumbersome and you’re trying to meet both sets of rules, which are not the same.” If there is a conflict between the two regimes, the Canadian company that files in both jurisdictions may be disadvantaged by the more rigid US regime.

For this reason, Wagner says her firm typically advocates for concurrent proceedings whereby a corporation with legal entities in both Canada and the US has its Canadian companies file proceedings in Canada and its US companies in the United States. She gives the example of Golf Town, owned and operated by Golfsmith International Holdings Inc. of Austin, Texas. While very few locations were closed in Canada, almost all locations in the US were closed down, she says. The US and Canadian companies were in a shared credit facility and the US operations were in dire straits. The proceedings ran separately, in two jurisdictions and under two regimes. This meant that US trade creditors didn’t get Canadian assets; rather, the Canadian assets got to those creditors, and the Canadian operations continued.

The restructuring of Target Canada also used



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“THE CCAA IS A LEAN AND FLEXIBLE STATUTE WITH FEWER CODIFIED RULES. WE AREN'T TIED TO A LENGTHY CODE, LIKE THE US BANKRUPTCY CODE, AND MULTIPLE FIRST-DAY PAPERS AND MOTIONS THAT SIGNIFICANTLY INCREASE THE COST OF THE PROCEEDINGS.”

- MELANEY WAGNER, GOODMANS LLP

the CCAA, she says (Goodmans acted for the court-appointed monitor), and although there was initial trepidation, as Target US was the parent, the restructuring was a success. “That plan received virtually unheard-of approvals,” says Wagner.

As head of the Restructuring & Insolvency group in Calgary for Blake, Cassels & Graydon LLP, Kelly Bourassa has handled parallel and other proceedings on both sides of the Canada/US border. Canadian and US proceedings, despite their differences, do have a lot of similarities, she says. “They still have the same underlying concepts of debtor in possession, restructuring and the idea that creditors can be compromised.

“In the French *sauvegarde* regime, it becomes very interesting because even where there is not enough money to pay all the creditors, shareholders still get a vote,” she says, “which is completely averse to what would be accepted in Canada and in the US, where we both have the view that equity claims have to come behind debt.”

In 2015 and 2016, Bourassa handled two “very similar” restructuring cases involving Canadian entities with US assets. One case, Parallel Energy, involved parallel proceedings, while the second, Argent Energy, engaged the CCAA in Canada and Chapter 15 proceedings in the US (recognition proceedings under the US Bankruptcy Code). The Parallel case is still not fully resolved, she says; however, the second case, which was

started in February 2016, was fully resolved by the end of the year.

“So there’s the ability to run a much quicker process under the CCAA,” Bourassa says.

Bourassa has seen great success, she says, with CCAA proceedings with Chapter 15 proceedings in the US. “From my own experience, we’ve been able to incorporate the Canadian principles” especially in cases where there are not enough assets to pay secured creditors, as Canadian proceedings value them more. “In a few cases ... it allowed us to avoid some of the rules that would be commonplace in a Chapter 11 proceeding, because they’re not part of the Canadian regime. So we’ve been able to streamline the US proceedings.”

Other foreign jurisdictions can come into play in international restructurings, sometimes with struggles to coordinate regimes. MacFarlane recalls the winding up of the business of Maple Bank GmbH in Canada. It was the first authorized foreign bank liquidation in Canada and was liquidated by German regulators, he says.

“We had two different systems; in Canada, it was the *Winding-up and Restructuring Act*, but the Germans wanted to apply their system in Canada,” he says. Borden Ladner Gervais, acting for the liquidator, was adamant that the CCAA should be used. “We ended up working out a protocol with the Germans, so the two systems did work in the end, and quite effectively. But you just have to work out a protocol, and that’s what largely happens between US cases and Canadian cases: that the lawyers, monitor, judges work out a cross-border protocol that helps run the two cases smoothly.”

Several international cases involving mining companies have used the CCAA regime, including Crystallex International Corporation, he says. Crystallex has operations in Venezuela and chose Canada to restructure; “that’s still ongoing.” Great Basin Gold Limited also restructured in Canada; based in Vancouver, it has mining assets in Africa. “Canada is used quite frequently for such cases. For companies that have head offices in Toronto or Vancouver, it gives them the legal basis to file in Canada.”

MacFarlane is seeing more coordination of the Canadian and American regimes, and Wagner, too, notes that international companies, stakeholders and advisors are seeing more examples of successful restructurings under the CCAA.

“They’re becoming more familiar with the flexibility, optionality and efficiencies of our CCAA regimes and the effect of our Canadian orders,” she says. “This is leading to more discussion and consideration at the initial strategizing stage, as there’s a recognition of what can be done under our CCAA, and a desire to take advantage of these benefits.”



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Cannabis Business Growth Ahead

WITH CANADA LEGALIZING cannabis for recreational use in Canada in October, 2018 became a year of big deals in the sector.

In November, Constellation Brands — an international producer and marketer of beer, wine and spirits — increased its stake in Canopy Growth by an additional \$4 billion (it had acquired a smaller stake earlier in the year). Two months earlier, Canopy had bought up Hiku Brands, parent company of Tokyo Smoke, for \$250 million.

Aurora Cannabis, one of the world's largest and fastest-growing cannabis companies, made two acquisitions: CanniMed Therapeutics for \$1.23 billion and MedReleaf Corp. for US\$2.5 billion. And, in December, the Altria Group, a tobacco company, bought a 45-per-cent stake in Canada's Cronos Group for US\$1.8 billion.

"It's certainly a very exciting" period in M&A in the cannabis sector, says Patricia Olasker, a partner at Davies Ward Phillips & Vineberg LLP in Toronto, who led a team of legal advisors for Canopy Growth in the acquisition by Constellation Brands for MedReleaf shareholders in the purchase by Aurora Cannabis, and who advised

AS THE CANADIAN CANNABIS SECTOR CONTINUES TO GROW, M&A LAWYERS HAVE SEEN A RISE IN MAJOR DEALS, BOTH NATIONALLY AND INTERNATIONALLY

BY ELIZABETH RAYMER



PHOTO: SHUTTERSTOCK



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"FOR CANADIAN COMPANIES, THE HOLY GRAIL IS REALLY BEING ABLE TO GET A FOOTPRINT INTO THE US. SOME ARE ALREADY THERE, SUCH AS TILRAY AND CANOPY."

- PATRICIA OLASKER,
DAVIES WARD PHILLIPS & VINEBERG LLP

the Cronos Group in the Altria deal.

"I think the challenges have been, because the big deals have had a US nexus, ... a process in getting people on the other side of the border comfortable with our regulatory regime, and with the industry generally." That has left a significant role for legal advisors in that respect, she says. And for the investment banking community in particular, as the mining sector "went into the toilet, the cannabis industry was born."

The most interesting aspect of the past year has been the international aspect of cannabis M&A as more and more companies look to expand their footprint outside of Canada, says Ranjeev Dhillon, a partner and co-lead of McCarthy Tétrault LLP's national Cannabis Law Group, based in Toronto. He sees a continuing trend in international deals with Canadian companies. "If you want to be a dominant player long-term, you need to look outside our borders."

Donald Belovich, a partner in the Capital Markets, Securities and Mergers & Acquisitions Groups at Stikeman Elliott LLP in Toronto, who led the team representing CanniMed Therapeutics' special committee of the board of directors

in CanniMed's purchase by Aurora, notes that Canada's cannabis sector is equivalent in size to California's cannabis marketplace. Canadian licensed producers are buying capacity and ancillary services, but are also looking elsewhere to grow their business markets.

"We're seeing them overseas, ... making acquisitions domestically and internationally," Belovich says. "They're realizing that to stay relevant and profitable, you need to do more than grow for Canada."

Will 2019 bring the same blockbuster deals to the cannabis industry as 2018 did?

Olasker sees cannabis M&A as moving in waves. The first wave began in 2015, she says, and she believes "the consolidation wave ... has come and gone." The second wave, including the Aurora-MedReleaf deal that she advised on last year, involved deals in which shareholders took a key role in deciding whether companies they'd invested in were wholly or partly for sale.

The third wave, which Olasker sees as taking place now, involves activity that "is not Canadian buys Canadian, but non-industry player buys industry player." This includes the Constellation-Canopy and Altria-Cronos Group deals, as well as Molson Coors Brewing Co.'s acquisition of The Hydrothecary Corporation last year.

"All these players are coming onto the Canadian stage and buying whole companies, or entering into a control-like relationship with the Canadian entities," Olasker says. "That's been interesting, and has delivered a lot of value into the hands of Canadian players."

Dhillon predicts "a flurry of activity" in 2019, with, potentially, some blockbuster deals based on companies with good synergies joining forces. On the other side, he says, as the cannabis market starts to find its feet, "I think we'll see some entities that don't perform well being targets, and can be scooped up cheap," made even easier since the cannabis sector has largely been funded with shares.

"I think in 2019 we will continue to see large amounts of activity, and it will outstrip 2018, quite frankly."

Aurora Cannabis's ultimately successful take-over of CanniMed Therapeutics, completed on May 2, was "a rollercoaster," says Stikeman Elliott's Belovich, who led the legal team for CanniMed. What started as a meat-and-potatoes M&A deal in terms of the acquisition became a hostile take-over bid by Aurora midway through, he says, and the deal also contained many "firsts."

Not only was this deal the first high-profile M&A deal in the cannabis space, but also the first under Canada's new take-over rules that took effect in 2016, which give companies more time to respond to unsolicited offers and find a higher bidder.



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“THE CANNABIS INDUSTRY ITSELF IS [STILL] COMING INTO ITS EARNINGS, THEN CONSTELLATION COMES IN AND RESETS THE BAR REGARDING VALUE.”

- DONALD BELOVICH,
STIKEMAN ELLIOTT LLP

Then Constellation Brands made its investment in Canopy Growth, which raised the bar and saw lofty valuations, says Belovich. “The cannabis industry itself is [still] coming into its earnings,” he explains, “then Constellation comes in and resets the bar regarding value.” Regulatory proceedings, then a take-over bid by Aurora under the new regime, “and crazy volatility in the marketplace, and overnight, the value is swinging in the millions of dollars.”

At the end of the day, Aurora increased its bid significantly and put in some more cash in addition to shares. “The valuation and price was so compelling, that ultimately it was in the best interest of the shareholders,” says Belovich, and CanniMed’s board could approve the deal.

The Constellation deal had a significant impact on the Aurora-CanniMed transaction and others, he adds.

Emmanuel Pressman of Osler, Hoskin & Harcourt LLP’s Toronto office, who acted for Constellation Brands in its investment in Canopy Growth, explains the rationale behind the deal. Three years ago Constellation had sold its Canadian wine business to the Ontario Teachers’ Pension Plan, a deal “designed to unlock value and capitalize on investment, and reallocate resources” to its Mexican breweries, premium label spirits and other products. About a year later, “in what’s otherwise a slow-growth business,” Constellation started looking around and saw Canada’s growth in the cannabis sector. The first deal, a 9.9-per-cent investment for about \$250 million, with the ability to get up to 20 per cent, was conducted, and a year after that decided to make a much more material and meaningful investment in the company: the controlling \$4-billion investment.

Although Constellation was interested in Canopy Growth with a view to creating infused beverages and other edible products, “that’s not the only driver behind the investment,” says Pressman. “They were interested in exploring a new category that was a potential competitor to alcohol. The cannabis players are positioning themselves as a ... threat to alcohol.”

Shifting trends in consumer habits, such as the move from drinking coffee to energy drinks among young people, forecasts a potential con-

sumer shift to cannabis edibles, vaping and more.

“I think Constellation is an innovator in the alcoholic beverage sector,” says Pressman, “and they saw a once-in-a-century opportunity. They were very forward-looking in terms of understanding shifts in consumer behaviour.”

The Constellation-Canopy deal created much speculation that investment in the cannabis space by certain types of industries would be more likely to occur, Pressman says. “Alcohol and beverages, tobacco and pharma were the three big industrials that people had expected to be very focused and interested in the sector.” First came the deal by Constellation, an alcoholic beverages company, then the Altria tobacco (Marlborough brands) company and its investments in Cronos, and then pharma, through joint-venture transactions with Tilray, a Canadian pharmaceutical and cannabis company incorporated in the United States with primary operations headquartered in British Columbia. “Now, you’ve got a closing of the circle, the trifecta of industries that have identified their horses and strategic investments.”

And Canada is the only market that’s available to US producers who want to raise capital, Pressman says. Although there are hundreds of profitable, revenue-generating US cannabis producers, cannabis remains a controlled substance and illegal under the US federal *Controlled Substances Act*, making it difficult for American cannabis producers to borrow money from traditional financial institutions, or to raise capital on federally regulated stock exchanges.

Because of Canada’s expertise in that market, its stock exchanges and capital markets can foster international cannabis players similar to the way they fostered international junior and mid-market exploration-stage and development-stage mining companies, he says. Cannabis producers today are contributing to robust Canadian capital markets, “and as that happens, that is also potentially going to feed and foster the Canadian M&A market.”

In December the proposed amendments to the federal *Cannabis Act* and the Cannabis Regulations were released. These proposed amendments to the Act and Regulations are anticipated to permit the legal sale of edibles, extracts and topicals containing cannabis by October 17, 2019.

Cannabidiol (CBD), a therapeutic cannabinoid which can be used topically, in an oil, has now been liberalized in the United States, which is ahead of Canada in that respect, Davies’ Olasker notes.

“I think we’re going to see ... Canadians looking to buy US hemp assets” so they can produce CBD, she says. “For Canadian companies, the holy grail is really being able to get a footprint into the US. Some are already there, such as Tilray and Canopy.”

Olasker also sees conventional retailers moving into the cannabis space, and notes Tilray’s recent



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global revenue-sharing agreement with Authentic Brands, which owns the shoe-store chain Nine West, among other brands, to develop and market consumer cannabis brands. “A driver is that if you’re going to buy a foot cream, you might prefer that it say Nine West on it rather than XYZ Weed Co.,” she jokes; and as cannabis products move into the health-and-wellness sector, “this is normal retail play, and obviously it makes a ton of sense.”

Today, cannabis is “a lot more than the Grateful Dead and potheads,” says Belovich. Medical cannabis may be available through health-care benefits and a product such as CBD oil may be safer for use by the elderly, for example, than conventional drugs. THC and CBD are just two of 113 cannabinoids identified to date, which science can use to create “millions of combinations,” he says. “If you think of the whole science aspect, that’s hugely exciting.”

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