

Desautels Review of Private Enterprise & Law: Introduction

VIRGINIA TORRIE,^{*} CONNOR
JONSSON,^{**} AND TY SCHMIDT^{***}

Private enterprises are the heart of the Canadian economy and the lifeblood of the Province of Manitoba. These businesses are found in almost every industry. Within Manitoba, private enterprises contribute 75% of the GDP, employ 74% of the workforce, and create 90% of new jobs. The majority are small and medium-sized businesses, but a number of large firms are also privately held. The Marcel A. Desautels Centre for Private Enterprise and the Law integrates the disciplines of business, law and the humanities as they apply to family controlled and other private enterprises in order to provide future lawyers and their clients with a better understanding of the opportunities and challenges facing privately held businesses.

With this inaugural issue, we are proud to introduce the flagship publication of the Centre: the Desautels Review of Private Enterprise & Law. The Desautels Review is a peer-reviewed journal published annually through the Manitoba Law Journal. It plays host to a broad range of multidisciplinary research in order to promote a deeper understanding of the multi-faceted and complex issues facing private businesses. Comparative perspectives are welcomed, as private enterprises play a vital role in the economies of many countries around the world. Last fall, a small editorial team led by Editor-in-Chief Dr. Virginia Torrie began the challenging and exciting work of launching the new law journal. Through promotional work on social media and grassroots outreach, the journal received many remarkable submissions for its inaugural issue, which we are proud to finally

^{*} Associate Professor, University of Manitoba Faculty of Law.

^{**} JD Candidate 2023, University of Manitoba Faculty of Law.

^{***} JD Candidate 2023, University of Manitoba Faculty of Law.

present to you. Welcome to our readers, and thank you to all the incredible authors and peer reviewers who made this first issue possible.

In the first paper, “The Supreme Court of Canada and the Development of a Canadian Common Law of Contract”, Professor John McCamus provides an in-depth survey of developments in the Canadian common law of contracts in the jurisprudence of the Supreme Court of Canada during the late twentieth and early twenty-first century. Offering a bird’s-eye view of the Supreme Court’s decisions, Professor McCamus highlights how jurisprudence has slowly manifested a growing sense of the Court’s responsibility for the development of uniquely Canadian private law jurisprudence and in recent years appears to have embraced more dramatic innovations in light of evolving sensibilities.

In the next paper, Professor Mohamed Khimji and Professor John Pritchard analyze the current theories and empirical evidence surrounding secured credit in “The Future of Secured Credit in Canada – A Survey of Theory and Evidence”. The authors argue that, while there is sufficient evidence to assert that secured credit results in lower interest rates for borrowers who provide collateral, it is still unclear where this reduction of interest rates comes from. Noting the difficult policy decisions that secured credit presents, the authors call for far more empirical research in this area so that law and policy makers can make optimal choices on an increasingly important feature of the global financial system.

In the final article of the issue, Professor Andrew Hutchison and Motselisi Khiba offer an international perspective on commercial cannabis regulation in “Regulating Adult Use of Cannabis in South Africa: International Law, Foreign Models, and Contextual Realism”, where the authors use a comparative approach to explore the regulatory model best suited for the cannabis industry in South Africa. After providing a history of legalization of cannabis in the country and discussing the treatment of cannabis in international law, the authors examine potential models for regulating its commercial use, analyzing the government monopoly model in Uruguay, the private market model in the US, and the mixed model in Canada.

In Connor Jonsson’s recent development article (“Bill C-208: Instrument for Intergenerational Prosperity or Tool for Tax Avoidance?”), he examines the changes made to sections 84.1 and 55 of the *Income Tax Act* through Bill C-208 and discusses their associated policy considerations. The article reports that the amendments will make it more affordable (from

an income tax perspective) for small business owners to transfer their business to their children or grandchildren. However, some critics have noted that it may present an opportunity for owners to conduct disingenuous transfers and effectively avoid taxation. The article concludes that it is still too early to discern the true effect of Bill C-208, but the relief it affords to small business owners is nonetheless justified.

The first case comment in this issue comes from Professor Camden Hutchison with “Principles of Interpretation as Applied to Corporate Articles: A Comment on *Rogers v Rogers Communications Inc.*”. This contribution analyzes caselaw from the British Columbia Supreme Court involving the high-profile boardroom battle among members of the Rogers family for control of Rogers Communications Inc. The Court’s decision affirms that articles of a company in B.C. should be interpreted to their plain meaning, and that there are times when it is inappropriate to allow surrounding circumstances to influence the meaning of legal text.

The second case comment is authored by Professor Darcy L. MacPherson (“When Should Executives be Responsible for Corporate Acts?: A Comment on *Loepky et al. v Taylor McCaffrey LLP*”). This case comment assesses a recent case from the Manitoba Court of Queen’s Bench (as it then was) that sheds light on the bases upon which corporate directors and officers might be held liable for what would otherwise be corporate acts. This comment concludes that finding executive liability will invariably depend on the unique facts of each case, and then goes on to provide a list of specific takeaways from the case.

Professor Alfonso Nocilla contributes the third case comment in this volume, “A Comment on *Shaver-Kudell Manufacturing Inc. v Knight Manufacturing Inc.*”. This comment examines a decision from the Court of Appeal for Ontario that deals with interpreting section 178(1)(e) of the *Bankruptcy and Insolvency Act* as it relates to property that a bankrupt had obtained by false pretences or fraudulent misrepresentation. The contributor posits that this decision helps clarify the scope of the provision as well as the scope of a bankruptcy court’s equitable discretion.

This issue closes with a series of four reviews of recently published books related to private enterprise and the law . Professor Mohamed Khimji reviews “Bangsund on the *Personal Property Security Act: The CCPSL Model*” by Clayton Bangsund. Professor Bryce Tingle reviews “Brand Management in Canadian Law”, 5th ed, by John McKeown. Professor Albert James and Elizabeth Tetzlaff review “An Alternative Approach to Family

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Business: A Theory of Socio-Material Weaving” by Mona Ericson. Lastly, Professor Bruce Curran reviews “Employment Law During a Pandemic” by Sean J. O’Donnell. Our book reviewers provide thoughtful, detailed assessments of these important new books in the field, while also offering their own expert insight on the subject matter at hand.

We are fortunate to work with a talented group of scholars and jurists from across the country and the world and we thank our editorial team and all of the MLJ staff, without whom this issue and these volumes would not exist. We hope our readers will enjoy this first issue of the Desautels Review and the broad range of subjects explored by our authors and we look forward to our next publication in 2023.