Preface and Issue Overview

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This is the first issue of a new dimension to the Manitoba Law Journal. We are referring to this new dimension as "The Review of Enterprise and Trade Law" (or TRETL, for short).[1] It is hoped that TRETL will present an opportunity for further collaboration between the Asper Chair in International Business and Trade Law, and the Desautels Centre for Private Enterprise and the Law, and our various partners, both within and outside the University of Manitoba.

Manitoba is a place that has both private and family enterprises, on the one hand, and enterprises that sell their wares around the world and engage with the international-trade system as a result, on the other. The combination of the two journals also recognizes that some family enterprises, even though they are "private", can nonetheless have effects in other jurisdictions as well. The combination of these two journals, therefore, recognizes that there is no clear line between family and private enterprise and enterprises that engage with other jurisdictions, both within a country such as Canada, and internationally.

In Virginia Torrie's contribution to this volume ("Saving the Farm: A Comparative Analysis of the *Farmers' Creditors Arrangement Act* in Manitoba and Ontario"), the author reports on a study with respect to the use of the

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1 TRETL represents the combination of what was formerly the Asper Review of International Business and Trade Law and the Desautels Review of Private Enterprise and the Law.

Farmers' Creditors Arrangement Act[2] during the period of the Great Depression of the 1930s and into the 1940s. The goal was to discover whether the legislation was successful in achieving its avowed goal of "keeping the farmer on the farm". With information from three different counties in Manitoba, and two more counties in Ontario, the study had a number of interesting findings, both about the basic question referred to in the previous sentence, and also with respect to county-by-county implementation of the statute.

With Sarah Berger Richardson's contribution ("Barn-Fire Prevention and the Law: Challenges and Opportunities for Reform"), we continue focus on issues of concern to farms. The author makes a powerful case that Canadian law can really do more to prevent unnecessary suffering of animals by paying greater attention to the reality of barn fires on Canadian farms. The author suggests changes to fire and building codes which would be designed to encourage farmers to take steps to reduce the likelihood of barn fires. It is suggested that putting animals (even those destined for human consumption) through unnecessary pain and trauma is an outcome to be avoided. In addition, certain private actors, including insurers and producer associations, can also put significant pressure on producers to prevent these unnecessary harms, by exercising their private governance role.

In Bradley Bryan's contribution to this volume ("Hybridity and Precarious Personhood: Limited Partnerships and Indigenous Economic Development"), the author lays out a convincing case as to why the uncertain relationship between limited partnerships, on the one hand, and limited liability, as typically seen in the case of corporations, on the other. This is considered through the lens of Indigenous community economic development. Bryan argues that the hybrid nature of the limited partnership makes it uncertain as to how much protection projects that are designed for economic development in Indigenous communities can be carried out under economically favorable conditions for those very communities.

The contribution of Joel John Badali ("Two Too Many Solitudes: First Nations Employment Law and the Unintended Effects of *Wilson* on Indigenous Employers") continues the focus on Indigenous issues. The

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2 *Farmers' Creditors Arrangement Act, 1934*, SC 1934, c 53, as amended by SC 1935, c 20, SC 1935, c 61.

contribution is concerned with the uneven application of the case of *Wilson v. Atomic Energy of Canada Ltd.*[3], which deals with which regime of employment law should be applied to workers employed by, or associated with, Indigenous groups. Although *Wilson* held that, in many cases, provincial jurisdiction should apply, a number later cases have appeared to honour this approach inconsistently.

In Darcy MacPherson's first contribution ("An Organization that is Criminal, but not Really: A Review of the Canadian Remediation-Agreement Regime in the Context of the SNC-Lavalin Affair"), the author examines the remediation-agreement regime. This is a regime within the *Criminal Code*,[4] that diverts organizational offenders (such as corporations) away from conviction under the criminal law in specific circumstances. The contribution also considers the role that the regime-agreement regime played in a recent Canadian political scandal involving the engineering giant, SNC-Lavalin.

In the contribution by Martin-Joe Ezeudo ("Case Comment ~ *Libfeld v. Libfeld:* Crafting Justice in a Breakdown of a Hybrid Business"), the author confronts a Manitoba case where there was the breakdown of a family business, but it appears there were overlapping forms of business associations used in the business. Though there were clearly some corporate entities involved in the business, the parties thought of themselves as partners in the business. This meant that when the four principals of the business (who were also siblings) suffered a number of irremediable breakdowns in their personal and professional relationships, the court had to consider not only the rules of the *Business Corporations Act* (Ontario)[5], but also the principles of the *Partnerships Act* of the same province.[6] The case confronted thorny issues around the fair and just to terminate the business relationships between the siblings.

In the final contribution in the volume, by Darcy MacPherson and Matthew London ("The Quixotic Belief in Corporate "Unicorns": A Review of *Bad Blood: Secrets and Lies Inside a Silicon Valley Start-Up*"), the authors review a book that looks at major recent corporate scandal in the United States. The review points out that the scandal was allowed to proliferate (in

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3 2016 SCC 29.

4 RSC 1985, c C-46.

5 RSO 1990, c B.16.

6 RSO 1990, c P.5.

terms of victims) at least in part because of poor corporate governance. Given the number of large "private" companies in Manitoba, the authors raise an issue that may be particularly relevant to Manitoba as to whether, when a corporate entity reaches a particular size, that that should be treated as "public", in part because it now has the ability to influence public policy and government action.