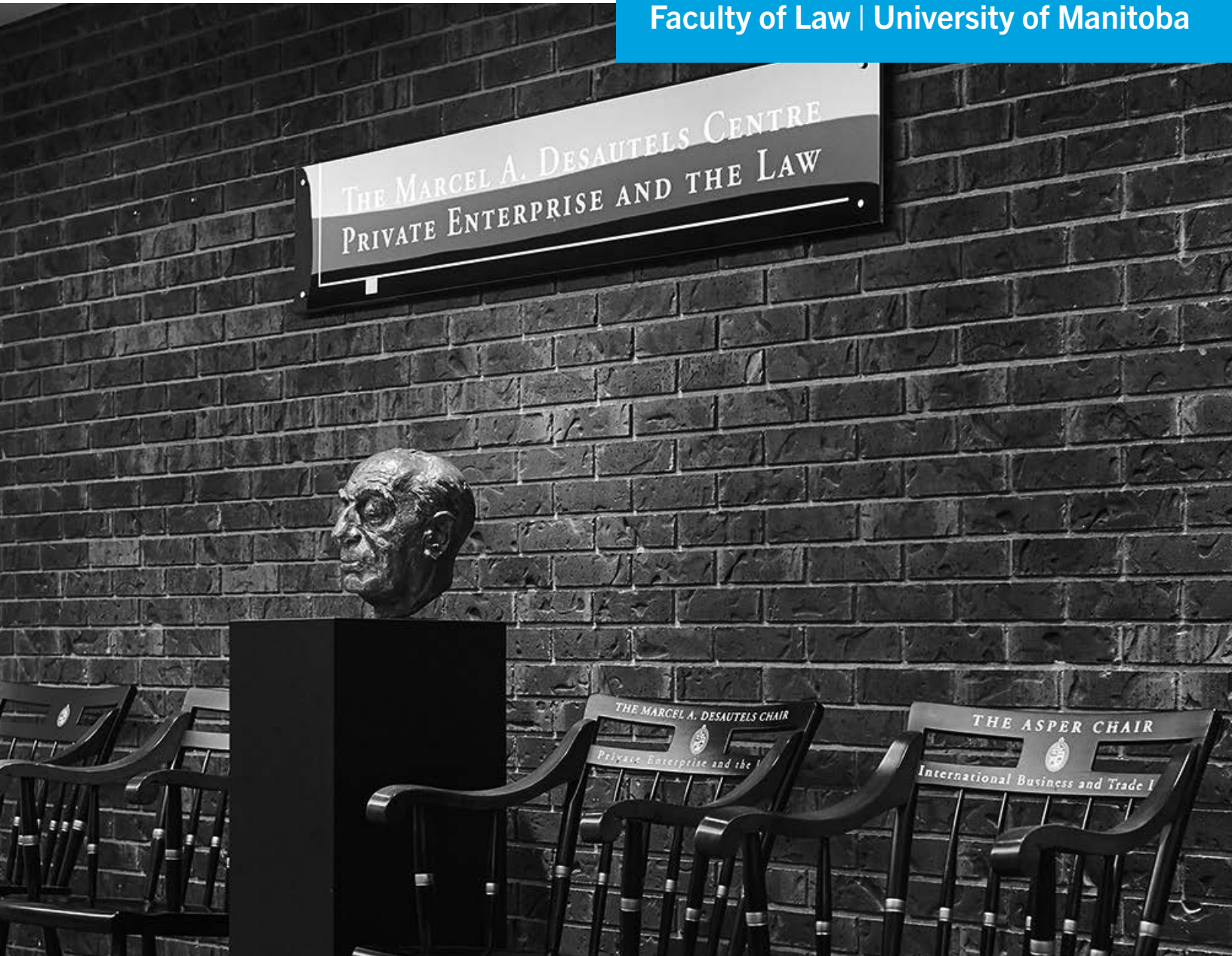


Business Law and Private Enterprise in Manitoba: 2023

A Report of the Marcel A. Desautels Centre for Private Enterprise and the Law

Faculty of Law | University of Manitoba



University
of Manitoba

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THE
MARCEL A. DESAUTELS CENTRE
FOR PRIVATE ENTERPRISE AND THE LAW

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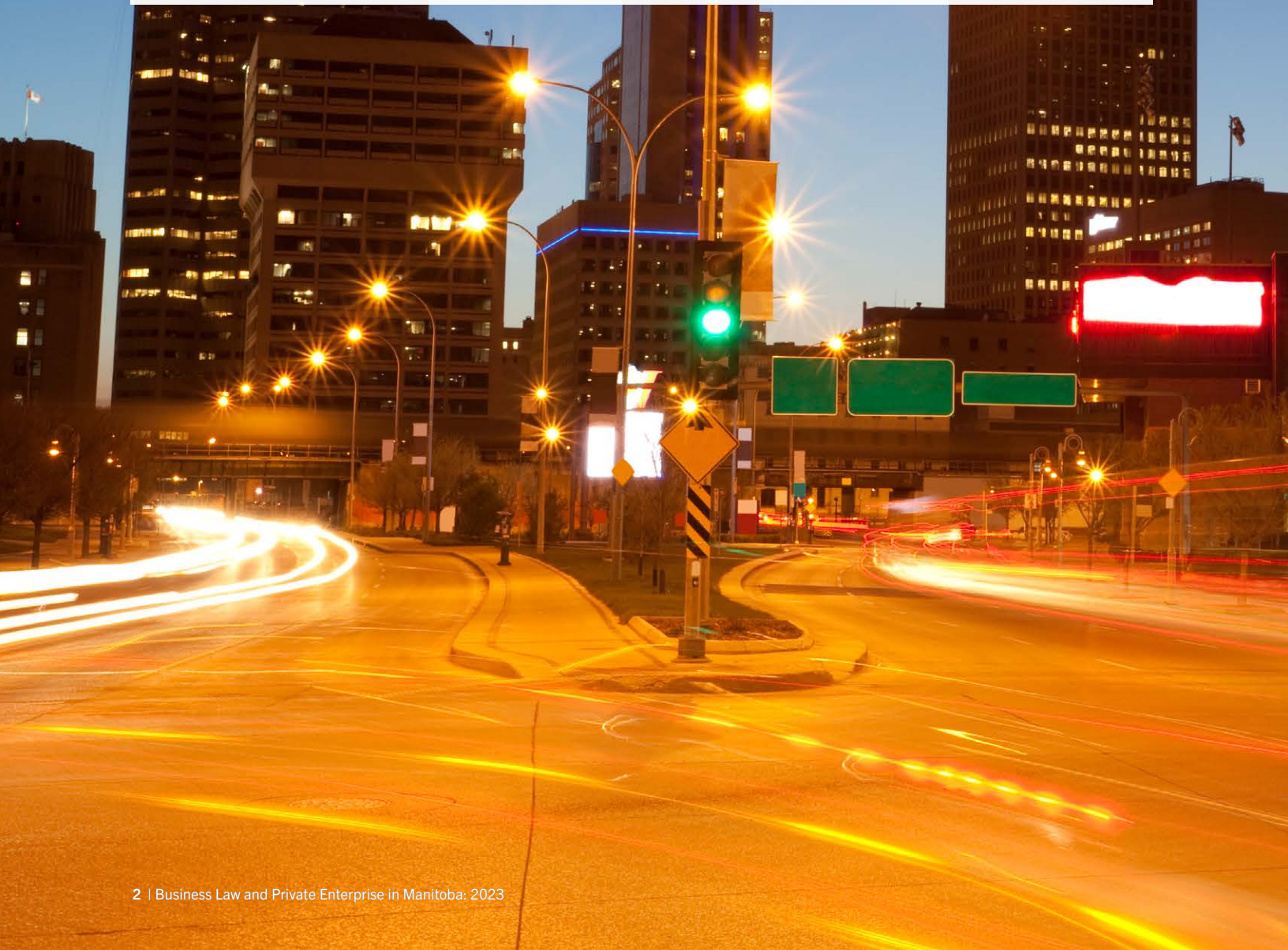
How to Use this Report*

Located in the geographic centre of Canada on the rich Canadian prairie, Manitoba is a bustling and energetic province with a diverse and expanding legal and business environment. Meaning “resting place of the Great Spirit” in a local Indigenous language, Manitoba is home to the province’s only law school at the University of Manitoba.

The Marcel A. Desautels Centre for Private Enterprise and the Law (the Desautels Centre) is housed in the law school and produced this report as a unified resource for business law information in Manitoba and to provide a comprehensive understanding of this landscape.

In this report, we aim to provide a comprehensive and insightful exploration of the Manitoba business law landscape and its intricacies, and have live-links throughout the report for readers seeking a deeper understanding of what is presented here. Thank you for taking time to read this inaugural report, exploring the dynamic forces shaping the business environment in this vibrant Canadian province we call home.

**Disclaimer: This report provides general information on Manitoba business law as of 2023 and should not be considered legal advice. For specific legal matters, it is advisable to consult qualified legal professionals.*



The Marcel A. Desautels Centre for Private Enterprise and the Law

In the academic landscape of Manitoba, the Marcel A. Desautels Centre for Private Enterprise and the Law is unique. Situated within the Faculty of Law at the University of Manitoba, the Centre is a facilitator, rather than a physical Centre. Like its benefactor, the Desautels Centre serves and offers support to family businesses through a myriad of important initiatives. Dr Desautels created an interdisciplinary nexus, weaving together the threads of business, law, and the humanities. Its primary focus is on family-controlled and other private enterprises, a specialization that sets it apart from business centres in other Canadian law schools.

The Centre's impact is formally divided between research and academic programs, but overseen by a Business Advisory Committee, with a Dean-appointed chair and comprising faculty members from the University of Manitoba's Faculty of Law. All spending is carefully monitored by the Committee, the academic program director, and the Dean of Law.

The Centre's [website](#) serves as a comprehensive platform highlighting its various activities and initiatives. The website showcases the diverse initiatives of the Centre, including links to the inaugural edition of the Desautels Centre's peer-reviewed journal, now merged with the *Asper Review* to join the [Manitoba Law Journal \(MLJ\)](#) imprints as "TRETJL," *The Review of Enterprise and Trade Law*. In addition to peer-reviewed articles relevant to the mandate of the Desautels Centre, the website also publishes Case Reports and Blogs, contributed by external academics, members of the Desautels Affiliated Researchers and Research cluster, and exceptional law students. These frequent and timely publications fulfill another of Dr Desautels' mandates in providing valuable resources for small- and medium-sized family-owned enterprises. Social media platforms like LinkedIn and X (Twitter) are also employed to disseminate information and raise awareness about developments in the field of private enterprise and the law, and about the Centre's ongoing initiatives. Much of this work is completed by law students, who under the guidance and supervision of the MLJ team and faculty members gain both publishing experience and extra pocket money.



Collaboration is a cornerstone of the Centre's ethos. It has partnered with the [Stu Clark Centre for Innovation and Entrepreneurship](#) at the Asper School of Business for lectures and other events. Moreover, the Centre has expanded its partnerships both within and outside the University of Manitoba, including the opportunity to work with Ukrainian scholars under the Scholars at Risk program. Over the past year, Dr Natella Roshkoshna and Dr Illia Roshkoshnyi, who left Ukraine just after the outbreak of the war, have contributed background research for potential program initiatives at the law school. Dr Roshkoshna has taken on the role of Blog Coordinator for the website and has engaged our [affiliated researchers](#) to publish [blogs](#) about their groundbreaking work in the nuanced field of private enterprise and the law.

Working with the Faculty of Law, the Centre is also committed to academic exploration and expansion of opportunities for students and for members of the private enterprise community. During COVID-19, along with three other academic concentrations in Law, the Private Enterprise and the Law concentration was established for students of the Juris Doctor program. The Centre's leadership, working beside the Associate Dean Professional Graduate Programs

and Executive Education at the I.H. Asper School of Business, successfully navigated a number of complexities to establish the long-awaited concurrent JD/MBA degrees, a milestone that was approved by the University of Manitoba Senate in May 2023.

The Centre's research initiatives promote deeper understanding of the multi-faceted and complex issues facing private businesses and serve as a resource for business lawyers. Current research relevant to family business is published in one of the *Manitoba Law Journal's* imprints, *The Review of Enterprise and Trade Law*. Evolving ideas and opinions on issues are published on the blog and the Centre keeps pace with judicial decisions through the publication of [Case Reports](#) on the Marcel A. Desautels Centre website.

The Centre has allocated \$39,000 for six Research Assistantships for LLM students for the 2023-2024 academic year and sponsored two tax law students to attend conferences, one in Montreal and one in Geneva. Such initiatives aim to attract top-level business law students for JD, LLM and MHR (Masters of Human Rights) graduate studies.

The Marcel A. Desautels Centre for Private Enterprise and the Law serves as an interdisciplinary hub, fostering a symbiotic relationship between business, law, and the humanities. Through its various initiatives, collaborations, research and academic programs, the Centre has carved out a unique space in the Canadian and Manitoba legal education landscape as a strategic facilitator for private enterprise and the law.

Rod Senft Lecture

In response to the generosity of Faculty of Law alumni Rod Senft, and with a desire to continue to facilitate interest in family businesses among the legal and business communities, the Marcel A. Desautels Centre for Private Enterprise and the Law presented three Rod Senft Lectures in collaboration with the The Stu Clark Centre for Innovation and Enterprise at the I.H. Asper School of Business at the University of Manitoba. The [lectures](#) focused on issues in Family Business Law and are available for online viewing on the website of the Marcel A. Desautels Centre for Private Enterprise.

In April 2021, the lecture was delivered by David Asper, a lawyer, philanthropist, and businessman who served as Acting Dean of the Faculty of Law from 2020-2021. One son of the well-known Israel (Izzy) Asper, OC,

OM, QC, founder of CanWest Global Communications Corporation, Mr. Asper's lecture, entitled "The Family Owned Business: What Could Go Wrong? We're Family!" focused on two cases – Silpit Industries and Sparco Holdings. Ultimately, the cases were decided in the Manitoba courts, and provide some insight on what can happen when family businesses reach a point of conflict, and how to try and avoid these risks.

In November 2021, the lecture was delivered by the distinguished Harvey Secter, former Chancellor of the University of Manitoba, former Dean of Law at the University of Manitoba, and alumni of the Faculty of Law and the Asper School of Business. He is also the president of Resolution Processes Inc., a mediation and arbitration services company, and has made many contributions to private enterprise, including as President and Chief Executive Officer of Ricki's Canada Limited from 1972 to 1988, directing the growth of a family retail business from a 10-store chain to a multi-division national operation. Mr. Secter's talk focused on "Successful Family Businesses Build Strong Economies and Healthy Communities: The Advisor's Role in Perpetuating the Virtuous Circle." His fascinating lecture on family business from this perspective is available for online viewing [here](#).

In December 2022, the lecture was delivered by Sprague Richardson, representing the sixth-generation member of Winnipeg's successful Richardson family. Mr. Richardson purchased Ken Kane Aerial Spray, a recognized leader in the Manitoba agricultural aviation business, in 2016. His lecture, entitled "Family Business - The Next Generation Takes Flight," focused on the Western Canadian Aerial journey from purchase to growth, the challenges faced, the regulatory complexities and legal requirements of the industry, and how intergenerational knowledge and family support assisted in building a successful company. The lecture is available for online viewing [here](#).

Developed, marketed, and delivered through the online platforms of the University, all three lectures were attended by hundreds of members of the legal community and the Manitoba business community. ■

The Manitoba Landscape: Business and Law

Manitoba, the geographical heart of Canada, is a province known for its rich history, diverse culture, and stunning natural beauty and in 2023, was also recognized for its vibrant and dynamic business environment. The province's business landscape is a unique blend of agriculture, manufacturing, education, healthcare, service industries, emerging industries, and a robust entrepreneurial spirit. The intersection of private enterprise and the law in the Manitoba economy animates the work of the Desautels Centre at the University of Manitoba.

Private enterprise in Manitoba may have its earliest roots in the fur trade. On May 2, 1670, England established what is now Canada's oldest incorporated joint-stock merchandising company, the Hudson's Bay Company. Originally a fur trading company looking to establish a northern passage to the Pacific, the Hudson's Bay company engaged Indigenous people and young adventurers from the British Isles in the fur trade. The first Indigenous fur traders would have worked with the HBC. In 1668 the North West Company with its tireless teams of Voyageurs also established itself at the forks of the Red and Assiniboine Rivers at the site of what is now Winnipeg. The establishment of forts to service the fur trade in the 1700s offered competition and the earliest days of private enterprise and the need for business law.

In the late 1800's, Winnipeg's preeminence for international trade was established within a tumultuous political environment as Manitoba joined Canadian confederation (1870), and the rails of the Canadian Pacific Railway crossed its soil. In 1873, Winnipeg was incorporated as a city. Because of the city's great appeal, track record, and potential for successful private enterprise as the 19th century became the 20th, Winnipeg real estate was among the most desirable and expensive in the world.¹

The traditional sectors of agriculture, manufacturing, and mining continue to be significant contributors to Manitoba's economy. The province's fertile lands make it a powerhouse in agriculture, producing a variety of crops that are exported worldwide. The manufacturing sector, particularly in aerospace and transportation equipment, is another pillar of the economy, providing a significant number of jobs and contributing substantially to the province's GDP. The rich mineral resources, including nickel, copper, and zinc, have made mining a lucrative industry in Manitoba.

The business landscape in Manitoba embraced emerging opportunities in the information technology sector. From software development to digital marketing, Manitoba's IT sector is thriving, attracting both domestic and international businesses.

Clean energy and biotechnology are other areas of growth, indicating a rising commitment to sustainability and innovation. Manitoba's entrepreneurial culture was another defining feature of its business landscape in 2023. The province boasts a thriving start-up community, supported by a network of incubators, accelerators, and venture capital firms.

Manitoba's capital, Winnipeg, is the epicenter of this economic activity. The city's strategic location at the intersection of major North American trade routes means that it has remained a critical centre for economic activity in western Canada. Winnipeg's downtown is home to a multitude of businesses, from multinational corporations to law firms to innovative start-ups, reflecting the city's economic vitality.

¹ Pierre Berton, *The National Dream*

MANITOBA'S ECONOMY

New highs in Manitoba's economic statistics represent significant rebounds from the downturn experienced during the height of the COVID-19 pandemic. Manitoba's real GDP at market prices for 2022 was approximately \$68.647 billion, representing approximately 3.6% year-over-year (YOY) growth. It is expected to have grown by 2.8% in 2023 to approximately \$70.5 billion.²

This GDP growth is driven by a low unemployment rate of 4.3%³ – below Canada's national unemployment rate of 5.4%.⁴ However, post-pandemic labour shortages have become a cause for concern, as job vacancies are difficult to fill and continue to increase across the country. This is particularly the case in the service industry and in other customer service-oriented jobs, where employees faced significant uncertainty, periodic lay-offs, and inconsistent hours during pandemic health restrictions.⁵ As well, public-facing employees – including the nurses, teachers, and personal-service workers who bore significant burdens during the pandemic, continue to be in high demand due to pandemic-related retirements, resignation, and burnout.⁶ Just how this shift will impact the Manitoba economy is an opportunity for further research and for innovative responses.

In addition to labour shortages, the 2023 Manitoba economy also grappled with a multitude of persistent challenges originating outside its borders. Global supply chain disruptions, including those which began during the pandemic and have not yet abated, have caused consumers to face rising prices. These disruptions are expected to gradually lessen as production increases, although this has been a recurring narrative for several years. The impacts of these disruptions have been particularly felt by Manitobans, as the province is heavily import-driven (\$2.53 billion in imports versus \$1.95 billion in exports, as of December 2022⁷).

The Canadian wildfires in the summer of 2023, which detrimentally impacted the entire country and were left

largely unaddressed by the federal government, serve as merely the most recent reminder that environment, weather, and climate have a significant impact on both people and businesses.⁸ And closer to home, Manitobans can recall the province's severe 2021 drought, which negatively impacted both agriculture production and livestock.⁹

The war in Ukraine has triggered broader geopolitical instability and a wave of international sanctions on Russia, as well as further disrupting trade flows and global supply chains.¹⁰ The war and sanctions have been blamed as oil and natural gas prices, as well as the price of various commodities like wheat climbed substantially.¹¹

Finally, inflation persists as an urgent matter of economic focus. In January 2022 the year-over-year consumer price index (CPI), the Bank of Canada's measure for inflation, rose by 5.5 per cent in Manitoba, representing the largest increase in nearly 30 years.¹² Inflation has continued to climb since. As a sustained increase in the general price level of goods and services, inflation can have a significant impact on the Manitoba economy. As the cost of living rises, the purchasing power of consumers diminishes, leading to changes in consumer behaviour and overall economic dynamics. For individuals and households in Manitoba, inflation can erode real incomes which can result in reduced consumer spending, leading to slower economic growth and potentially affect local businesses. Additionally, inflation can put pressure on businesses as their operating costs increase, especially if they are unable to pass those costs onto consumers through higher prices. Small and medium-sized enterprises may face tougher challenges to maintain profitability, potentially leading to job cuts or reduced investments.

In late 2023, Manitoba's 7 year old Progressive Conservative government was replaced by the New Democratic Party, whose approach to governing during their first few months focussed largely on further address of the economic challenges of the province.

² <https://www.manitoba.ca/budget2022/fiscally-responsible-outcomes-and-economic-growth-strategy-economic-outlook.html>; see also <https://www.gov.mb.ca/mbs/>

³ https://www.gov.mb.ca/mbs/publications/mbs_infographic_ifs_2023_m06.pdf

⁴ Ibid.

⁵ <https://www.gov.mb.ca/jec/lmi/outlook/index.html>

⁶ <https://www.gov.mb.ca/jec/lmi/outlook/index.html>

⁷ https://oec.world/en/profile/subnational_can/manitoba#:~:text=Yearly%20Imports&text=ln%202022%20the%20top%20import,mix%20with%20diammonium%2C...

⁸ <https://www.nytimes.com/2023/07/03/business/economy/canada-wildfires-economy.html>

⁹ <https://www.gov.mb.ca/agriculture/markets-and-statistics/economic-analysis/pubs/economic-impacts-of-the-2021-drought-on-crop-production-in-manitoba.pdf>

¹⁰ <https://www.conferenceboard.ca/insights/economic-impact-on-canada-of-the-war-in-ukraine/>

¹¹ <https://www.conferenceboard.ca/insights/economic-impact-on-canada-of-the-war-in-ukraine/>

¹² <https://www.manitoba.ca/budget2022/fiscally-responsible-outcomes-and-economic-growth-strategy-economic-outlook.html>

MANITOBA BUSINESSES AND CORPORATIONS

According to the most recent information available, as at December 2022, Manitoba boasted 43,161 businesses with employees.¹³ Of these, the largest single sector concentration was in construction, making up 10.9% of Manitoba's businesses. Retail trade and health care were tied as the second largest sectors, at 10.8%. Agriculture businesses make up 7.2% of Manitoba's businesses.¹⁴

Of the 43,161 Manitoban businesses, 97.8% are small businesses with 1 to 99 employees, 1.9% are medium businesses with 100 to 499 employees, and 0.3% are large business with 500 or more employees.¹⁵

In addition, Manitoba has 86,333 businesses without employees, which are made up of real estate businesses (19.6% of businesses without employees) and agriculture, including forestry, fishing and hunting (16.1%).¹⁶

It should be noted that the above data, provided by Manitoba Bureau of Statistics, defines a business as an enterprise that is either incorporated or has a minimum of \$30,000 in revenue. A business with employees is defined as having an employee workforce for which payroll remittances are submitted to Canada Revenue Agency *and* either has a minimum of \$30,000 in revenue or is incorporated under a federal or provincial Act, and have filed a federal corporate income tax form within the past three years.¹⁷

The Manitoba Companies Office provides clear numbers as to active corporations of any kind. As at March 31, 2023, there were 100,169 active corporations in Manitoba, representing a 4.17% increase over the 96,156 counted in 2022. There is limited data available about the number of businesses organized in other, non-incorporated manners, though the Manitoba Companies Office does provide the number of Limited Partnership Registrations in each year: an average of 223 annually in the 5-year period from 2018 through 2023.

Despite the entrepreneurial spirit of the Province, not all businesses are successful. In 2022, there were 34 business insolvencies, and there were 31 in 2021.¹⁸

In this context, a business is defined as any commercial entity or organization other than an individual, or an individual who has incurred 50% or more of total liabilities as a result of operating a business. Additionally, there were 2,773 consumer insolvencies in 2022, where a consumer is an individual with more than 50% of total liabilities related to consumer goods and services. Still, Manitoba remains a province of opportunity for private enterprise in particular. ■

¹³ https://www.gov.mb.ca/mbs/publications/mbs401_br_2022_m12.pdf

¹⁴ All from https://www.gov.mb.ca/mbs/publications/mbs401_br_2022_m12.pdf

¹⁵ https://www.gov.mb.ca/mbs/publications/mbs401_br_2022_m12.pdf

¹⁶ https://www.gov.mb.ca/mbs/publications/mbs401_br_2022_m12.pdf

¹⁷ https://www.gov.mb.ca/mbs/publications/mbs401_br_2022_m12.pdf

¹⁸ All data in this from: <https://www.gov.mb.ca/mbs/moreinfo.html?id=35> (Manitoba Bureau of Statistics Insolvencies Quick Facts)



The Impact of COVID-19

COVID-19, which unleashed its global impact beginning in 2020, did not merely act as a transient health crisis; it left indelible marks on every stratum of society. Although in 2023 Manitoba, along with the rest of the world, was transitioning into a post-pandemic era, it is crucial to acknowledge the profound impact that this virus and its attendant shut downs, lockdowns, and other consequences had over several years, primarily between 2020 and 2022. Every business decision, government policy, and legal judgment during these tumultuous times occurred under the shadow of COVID-19. The following sections delve into the specific nuances of how the pandemic has and continues to irrevocably influence business law in Manitoba.

In this inaugural report, it is both fitting and necessary to emphasize that while the world might be moving beyond the direct grip of the pandemic, its echoes continue to shape our legal systems and the ways in which business is conducted. The spirit of adaptability, resilience, and innovation that have guided the growth of the province across the centuries and during the challenging years of COVID-19 now necessarily form a part of Manitoba's legal and business infrastructure.

IMPACT ON THE LEGAL SYSTEM

The initial weeks of the COVID-19 transition from offices to working from home were rife with logistical dilemmas. Adjusting to platforms for virtual meetings, digital case management, and electronic document sharing became literally an overnight reality.

COVID-19 reshaped justice and access to justice in Manitoba. As we reflect on the sweeping changes brought about by the pandemic-driven shift to digitization, the concept of “creative destruction” seems particularly salient. Coined by the economist Joseph Schumpeter, creative destruction refers to the process where old ways of doing things are obliterated by innovative methods, leading to a renaissance in the structure and operation of systems.¹⁹

The justice system, historically rooted in long-established in person procedures and paper-based traditions, suddenly found itself at the crux of such a transformation.

For centuries, the concept of justice has been intertwined with grand courthouses - physical embodiments of the rule of law.²⁰ These structures, with their imposing architecture and solemn atmosphere, were more than mere buildings; they were symbols. To many, accessing justice meant entering these spaces, a pilgrimage of sorts to a place where rights were vindicated, and disputes were resolved. But with the pandemic rendering these halls more or less inaccessible, the very notion of what constitutes a “court” began to evolve.

The digital pivot opened the door to a radical reimagining of this traditional paradigm.²¹ If justice was no longer anchored to physical spaces, then the implications were profound. With digital platforms, justice had the potential to become decentralized, more fluid, and democratized in a manner previously unimagined. The courtroom could be in one’s living room, at a community center, or even in a remote village halfway across the province, so long as there was a digital connection. Justice was no longer something one travelled to; instead, it had the capability to journey to every individual.

This transformation in access to justice and its administration, while disruptive, may herald a fundamental paradigm shift.²² By disentangling justice from its traditional physical anchors, the system could move towards becoming more responsive, flexible, and person-centric. Instead of individuals adapting their lives to the bureaucratic timelines and geographical constraints of the legal system, in its response to COVID-19 the system could, in theory, embrace the impetus of innovation forced by the pandemic, and mould itself around the needs and realities of its users. The very essence of what we understand as a “court” or the “delivery of justice” is in flux, and perhaps, in this creative destruction lies the blueprint for a justice system of the future.

IMPACT ON BUSINESS

The tenacity and adaptability of Manitoba’s business community were rigorously tested by the sweeping and abrupt changes brought on by the COVID-19 pandemic. The pandemic’s continued effects on Manitoba’s businesses are multifaceted, complex, and profound.²³ The immediate aftermath of the pandemic’s onset was characterized by a sense of uncertainty. Businesses, large and small, found themselves navigating uncharted waters – or, as they were so commonly called, ‘unprecedented times.’ And while operational challenges were immediately evident, there were deeper, underlying shifts in paradigms, values, and aspirations that began to take shape. The initial wave of lockdowns imposed to curb the spread of the virus delivered an immediate shock to the province’s economy. Essential sectors, such as grocery retail, faced the dual challenge of increased demand and the urgent necessity to implement stringent health and safety protocols.²⁴ In contrast, sectors deemed non-essential, like hospitality, tourism, and certain retail segments, found their operations significantly curtailed or entirely halted.

This division between essential and non-essential sectors revealed more than just operational challenges. It highlighted deep vulnerabilities in certain business models.²⁵ Many establishments, particularly small and locally-owned businesses, confronted existential threats.

¹⁹ <https://www.cmu.edu/epp/irle/irle-blog-pages/schumpeters-theory-of-creative-destruction.html>

²⁰ <https://www.law21.ca/2020/04/pandemic-i-what-were-up-against/>

²¹ <https://www.law21.ca/2020/04/pandemic-ii-justice-system-down/>

²² <https://www.law21.ca/2020/04/pandemic-iii-justice-reconstructed/>

²³ <https://www.utpjournals.press/doi/full/10.3138/cpp.2020-072>

²⁴ <https://onlinelibrary.wiley.com/doi/full/10.1111/cjag.12282>

²⁵ https://epe.lac-bac.gc.ca/100/201/301/weekly_acquisitions_list-ef/2021/21-36/publications.gc.ca/collections/collection_2021/statcan/45-28/CS45-28-1-2021-31-eng.pdf

For many private enterprises in Winnipeg, especially in the service sector that thrived on human interaction and congregation, the COVID-19 lockdowns were devastating. Without the financial reserves or the infrastructure to pivot quickly many ceased operations, reshaping the fabric of local communities and downtown streets.

Labour dynamics, too, underwent a sea change.²⁶ With health concerns paramount, many employees were either furloughed or transitioned to remote work, introducing a new set of challenges. The traditional 9-to-5, office-bound work structure seemed archaic almost overnight. But this wasn't merely a logistical shift—it bore deeper implications. As homes turned into workplaces, the demarcation between professional and personal began to blur. This brought to the forefront conversations about mental well-being, the importance of 'switching off', and the need to redefine what productivity truly means. Work, for many, was no longer a place one went to—it was an activity one engaged in, irrespective of location. This not only changed how businesses managed their teams but also how employees envisioned their career trajectories and life priorities.²⁷ For some this was liberating as they realized that they could, quite literally, work from anywhere – including warmer climates. For others, dependant on a particular place or location for production, the pandemic posed a real threat to existence.

As the pandemic persisted, there was a palpable shift in the priorities of the workforce. Many began to value flexibility, work-life balance, and mental well-being over traditional job incentives, benefits, and locations.²⁸ For businesses, managing remote teams, ensuring productivity, and retaining organizational culture and coherence became focal points. Companies weren't just adapting to Zoom calls and virtual team-building activities. They were navigating the intricacies of human connection in a digital age, of ensuring that their employees felt valued and connected and remained with the organization, even if in reality they were miles apart.²⁹

The rise of e-commerce, which had been gradual in the years leading up to the pandemic, suddenly saw a

meteoric rise.³⁰ Businesses that had never considered online platforms were compelled to explore e-commerce to survive. This transition was not merely about setting up online shops; it involved understanding and navigating digital marketing, logistics, and the intricacies of online customer engagement. While larger businesses had the resources to make these transitions more seamlessly, smaller businesses often relied on community support, collaborations, and local initiatives. Supply chains, often taken for granted, came under immense strain. Global disruptions meant that businesses had to re-evaluate their dependencies on international suppliers.³¹ This led to a renewed emphasis on local sourcing, boosting regional collaborations and partnerships. However, this shift wasn't without its challenges.³² Local suppliers faced capacity issues, and businesses had to grapple with the balance between supporting local and ensuring efficiency and affordability. Manitoba's businesses, especially those relying heavily on global suppliers, faced a reckoning. Disruptions forced a re-evaluation of sourcing strategies, favouring localized suppliers and promoting self-reliance.

Amidst these challenges, the pandemic also inadvertently became a litmus test for corporate values. Companies were observed, and often judged, not just on their profitability or adaptability, but on their empathy and compassion. How they treated their employees during crises, how they supported their communities, and how they upheld their social responsibilities became defining narratives.

In essence, while the pandemic posed multifarious and daunting challenges, it also served as a reflective lens for Manitoba's business community, prompting introspection, adaptation, and evolution. ■

²⁶ <https://www.emerald.com/insight/content/doi/10.1108/ITP-08-2021-0585/full/html>

²⁷ <https://psycnet.apa.org/record/2020-65357-001>

²⁸ <https://www.emerald.com/insight/content/doi/10.1108/ITP-08-2021-0585/full/html>

²⁹ <https://psycnet.apa.org/record/2020-65357-001>

³⁰ https://www.tac-atc.ca/sites/default/files/conf_papers/gindie1.pdf

³¹ <https://www.tandfonline.com/doi/abs/10.1080/16258312.2021.1932568>

³² <https://www.tandfonline.com/doi/abs/10.1080/16258312.2021.1932568>



Legislative Responses to COVID

In times of crisis, populations look to government for leadership, assurance, and the promise of a secure future. The sudden and unprecedented nature of the COVID-19 pandemic necessitated rapid and often drastic legal interventions with severe and nuanced repercussions. Governments at all levels did their best but they were all in uncharted waters. As businesses shuttered, economies staggered, and the very fabric of daily life altered, the Manitoba provincial and municipal governments, the school boards, and the Canadian federal government scrambled to respond. The legal reforms and initiatives during this period, though well-intentioned, were a matter of trial and error, each aiming to mitigate the multidimensional crises that unfolded.

It is imperative to acknowledge that the road taken by all levels of government was far from smooth and by the end of 2023, most governments in Canada that had navigated the pandemic were replaced, or their leaders had been replaced. There were concerns about the timely distribution of financial aid, the scope of beneficiaries, and the potential long-term implications of these measures. Voices from different sectors and regions expressed apprehensions about being left out, or not adequately being catered to, even as the pandemic wreaked havoc on their livelihoods. Such criticisms and concerns, while a testament to the democratic ethos of Canada, also highlighted the monumental challenge faced by lawmakers in addressing an unparalleled crisis. While Manitoba's provincial decisions aimed to cater to the unique socio-economic composition and challenges of the province, the overwhelming magnitude of the pandemic meant that many crucial responses came from the federal level. The national scope of the issue prompted nationwide policies that often crossed Constitutional lines, especially when it came to matters of finance and interprovincial commerce.

In addition to the policy decisions and legislative changes, the courts played an equally pivotal role. They not only interpreted these new laws and policies but were also central in arbitrating the myriad business disputes that arose in the pandemic's wake. From business contracts rendered unviable due to lockdowns, to employment disputes stemming from remote work or layoffs, the judiciary became a critical arena for discerning and upholding justice in these tumultuous times, as part of a larger effort to navigate an extraordinary crisis.

MANITOBA'S PROVINCIAL GOVERNMENT ACTION

In the face of COVID-19's challenges, the Province of Manitoba invoked the authority provided by *The Emergency Measures Act* (EMA) from March 20, 2020. Further directives, shaped under *The Public Health Act* (PHA), sought to provide structure and relief during these unprecedented times. Through various initiatives, the province aimed to provide a framework of support for its businesses and citizens.³³

The **Manitoba Bridge Grant** emerged as a direct response to the immediate needs of businesses.³⁴ *Stream A* was designed to offer a one-time grant of \$5,000 to eligible small and medium-sized businesses that were constrained by pandemic-induced restrictions. On the other hand, *Stream B* extended its reach to the province's home-based businesses, adjusting its financial assistance based on a business's past income, with the maximum aid also capped at \$5,000. Both these avenues, however, concluded their offering phase by July 16, 2021.

Simultaneously, the **Manitoba Gap Protection Program (MGPP)** was introduced.³⁵ With a budget allocation of \$120 million, it provided eligible businesses a one-time non-interest-bearing support of \$6,000. The conditions attached were precise, ensuring businesses tread carefully between provincial and federal assistance programs.

The **Manitoba Pandemic Sick Leave** program was formulated to address the practical challenges employees faced during the pandemic.³⁶ By covering up to five full days of COVID-19 related sick leave, the program tried to alleviate some of the immediate burdens faced by employees and employers alike. The criteria, however, stipulated clear boundaries, ensuring that certain sectors and governmental bodies remained outside its scope.

With the **Caregiver Wage Support Program (CWSP)**, the province acknowledged the indispensable role

of caregivers during the pandemic.³⁷ This program provided a \$5 per hour wage supplement for eligible caregivers, emphasizing the value of care during such critical times.

The **Sector Support Program** was the province's way of reaching out to specific business sectors that felt the brunt of the pandemic more acutely.³⁸ Financial assistance varied based on employee numbers, aiming to offer some relief to businesses navigating the disruptions brought about by health restrictions.

To provide opportunity for innovative responses to the pandemic the province announced several tax and fee deferrals.³⁹ These measures ranged from temporary relief on utilities to more flexible payment timelines for institutions. Meanwhile, the **Summer Student Recovery Plan** was a gesture towards Manitoba's youth, aiming to support both students seeking employment and businesses looking to hire during the summer months.⁴⁰

In crafting these measures, the Province of Manitoba aimed to offer a supportive structure with clear conditions during the pandemic's challenging terrain.

FEDERAL GOVERNMENT ACTION

Canada's federal government rolled out a suite of programs purported to bolster and protect the business environment.

The **Canada Emergency Wage Subsidy (CEWS)** emerged as a safety net for employers.⁴¹ Its intent was clear: to keep Canadians on the payroll. Stretching from March 15, 2020, through to September 2021, it provided financial backing to qualified employers, cushioning them against the upheaval of the pandemic and enabling them to either re-hire workers or at least stave off further job losses. The criteria for CEWS were pointedly structured, ensuring its benefits seeped down to those genuinely grappling with revenue drops.

Simultaneously, recognizing the burden of rent in times of dwindling revenues, the **Canada Emergency Rent Subsidy (CERS)** was introduced.⁴² Rather than being

³³ <https://books.google.ca/books?hl=en&lr=&id=8GQLEAAQBAJ&oi=fnd&pg=PP1&dq=manitoba+government+response+to+covid&ots=OY1X8CsNtJ&sig=68ND4ldS8wI8EnxYgYDBSqzbuSM#v=onepage&q=manitoba%20government%20response%20to%20covid&f=false>

³⁴ <https://www.gov.mb.ca/covid19/programs/bridge-grant.html>

³⁵ <https://www.nortonrosefulbright.com/en/knowledge/publications/90a367d8/manitoba-covid-19-funding-and-financial-relief-programs-for-startups-and-small-businesses;https://engagemb.ca/manitoba-gap-protection-program>

³⁶ <https://www.gov.mb.ca/covid19/programs/pandemic-sick-leave.html>

³⁷ <https://www.gov.mb.ca/covid19/programs/caregiver-wage-support.html>

³⁸ <https://www.gov.mb.ca/covid19/programs/issp.html>

³⁹ <https://www.gov.mb.ca/covid19/programs/tax-fee-deferrals.html>

⁴⁰ <https://mbchamber.mb.ca/initiatives/covid-19-tools-resources/relief-funds/>

⁴¹ <https://www.retailcouncil.org/coronavirus-info-for-retailers/covid-19-relief-measures-by-region/canada-emergency-wage-subsidy-cews-overview/>

⁴² <https://www.retailcouncil.org/coronavirus-info-for-retailers/covid-19-relief-measures-by-region/the-canada-emergency-rent-subsidy-cers-overview/>

a mere financial handout, CERS intended that funds reached the renters and property owners directly.

For smaller businesses and non-profits staring at mounting operational expenses and diminishing revenues, the **Canada Emergency Business Account (CEBA)** was perceived by business owners and employees as a potential lifeline.⁴³ CEBA's were interest-free and promised loan forgiveness, provided the stipulated criteria were met by December 31, 2022.

Then, the **Regional Relief & Recovery Fund (RRRF)** launched.⁴⁴ With a \$2 billion pool, it aimed to cater to those businesses that somehow fell through the cracks of other support mechanisms. Its focus ranged from manufacturing and technology to tourism and other key regional sectors, essentially acting as a safety net for sectors uniquely impacted by the pandemic.

Further broadening the safety net, the **Business Credit Availability Program (BCAP)** was set in motion for both SMEs and mid-market businesses.⁴⁵ Working hand in hand with Export Development Canada and the Business Development Bank of Canada, BCAP provided both small and mid-sized entities with avenues to access crucial financial resources, tailored to their specific needs.

The **Highly Affected Sectors Credit Availability Program (HASCAP)** zeroed in on those sectors that bore the brunt of the pandemic.⁴⁶ By providing low-interest loans, HASCAP aimed to infuse liquidity into businesses to support their operational continuity.

Last, sector-specific supports were vital.⁴⁷ The energy sector, a cornerstone of the Canadian economy, received more than \$2 billion in federal aid. A dedicated \$500 million COVID-19 Emergency Support Fund was set up for cultural, heritage, and sport organizations. In agriculture, redistribution of unsold inventories, enhanced insurance coverage, and myriad measures aimed to keep this sector from collapse. Futurpreneur Canada and the Industrial Research Assistance Program were established to nurture the next generation of business leaders.

The federal government's approach was multi-pronged and like the efforts of most governments globally, in some sectors and for some Canadians, was helpful but

not – or not enough – for others. Despite the efforts of governments at all levels to provide relevant leadership and protect people in their jurisdictions, the pandemic was very expensive and its fiscal ticket remains one of the greatest challenges to Canada's public purse. By targeting broad-based needs while also catering to sector-specific challenges, it endeavoured to ensure Canada's economic machinery, albeit slowed, never ground to a halt.

LEGISLATIVE AND ADMINISTRATIVE CHANGES

While the impact of COVID-19 certainly led to much legislative and administrative reform at both the provincial and federal levels, this section highlights reforms that occurred outside the context of the pandemic that have impact on the business community. It does not purport to be exhaustive, but rather to – once again – provide a sampling of the intriguing world of Manitoba business law.

Canada Business Corporations Act, s. 122(1.1)

In Canadian corporate law, the **Canada Business Corporations Act (CBCA)**, RSC 1985, c C-44, has long stipulated a fiduciary duty incumbent upon directors and officers to Act “honestly and in good faith with a view to the best interests of the corporation.” This duty mandates that the interests of the corporation supersede any personal or other business interests that directors and officers may harbour. Historically, this was interpreted as a de facto obligation to prioritize shareholder interests. However, a seminal shift occurred in 2008 with the Supreme Court of Canada's ruling in *BCE Inc. v. 1976 Debenture Holders*, 2008 SCC 69. The Court elucidated that the fiduciary duty is not owed to shareholders or any other specific group but to the corporation as an entity. This nuanced interpretation clarified that while shareholder interests often align with those of the corporation, in instances of divergence, the allegiance of directors must unequivocally lie with the corporation.

Bill C-97, which came into effect on June 21, 2019, amended the CBCA and codified the principles laid out in the BCE decision. It enumerates a list of factors that

⁴³ <https://ceba-cuec.ca/>

⁴⁴ <https://www.canada.ca/en/atlantic-canada-opportunities/campaigns/covid19/regional-relief-recovery-fund.html>

⁴⁵ <https://www.canada.ca/en/department-finance/programs/financial-sector-policy/business-credit-availability-program.html%E2%80%8D>

⁴⁶ <https://hascap.ca/>

⁴⁷ <https://www.gov.mb.ca/covid19/programs/federal.html>

directors and officers may consider when discharging their fiduciary duties. Specifically, Bill C-97 amended s. 122 of the CBCA to add:

s. 122 (1.1), that When acting with a view to the best interests of the corporation under paragraph (1)(a), the directors and officers of the corporation may consider, but are not limited to, the following factors: (a) the interests of (i) shareholders, (ii) employees, (iii) retirees and pensioners, (iv) creditors, (v) consumers, and (vi) governments; (b) the environment; and (c) the long-term interests of the corporation.⁴⁸

The inclusion of retirees and pensioners recognizes Canada's burgeoning demographic, and the explicit mention of environmental considerations heralds a new era of corporate responsibility, one that aligns with the escalating public discourse on environmental sustainability, and one of the stated priorities of the Trudeau government.

Majority Voting Requirement for Directors of Public Companies

As of August 31, 2022, a noteworthy amendment to the Canada Business Corporations Act (CBCA) fundamentally altered the landscape of shareholder voting in director elections. Stemming from Bill C-25, this legislative modification mandates that reporting issuers incorporated under the CBCA must now allow shareholders to cast “against” votes for nominees in uncontested director elections. This is a departure from the previous framework, which only permitted shareholders to “withhold” their vote or vote “for” nominees. The change is part of a broader suite of amendments introduced by Bill C-25, which received Royal Assent in the spring of 2018 but had been largely dormant pending the publication of related regulations. The implementation of these key changes in shareholder voting was officially announced in March 2022, with the stipulation that they would take effect at the end of August.⁴⁹

The previous CBCA provisions allowed shareholders to either “withhold” their vote, effectively abstaining, or vote “for” a nominee. The introduction of the “against” vote carries significant implications. Specifically, an “against” vote effectively diminishes the tally of “for”

votes, thereby raising the electoral stakes for nominees. If a nominee fails to secure more than 50% of “for” votes, they will not be elected, although this is subject to any divergent provisions in the company's articles. However, it is worth noting that the failure of a nominee to be elected does not preclude their appointment by other elected directors, particularly if their presence is required to meet other CBCA stipulations, such as Canadian residency or independence requirements for distributing corporations.⁵⁰

Moreover, the CBCA amendments offer a degree of flexibility in board operations. If a company's articles specify a minimum number of directors, those who meet the electoral threshold can assume full board responsibilities, provided they satisfy quorum requirements, even if the minimum number of directors is not elected. This provision ensures continuity in corporate governance, mitigating the potential disruptions that could arise from an incomplete board election.

The new majority voting system largely aligns with existing listing rules of the Toronto Stock Exchange (TSX), but it also extends its impact to reporting issuers not listed on the TSX. This is a salient point, as it broadens the scope of the amendment's influence, making it applicable to a wider range of corporations who are not listed on the TSX.

Diversity in Corporate Boards

The *Canada Business Corporations Act* (CBCA) underwent a significant amendment on May 1, 2018, focusing on the incorporation of diversity disclosure requirements for publicly-listed CBCA corporations. However, the actual enforcement of these amendments awaited the finalization of supporting regulations, which came into effect on January 1, 2020. Consequently, the 2020 shareholder meetings of publicly-listed CBCA corporations were the first to be governed by these new stipulations. Notably, the amendments extend the scope of existing Canadian securities law on diversity disclosure, both in terms of the categories of diversity and the range of issuers to which they apply, including those listed on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSXV), and Canadian Securities Exchange (CSE).⁵¹

⁴⁸ <https://www.parl.ca/DocumentViewer/en/42-1/bill/C-97/first-reading>

⁴⁹ <https://www.dentons.com/en/insights/articles/2022/may/11/updates-on-the-canada-business-corporations-Act-statutory-majority-voting-requirements>

⁵⁰ <https://www.dentons.com/en/insights/articles/2022/may/11/updates-on-the-canada-business-corporations-Act-statutory-majority-voting-requirements>

⁵¹ https://ised-isde.canada.ca/site/corporations-canada/en/data-services/diversity-boards-directors-and-senior-management-federal-distributing-corporations-2022-annual?utm_campaign=cc_diversity_report_2022&utm_medium=link&utm_source=email&utm_content=eng

The disclosure requirements mandate that public corporations annually divulge information regarding their term limits, diversity policies, and targets, if any exist. Additionally, statistics concerning representation by “designated groups” within both the board of directors and executive officer levels must be disclosed. These requirements are applicable to a wide range of corporate roles, including the board chair and vice-chair, president, chief executive officer, chief financial officer, and vice-presidents overseeing principal business units or functions. Importantly, the term “designated groups” is borrowed from the federal Employment Equity Act and encompasses women, Aboriginal peoples, persons with disabilities, and members of visible minorities. This represents a broadening of the scope beyond gender diversity, which was the primary focus of previous regulations applicable only to TSX-listed issuers.⁵²

The amendments were a subject of considerable debate in the Canadian Parliament, culminating in a “comply or explain” framework that mirrors existing Canadian securities law. Under this regime, corporations are not mandated to adopt specific diversity quotas or policies. However, they are required to disclose the number and proportion of directors and executive officers who are members of designated groups. If a corporation has not adopted any specific diversity policies, it must explain the rationale behind this decision.

As part of the amendments, the federal government committed to a five-year review of these diversity disclosure provisions, slated for 2025. Should the amendments fail to engender a noticeable increase in boardroom and C-suite diversity, further legislative revisions will be considered.⁵³

In 2021, following the inaugural year of the new diversity disclosure requirements under the *Canada Business Corporations Act (CBCA)*, Corporations Canada conducted a review and subsequently published guidance aimed at enhancing the clarity and consistency of companies’ disclosures. The guidance offered several key recommendations.⁵⁴

First, Corporations Canada advised the use of a table format to disclose targets for each of the four designated groups—women, Indigenous peoples, persons with disabilities, and members of visible minorities. The table was recommended to delineate whether targets

had been set and, if so, specify those targets in terms of numbers, percentages, or ranges, along with the intended timeframes for their achievement. This information was suggested to be presented in separate rows for the board and senior management.

Second, for the actual results, a similar table format was recommended. This table was to include not just the number of directors and senior management team members belonging to each designated group, but also the total number of individuals in these categories. Where no members of a designated group were present, a zero or “nil” was to be indicated. Optionally, but advisedly, companies could also indicate if an individual belonged to more than one designated group.

Additionally, if companies opted to disclose targets and statistics for groups beyond the four designated categories, such as the LGBTQ+ community, or extend the scope beyond senior management, these disclosures were to be presented separately to avoid confusion.

Last, the guidance emphasized the importance of clearly stating the date of the disclosed information. Companies were advised to present this data as of their financial year-end, the date of the circular, or another chosen date. For the sake of comprehensive disclosure, it was suggested that companies might want to disclose the information both as at the date of the circular and immediately following the shareholders’ meeting, assuming all director nominees were elected.

National Instrument 45-106

The Canadian Securities Administrators (CSA) have embarked on a noteworthy initiative aimed at facilitating capital acquisition for smaller issuers listed on Canadian stock exchanges. This initiative culminated in the amendment of National Instrument 45-106 Prospectus Exemptions, effective November 21, 2022, to introduce a new prospectus exemption known as the “Listed Issuer Financing Exemption.”⁵⁵ This exemption is designed to streamline the capital-raising process, subject to a set of detailed requirements.

For issuers to avail themselves of this exemption, they must meet several criteria. Firstly, they must have been reporting issuers in Canada for a minimum of

⁵² https://ised-isde.canada.ca/site/corporations-canada/en/data-services/diversity-boards-directors-and-senior-management-federal-distributing-corporations-2022-annual?utm_campaign=cc_diversity_report_2022&utm_medium=link&utm_source=email&utm_content=eng

⁵³ <https://ised-isde.canada.ca/site/corporations-canada/en/business-corporations/diversity-boards-directors-and-senior-management#s3>

⁵⁴ <https://ised-isde.canada.ca/site/corporations-canada/en/data-services/diversity-boards-directors-and-senior-management-federal-distributing-corporations-2020-annual>

⁵⁵ <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-330/csa-staff-notice-45-330-frequently-asked-questions-about-listed-issuer-financing-exemption>

12 months prior to declaring their intent to utilize the exemption. Additionally, they are mandated to have filed all requisite continuous disclosure documents in compliance with Canadian securities legislation. Other stipulations include the listing of the issuer's equity securities on an accredited Canadian stock exchange, the absence of the issuer's status as an investment fund, the existence of active business operations, and no recent restructuring transactions with dormant companies or individuals.⁵⁶

The exemption also delineates specific distribution requirements. Securities distributed under this framework must either be listed equity securities or units comprising both a listed equity security and a convertible warrant. Furthermore, the funds garnered through this exemption cannot be allocated for significant acquisitions, restructuring transactions, or any activities necessitating security holder approval. Issuers can raise capital up to the greater of \$5 million or 10% of their market capitalization in any one-year period, capped at \$10 million. However, the exemption imposes a limitation that the total distribution in any one-year period should not inflate the issuer's outstanding listed securities by more than 50%.⁵⁷

In terms of disclosure, eligible issuers are required to file a Short Offering Form, known as Form 45-106F19 – Listed Issuer Financing Document. This document should encapsulate a concise overview of the issuer's business, the intended utilization of the raised funds, material facts not disclosed in other public documents, and the offering's pricing details. It must also include a disclaimer stating that the document has not undergone review by securities regulators, along with outlining the statutory rights available to purchasers. Prior to solicitation, issuers must file this form with regulatory bodies in all jurisdictions where the offering is accessible. A corresponding news release must also be disseminated.⁵⁸

It is imperative for issuers to exercise due diligence in the creation and distribution of their Short Offering Form. Any misrepresentations could render them susceptible to legal repercussions, including the rescission of securities purchases or claims for damages. In certain jurisdictions, liability could extend to directors and executives who have endorsed the document.

This exemption may represent a useful advancement in Canadian securities regulation. It addresses the collective concerns of growing issuers by offering a more efficient capital-raising mechanism, while concurrently implementing safeguards to protect investors. This exemption not only enhances the competitiveness of Canadian issuers in the global arena but also alleviates administrative burdens domestically. It strikes a judicious balance between market accessibility and regulatory oversight, thereby serving the dual objectives of investor protection and market facilitation.

Say on Pay

Bill C-97, a legislative Act that received Royal Assent three years ago, remains in a state of partial implementation, particularly concerning its “say-on-pay” provisions. These provisions, which were subject to a federal consultation process that concluded in March 2021, have yet to be officially enacted, leaving a cloud of uncertainty over their eventual implementation. The Act outlines two principal requirements for what it terms “prescribed corporations,” a designation that remains to be formally defined through subsequent regulation. Reporting issuers are advised to operate under the assumption that they will fall under this category.⁵⁹

The first requirement mandates that prescribed corporations must formulate a coherent approach to the remuneration of their directors and senior management. The term “senior management” is another variable yet to be defined by regulation, adding another layer of ambiguity to the legislation. Essentially, this provision necessitates that corporations have a well-articulated compensation plan for their leadership, although the specifics are pending further clarification.⁶⁰

The second requirement introduces a novel element of shareholder participation in corporate governance. It obliges corporations to present their compensation plans for a non-binding shareholder vote at each annual meeting. The results of this vote must be disclosed to shareholders, thereby enhancing transparency in corporate decision-making. While the vote is non-binding—acknowledging that the ultimate fiduciary duties of directors are owed to the corporation—it does provide shareholders with the opportunity to express their views on executive compensation. Should the

⁵⁶ <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106/csa-notice-amendments-national-instrument-45-106-prospectus-exemptions-introduce-listed-issuer>

⁵⁷ <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106/csa-notice-amendments-national-instrument-45-106-prospectus-exemptions-introduce-listed-issuer>

⁵⁸ <https://www.osc.ca/en/securities-law/instruments-rules-policies/4/45-106/csa-notice-amendments-national-instrument-45-106-prospectus-exemptions-introduce-listed-issuer>

⁵⁹ <https://ised-isde.canada.ca/site/corporations-canada/en/consultation-regulatory-proposals>

⁶⁰ <https://ised-isde.canada.ca/site/corporations-canada/en/consultation-regulatory-proposals>

board choose to disregard the shareholder vote, this decision will not escape shareholder scrutiny.⁶¹

The lingering questions that remain unaddressed pertain to the scope of the legislation: which corporations and which echelons of management will be subject to these say-on-pay provisions. It's worth noting that the concept of say-on-pay is not entirely novel. The Ontario Securities Commission had previously issued Staff Notice 54-701 in 2011, identifying an advisory say-on-pay vote as a policy idea warranting further exploration. Moreover, advisory votes on executive compensation are already a feature of the Dodd-Frank regulatory framework in the United States, and numerous Canadian reporting issuers have voluntarily adopted similar policies.

These say-on-pay provisions of Bill C-97 represent a significant, albeit pending, development in the realm of Canadian corporate governance. They aim to strike a balance between the fiduciary responsibilities of directors and the participatory rights of shareholders, particularly in the sensitive area of executive compensation. While the Act leaves several critical questions unanswered, its eventual implementation could serve as a milestone in enhancing transparency and shareholder engagement in corporate decision-making. The delay in its enactment, however, adds a layer of complexity and uncertainty that corporations and shareholders must navigate in the interim and poses questions about the actual priority of these changes for the federal government.

Microloans for Women Entrepreneurs

On August 15, 2022, the Government of Canada announced a significant financial initiative aimed at bolstering women entrepreneurship—the \$55-million Women Entrepreneurship Loan Fund.⁶² Administered in part by the Women's Enterprise Organizations of Canada (WEOC), a Winnipeg-based consortium focused on aiding women entrepreneurs, the fund was allocated approximately \$30 million for disbursement. Other organizations involved in administering the fund included the National Aboriginal Capital Corporations Association, the Northumberland Business Development Assistance Corp, and Coralus. This loan fund forms a component of the federal government's broader \$6-billion Women Entrepreneurship Strategy, which encompasses other initiatives like the Inclusive Women Venture Capital Initiative, the WES

Ecosystem Fund, and the Women Entrepreneurship Knowledge Hub.

The mechanics of the Women Entrepreneurship Loan Fund were designed to be particularly beneficial for start-ups, underrepresented groups, and sole proprietorships. The fund offers microloans of up to \$50,000, featuring terms of up to five years, a maximum interest rate of prime + 4%, and a loan management fee capped at 1%. To qualify, businesses must be majority women-owned and should not exceed \$2 million in annual gross revenues. Additionally, applicants are required to present a business plan that includes cash flow forecasts for at least two years.

The initiative was stated to be an important stride towards equality in the business world, particularly in light of the federal government's report indicating that women-owned businesses are less likely to seek equity funding compared to their male counterparts. Furthermore, only 17% of small- and medium-sized enterprises in Canada are women-owned. The fund aims to address these disparities and capitalize on the economic potential of advancing gender equality, which, according to a study by McKinsey & Company, could infuse an additional \$150 billion into the Canadian economy.⁶³

Prompt Payment for Builders

On May 30, 2023, the Legislative Assembly of Manitoba granted Royal Assent to Bill 38: *The Builders' Liens Amendment Act (Prompt Payment)*.⁶⁴ This legislative action aimed to modify *The Builders' Liens Act* to establish a prompt payment scheme in Manitoba's construction sector. The legislation was designed to expedite the flow of payments within the construction contract chain by imposing specific deadlines on each payor. This move followed similar legislative enactments in other Canadian provinces like Ontario, Saskatchewan, and Alberta, after three previous unsuccessful attempts to legislate prompt payment in Manitoba.

The crux of Bill 38 was the introduction of a prompt payment system, closely mirroring those in other jurisdictions. The legislation delineated the concept of a "proper invoice," specifying the requisite elements, such as the contractor's name, address, and detailed information about the work, services, or materials

⁶¹ <https://ised-isde.canada.ca/site/corporations-canada/en/consultation-regulatory-proposals>

⁶² <https://ised-isde.canada.ca/site/women-entrepreneurship-strategy/en/women-entrepreneurship-loan-fund>

⁶³ <https://www.mckinsey.com/featured-insights/gender-equality/the-power-of-parity-advancing-womens-equality-in-canada>

⁶⁴ <https://web2.gov.mb.ca/bills/42-5/b038e.php#:~:text=The%20owner%20must%20pay%20the,partial%20payment%20from%20the%20owner.>

provided. Upon receipt of a proper invoice, the owner had 28 days to remit payment to the contractor. However, the owner could suspend this deadline by issuing a notice of non-payment within 14 days if they disputed any portion of the invoice.

The Amendments also outlined the payment obligations from contractors to sub-contractors. Upon receiving payment from the owner, contractors had a 7-day window to pay their sub-contractors. If the owner failed to pay the contractor, the latter had 35 days from the date of submitting the proper invoice to pay its sub-contractors in full. Similar provisions were made for sub-contractors paying their own sub-contractors, extending the payment deadline to 42 days in certain circumstances.

Bill 38 also introduced an adjudication process aimed at resolving payment disputes more efficiently than traditional court processes. The scope of issues that could be referred to adjudication was broad, ranging from disputes related to non-payment notices to valuation of work and services.

To accommodate these changes, the Act extended the existing 40-day timeline for builders' lien remedies to 60 days. Additionally, a comprehensive review of the Act was mandated to occur within two years of Bill 38 coming into force, including public representations and a report to be tabled in the Legislative Assembly.

The implementation of Bill 38 is poised to bring transformative changes to the construction industry in Manitoba, affecting owners, contractors, and sub-contractors alike. It aims to streamline the payment process, introduce an efficient dispute resolution mechanism, and align Manitoba's construction industry with best practices observed in other Canadian provinces.

Canada's Residential Real Estate Ban

Effective January 1, 2023, in a bid to curb the spiraling housing crisis accentuated throughout the pandemic in Canada's largest urban centres, the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* was enacted. The Act primarily bars non-Canadians from acquiring residential property in the country, with certain exemptions and conditions outlined in the

Act and its forthcoming regulations. The legislation is slated to remain in force for a two-year period.⁶⁵

Section 4(1), the cornerstone clause of the Act, bars non-Canadians from purchasing residential property in Canada, whether directly or indirectly. The term "residential property" is defined to include detached houses, semi-detached homes, rowhouse units, and residential condominium units. "Non-Canadian" is delineated to mean individuals who are neither Canadian citizens nor permanent residents, as well as certain types of corporations.⁶⁶

However, the Act also provides for exceptions under Sections 4(2)-(5), which include temporary residents, protected persons under the *Immigration and Refugee Protection Act* (IRPA), and non-Canadians purchasing property with a Canadian spouse or common-law partner. Additional exceptions are made for foreign states acquiring property for diplomatic purposes and for those who had entered into purchase agreements before the Act's enforcement date.⁶⁷

Section 5 of the Act clarifies that contravention of its provisions would not invalidate the sale of the residential property in question. Penalties for violation included a fine of up to \$10,000 under Section 6(1), and the potential for the property to be ordered sold by a superior court under Sections 7(1) and (2).⁶⁸

It merits attention that the Act serves as a pivotal component of a more expansive governmental strategy aimed at tempering housing inflation and reducing the prevalence of foreign-owned vacant homes. It was intended to operate in conjunction with other policies, such as the *Underused Housing Tax Act*, which had received royal assent on June 9, 2022.⁶⁹

However, on December 2, 2022, the Privy Council passed an Order in Council confirming regulations related to the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (the Act). The *Prohibition on the Purchase of Residential Property by Non-Canadians Regulations* (the Regulation) was published on December 21, 2022, in the *Canada Gazette*. The Regulation came into force on January 1, 2023, along with the Act. These regulations provided greater clarity as to how the Act operates.⁷⁰

⁶⁵ <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act>

⁶⁶ <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act>

⁶⁷ <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act>

⁶⁸ <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act>

⁶⁹ <https://www.cmhc-schl.gc.ca/professionals/housing-markets-data-and-research/housing-research/consultations/prohibition-purchase-residential-property-non-canadians-act>

⁷⁰ <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2022-250/page-1.html>

One of the most salient points is the geographical limitation of the Act to “census agglomerations” or “census metropolitan areas,” as defined by Statistics Canada. This effectively means that the Act’s prohibitions are not universally applicable but are concentrated in areas with significant populations, including both large cities and smaller centres. The Amending Regulation further refined this by excluding properties zoned for mixed commercial and residential use that do not contain a dwelling unit, addressing a previously problematic aspect.

The definition of “purchase” in the Regulation is expansive, encompassing not just the acquisition but also the agreement to acquire a legal or equitable interest in a residential property. This broad interpretation could potentially capture various transactional forms, including mortgages, although the Canada Mortgage and Housing Corporation (CMHC) suggests that mortgages are not intended to be prohibited.

The Regulation also provides a more nuanced understanding of what constitutes “control” by a non-Canadian, extending it to entities other than individuals and corporations and setting a threshold of 10 percent ownership or voting rights. This aligns more closely with existing foreign buyer legislation.

In terms of consequences for contravention, the Regulation outlines the conditions under which a court may order the sale of a residential property acquired in violation of the Act. The proceeds from such a sale would be distributed in a specific order, prioritizing the Minister’s costs and any outstanding fines.

Last, the Regulation not only identifies exemptions for certain temporary residents and foreign nationals but also accords due recognition to the constitutional rights of Indigenous peoples, as enshrined in Section 35 of the *Constitution Act*, 1982.

LEGISLATIVE CHANGES AFFECTING EMPLOYERS

On May 20, 2021, the Manitoba Legislature passed several bills with implications for employers, human resources professionals, and employees. Among these, Bill 11, *The Workplace Safety and Health Amendment*

Act, took immediate effect, while the others await future proclamation dates.⁷¹

Bill 11 introduces substantial changes to the *Workplace Safety and Health Act* (WSHA), including an increase in maximum penalties for offences and procedural alterations. Notably, it shortens the time frame within which employees can file a complaint against employer reprisals to six months. It also grants the Director of Workplace Safety and Health the authority to dismiss appeals deemed frivolous or filed outside the stipulated time. The fines for offences have been significantly escalated, with a first offence now attracting a maximum fine of \$500,000, up from \$250,000.⁷²

Bill 18 amends *The Workers Compensation Act* (WCA), expanding the scope of “accident” and “occupational disease” to include conditions like post-traumatic stress disorder. It also clarifies that employers cannot recoup costs arising from an employee’s WCA claim. A new “employer advisor” role is introduced to guide employers on WCA interpretations. Employers are also mandated to handle information from the Workers Compensation Board with heightened care.⁷³

Bill 26 amends *The Human Rights Code* by capping damages for injury to dignity, feelings, or self-respect at \$25,000, a significant reduction from the current unlimited general damage awards.⁷⁴

Bill 51 repeals *The Limitation of Actions Act* in this context, introducing a new two-year limitation period for civil claims, including wrongful or constructive dismissal, with specific exemptions such as sexual assault claims.⁷⁵

Bill 49 amends to *The Freedom of Information and Protection of Privacy Act* (FIPPA), affecting public sector employers. It outlines conditions under which a public body can refuse to disclose certain types of information, including confidential labour relations information and details of ongoing or past investigations into employee conduct.⁷⁶

These legislative reforms will have far-reaching implications for the employer-employee relationship in Manitoba, affecting everything from workplace safety and workers’ compensation to human rights and privacy considerations.⁷⁷ ■

⁷¹ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷² <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷³ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷⁴ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷⁵ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷⁶ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

⁷⁷ <https://web2.gov.mb.ca/bills/42-3/b011e.php>

Indigenous Business Development

Indigenous peoples across Canada continue to experience increased recognition of their rights and interests through litigation and court decisions, advocacy and lobbying efforts, new legislation, agreements with Provincial and Federal levels of Government, and a cultural shift towards broader awareness among the general Canadian population and the business sector of the nature and scope of these rights and interests. Indigenous governments, communities, and individuals across Manitoba are increasingly leveraging their Indigenous rights (including through settlement monies and lands, economic accommodations, and self-government initiatives) to develop and seize new business opportunities. At the same time, Canada⁷⁸ and the Province of Manitoba⁷⁹ (among other Provincial and Territorial Governments) have committed significant resources to “Economic Reconciliation” with Indigenous peoples, leading to various kinds of support for Indigenous economic and business development.

The importance of Indigenous Business Development for non-Indigenous businesses, and the broader business community, cannot be understated. Indigenous communities, governments, businesses and individuals will continue to gain traction and increasingly engage in Manitoba and Canada’s economy in various ways, leading to opportunities not only for Indigenous peoples but also for non-Indigenous businesses and business leaders that understand and embrace these opportunities. Additionally, as Indigenous businesses are established and grow, non-Indigenous businesses will come into contact with them more often, either as suppliers, customers, competitors, or partners. This section will consider the context, current status, government initiatives, and future potential of Indigenous Business Development in Manitoba.

⁷⁸ <https://www.budget.canada.ca/2023/report-rapport/chap4-en.html>

⁷⁹ <https://news.gov.mb.ca/news/?item=60778>

Demographics

Although the term “Indigenous” is used throughout this writing, it is generally synonymous with the term “Aboriginal” as defined under the *Constitution Act, 1982*.⁸⁰ Section 35 of the *Constitution Act, 1982* defines the “Aboriginal peoples of Canada” as the First Nation⁸¹, Inuit and Métis peoples of Canada. There are five distinct First Nation linguistic groups in Manitoba, including the Cree, Ojibway, Dakota, Objway-Cree (or “Oji-Cree”), and Dene.⁸² Throughout Manitoba, there are 63 First Nations with roughly 165,000 members collectively. Approximately 90,000 of these members live on a reserve.⁸³ Most of the First Nations in Manitoba are signatories to one of the “Numbered Treaties”⁸⁴, and belong to one of the seven tribal organizations in the Province.⁸⁵ The Birdtail Sioux, Sioux Valley⁸⁶, Canupawakpa, Dakota Tipi, and Dakota Plains First Nations however are not signatories to any treaties with Canada. In addition to the foregoing First Nations, Manitoba is the homeland of the Red River Métis.⁸⁷ There are over 95,000 Métis individuals throughout Manitoba, a majority of whom are members of the Manitoba Métis Federation.⁸⁸

Treaties

The Manitoba Métis Federation, the Province of Manitoba, and the Government of Canada are parties to the *Manitoba Métis Self-Government Recognition and Implementation Agreement*⁸⁹, which provides for the recognition of the Manitoba Métis’⁹⁰ right to self-determination and its inherent right to self-government and provides a framework towards the negotiations and implementation of a treaty among the Manitoba Métis and the Province of Manitoba and Government of Canada. In June of 2023, the Red River Métis voted unanimously in favour of ratifying the *Red River Métis Self-Government Recognition and Implementation*

*Treaty*⁹¹, which, once it is enacted by the Governments of the Province of Manitoba and Canada, will provide treaty rights to the Red River Métis.⁹²

Under the Numbered Treaties, First Nations were entitled to reserve lands based on their populations. Many First Nations did not receive the amount of reserve lands they were entitled to under treaty. In 1930, the Government of Canada through the *Manitoba Natural Resources Transfer Act*⁹³ transferred control of lands and natural resources in Manitoba to the Province.⁹⁴ In 1997, 21 First Nations who were entitled to additional reserve lands entered into the *Manitoba Treaty Land Entitlement Agreement* in which Manitoba agreed to provide land and cash to purchase lands to settle First Nation treaty land entitlement claims.⁹⁵ Eight other First Nations entered into separate treaty land entitlement settlement agreements with the Government of Canada and Manitoba.⁹⁶ In all, under the treaty land entitlement settlement agreements in Manitoba, 1.4 million hectares of land were transferred to First Nation and \$190 million dollars was provided to purchase lands and for other costs. The administration and implementation of the treaty lands entitlements settlements under the *Manitoba Treaty Land Entitlement Agreement* is administered by the *Treaty Land Entitlement Committee*.⁹⁷ The lands settled under these agreements have enormous economic value for First Nations in the Province.

Consultation and Accommodation

Indigenous peoples in Manitoba often engage with the Province of Manitoba and/or Government of Canada pursuant to the Crown’s duty to consult and accommodate them when the Crown contemplates or makes decisions that may have adverse impacts on Aboriginal rights (including treaty rights). This is

⁸⁰ Schedule B to the Canada Act 1982 (UK), 1082, c 11 [“*Constitution Act, 1982*”].

⁸¹ The *Constitution Act, 1982* and other Federal legislation used the term “Indian”, which has generally been replaced by the term “First Nation”.

⁸² <https://sac-isc.gc.ca/eng/1626886719453/1626886859809>.

⁸³ *Ibid.*

⁸⁴ Manitoba is entirely covered by Treaty 1, Treaty 2, Treaty 3, Treaty 4, and Treaty 5.

⁸⁵ *Supra*, note 310; Dakota Ojibway Tribal Council, Interlake Reserves Tribal Council, Island Lakes Tribal Council, Keewatin Tribal Council, Southeast Resource Development Council, Swampy Cree Tribal Council, and West Region Tribal Council.

⁸⁶ The Sioux Valley Dakota First Nation is however a party to a Comprehensive Agreement-In-Principle; <https://www.rcaanc-cirnac.gc.ca/eng/1100100032143/1539711837777>.

⁸⁷ <https://www.mmf.mb.ca/metis-minute/identity>.

⁸⁸ <https://www12.statcan.gc.ca/census-recensement/2021/as-sa/98-200-X/2021006/98-200-X2021006-eng.cfm>.

⁸⁹ https://www.mmf.mb.ca/wcm-docs/docs/news/manitoba_metis_self-government_recognition_and_implementation_agreement.pdf.

⁹⁰ The “Manitoba Métis” is the former name used by the Manitoba Métis Federation to describe the Métis in the Province of Manitoba. The term “Red River Métis” has more recently been adopted by the Manitoba Métis Federation instead of “Manitoba Métis”.

⁹¹ <https://www.mmf.mb.ca/ega/red-river-metis-unanimously-accept-modern-day-treaty-with-canada-in-historic-vote>.

⁹² https://www.mmf.mb.ca/wcm-docs/docs/ega/final_treaty_plain_language_backgrounder_april_14_2023_.pdf.

⁹³ C.C.S.M. c. N30.

⁹⁴ <https://sac-isc.gc.ca/eng/1305306991615/1611939771671>

⁹⁵ <https://tleimc.ca/about-us/manitoba-framework-agreement/#:~:text=The%20Manitoba%20Framework%20Agreement%20E2%80%93%20Treaty%20Land%20Entitlement,Entitlement%20First%20Nations%20%28EFNs%29%20represented%20by%20the%20TLEC..>

⁹⁶ *Supra*, note 322.

⁹⁷ <http://www.tlec.ca/>

often triggered when the Crown makes decisions in relation to natural resource and other development projects, including decisions to issue permits under environmental and other regulatory legislation, which impact First Nations' treaty rights to land and to engage in traditional practices (such as hunting, trapping, fishing, etc.). Often, the Crown delegates certain obligations of this duty to consult and accommodate onto proponents of projects (when such are projects are not being developed by the Crown) who then seek to negotiate and obtain the consent of the impacted Nations through accommodation agreements. These accommodation agreements with project proponents often provide First Nations with economic value in the form of cash or royalty payments, preferential employment and training opportunities for their members, and preferential contracting opportunities. These opportunities have led to the development of Nation-owned businesses and member-owned business in several instances.

Accommodation agreements are also entered into by the Crown when the project is developed by the Province or Canada. In Manitoba, the Province's hydroelectric development through Manitoba Hydro for example, and the Crown's duty to consult and accommodate, have led to many settlement agreements with First Nations.⁹⁸ Hydroelectric development in Manitoba will continue to grow with new and expanded projects. The Government of Canada and Province of Manitoba recently announced nearly \$500 million in future investments in Manitoba hydroelectric projects, including towards the Pointe du Boic Generating Station and the Portage la Prairie transmission network.⁹⁹ There are approximately 30 major projects that are under construction or planned in Manitoba in the next ten years, including 27 energy projects and 3 mining projects, totalling \$2.1 billion dollars in investments.¹⁰⁰ These projects will likely lead to additional accommodation agreements with affected First Nations and the Red River Métis, potentially furthering opportunities for Indigenous businesses related to natural resource development and related services throughout the Province.

TRC Calls to Action

In 2006, a class action regarding survivors of Canada's residential schools was certified, and led ultimately to the Indian Residential Schools Settlement Agreement.¹⁰¹ As part of the settlement agreement, the Truth and Reconciliation Commission was established, and spent 6 years investigating the residential school system. In 2015, the Truth and Reconciliation Commission published its final report and Calls to Action.¹⁰² The Calls to Action included Article 43, which called on the Federal, Provincial, Territorial, and Municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples*¹⁰³ (the "**Declaration**") as a framework for Reconciliation, and the Federal government to develop a national action plan to achieve the goals of the Declaration. Article 92 calls on the corporate sector in Canada to adopt the Declaration as a reconciliation framework and to apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples and their lands and resources, including through meaningful consultation seeking free, prior and informed consent before proceeding with economic development projects; providing equitable access to jobs, training, and educational opportunities in the corporate sector so that Aboriginal communities gain long-term sustainable benefits from economic development projects; and providing education for management and staff on the history of Aboriginal peoples, including the history of residential schools, the Declaration, treaty and Aboriginal rights, Indigenous law, and Aboriginal-Crown relationships.¹⁰⁴

United Nations Declaration on the Rights of Indigenous Peoples Act

In 2021, the Government of Canada enacted the *United Nations Declaration on the Rights of Indigenous Peoples Act*¹⁰⁵ (known colloquially as "**UNDA**"). The UNDA affirms the Declaration as a universal international human rights instrument with application in Canadian law¹⁰⁶ and commits the Government of Canada to working in consultation and cooperation with Indigenous peoples in Canada to "take all

⁹⁸ <https://www.gov.mb.ca/inr/settlements-and-other-agreements/index.html>.

⁹⁹ <https://www.canada.ca/en/department-finance/news/2023/11/governments-of-canada-and-manitoba-invest-nearly-500-million-to-deliver-clean-reliable-and-affordable-electricity-to-manitobans.html>.

¹⁰⁰ https://natural-resources.canada.ca/sites/nrcan/files/emmc/pdf/2023/2023-Major-Projects-Inventory-Report_EN_14Nov2023_OP.pdf.

¹⁰¹ <https://www.rcaanc-cirnac.gc.ca/eng/1450124405592/1529106060525>

¹⁰² *Ibid.*

¹⁰³ United Nations General Assembly A/61/L.67; 61/295 (the "**Declaration**").

¹⁰⁴ https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

¹⁰⁵ S.C. 2021, c. 14 ("**UNDA**").

¹⁰⁶ *Supra*, note 329, section 4(a).

measures necessary measures to ensure that the laws of Canada are consistent with the Declaration.”¹⁰⁷ The Declaration includes several Articles that relate directly to the economy and business sector, including Article 3 which provides that Indigenous peoples have the right to self-determination and the right to freely pursue their economic development. Article 4 provides that Indigenous peoples have the right to self-determination and self-government in matters relating to the ways and means of financing their autonomous functions; Article 5 provides that Indigenous peoples have the right to maintain and strengthen their economic institutions while also having the right to participate fully in the economic life of the broader Canadian state; Articles 18 and 19 provide that Indigenous peoples have the right to choose their own representatives and to be consulted and cooperated with in good faith in order for their free, prior and informed consent to be obtained before the Crown adopts or implements legislative or administrative measures that affect them; Article 20 provides that Indigenous peoples have the right to maintain and develop their economic systems and institutions and to be secure in the enjoyment of their own means of subsistence and development; Article 23 provides that Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development; Article 26 provides that Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, including the right to own, use and develop and control these lands, territories, and resources; Article 27 provides that Indigenous peoples have the right to redress, including through restitution or equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been taken or damaged without their free, prior and informed consent; and Article 32 provides that Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources, and that states must consult and cooperate in good

faith with Indigenous peoples to obtain such free, prior and informed consent prior to the approval of any project affecting their lands or territories and other resources.

The UNDA provided that Canada would develop an “Action Plan” to implement and achieve the objectives of the Declaration.¹⁰⁸ This year, the Department of Justice released the *United Nations Declaration on the Rights of Indigenous Peoples Action Plan*¹⁰⁹ (the “Action Plan”). The Action Plan is a five year plan (2023-2028) that sets out the priorities of the primary stakeholders, including shared priorities, First Nation priorities, Inuit priorities, and Métis priorities in implementing the Declaration in Canada.¹¹⁰ The Action Plan sets out the next steps for its implementation, including ongoing consultation and cooperation with Indigenous peoples through bilateral mechanisms, and national and regional committees.¹¹¹ The Action Plan will likely lead to consultation and cooperation on the amendment of current legislation, and the co-development of new legislation that will bring Canada’s law into alignment with the Declaration.

The Path to Reconciliation Act

Although the Province of Manitoba has not enacted similar legislation as UNDA (or the *Declaration on the Rights of Indigenous Peoples Act*¹¹², as an example of similar Provincial legislation), the Province has legislation related to Reconciliation more broadly, entitled *The Path to Reconciliation Act*.¹¹³ This legislation affirms the Government of Manitoba’s commitments to reconciliation guided by the calls to action of the Truth and Reconciliation Commission, the principles set out in the Declaration, and the calls for justice of the National Inquiry into Missing and Murdered Indigenous Women and Girls.¹¹⁴ The Act also provides that each member of the Executive Council must promote measures to advance Reconciliation through the work of their department and across government.¹¹⁵

¹⁰⁷ *Ibid.*, at section 6(1).

¹⁰⁸ *Ibid.*

¹⁰⁹ <https://www.justice.gc.ca/eng/declaration/ap-pa/ah/pdf/unda-action-plan-digital-eng.pdf> (“Action Plan”).

¹¹⁰ *Ibid.*, at page 20.

¹¹¹ *Ibid.*, at page 21.

¹¹² S.B.C. 2019, c. 44

¹¹³ C.C.S.M. c. R30.5

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*, at section 3(2).

CURRENT STATUS OF INDIGENOUS BUSINESS DEVELOPMENT IN MANITOBA

It's estimated that in 2016, spending in Manitoba related to Indigenous governments, businesses, and households amounted to roughly \$9 billion,¹¹⁶ and that Indigenous businesses' contributed roughly \$1.1 billion to Manitoba's gross domestic product; created approximately 14,000 jobs; and generated \$5.6 million in labour income.¹¹⁷ In 2018, there were an estimated 17,363 Indigenous-owned businesses in Canada, accounting for 1.3% of all private businesses in the country.¹¹⁸ Seven percent of these businesses (roughly 1,215 businesses) were located in Manitoba. Indigenous people in Canada account for roughly 5% of the population¹¹⁹ and therefore Indigenous peoples have been underrepresented as private business owners. The Indigenous population in Canada has grown at a pace of 9.4% from 2016 to 2021, which is higher than the population growth of non-Indigenous peoples in Canada (which during the same period was roughly 5.3%).¹²⁰ Given the growth of the Indigenous population, and the increasing opportunities for Indigenous-owned businesses, we will likely see the gap between Indigenous and non-Indigenous businesses continue to close (both in terms of representation and overall share). The Government of Canada estimated that as of 2020, the gross domestic product attributable to Indigenous peoples in Canada was \$48.9 billion and the value of that output in 2020 was an estimated \$97 billion.¹²¹ Given that Canada's Indigenous population makes up roughly 5% of Canada, some estimate that the potential value of the Indigenous economy could be nearly double (\$100 billion).¹²² However, as in other sectors of the economy, these outputs experienced declines in growth during the COVID-19 pandemic.¹²³ As the broader Manitoba economy continues to face challenges related to the aftermath of the COVID-19 pandemic, high interest rates, inflation, and slowing growth, Indigenous businesses in the Province will also face related challenges, which may however be curtailed

or even outweighed by the growing opportunities for such businesses.

Government Initiatives

In furtherance of various objectives, Indigenous, Federal, and Provincial governments have invested in programs and services to bolster Indigenous business development. Federal and Provincial governments have invested in order to further commitments to economic reconciliation while Indigenous governments and organizations continue to invest towards self-sufficiency and general economic development in their communities.

One of the most promising investments that the Government of Canada has committed to is the Indigenous business and federal procurement policy. Canada has set a target for all Federal departments and agencies to purchase a minimum of 5% (equal to the percentage of Indigenous people in the Canadian population) of the total value of contracts from Indigenous businesses.¹²⁴ All Federal government departments and agencies have to meet or exceed this target by the end of the 2024-2025 fiscal year.¹²⁵ This policy presents an excellent opportunity for Indigenous businesses in Manitoba (and beyond). The Government of Canada purchases approximately \$22 billion¹²⁶ worth of goods and services every year, meaning that if the procurement target is met, Indigenous businesses will have access to \$1.1 billion of business (from the Government of Canada alone).

In addition to the Federal procurement policy, the Government of Canada has established the Aboriginal Entrepreneurship Program to promote entrepreneurship in Indigenous communities by providing access to capital and business opportunities.¹²⁷ The Access to Capital program provides Indigenous businesses with access to non-repayable contributions of up to \$99,999, and the program is managed by the National Aboriginal Capital Corporations Association¹²⁸ who distribute the funds through a network of 59 Aboriginal Financial

¹¹⁶ <https://www.brandonu.ca/rdi/files/2019/01/Indigenous-Economy-Report.pdf> at page 37.

¹¹⁷ *Ibid.*, at page 30.

¹¹⁸ <https://www150.statcan.gc.ca/n1/pub/11-627-m/11-627-m2023038-eng.htm>.

¹¹⁹ <https://www150.statcan.gc.ca/n1/daily-quotidien/220921/dq220921a-eng.htm?indid=32990-1&indgeo=0>.

¹²⁰ *Ibid.*

¹²¹ <https://www150.statcan.gc.ca/n1/pub/13-604-m/13-604-m2022001-eng.htm>.

¹²² <https://www.cbc.ca/news/business/first-nations-indigenous-economics-canada-1.7039906>

¹²³ *Supra*, note 340.

¹²⁴ <https://www.sac-isc.gc.ca/eng/1691786841904/1691786863431>

¹²⁵ *Ibid.*

¹²⁶ https://buyandsell.gc.ca/for-businesses/selling-to-the-government-of-canada/the-procurement-process-#:~:text=The%20Government%20of%20Canada%20is%20one%20of%20the_year%20on%20behalf%20of%20federal%20departments%20and%20agencies.

¹²⁷ <https://www.sac-isc.gc.ca/eng/1375201178602/1610797286236>

¹²⁸ <https://nacca.ca/>

Institutions.¹²⁹ There are 11 such Aboriginal Financial Institutions in Manitoba, including 7 in Winnipeg and 4 throughout the rest of the Province.¹³⁰ The Aboriginal Entrepreneurship Program also includes the Access to Business Opportunities stream, which provides funding to Indigenous communities and businesses to engage in activities that promote a culture of entrepreneurship. Eligible activities under this stream may be reimbursed for 100% of the costs to a maximum of \$500,000, and include institutional development, including training and development and business supports to business development organizations; business advisory services and training; commercial ventures; market development, and business development.¹³¹ Lastly, the Government of Canada has developed the Strategic Partnership Initiative which helps Indigenous communities participate in complex economic opportunities that span multiple years, have regional economic impacts and serve multiple communities.¹³² This program provides funding of up to \$14.45 million per year for investments in economic readiness; economic infrastructure; expanding viable businesses; pre-feasibility and feasibility studies; environmental diagnostics and evaluations; community economic development planning; and skills and development training.¹³³ In addition to the yearly funding budget, an additional \$300 million available until 2027 to support the development of clean energy projects in Indigenous communities.¹³⁴

The Province of Manitoba also has specific programs geared towards helping Indigenous businesses succeed. The Indigenous and Northern Initiatives Fund provides funds, up to a maximum of \$25,000, to Indigenous and non-Indigenous businesses to improve relationships between Indigenous and non-Indigenous peoples in Manitoba; improve the quality of life for Indigenous peoples with respect to economic development, job creation and educational initiatives; support activities that align with the Path to Reconciliation Act, the Truth and Reconciliation Commission's Calls to Action, and the Declaration; and show clear, concrete and positive project benefits that align with the priorities of government.¹³⁵ In addition, the Province has other

strategies and opportunities related to Indigenous economic development, such as its *Look North Strategy* (which supports economic development in Northern Manitoba); the *Northern Health Foods Initiative* (which supports local and regional food security projects in the North); and *Partnering for Economic Growth* (which is an umbrella policy encompassing various economic development funds, business accelerators, and business development services).¹³⁶

Lastly, Manitoba is home to several Indigenous-led economic and business development organizations, including the First Peoples Economic Growth Fund (which provides financing to support Manitoba First Nation business proposals); the Louis Riel Capital Corporation (which lends capital to Métis owned businesses); the Tribal Wi-Chi-Way-Win Capital Corporation (which provides resources to Aboriginal entrepreneurs and businesses in Manitoba); the Dakota Ojibway Community Futures Development Corporation (which provides business development services and capital to the nine Dakota and Ojibwe First Nations in Manitoba); and the Tribal Councils Investment Group of Manitoba Ltd. (which provides business development services and capital to 55 First Nation member communities), for example.

FUTURE OUTLOOK

As previously stated, Indigenous peoples continue to be underrepresented in private business. However, as support and opportunities continue to expand for Indigenous businesses, these gaps will likely close. With an increasingly growing population, the number of Indigenous businesses in Manitoba will also likely continue to grow. Indigenous people and businesses continue to face challenges that impact entrepreneurship and success. For example, Indigenous people continue to have lower educational outcomes compared to other Canadians, including slightly lower high school completion and much lower post-secondary education completion rates. In 2021, among Aboriginal people aged 25 to 64, 26% had not received a high school diploma or an equivalent certificate, compared to only 10% among non-Indigenous Canadians. As

¹²⁹ *Supra*, note 348.

¹³⁰ <https://nacca.ca/indigenous-financial-institutions/>; the Artic Co-operative Fund, Cedar Lake Community Futures Development Corporation, Community Futures North Central Development, Dakota Ojibway Community Futures Development Corporation, First Peoples Economic Growth Fund Inc., Kitaya Community Futures Development Corporation, Métis Economic Development Fund, Louis Riel Capital Corporation, Northwest Community Futures Development, Southeast Community Futures Development Corporation, and Tribal Wi-Chi-Way-Win Capital Corporation.

¹³¹ <https://www.sac-isc.gc.ca/eng/1582037564226/1610797399865>

¹³² <https://www.sac-isc.gc.ca/eng/1330016561558/1594122175203>

¹³³ *Ibid.*

¹³⁴ <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/reduce-emissions/reducing-reliance-diesel.html>

¹³⁵ <https://www.gov.mb.ca/inr/major-initiatives/indigenous-and-northern-initiatives-fund.html>

¹³⁶ <https://gov.mb.ca/investmb/businesses/indigenous-business-and-resources.html>

well, only 45% of Indigenous people had completed post secondary education, compared to 66% among non-Indigenous Canadians.¹³⁷ These disparities have lessened over time, and will likely continue to lessen with continued support for Indigenous students.¹³⁸ Indigenous people are more likely to face barriers to entrepreneurship and business success due to the remoteness of many of their communities. As of 2016, roughly 60% of Indigenous peoples in Canada lived in rural areas (compared to only 33% of non-Indigenous Canadians), with 46% in rural remote areas and 15% in rural regions close to cities.¹³⁹ Additionally, Indigenous women and girls may face more challenges as they are more likely than non-Indigenous women and girls to live far from large population centres, with nearly 75% of the Indigenous female population living in very remote communities.¹⁴⁰ Rural remote regions in Canada are experiencing population decline.¹⁴¹ Rural and remote areas with declining populations present less economic opportunity due to higher operating costs and less access to customers. However, increased broadband internet access in rural and remote communities have and will continue to dampen some of the challenges associated with operating a business in a remote area.¹⁴² Continued investment in internet infrastructure and accessibility in rural and remote areas (particularly the North) will assist Indigenous businesses operating in these areas in various ways.

Although many Indigenous peoples live in remote and rural areas, more and more Indigenous peoples are relocating from these areas to urban centres.¹⁴³ At the same time, Indigenous peoples across Canada are investing in urban development. In Manitoba, Naawi-Oodena (“centre of the heart and community”), an urban reserve development on repatriated lands formerly occupied by the Canadian Armed Forces’ Kapyong Barracks, will be the largest urban reserve development in Canada.¹⁴⁴ Seven Treaty One First Nations are involved in the project, which will take place in three phases over the next 15 years. The initial phase of the project will include 100 residential units, 300,000 square feet of commercial space, and \$25 million in infrastructure investments. The second and third phases combined will add 1,000 residential units,

750,000 square feet of commercial space, and an additional \$59 million in infrastructure investments.¹⁴⁵ This development will likely enable increased Indigenous economic and business development in the Province’s capital, and presents immense opportunities for Indigenous businesses involved in the construction and development of the project itself.

As Reconciliation efforts continue throughout Canada, we will also likely see the Declaration, UNDA, and the Government of Canada’s Action Plan being leveraged by Indigenous peoples in their negotiations, advocacy, and rights claims, which will likely lead to changes to the law as it affects Indigenous rights in Canada and its Provinces and Territories. This will in turn likely lead to increased consultation and accommodation with Indigenous peoples whose rights are impacted by government infrastructure, and non-government resource development and other projects. Stronger Indigenous rights will lead to better accommodations and opportunities flowing from accommodation agreements to Indigenous communities and businesses. Indigenous peoples will continue to increasingly develop new businesses, expand and grow current businesses, and enter into partnerships with non-Indigenous businesses, to seize these opportunities. These opportunities, aided by public investment in initiatives related to business development and procurement (for example) will strengthen Indigenous business and entrepreneurship, both in urban and rural areas. As Indigenous businesses flourish, so too will Indigenous economies and communities at large, which will likely lead to lessening of economic and other disparities between Indigenous and non-Indigenous Canadians. As the Indigenous economy and its value grows (or even doubles), Indigenous and non-Indigenous peoples and businesses as a whole stand to gain from increased economic activity and business opportunities. Given Manitoba’s large Indigenous population and extensive natural resources, Manitoba may have the most to gain from unlocking the value of Indigenous business and entrepreneurship in the Province. ■

¹³⁷ <https://www150.statcan.gc.ca/t1/tb1/en/tv.action?pid=9810042001&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=3.1&pickMembers%5B2%5D=2.5&pickMembers%5B3%5D=4.1&pickMembers%5B4%5D=5.1&pickMembers%5B5%5D=6.1>.

¹³⁸ <https://www.canada.ca/en/employment-social-development/corporate/reports/research/education-training-indigenous.html>

¹³⁹ <https://www.oecd-ilibrary.org/sites/e6cc8722-en/index.html?itemId=/content/component/e6cc8722-en>

¹⁴⁰ <https://www150.statcan.gc.ca/n1/daily-quotidien/220620/dq220620a-eng.htm>

¹⁴¹ *Supra*, note 367.

¹⁴² https://www.internetsociety.org/wp-content/uploads/2020/07/Impact-Indigenous_Communities-EN.pdf at page 11.

¹⁴³ *Supra*, note 368.

¹⁴⁴ <https://www.cbc.ca/news/canada/manitoba/naawi-oodena-repatriation-winnipeg-largest-urban-reserve-1.6691359>

¹⁴⁵ *Ibid.*

The Future of Business Law in Manitoba

A number of issues are shaping the legal landscape in Manitoba and demand attention from legal scholars, practitioners, and policymakers alike. From the evolving relationship between Indigenous communities and corporate interests to the legal challenges posed by emerging technologies like blockchain and Artificial Intelligence, these topics are both timely and enduring. These topics are available for ready reference and education on the [Marcel A. Desautels website](#).

ARTIFICIAL INTELLIGENCE

The intersection of AI and intellectual property law is a complex, multi-faceted issue that defies easy solutions. It's a dynamic interplay of ethical, legal, economic, and societal factors, each influencing and being influenced by the other. As the world stands on the cusp of this new frontier, it has the unique opportunity to not just navigate but also shape this evolving landscape, thereby playing a pivotal role in defining the future of intellectual property law in the age of AI.

THE GIG ECONOMY: LABOUR LAWS REIMAGINED

In the 21st century's complex economic structure, the gig economy emerges as both a disruptor and a revelation. It is a realm where the traditional boundaries of employment are not just blurred but are often rendered almost invisible. The rise of this new work paradigm in Manitoba, a province characterized by its small but robust economy, presents a variety of legal, ethical, and social questions that demand a nuanced exploration.

At the heart of this complex web lies the very definition of 'employee,' a term that has been the foundation of labour laws for decades.¹⁴⁶ The gig economy, with its fluid work arrangements, challenges this foundational concept.

DATA PRIVACY AND CYBERSECURITY: THE NEW BATTLEGROUND

The realms of data privacy and cybersecurity have evolved into a new battleground, a theatre where

technological innovation, legal frameworks, and ethical considerations are in constant flux. In Canada, a nation that is digitized and interconnected, the stakes are particularly high. Both Canada and Manitoba find themselves at the intersection of multiple forces: the global flow of data, the proliferation of cyber threats, and the ethical quandaries that accompany technological advancements.¹⁴⁷

BLOCKCHAIN AND CRYPTOCURRENCY

The allure of cryptocurrencies, for many of their proponents, lies in two foundational attributes: decentralization and technological sophistication. Yet, paradoxically, these very features could serve as impediments blocks to their widespread adoption, particularly by governmental bodies and the general populace. For lawyers and businesspeople, much of this complex web of cryptocurrency, and blockchain-related innovations and shortcomings, represents an intriguing future business opportunity.

CORPORATE GOVERNANCE

The discourse surrounding corporate governance has been undergoing a seismic shift, particularly in the context of Environmental, Social, and Governance (ESG) considerations and the move towards stakeholderism (the consideration of all parties interested in the actions of corporations), rather than shareholder primacy (which placed the interests of shareholders first).¹⁴⁸ This transformation has palpable implications for the future of business law in Manitoba and, indeed, across Canada.

SOCIAL MEDIA AND THE ONLINE WORLD

In the fluid domain of digital society, the boundaries between the legal realm, technological innovation, and business interests are increasingly porous. The interaction among these spheres raises intricate questions that command the attention of academics, legal experts, policy makers and savvy business professionals. ■

¹⁴⁶ <https://journals.sagepub.com/doi/abs/10.1177/1024258917701381>

¹⁴⁷ https://www.researchgate.net/profile/Scott-Romaniuk/publication/347767051_Routledge_Companion_to_Global_Cyber-Security_Strategy/links/620a2649cf7c2349ca12e87c/Routledge-Companion-to-Global-Cyber-Security-Strategy.pdf#page=475

¹⁴⁸ <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clqv106&div=5&id=&page=>

United Nations Guiding Principles on Business and Human Rights

In June, 2011, the United Nations Human Rights Council endorsed the [“Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,”](#) In late 2023, the Marcel A. Desautels Centre for Private Enterprise and the Law sent a delegate to the UN Forum on Business and Human Rights to learn more about these guiding principles and how they might become part of the Manitoba business landscape and to explore current global issues at the intersection of business law and human rights.

Three primary issues weaved throughout the panels of the Forum: the need to adapt the Guiding Principles for local/regional application; the requirement that in matters of development that impact Indigenous peoples, there be dialogue for prior, informed, consent; and that there is an important role for universities and law schools in particular, to work with business communities to develop the dialogue on business and human rights.

In November, 2024, the University of Manitoba Faculty of Law will host an international conference dedicated to business and human rights, and in particular the guiding principles as they relate to the extractive industries. ■



Research and Business Law: The University of Manitoba

There is a host of research being conducted in Manitoba universities in the field of business law. Below are a few selected legal scholars and the important work shaping the field of business law.¹⁴⁹ More information may be found on their University websites.

Dr. Bryan Schwartz, Professor and Asper Chair of International Business and Trade Law, co-authored an exciting book in 2021, entitled *Cybersecurity and Canadian Law Firms* (published by the *Asper Review of International Business and Trade Law*). The book aims to provide clear guidance on the intersection between cybersecurity and professional responsibility to Canadian firms, and intersects well with much of the subject matter of this report. A reader who was intrigued by the sections discussing the future – or present – of cybersecurity and privacy would be well advised to check out Dr. Schwartz’s book.

Martine Dennie, Assistant Professor at the University of Manitoba Faculty of Law, has been publishing exciting research at the crossroads of sports, human rights, and law. Take for instance her 2021 publication, “Seeing Red: Colour Blindness and the Performance of Whiteness in the Calgary Flames’ C of Red” in the *Canadian Ethnic Studies Journal*, Volume 53, Issue 3, 51-70. Dennie, through interviews conducted with hockey fans and players who identify as Calgary Flames fans, contemplated the concept of whiteness in sports fandom, how it interfaces with Canada’s multicultural identity – and the underlying bias that may be present in sports. It is imperative for both lawyers and sports fans to remember that sports are – fundamentally – a business, and when human rights issues are at play, there are myriad lessons for business lawyers to learn.

Associate Professor Dr. Bruce Curran recently won “The Law of Work Best Paper” Prize at the Canadian Industrial Relations Associations conference. Entitled, “Negotiating About Bad Faith: The Effect of Honda on Wrongful Dismissal Settlements,” the paper examines a gap in legal literature on the negotiation of dismissal settlements left by the Supreme Court of Canada’s 2008 decision of *Honda Canada Inc. v. Keays* which revised legal principles regarding employers’ duty of good faith in the dismissal process. Dr. Curran

performed an experiment involving the negotiation of a fictitious wrongful dismissal lawsuit with allegations of employer misconduct, randomly assigning 288 law students into either a Honda-era condition or a pre-Honda-era condition. Each student was assigned the role of employer counsel or employee counsel, and paired for a negotiation with a student playing the role of the opposing counsel. Negotiators were provided with a package that contained confidential information related to their client’s experiences and settlement preferences, and a summary of the law of the relevant era. The results of this experiment suggested to Curran that from an employee perspective, there may be less cause for concern about Honda’s impact than originally thought, and provides interesting implications for the business law world as it intersects with labour law.

Professor Darcy MacPherson recently published “I Am a Corporation and I Committed a Crime, I Can’t Go Bankrupt: Recent Cases on the Intersection of Organizational Criminal Liability and Bankruptcy” in Volume 45, Issue 4 of the *Manitoba Law Journal*. The paper confronts the role of bankruptcy and insolvency created or exacerbated by criminal malfeasance for which a corporation is responsible. In doing so, he examines two recent cases – one from the Ontario Court of Appeal and one from the Quebec Court of Appeal – that contradict each other on the importance of bankruptcy considerations to criminal fines for corporations. Professor MacPherson also, intriguingly – or, in a manner that could strike fear into the hearts of corporate directors – proposes an alternative to the current system, suggesting that an additional liability could be placed on directors in a situation where a corporation is unable to pay a criminal fine levied against it due to bankruptcy.

Professor Michelle Gallant recently published “Modern Finance-Centric Governance: the 2022 Emergency Measures, Property and Financial Powers” in Volume 46, Issue 1 of the *Manitoba Law Journal*, entitled *Canada’s Emergencies Act: Beyond the Rouleau Report*. While the entire issue is worth reading, Dr. Gallant’s note examines the distinct finance and property-related measures used in 2022 to end the Freedom Convoy in Ottawa, and their relationship to the federal *Emergencies Act*. She highlights that in light

¹⁴⁹ For a fulsome presentation of current legal research at the University of Manitoba Faculty of Law, see our annual [Research Report](#).

of this utilization, lawmakers must decide the critical question of whether an approach forged to deal with serious crime—financing and property restrictions—is appropriate for a public order emergency going forward. If they decide it is, she recommends it be clearly delineated as such. This provides thought-provoking reading for Canadians and businesspeople interested in the connection of finance and public policy, particularly as it relates to the government’s response to the COVID-19 pandemic.

Dr. Katie Szilagyi joined the Faculty of Law as an Assistant Professor in 2021, and brings an unprecedented research focus on Law and Technology. Having a background in Biosystems Engineering with a Bachelor of Science degree from UM (2008), she received her Juris Doctor degree from the University of Ottawa in 2012, completing joint specializations in Law and Technology and International Law.

Dr. Szilagyi’s PhD dissertation argued that the Rule of Law is made vulnerable by technological innovations in artificial intelligence (AI) and machine learning (ML) that take power previously delegated to legal decision-makers and put it in the hands of machines. In her abstract, she asserts that “we need to interrogate the potential impacts of AI and ML in law: without careful scrutiny, AI and ML’s wide-ranging impacts might erode certain fundamental ideals. Our constitutional democratic framework is dependent upon the Rule of Law: upon a contiguous narrative thread linking past legal decisions to our future lives. Yet, incursions by AI and ML into legal process—including algorithms and automation; profiling and prediction—threaten longstanding legal precepts in state law and constraints against abuses of power by private actors.”

Dr. Szilagyi’s research is innovative and interdisciplinary. She has published and presented on the transformative impacts of blockchain technology on the legal landscape, as well as the international humanitarian law implications of autonomous weapons systems on the battlefield. She is affiliated with collaborative and cross-cultural research networks, such as the Canadian Robotics & Artificial Intelligence Ethical Design Lab (CRAiEDL) and the Open African Innovation Research Network (OpenAIR), having published an interdisciplinary paper with a team of authors from the latter in *Smart Agricultural Technology* Vol 3, February 2023.

University of Manitoba Faculty of Law graduate Lauren Gowler (class of 2023) recently published “Off to the Races: Bill 31 The Horse Racing Regulatory Modernization Act (Liquor, Gaming and Cannabis Control Act and Pari-Mutuel Levy Act Amended),” in Volume 46, Issue 2 of the *Manitoba Law Journal*. In it, Ms. Gowler analyzed a piece of legislation seeking to modernize the regulatory framework for thoroughbred and standardbred horse racing in the province, aiming to switch the regulator for the horse racing industry from the Manitoba Horse Racing Commission (MHRC) to the Liquor, Gaming and Cannabis Authority (LGCA). Ms. Gowler’s analysis proves useful not only for businesspeople and lawyers engaged in business or public policy in the gambling industry, but all who are interested in reforms that impact regulated industries.

The *Manitoba Law Journal* recently featured a piece from arguably the pre-eminent contract law scholar in Canada, Dr. John D. McCamus. Volume 45, Issue 2, *Desautels Review for Private Enterprise and the Law* an imprint of the *Manitoba Law Journal*, featured “The Supreme Court of Canada and the Development of a Canadian Common Law of Contract.” In it, the long-time Osgoode Hall professor provided a survey of developments in the Canadian common law of contracts in the jurisprudence of the Supreme Court of Canada during the last decades of the twentieth century and the first decades of the twenty-first. Tracing the development of the law over a great number of years, McCamus notes that developments in recent years have embraced more dramatic innovations, and explains that this change is explained on the basis that they realign doctrine in accord with its underlying values and principles in light of evolving modern sensibilities as to fair and just result. He further identifies factors contributing to this evolution, such as the encouragement of good faith performance of contractual obligations. Readers of all types will enjoy McCamus’ writing for the same reason every first-year contracts professor recommends that confused students read his work: because it is clear, concise, and comprehensive.

THE L. KERRY VICKAR BUSINESS LAW CLINIC AT ROBSON HALL

Third-year law students working at the [L. Kerry Vickar Business Law Clinic](#) play a pivotal role in bridging the legal gap for underserved businesses and organizations in Manitoba. Under professional supervision, these

students offer a wide array of services, including advising on the selection and formation of business entities, drafting essential legal documents, conducting thorough legal research, and providing guidance on regulatory compliance, good governance, stakeholder activism, and social responsibility. Their hands-on experience in corporate and commercial law is not only instrumental in their educational development, fostering practical skills and a sense of professional duty but also significantly contributes to the local community. By providing free legal support to small businesses, innovators, non-profits, and others who cannot afford traditional legal assistance, they are an essential part of the legal support system in Manitoba, enhancing accessibility to legal resources and fostering a vibrant business environment.

Named for its benefactor, alumnus L. Kerry Vickar [LLB/80], the L. Kerry Vickar Business Law Clinic has been a key learning environment for Manitoba's legal education since 2014, offering numerous Manitoba law students hands-on, practical experience in business law.¹⁵⁰ It operates as a teaching clinic and an academic course. Functioning like a law firm, it provides third-year students at the Faculty of Law at The University of Manitoba with valuable hands-on experience in a wide array of legal matters.¹⁵¹ This unique combination of practical orientation and academic pursuit benefits students, clients, and the broader community. The clinic's establishment marked a significant step towards bridging theoretical knowledge with practical application, aligning with the University of Manitoba's tradition of excellence and innovation in legal education.¹⁵²

The engagement process is carefully structured, with the fall and winter terms being the primary operational periods, and reduced capacity during the summer months.¹⁵³ From initial discussions with potential clients to signing engagement letters, scoping and managing work, working with client teams, and asking for client feedback at the end of engagement, the clinic's methodology is thorough and respectful.¹⁵⁴

The goal of the clinic is to expose students to the practical aspects of corporate and commercial law,

instilling professional responsibility and a sense of public obligation. Collaborating with the Stu Clark Centre for Entrepreneurship at the Asper School of Business, the North Forge Technology Exchange, and other organizations, the clinic has become a hub for practical legal education.¹⁵⁵

All of this operates within the bounds of The Law Society of Manitoba rules and its Code of Professional Conduct, ensuring a professional and ethical approach to legal practice.

Who Does the Clinic Serve?

The clinic's services are rendered free of charge to a broad spectrum of clients, including small businesses, start-ups, entrepreneurs, innovators, family businesses, non-profits, charities, the arts, cultural, and community organizations. This targeted focus on those who do not have a lawyer and cannot afford legal assistance in Manitoba aligns with the clinic's mission of public service and social justice.¹⁵⁶

What the Clinic Does

The L. Kerry Vickar Business Law Clinic provides an array of services that include, and go beyond, traditional legal assistance.¹⁵⁷

Clients who seek the clinic's valuable assistance begin on the Clinic's [website](#) where they are invited to fill out a detailed intake form asking questions about the nature of the business, the nature of the legal issue presented, as well as whether they have consulted a lawyer or other clinic on the matter.¹⁵⁸

During the clinic's operating months (primarily the Fall and Winter academic terms, from September to early December and January to May, as well as reduced capacity in the summer), clinic students will respond to the intake form and schedule a meeting with prospective clients.¹⁵⁹

At this meeting, clinic students will talk with potential clients, explore their questions, issues, need for assistance, and determine whether we have appropriate expertise, student resources, time and

¹⁵⁰ <https://business-law-clinic.sites.umanitoba.ca/about-us/>

¹⁵¹ <https://business-law-clinic.sites.umanitoba.ca/about-us/>

¹⁵² <https://business-law-clinic.sites.umanitoba.ca/about-us/>

¹⁵³ <https://news.umanitoba.ca/l-kerry-vickar-business-law-clinic-open-for-summer/>

¹⁵⁴ <https://news.umanitoba.ca/l-kerry-vickar-business-law-clinic-open-for-summer/>

¹⁵⁵ <https://news.umanitoba.ca/l-kerry-vickar-business-law-clinic-open-for-summer/>

¹⁵⁶ <https://news.umanitoba.ca/l-kerry-vickar-business-law-clinic-open-for-summer/>

¹⁵⁷ <https://business-law-clinic.sites.umanitoba.ca/about-us/>

¹⁵⁸ <https://business-law-clinic.sites.umanitoba.ca/about-us/>

¹⁵⁹ <https://business-law-clinic.sites.umanitoba.ca/about-us/>

assess how the work fits into the portfolio of other work being done as well as availability of students, instructors, mentors, and make a decision. The Clinic knows clients are busy, and emphasizes timeliness in all that it and its students do.¹⁶⁰

In matters that go forward, clients are asked to sign an engagement letter and submit all relevant materials. Clinic students, typically in pairs, aim to resolve client matters within the academic term. This – done to ensure the matter is completed during a student’s placement at the clinic – also ensures timely resolution of the client’s legal issue.¹⁶¹

Clients can look forward to being walked through their legal options, discussing draft deliverables, being able to reach the clinic for questions and comments, and even assistance with presentations to boards or board committees about recommendations and the clinic’s work. Instructors are actively involved in the work, potentially participating in client meetings, developing advice, reviewing and editing work-products, client communications, and drafting documents.¹⁶²

Finally, at the end of the engagement, clients are asked to provide feedback on the experience, contributing to the continuous improvement of the clinic.¹⁶³

This organized process reflects the clinic’s commitment to professional responsibility, utilizing the expertise and resources available to cater to the legal needs of clients efficiently. By aligning each engagement with the academic calendar and ensuring thorough communication, the clinic strives to provide an optimal legal service that respects both the client’s needs and the learning objectives of the students involved. The structured approach to client engagement sets a standard for excellence and accountability, core values of the Faculty of Law at the University of Manitoba.¹⁶⁴

Conclusion

The years between the onset of COVID-19 and 2023 represent a number of new frontiers for business and for law. As we cast our gaze upon the unfolding horizon of Manitoba’s future, the realm of business law emerges as a particularly salient domain. Legislative responses to COVID-19 at all levels of government have left us with an environment significantly changed. Ongoing and emerging issues continue to shape the landscape, including artificial intelligence, the changing nature of work, the financial and social costs of COVID-19. Indigenous business development and economic reconciliation will continue to influence entrepreneurship and the nature of family business in Manitoba as we intentionally pursue a strong business environment with a fair, shared future for all. The potential to embrace the local application and implementation of the UN Guiding Principles for Business and Human Rights presents a new horizon for Manitoba business law, as does the significant legal research taking place in the Province’s well-reputed and only law school. The Centre’s academic program allows students to address issues faced by private enterprises and their owners in a holistic manner. Experiential learning opportunities provide students with the necessary skills to advise business clients, while serving the legal needs of Manitoba’s business community. The Centre’s research initiatives promote deeper understanding of the multi-faceted and complex issues facing private businesses and serve as a resource for business lawyers.

Standing on the visionary shoulders of Dr. Marcel A. Desautels to provide future lawyers and their clients with a better understanding of the opportunities and challenges facing privately held businesses, the Faculty of Law has produced this report as a window into the integrated and nuanced disciplines of business, law and the humanities as they apply to family controlled and other private enterprises, in the dynamic prairie province we call home. ■

¹⁶⁰ <https://business-law-clinic.sites.umanitoba.ca/what-we-do/>

¹⁶¹ <https://business-law-clinic.sites.umanitoba.ca/what-we-do/>

¹⁶² <https://business-law-clinic.sites.umanitoba.ca/what-we-do/>

¹⁶³ <https://business-law-clinic.sites.umanitoba.ca/what-we-do/>

¹⁶⁴ <https://business-law-clinic.sites.umanitoba.ca/what-we-do/>

In Memoriam: Marcel A. Desautels

C.M., O.ONT., O.M. BA (LatPh)/55, LLB/59, LLM/65, LLD (Hon)/99

On Tuesday, January 31, 2023, Marcel A. Desautels passed away at the age of 88. News of his passing rippled through not just Manitoba, but also through the larger sphere of Canadian post-secondary education, and we all felt the loss. Born in 1934 in the Francophone town of St. Boniface—distinct from Winnipeg at the time—Dr. Desautels leaves behind a legacy that extends well beyond the ordinary contours of charitable giving. His life’s journey offers a multifaceted illustration of his dedication to both profession and community, enriched by a profound love for the arts.¹⁶⁵

After completing his studies at the Collège Universitaire de St. Boniface, Dr. Desautels further committed himself to legal education at the University of Manitoba, completing a Masters of Law. His relationship with his alma mater would evolve into a philanthropic narrative punctuated by the largest-ever private donation to its Faculty of Music in 2008—a \$20 million benefaction that resonated not just in Manitoba but across Canada’s music education landscape. Much of his other giving was directed to business and law schools, including the University of Manitoba I.H. Asper School of Business and the Marcel A. Desautels Centre for Private Enterprise and the Law at the Faculty of Law. He also generously provided business and law scholarships in each.

Dr. Desautels’ magnanimity can be contextualized within his broader career arc. After initially practicing law privately, he transitioned to leadership roles at Great-West Life and the Treasury Board of Canada. But it was his role as the general manager of Canadawide Parking Services, beginning in 1968, that proved to be a catalyst for his entrepreneurial prowess. That role prepared him for the ownership of Creditel in 1971, which he transformed from a fledgling credit firm into Canada’s foremost credit reporting and debt collection agency, with 16 offices nationwide and 800 employees.¹⁶⁶

Selling Creditel opened the floodgates of Desautels’ philanthropic ambitions. He founded the Canadian

Credit Management Foundation, a non-profit organization that to date has given over \$100 million to post-secondary institutions in Canada.¹⁶⁷ He led Vision, a ground-breaking fundraising initiative for the Université de St. Boniface.¹⁶⁸ His altruism found diverse outlets, not only at his alma maters, but also at other notable institutions like the University of Toronto and McGill University.¹⁶⁹ Faculties and scholarships across these campuses, too, bear his name, commemorating his enduring connection with Canadian academia.

A mere cataloging of Desautels’ contributions might not fully capture the human element, the genuine engagement he had with the students and faculties he supported. He made annual visits to Winnipeg to meet Desautels scholars at the Faculty of Music.¹⁷⁰ One might posit that this was the reciprocal melody in the opus of his life—an harmonious blend of benefaction and personal connection that made his philanthropy deeply resonant.

Though a man of innumerable accolades, Desautels wore his honours lightly. He was a member of not just one, but three Orders: Canada, Ontario, and Manitoba.¹⁷¹ He received honorary degrees from several universities and, after retiring, spent considerable time meeting with students and faculty members of the institutions he had so generously endowed.

His legacy lives on. The vigour of his generosity pulsates through the academic and cultural tenor of our nation. The scholarships, faculties, and pavilions that bear his name serve as lasting tributes. This report emanates from the impactful work of the Marcel A. Desautels Centre for Private Enterprise and the Law at the University of Manitoba Faculty of Law. Here, his influence is not just etched in plaques or statues but is imbued in the intellectual pursuits that his philanthropy has made possible. Marcel Desautels changed – and continues to change – countless lives for the better. He lived an extraordinary life, and we are grateful. ■

¹⁶⁵ <https://www.cbc.ca/news/canada/manitoba/marcel-desautels-obituary-philanthropist-manitoba-1.6732900>

¹⁶⁶ <https://news.umanitoba.ca/remembers-um-benefactor-alumnus-marcel-a-desautels-cm-oont-om/>

¹⁶⁷ <https://www.rotman.utoronto.ca/Connect/MediaCentre/Announcements/Marcel-Desautels>

¹⁶⁸ <https://giving.mcgill.ca/all-stories/remarkable-legacy-marcel-desautels>

¹⁶⁹ <https://giving.mcgill.ca/all-stories/remarkable-legacy-marcel-desautels>

¹⁷⁰ <https://news.umanitoba.ca/remembers-um-benefactor-alumnus-marcel-a-desautels-cm-oont-om/>

¹⁷¹ <https://www.gg.ca/en/honours/recipients/146-8438>



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