



DIRECTORS
ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Melissa Kennedy

& The Law Department of Sun Life Financial

THE SPEAKERS



Melissa Kennedy
*Executive Vice President, Chief
Legal Officer & Public Affairs,
Sun Life Financial*



Jeremy Forgie
*Partner, Blake, Cassells
& Graydon LLP*



The Hon. Jean Charest
*Partner, McCarthy Tétrault
LLP; former Premier of Québec
(2003 – 2012)*



Walied Soliman
*Chair, Norton Rose Fulbright
Global & Canada LLP*



Matthew Cockburn
*Member of Executive Committee
& Partner, Torys LLP*

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of the achievements of our distinguished Guest of Honor and her colleagues, we presented Melissa Kennedy and the Legal Department of Sun Life with the leading global honor for General Counsel and Law Departments. Sun Life Financial is a leading financial services company that has helped its clients achieve lifetime financial security and live healthier lives since 1865.

Ms. Kennedy's address focused on key issues facing the General Counsel of an international financial services corporation. The panelists' additional topics included executive compensation, corporate social responsibility, boardroom strategy, and the in-house/external law firm relationship. Karen Todd, Executive Director and Chief Operating Officer of the Directors Roundtable, moderated the program.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel. Join us on social media for the latest news for Directors on corporate governance and other important VIP issues.



Melissa Kennedy

*Executive Vice President, Chief
Legal Officer & Public Affairs*

Melissa Kennedy is responsible for the company's worldwide legal, compliance, corporate secretarial and public affairs functions and is the executive sponsor of sustainability at Sun Life.

Through proactive legal consultation and sound compliance and governance frameworks, Melissa and her teams are responsible for guiding the organization to deliver on its Purpose to help Clients achieve lifetime financial security and live healthier lives.

Melissa joined Sun Life in 2014 with a breadth of experience spanning private practice, regulatory and in-house roles. Prior to joining Sun Life, she was Senior Vice-President, General Counsel and Corporate Affairs for the Ontario Teachers' Pension Plan, one of Canada's largest pension funds. Melissa started her career in private practice,

followed by roles as head of the prosecution team at the Ontario Securities Commission and as Vice-President, Associate General Counsel at a major Canadian bank.

A passionate advocate for diversity and inclusion, Melissa is a founding member of Legal Leaders for Diversity, a group of Canadian General Counsel who promote diversity and inclusiveness in the Legal community. In 2017, Melissa received the Distinguished Alumnus Award from the University of Toronto, Faculty of Law; and in 2016, The Women's Executive Network recognized her as one of Canada's Most Powerful Women. In recognition of her team's efforts to embed sustainability practices into the Sun Life culture and operations, Melissa was awarded the 2017 Environmental, Social and Governance award from the Canadian General Counsel Awards.



Sun Life Financial

Sun Life is a leading international financial services organization providing insurance, wealth and asset management solutions to individual and corporate clients. Sun Life has operations in a number of markets worldwide, including Canada, the United States, the United Kingdom, Ireland, Hong Kong, the Philippines, Japan, Indonesia, India, China, Australia, Singapore, Vietnam, Malaysia and Bermuda.

Our clients are at the center of everything we do and we are focused on building lasting and trusted client relationships and deepening the value we provide our clients.

We continue to invest in our distribution capabilities, through digital channels and by enabling our advisors, agents, partners and brokers to deliver great client experiences and focus on meeting client needs.

We continue to invest in new capabilities to reach our clients more effectively, drive efficiencies and explore new business opportunities.

Our continued financial and risk management prudence, efficient use of capital and strong execution will support our medium-term financial objectives.

Delivering on our strategy will require that we maintain our focus on attracting, retaining and developing the best talent, while also continuing to evolve our talent and culture.

Our purpose is to help our clients achieve lifetime financial security and live healthier lives.

KAREN TODD: I'm very happy to be here in Toronto this morning, and we're very pleased that you're here today.

I want to especially thank the people of Sun Life Financial and the outside law firms who came to the program today. We're also very appreciative that McCarthy Tétrault is hosting this event at their office.

The Directors Roundtable is a civic group whose mission is to organize the finest programming on a national and global basis for Boards of Directors and their advisors, which include General Counsel and their Legal Departments. Over the last 28 years, this has resulted in more than 800 programs on six continents. Our Chairman, Jack Friedman, started this series after speaking with corporate directors, who told him that it was rare for a large corporation to be validated for the good they do. He decided to provide a forum for executives and corporate counsel to talk about their companies, the accomplishments in which they take pride, and how they have overcome the obstacles of running a business in today's changing world.

We honor General Counsel and their Law Departments so they may share their successful actions and strategies with the Directors Roundtable community via today's program and the full-color transcript document that will be made available to about 100,000 leaders worldwide.

Today, it is our pleasure to honor Melissa Kennedy, Executive Vice President, Chief Legal Officer & Public Affairs, and the Law Department of Sun Life Financial, many of whom are here today. I would like to acknowledge them now. [APPLAUSE]

Thank you. I'd also like to introduce our Distinguished Panelists: Jeremy Forgie, who is a partner at Blake, Cassells & Graydon LLP; the Honorable Jean Charest, who is with McCarthy Tétrault and was the Premier of Québec.



THE HON. JEAN CHAREST: Rapidly forgotten! [LAUGHTER]

KAREN TODD: We also have Walied Soliman, who is the Chair of Norton Rose Fulbright Global & Canada LLP; and Matthew Cockburn, member of the Executive Committee and a partner at Torys LLP.

I have a special surprise for Melissa – a letter from the Dean of the University of Toronto, Faculty of Law, that I would like to read to you. This was addressed to our chairman:

Dear Mr. Friedman:

On behalf of the Faculty of Law, University of Toronto, I'm delighted to learn of Melissa Kennedy's most recent honor, the World Recognition of Distinguished General Counsel in Toronto, presented by Directors Roundtable.

With a breadth of experience spanning private practice, regulatory and in-house roles, Ms. Kennedy's career has been remarkable and diverse. She has held leadership roles at the Ontario Securities Commission, CIBC [Canadian Imperial Bank of Commerce], and the Ontario Teachers' Pension Plan, some of this country's most notable institutions.

Her most recent appointment as Executive Vice President, Chief Legal Officer & Public Affairs at Sun Life is a reflection of her outstanding contributions and achievements.

Throughout Ms. Kennedy's illustrious career, she has exemplified both passion and commitment, something we hope to inspire in our students. She is a long-time champion of diversity in the legal landscape, an ardent supporter of sustainability initiatives, and a giant in the growing practice area of in-house counsel.

As one of our faculty's most distinguished alumna, we are tremendously proud of Ms. Kennedy's ties to our institution. She has been a steadfast supporter of the Faculty of Law for more than 25 years, including serving as mentor extraordinaire, and most recently as cochair for the highly successful Campaign for Excellence Without Barriers. She gives generously of her time, energy and skill, demonstrating a deep commitment to future generations of lawyers and legal scholars.

In recognition of her outstanding contributions to business and society, I can think of no better candidate for this prestigious award and wish to extend my heartfelt congratulations to Ms. Kennedy on receiving this honor.

Best regards,

Edward Iacobucci

[APPLAUSE]

KAREN TODD: I'm now going to turn it over to Dean Connor, the CEO of Sun Life Financial, to introduce Melissa.

DEAN CONNOR: It's a great honor to be here, to help celebrate this recognition of Melissa.

Just a word of context on Sun Life and, to give you a sense of the work that Melissa does. I describe Sun Life along three lines: one is very global, complex, and fast-growing. The global, we operate in 27 countries around the world. Two-thirds of our business is outside of Canada, including Asia, where we operate in seven markets – the largest markets that are growing like a rocket – so, a complex global business. Complex, in the sense that we're not just in life insurance, we're not just in annuities or pensions, but we're in medical stop-loss insurance in the United States; we're in mandatory provident funds in Hong Kong; we sell health insurance in China (that's a scary prospect!). It is a complex business, with multiple distribution, with agents and bank partners and online Internet sales, multiple distribution channels – anyway, I won't bore you with all that. Then the third dimension is growth. A couple of aspects: one, it took us 147 years to grow the assets under management to \$550 billion, and seven years to double that to \$1.1 trillion of assets under management, not only the magic of compound interest but also growth in the company. The earnings of the company have grown at 12% compounded annually for the past five years.

It is a global, complex, growing business. This is the business that Melissa oversees in terms of the legal function, in terms of compliance, in terms of sustainability, and global and public and corporate affairs. She is one of just 11 people who are on our Global Executive Team, and we sit around contemplating our future and how do we grow safely, and Melissa has a huge responsibility in that regard. She discharges it with distinction.

We have a bunch of mantras around how we run the business, and they include things like treating people with dignity and respect, being polite but direct – and



Melissa is the master of that. She will come into my office, shut the door, and she'll say, "I was thinking about something you just said, and you might want to think about it a little differently. Just say it!" Have you ever heard Melissa say that? When she says, "Just say it!", you think, "You know what? She's right!" So, polite but direct.

Setting goals that are ambitious, but achievable – Melissa has done that with all of the areas that she's touched in the firm. Every single person we hire must upgrade the average. That's not just hiring; that's promoting and developing. Melissa has done a fantastic job, and a lot of that – you can see the talent around the room here, Sun Life colleagues – a lot of growth of individuals; a lot of opportunities given to people; a lot of support and mentorship.

I'll stop there – I don't want her head to get too big – Melissa, I couldn't say enough positive things about your contribution to the firm. She's a great counsel and partner to me; amazing common sense with wide peripheral vision, incredible street sense, all wrapped up in a person who's got a fantastic sense of humor, as well – if you've ever been part of that, you'll know what I'm talking about.

With that, let me turn it back. Thank you to the Directors Roundtable, thank you to McCarthy, for honoring Melissa and the Sun Life Law Department; thank you for having us all here this morning. Thanks. [APPLAUSE]

MELISSA KENNEDY: Thank you, Dean, so much for that kind introduction. I'm so appreciative that you're here today to celebrate this great honor for the Legal Department. Quite frankly, if it had just been me, I would not be here. I'm here because it's for our Legal Department, which has gone through a lot of change and is a huge part of the success of the company.

My sincere thanks to the Directors Roundtable, and specifically Karen Todd, for this great honor. I'm also grateful to my distinguished colleagues and friends on the panel this morning – the Honorable Jean Charest of McCarthy; Matthew Cockburn of Torys; Jeremy Forgie of Blakes; and Walied Soliman of Norton Rose, who used to be my student when I was at the OSC [Ontario Securities Commission] – just sayin'! [LAUGHTER]

These are truly some of the most accomplished members of the Bar, Canadian business, and politics, and I'm privileged that they're speaking today, honoring Sun Life's Legal Department.

None of this would have been possible without the ongoing support I receive from Sun Life, including Bill Anderson, who's Chair of our Board, and the other members of the Board; Dean, of course; and my colleagues who are on the Executive Team; including the CFO who is here today.

One thing I've learned in my leadership roles is to surround yourself with the expertise that you sorely lack. To that extent, I want to highlight the expertise, leadership and stewardship shown by my Senior Leadership Team, many of whom are here today, and my colleagues in Legal, Compliance, Government Relations, Corporate Secretary, and Sustainability.

I'm very proud to be part of Sun Life, which is a truly iconic Canadian company headquartered in Toronto. Serving over 36 million clients around the world, we have over 40,000 employees and 100,000 advisors worldwide. Sun Life is older than

Canada, and we have been global since inception. Our operations in Asia began almost immediately after we set up shop, and we now operate in 27 countries. Operating in multiple jurisdictions with a variety of legal frameworks, cultures and even values presents our teams with extraordinarily challenging work.

Our business is not only diversified across geographies, but also across businesses, from life and health protection – as Dean mentioned – wealth solutions to asset management. In fact, asset management is a significant part of our business, as reflected by the fact that we recently surpassed \$1 trillion in assets under management. In fact, upon the news of Sun Life acquiring a new business in alternative asset management in the UK, a senior analyst with J.P. Morgan – who happens to be my son [LAUGHTER] – said, “I don’t know whether to think about you as a life coach or an asset manager!” And I said, “We’re both. We need to be both in order to fulfill our purpose and serve our clients.”

Our purpose is to help our clients achieve lifetime financial security and live healthier lives. Clients are at the core of everything we do. We include health in our purpose because it aligns directly to our disability and wellness solution, and it’s an important reminder that our clients’ physical and mental wellbeing is just as important as their financial wellbeing.

We call our strategy “Client for Life,” as we see our clients having a lifetime relationship with us. A few years ago, we made a deliberate decision to stop calling our clients “customers,” because we felt that “customers” connote a quick transaction and then it’s done, whereas we literally have our clients throughout their lifetimes.

I was on a panel once, and a fellow GC admonished me, saying, “You shouldn’t call them ‘clients’; you should call them ‘customers,’ because clients may denote a higher liability for the company.” And

I thought to myself, “That’s okay – that’s what makes us different.”

One of the things that really drew me to the company was an immediate connection with Dean on the importance of talent management and development. Six years ago – goodness knows – it was not my expertise on insurance! We are constantly assessing talent, developing new capabilities, and it is the reason why so many with Sun Life employees stay with the company for decades. I told Dean that in my first year at Sun Life, I talked about talent more than I’ve ever talked about it in my entire career, combined.

Why is talent important? For me, I come from a family of teachers, and pedagogy was a frequent topic at the table. How do people learn? Are you a visceral learner? Are you a visual learner? Can you laterally think to solve problems? And so on.

Nothing makes me happier than to see the success of those around us. My motto is, “If you look good, I look good,” because I consider those *my* achievements.

I’d like to spend a few minutes on why I’m passionate about my job. I’ve had an unusual career, and it’s been a journey. As Ed Iacobucci at U of T [University of Toronto] mentioned, I’ve had a number of jobs. I started at Faskins in litigation, and then joined a startup litigation boutique, Kelly Affleck Greene. I always thought I’d be in the courtroom. But after years of litigation, I joined the OSC [Ontario Securities Commission] as a prosecutor, because I’ve always been a capital markets junkie. I love the public policy aspect, and also discovered I’m actually pretty good at managing lawyers. I like it, after being bizarrely promoted to head the team after a couple of months. I reluctantly left the OSC for CIBC [Canadian Imperial Bank of Commerce], where I had an amazing experience of just so many issues that I dealt with there.

I joined Teachers when I realized I was ready for the next step and turned myself into a pension expert and deal lawyer. And



six years later, after a couple of overtures and some diligence on my part, I joined Sun Life. It was the best decision. It’s an extremely difficult business – it’s always challenging – but I love it. Suffice it to say, I like change – which makes me a bit of a weirdo, particularly for a lawyer.

Why do I like my job? Why do I like and enjoy managing lawyers? Because it’s really hard! We’re a challenge; we’re hard to manage. Quite frankly, I think we are an odd bunch of ducks, but I like us. What I’ve always said – and my team has heard this – I believe lawyers are a quivering mass of insecurity and needing constant attention and approval. [LAUGHTER]

It resonates! See? Come on – you know we are. I know I am! And I think it’s just we’ve all gotten really good at projecting otherwise.

For me, starting out in the courtroom was the best training to develop a thick skin. Litigators even have a public leader board for complete public humiliation. It’s called the ORs [Ontario Reports], which is a weekly digest of significant cases in Ontario. And you know the first thing we all read when we read the ORs – it’s not the case, it’s not the big company that was involved; it’s which lawyer flamed out in court! Who lost! So, that’s right – quivering masses of insecurity.

Over the years, I've heard the philosophy, "Managing lawyers, the art is easy – they're professionals – just leave them alone, and they'll manage themselves." Quite frankly, I could not disagree more. Lawyers have been the minority of professionals in my teams in my careers, and they always require the majority of my time. But as I recently read in the *HBR* [*Harvard Business Review*], doing the big deals and cases doesn't yield the deep rewards that comes from building up people, and I completely agree.

In most companies, the GC role, of course, has evolved. It certainly has at Sun Life; the GC is no longer simply accountable for contracts, lawsuits or M&A. If they are part of the senior executive team and report directly to the CEO, they have a strategic position, and they are expected to be C-suite executives, just like their P&L colleagues, with their own views on the company strategy and direction. In fact, quite frankly, these days I don't think I often practice law, about which my colleagues are extraordinarily grateful!

A significant aspect of the GC role is now their role with the board, which I've accurately heard described as an art form. As boards continue to be more and more the target of shareholders and regulators and investors, board members frequently turn to the GC for some guidance, and we must carefully navigate those waters, bearing in mind that our primary responsibility is to the company.

The role of the in-house legal team has also evolved. Sometimes I've heard us described as a law firm inside a company, but I've always rejected that imagery, although I can appreciate why some GCs have used it. It used to be the perception – and perhaps it was the reality – that the really smart lawyers didn't go in-house – as I was certainly told by a former partner when I left private practice. [LAUGHTER]

Just to combat that perception, some GCs would set up the internal team competitively

“One thing I've learned in my leadership roles is to surround yourself with the expertise that you sorely lack. To that extent, I want to highlight the expertise, leadership and stewardship shown by my Senior Leadership Team, ... and my colleagues in Legal, Compliance, Government Relations, Corporate Secretary, and Sustainability.” – Melissa Kennedy

with the external teams. You've got to be as good as Blakes, McCarthy, Torys or Norton Rose, because otherwise, you can all be outsourced!

I've never thought that that was an accurate description, and the first time I heard it, when I joined a company where we considered ourselves a law firm inside a company, I thought, "Well, then I think we're all being comped wrong, because advisors usually aren't given a cash annual bonus based upon the business success of their clients; so, I'm not sure this is right."

I also don't think it really connotes what I think is really fun and different about being in-house. It's being part of a broader team; it is seeing how your work contributes to the greater, larger piece; it's helping to solve problems outside your expertise. It's partnering with really smart people of differing expertise across the company, both in the business and the other functions; it's partnering with external counsel, who have remained the legal experts. It's starting to manage people, and, of course, it's sometimes even completely changing your practice.

At Sun Life Legal Department, we've even developed our own mission statement. We've gone all corporate! It is to develop strategic, proactive solutions for our partners. And notice we don't even use the word "legal" or "advice" in that.

What's the big deal of that? Because for the top performing legal departments, in my view, our job is simply not to tell the business what the law is. I actually think that's quite

an easy job! Law is hard, and it's going to cost the business more and probably thwart their objectives. Mic drop – we're done.

That's not our job. We're there to do more than that. We are there to help the business succeed.

Now, help the business succeed at all costs? No, of course not. Lawyers, both internal and external, are frequently looked upon as the ones who should put up their hand and question whether what is happening is the right thing to do. I've heard the term "guardian" or "conscience" of the company, but quite frankly, I'm quite uncomfortable with that term, because I really hope I'm not the only C-suite member whose antenna isn't bent. But when we hear about the latest corporate scandal or malfeasance, we inevitably hear, "Where were the lawyers?"

I think what that question really means is not whether the practice or product in question was *legal*, but why didn't the lawyers, of all people, say, "This isn't right." Well, why do people expect that of us? Let me give you an example of this in action. There was an idea we had in one of my workplaces that was fairly aggressive and had some not insignificant risk. I was worried we were going to be sued, regulators would call, and it would ultimately backfire. I got off the phone with the senior leaders and we decided to launch this project the next day, and then I immediately got on the phone with the lawyer who was boots on the ground, and we talked about the details including the launch the next day, and I asked her, "Okay, are *you* okay to go ahead with this?" She told me of all the work she'd



done to ensure the business understood the full spectrum of risk, and notwithstanding, the business had decided to go ahead with it. And I said, “No, no, no. That’s not what I want. I want to know, are *you* okay with this? *You* know this business. Is this the right thing for us to do?”

There was silence, because I’m not sure she’d ever heard anyone ask her that question before. There was a pause; she said “yes,” and so we launched.

The other litmus test I use is when we’re thinking about things – and some of you I know will nod your heads – is, “Do you have the Thanksgiving speech?” And I use “Thanksgiving” because it’s a secular holiday, but I do have to remember with my global teams, it doesn’t play outside North America. It goes like this: When the nasty heading appears, and you’re at the Thanksgiving dinner table with your family, and Aunt Sally says, “Just what kind of company *do* you work for?” Do you have an answer you can explain?

Businesses, of course, have to make tough decisions, to be sure – there’s no question about that. But we should be asking – we *have* to be asking – “Is this right? Is this fair?”

Before I close, I want to touch on two things that my teams and I have championed, that I think are related and that are near and dear to me, and that’s diversity and sustainability. Firstly, I’ve tried to be a champion for diversity and inclusiveness in the legal community for some years and, of course, within the last six, within Sun Life. There are three reasons why I promote diversity. The business case has been proven again and again – you get better results with more diverse peers. Group think, even among well-meaning and well-thought, thoughtful people can lead to suboptimal results. You have to surround yourself with people who are different from you, think differently from you, have had different experiences. And you have to encourage them to challenge you. As Dean says, we call it “polite but direct.”

I’m going to give you an example I always use, of where I think group think led to bad examples. And I like this example, because it doesn’t involve gender, people of color, LGBTQ, but it’s a classic example, I think, of group think. It’s in the corporate world.

The lawyers who deal with boards will remember when the restriction on board interlocks was introduced. A board interlock is where you and I sit on the board of Sun Life, but we also sit on two other boards together. We have three interlocks. The interlocks restriction was developed after the stock option backdating scandal in the 2000s, when the SEC went after multiple companies. And it was widespread practice where executives were permitted to backdate their stock options to a point in time where the price would have been more favorable for the outcome, i.e., when the price was lower.

After the scandal, the question was asked, “How did this happen?” Because many of the companies involved were good companies, with compliant cultures and good boards. So how – it was so widespread, and it spread so quickly. Well, the research showed that there was a much higher

probability that a company would adopt this questionable practice, where the company had multiple interlocks. And you can picture the board meeting where the backdating would be introduced, and some of the board members would say, “Oh, yeah, we’ve done it over here – yeah, that’s a great practice.” They’d already agreed to it in another company. The companies got validation to embrace it because other companies were doing it, and the boards weren’t diverse enough to challenge it. To me, that’s the ultimate in group think.

The second reason why diversity is important is, it’s simply the right thing to do. For me, it’s a question of human rights, fairness, and a rejection of those with privilege preserving the status quo for their own self-interest. We shouldn’t have to make the business case; I do actually think it’s okay to do something just simply because it’s the right thing to do.

And the third reason, and most importantly, I think it’s more fun! I’ve always had more fun being in diverse environments. Wanting to hang out with people who are like you is wholly natural, because it’s self-affirming. You’re okay, I’m okay! But after a while, isn’t it boring to be all the same? For me, I learn far more when I’m in diverse environments.

Finally, sustainability. My teams have done a huge stewardship in this area, which I believe is a differentiator for Sun Life. And I’m very proud to be an executive sponsor of sustainability, and I’m proud of some of our accomplishments, so just to give you a few – again, this year, we are one of the few insurance companies among the Global 100 Most Sustainable companies in the world. We’ve been on the FTSE4Good [Financial Times Stock Exchange] index since its inception. We’ve been part of the Bloomberg Gender-Equality Index [GEI], Top Employers for Young People, and for LGBTQ. And last year, we were the first insurance company to issue a sustainability bond which, in itself, is receiving accolades.

I believe this focus on sustainability can be wholly aligned with the company and its values. Given our purpose, we've made lifetime promises to our clients, and invest over the long term. So, literally clients are expecting us to be around for another 150 years! Isn't that the very essence of what it means to be sustainable?

Sustainability is also important to all of our stakeholders and has been for some time. A full 92% of our employees tell us that it's important to them, and increasingly, our investors, particularly in North America, are saying it's important to them, too. Regulators, our boards, shareholders and, of course, clients, are expecting more from us.

Sustainability starts with good governance and a solid foundation as a trusted business partner and should include considerations like your carbon footprint. It should also include things like diversity, because diversity helps ensure that you have a long-term, resilient workforce. Sustainability should then build out into a company's expertise and, in our case, that's investing that trillion dollars of assets under management, providing lifetime security, and helping clients look out for their lives. All three, of course, are part of the UN 17 Sustainable Development Goals.

As public trust in just about every institution and societal estate is waning, companies are being urged to pick up the mantle, and more and more, they are. I can attest we have been trying – and, I believe, succeeding on many fronts – but at the same time, we fully appreciate there is still a lot of heavy lifting to be done.

Finally, I've always believed that lawyers everywhere – internal, external – but lawyers, given our training and our education that is grounded in unquantifiable concepts like justice, fairness and, ultimately, the law, we are ultimately suited to help pick up that mantle.

I think that's why people ask, "Where were all the lawyers?"

“A few years ago, we made a deliberate decision to stop calling our clients ‘customers,’ because we felt that ‘customers’ connote a quick transaction and then it's done, whereas we literally have our clients throughout their lifetimes.”

– Melissa Kennedy

On behalf of the team at Sun Life, I'd like to thank you for the opportunity to speak today, and for this humbling honor for the Law Department. Thank you. [APPLAUSE]

KAREN TODD: Before we move on to our panelists, I wanted to ask Melissa a couple of questions. First, what do you find is the biggest challenge for a General Counsel in dealing with a board, given the #MeToo and other recent issues?

MELISSA KENNEDY: I see some other GCs in the room, too. I think that the challenge we have to remember, when we're dealing with a board, is that our primary obligation is to the company. *However*, the board, 99.9% of the time – even probably higher – is completely aligned with the interests of the company, and so they really are looking to you for guidance and advice. On the #MeToo situation, it has introduced some due diligence questions for all of us that we have not tackled head-on, that all of us – both internal and external counsel – have now been dealing with and tackling head-on. But the biggest issue for General Counsel is careful navigation, as being the trusted partner for the board, but realizing your primary obligation is to the company.

KAREN TODD: Thank you! The other one that I wanted to ask about is that last night, when we were at dinner, Melissa mentioned that her group works in an open office. Can you tell us about that experience?

MELISSA KENNEDY: Sure! We moved into a beautiful new building just a couple of years ago, One York, which is at York and Lakeshore, and as we were considering moving in, we had a certain footprint and

the facilities and the designers were saying, "Some of you are not going to have offices." Well, I was ready to fight the good fight for the lawyers – "No, we need offices," and you all know the "privilege" argument that nobody else has that we can bring out, "And we need offices," and we all know it. And I've fought that fight before! But actually, it was my Senior Leadership Team who came to me, and it was their idea, and they said, "No – let's go open concept," because the footprint – we had some designs with offices in our footprint, it would just have been like throwing people into prisons every day. We did a lot of due diligence; the team and I went out and looked at other spaces, learned benchmarks and learned from others. And so all of our Legal Department, from the admin assistants, paralegals, professional support staff, to the executives, including the senior vice presidents, we all have the same offices, and they're all open, with internal offices that we can get to for privacy and quiet work, if we need to.

A common question lawyers are always asked, "Isn't it noisy?" The lawyers here will attest, it's actually too quiet. It's like a library! But I actually had a lawyer come to me last week who I had coffee with, and he said, "You know what, I was really skeptical about this, but I actually love it. It's far more collaborative; it's brighter; the air quality is better." And it seems to work for us.

KAREN TODD: Thank you! Our next speaker is Jeremy Forgie with Blake, Cassells & Graydon.

JEREMY FORGIE: Thank you, Karen. And thank you, Melissa. Good morning, everyone.

I just wanted to go back to a couple of points you mentioned, Melissa. First of all, the new Sun Life building. To me, it's symbolic of a lot of what makes Toronto a very exciting city to work in. The global significance of our financial services sector, and people comment on that, but it is actually true, statistically – in North America and globally. When you talk internationally with clients, with other law firms, the respect the Canadian financial services sector has in its large insurers – and Sun Life is a major player – is truly impressive. That has all contributed to the people in this room in creating a rewarding career. I appreciate the opportunity, Melissa, to be here and to be associated with the Sun Life brand and Sun Life businesses.

The second thing I wanted to pick up was you were mentioning managing talent. That's going to lead into my topic, which is a little bit of executive compensation, maybe some core CPD [Continuing Professional Development] stuff for the junkies on that.

There were two things you mentioned. One was maintaining and promoting your talent team, but the other interesting observation, among many, was defensive and protecting the corporation, and in a way, that also leads into my topic, because a key thing about retaining management is creating the right incentives. I'm going to talk about a couple of court decisions that look at the primary retention technique, which is that, if you're around and you do a good job and you meet the various performance thresholds in the next two to three years, there will be this award given in the form of stock options or performance share units or restricted share units. But if you leave, you won't get them; they'll be forfeited. We've had some recent Court of Appeal decisions in Ontario that have looked at the issue, and some of the dos and don'ts, that are relevant for compensation committees – because there's a lot of dollars at play here, and they're obviously relevant for management – and they are certainly relevant for counsel in having to deal with these situations.



Now, I hasten to add that I've promised to refer to very few cases, and the cases in the few minutes I'm speaking, and I promise there will be no discussion of income tax laws – which is hard for an exec com practitioner! I also wanted to thank my partner, Elizabeth Boyd, for some of the suggestions in this topic; she's here this morning.

The headline of what I'm going to talk about for just a few minutes is that dealing with the rights of a terminated executive – and termination is when you have to think about protecting the corporate interest – so I'll just say you can tell I'll have an employer slant on these comments, but that's what I'm going to tackle here – protecting the corporation will involve dealing with what happens to stock option benefits and other forms of incentive compensation, and can the executive get those over the reasonable notice period, which can be some number of years based on the case law. As a non-employment lawyer (I am more of an exec com practitioner and more in the tax area) but with deference to my employment law colleagues, I'm actually surprised how often disputes relating to the enforcement of forfeiture provisions in equity and other types of executive compensation awards have gone all the way up to the Ontario Court of Appeal. In fact, there's been five decisions

in this area in the last couple of years, and I'm going to talk a little bit about one, the *IMAX* case [*O'Reilly v. IMAX Corporation*].

The *IMAX* case deals with stock options and restricted share units. As you might have expected, in the context of the disputed termination, where just cause wasn't established but it wasn't a happy separation, the employer contended that the terms of its stock options and restricted share units prevented them vesting after the date the individual was technically dismissed without cause. The lower court rejected that argument and said "No, as per the usual common law assumption, the value of these benefits can be quite significant. What you would have earned over the reasonable notice period should be included in the damages for failing to give reasonable notice."

The employer also argued in this case that, "Well, no, we have specific language that dealt with this, and basically, the proposition in our plan terms was that once service is stopped – once the executive has ceased providing services – there can be no opportunity to vest into those awards."

That was really the heart of the issue, and I'm going to try to point out some practical dos and don'ts in the brief time this morning on some techniques that work, both in terms of how to phrase these provisions, and also how to manage them.

But if we back up for a moment – and I couldn't resist a few key core legal points – the general presumption is that it's been long established that when an employee terminates, the ordinary presumption is that they are entitled to the benefits and other compensation they would have earned over the reasonable notice period. That's where you start, and that's important to remember when you're designing and drafting executive compensation plans. That's going to be the operating environment. Many people will say that may be entirely justified and, in an amicable termination, that may well be the logical result. But it may well not

be, when you're thinking of the corporate interest in a disputed termination, because we know it's very difficult to establish just cause, but there may be circumstances when you really feel it's important, as a compensation committee member and as a member of management, to ensure that people don't walk away with potentially millions of dollars' worth of awards.

What the Court of Appeal said is there are really two key tests. One was, what is the executive's common law right to damages for breach of contract? Frankly, that's pretty well established. The presumption normally is that it's the benefits you would have earned over the reasonable notice period. But the second question I want to focus briefly on, that is maybe more relevant in *this* context, is do the terms of a particular plan or award letter take away those common law rights? That's the thing that's of particular interest to compensation committees and to management and to internal counsel.

Essentially the test that the courts looked at in *Imax* and earlier cases, was ambiguity is not good enough. For example, referring to "following termination, the awards won't vest" is simply not good enough; ambiguity would be interpreted typically against the employer in that case. The test the courts have articulated, including the Court of Appeals – and we've now got established law on this – is do the plan terms or the award terms unambiguously alter or remove the common law rights? And they gave some examples.

If your objective is to be able to control the vesting of these awards, for example, if the plan said, "vesting or the right to receive awards does not continue to apply after termination of employment without regard to any period of notice or continued compensation," that was held to be effective. In other plans that were held to be effective, there has been a statement, that "termination will result in the awards not vesting, and there is no liability or obligation to make any further payment under the plan." That kind of clear drafting should work

– in contrast, drafting where the plan simply says "following notice of termination of employment" or "following termination of employment, the awards don't vest," probably won't work.

I'm just going to wrap up very briefly by saying that when you stand back and look at this, there are also some dos and don'ts in how to communicate and administer forfeiture provisions. In another older case at the Ontario Court of Appeal, it's the *Lin* case – that was the name of the executive – and it dealt with an employer that is one of the large Ontario pension funds. That case, to me, demonstrated two things. One, it demonstrated the importance of being consistent in how you apply these types of forfeiture or vesting provisions, particularly in disputed or contentious terminations. Secondly, how do you communicate them when you make amendments? In this particular case, unfortunately, the employer had decided, "Well, maybe we'd better clean up our forfeiture or termination provisions." They did that, they rolled out the communication on the amendments. In retrospect, one might say not surprisingly, a number of executives did not sign back; there was a disputed termination; and the court really latched onto that. They said two things: "We're not going to uphold this language, because you were inconsistent in your application, at least in terminations that were not voluntary resignations; and secondly, you did ask for a sign-back and you didn't get it." That may sound like an obvious bad fact pattern, but it is an example of how to think about carefully approaching the situation if you decide you need to look at some existing awards and to try and clean up the language, if that suits your objectives.

I'm going to wrap up with those comments and, Karen, I'm going to turn it back to you to continue with our discussion.

KAREN TODD: Thank you. Why would a board compensation committee care about termination or forfeiture provisions?



JEREMY FORGIE: We had a chance to elaborate on that slightly, as the dollar amounts are huge, and again, an example Melissa gave of if somebody's gone and there's the appearance or a perception that there's been some damage to the corporation or the interests of the corporation or the interests of the shareholders, then there's a strong business imperative to ensure that people don't walk away with large compensation awards. That's got to be relevant to a compensation committee.

KAREN TODD: I agree. What is your general experience with stock options and other incentive compensation awards? Are they generally clearly drafted, or is it an issue that needs to be addressed?

JEREMY FORGIE: Well, a lot are, but it's a mixed story – classic lawyer's answer – it depends. There's quite elaborate language. In the current context, and given the size of the awards, there's frankly nothing wrong with fairly blunt language. Because you can always agree to back away from that.

There are a few "bad" examples of drafting, though, that we do see; they tend to be in the format where, for example, awards in

the form of short letters, where there's a very brief reference to termination of employment, and those could be problematic.

KAREN TODD: Thanks very much. We are going to move on to Jean Charest. He is ready and willing to go!

THE HON. JEAN CHAREST: Thank you very much, Karen; and Melissa, ladies and gentlemen. On behalf of McCarthy Tétrault, welcome to all of you. I was invited to be part of this event by Nancy Carroll and Bob Richardson in my firm, and I'm not sure they knew at the time that Melissa and I had met in a previous life, a few times! I want you, in all honesty, to know that her record is not without a few blemishes. [LAUGHTER]

She's made grave mistakes in her lifetime. One of them was in the 1993 Federal Progressive Conservative Party leadership race, where she supported the wrong candidate! [LAUGHTER]

One day, she'll be forgiven for that!

Karen, we're delighted to have you with us in Canada, and for those of you who don't know, this is Karen's first visit to Canada, actually, as an American. Welcome, and we are offering her refugee status after the event. [LAUGHTER]

My comments today may have a bit more of a political tangent. I want to talk about the new era of corporate responsibility. It's the broad title of what my remarks are about. Before, I want to return a moment to Melissa and say if there's one thing that stands out in your career, Melissa, it's been not only the work that you've done and the leadership that you've practiced, you and your team, throughout your *whole* career. There is a common thread since you have been a very strong proponent of diversity. You have been recognized throughout Canada as a leader on this issue. You have much to be proud of, given all that you have accomplished.



I want to talk about this new era of corporate responsibility, because it is very much a marker in the changes that we've seen in 2019. But the backdrop to it is fairly important. We need to understand what is happening and why this is happening.

There are a number of commentators who are saying that capitalism is at an inflection point right now, which is a huge statement when you think of it. The people who are saying this aren't just left-wing commentators; they are business leaders and think tanks throughout the world. This is the context in which all of us are operating.

Edelman [Edelman Trust Barometer] did a poll very recently, where they found that 56% of the people polled had a similar opinion – and this was in 28 countries – that represents two-thirds of the population. [LAUGHTER]

A word of caution about polls, there is one basic rule: a poll tells a story but never tells the *whole* story. You have to be careful how you interpret the numbers. But 56% of people polled very recently said that capitalism actually causes more harm than good. This sentiment is very surprising, given the world in which we live, and for those of us who are operating in a business environment.

In fact, Ray Dalio, the iconic founder of Bridgewater, went so far as to say, "Capitalism must either evolve or die." Nothing short of that, which sounds pretty dramatic to me. You will have noticed that one of the very important markers of this whole discussion we're having now in the world – it's everywhere, Europe and here and everywhere – was the recent U.S. Business Roundtable statement on the purpose of the corporation. I want to quote from it. It's a short statement, and it was a surprising one, because up until very recently, the U.S. Business Roundtable had adopted the view that was espoused by Milton Friedman and the Chicago School of Economics, that the purpose of the corporation was to serve its shareholders; to create value for them. Full stop. They have since, after reflection, issued a statement only a few months ago that has really been the source of much debate. I'll just mention – I won't read it all – but in the preamble, they recommit to a free market system. Then they go on in the second paragraph to say all the things that we expect, that the business plays a vital role in the economy, creating jobs, manufacturing equipment and vehicles; they said something that is probably more directed towards the American economy – support national defense, for example – and then they said, "We commit." "We commit to

delivering value to our customers.” So far, so good. “Investing in our employees.” New. “Dealing fairly and ethically with our suppliers.” New. “Supporting the communities in which we live. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses,” which was a new affirmation of the Business Roundtable. “And generating long-term value for shareholders who provide the capital that allows companies to invest and grow and innovate,” and I’ll return to that in my conclusion. “We are committed to transparency and effective engagement with shareholders.” And, finally, they conclude by saying, “Each of our stakeholders is essential.” And that’s the key word. They moved the language, in terms of the purpose of the corporation, to serve not only the shareholders, but enlarge it to stakeholders. That’s change. “And we commit to delivering value to all of them, to the future success of our companies, our communities, and our country.”

If we want to understand why this happened and why they felt compelled to make this statement, I guess we have to return to the financial and economic crisis of 2008. Jeremy, you mentioned something that resonated a lot for me, and I was in office at that time. That’s how Canada distinguished itself from the rest of the world during that financial and economic crisis. Our financial institutions, including the one you are part of, remained a very strong foundation of our economy during that whole period. Canadians were surprised, I remember the impact of the sub-prime mortgages in the United States, which we didn’t have here in Canada. But you’ll also remember that our banks and financial institutions are better regulated and better capitalized. In fact, I remember being very surprised by the number of European banks who had invested in sub-prime. I think *they* were surprised how much they had invested in sub-primes.

The net result of it was a call to government to fund and to bail out these private financial institutions, without a lot of

“Why do I like and enjoy managing lawyers? Because it’s really hard! We’re a challenge; we’re hard to manage. Quite frankly, I think we are an odd bunch of ducks, but I like us. What I’ve always said – and my team has heard this – I believe lawyers are a quivering mass of insecurity and needing constant attention and approval.” — *Melissa Kennedy*

consequences for the people who worked and who were at the source of this. By the way, that remains an issue to this day, and with a number of people concluding that when these institutions make money, it’s *their* money, but if they lose money, then it’s *our* money. This is at the source of some of the anxiety and some of the changes that we have seen in our political rhetoric.

We’ve seen the very rapid rise in nationalism, populism, and the emergence of the authoritarian leaders throughout the world. This has been one of the strong trends in politics. This isn’t just about our southern neighborhood and what’s happening in the United States; it’s about Europe – Eastern Europe in particular, and its concept of illiberalism, that is espoused by a number of Eastern European political leaders. It’s the story behind Brexit, the election of Bolsonaro in Brazil, Duterte in the Philippines, and the authoritarian leaders that we know, whether Xi Jinping, Vladimir Putin, or Erdogan in Turkey. Just over the last few days, Erdogan said to European leaders, either you help me in resolving this conflict in Syria, or I’ll simply open my border and let the refugees float to Europe. The extraordinary human consequences that would follow would be very grave.

Much of the anxiety and the distemper of these times is rooted in a number of imbalances. Among the imbalances is the distribution of wealth, and the resulting inequalities that accompany these imbalances, including inequalities in opportunity that a number of people experience. They’ve lost that opportunity that used to be part of their lives or taken for granted.

South of the border, we’ve seen something quite extraordinary, Karen, that I didn’t think we’d see. I come from a place called the Eastern Townships in Québec; we’re about 20 kilometers from the border of Vermont. We knew of Bernie Sanders when he was elected mayor, and we knew of him because he got elected under a socialist label in the United States, which was quite original and unusual. But we are witnessing the rehabilitation of the concept of socialism in American politics and rhetoric, and its legitimation. Elizabeth Warren tabled legislation called the Accountable Capitalism Act, where 40% of board members would be employees if a company had more than \$1 billion worth of market cap. Senators Chuck Schumer and Bernie Sanders actually proposed legislation that would prohibit share buybacks and dividends if companies didn’t meet specific employee wage and benefit levels. All these things would have been actually unheard of only a short time ago.

We also have business leaders, like Jamie Dimon of JPMorgan, Ray Dalio of Bridgewater, Marty Lipman, a famous, iconic lawyer in New York, all writing about this. Martin Wolf in the *Financial Times*, Larry Fink – a famous letter, now – the CEO of BlackRock, about how companies now need to change their corporate governance. It’s the U.S. Business Roundtable, the World Economic Forum, and the British Academy that have all spoken to these very important, important issues.

We’re entering a new era. As I mentioned, 2019 is a marker in this period. Among the things and the trends that we see changing, and the assumptions that are changing, are



the following: First, there's the reassessment of the principle of shareholder primacy that was advocated by Friedman in the Chicago School. Secondly, the most publicized and most written about affirmation, of course, is about the interest of the stakeholders who have now entered the boardrooms as a group of people whom we must take into account. There is the recognition that ESG [environmental, social and corporate governance] represents material risk, which is a legal concept. It's not just the concept of goodwill; it is a very real, material risk.

Sustainability now becomes a fundamental goal for companies. It's also pushing back on this concept of short-termism that many of us regret, a view of gaining public trust in business, but also capital markets. I want you to remember that concept – public trust in business *and* capital markets – because I'll return to that.

The common thread of all these initiatives, by the way, is the urgent focus on climate change, everywhere, and for a number of boards, and now the ESG responsibilities. These are pressing invitations for companies to reflect upon a broad concept of their culture, how it reflects upon the internal wellbeing, its sustainability and the reputation of the company.

These changes will mean more board accountability on ESG issues, and a pre-occupation of integrating these issues in the business strategy that the CEO will be asked to execute.

This is the world in which we are now entering, and these concepts are gaining momentum.

In real, practical ways, what does this mean in our everyday life? Well, we have a very recent example here in Canada. We've had this very protracted debate about barricades and resource projects, and ESG. There was a very important decision rendered by Don Lindsay, CEO of Teck Resources only a few days ago. He wrote a letter to the government after defending a Frontier oil sands project for more than 10 years that had gone through all the basic approvals, announcing to the government of Canada that they were withdrawing the project. And though he doesn't speak directly to corporate responsibility, it's implied very directly in the letter, which is very well-crafted. If you haven't read it, I encourage you to do so.

In one paragraph, and I'll quote directly from the letter, he says, "Global capital markets are changing rapidly and investors, customers are increasingly looking for jurisdictions to have a framework in place that reconciles resource development, climate change in order to produce the cleanest possible products. This does not yet exist here today and, unfortunately, growing debate around this issue has placed Frontier and our company to think of their responsibility and their boards squarely at the nexus of the much broader issues that need to be resolved. In this context, it is now evident that there is no constructive path forward for the project. Questions about the societal implications of energy development, climate change and indigenous rights are critically important ones for Canada, its provinces and its indigenous governments to work through." And, by implication, obviously, for his company and his board.

Later on in the letter, he says, "Resource development has been at the heart of the Canadian economy for generations. Resource sectors, including the Alberta oil sands, create jobs, build roads, schools, hospitals, contribute to a better standard of living for all Canadians. And at the same time, there's an urgent need to reduce global carbon emissions and support action on climate change." This is a company from Alberta who operates in the oil sands, and this is the chief executive officer of this company saying this to the government of Canada, reflecting the position of his board and his employees.

In another paragraph, he says, "At Teck, we believe deeply in the need to address climate change, and finally, without clarity on this critical question, the situation that has faced Frontier will be faced by future projects, and it will be very difficult to attract future investment, either domestic or foreign." That's how consequential these issues are for this company, and for our society, and for the future of Canada.

The resource sector – it's about 15%, 16% of our GDP, but a bigger chunk of our exports and our ability to address these issues and to get it right will determine the future prosperity of our country. We will rely on people like Melissa and the General Counsels to offer advice, guidance and enlightenment to the leaders of these companies, so that they make the right decisions.

Thank you. [APPLAUSE]

KAREN TODD: Jean, can you tell us a little bit about how the government addressed the situation of getting more women on boards?

THE HON. JEAN CHAREST: We were elected in 2003, and our ambition was to name more women on boards of state-owned corporations of Québec. There's a number of them that are very important; notably the Quebec Liquor board, Hydro-Québec and La Caisse de dépôt et placement du Québec [Quebec Deposit and Investment Fund]. When we asked the folks in the Executive



Branch why they weren't able to propose women candidates, they said to us, "Well, there are none! We looked, but, you know, we don't find them!" So, in 2006, out of frustration, our government decided, "Well, if there aren't any, I guess we'll just table legislation that will say that from now on, for the 22 most important state-owned corporations of Québec, there will be parity. We'll accomplish this within five years." Lo and behold, all these women who did not exist appeared. We met our objective within three years. We felt that this is something that we should do because government should lead by example, in terms of parity and diversity. I can assure you that these state-owned corporations are extremely well-run, especially when I was in office, and did very well and even better than they have in the past. This was in 2006, by the way, and to this day, no other government in Canada has emulated that example. In fact, I've been surprised that our federal government, which has made this a very important issue, and rightfully so, has never chosen to implement similar legislation, which I believe has made a significant difference in leading by example and demonstrating that diversity is something that we should live by.

KAREN TODD: Thank you! Our next speaker is Walied Soliman from Norton Rose Fulbright.

WALIED SOLIMAN: Thank you very much. I have the distinction of speaking right after one of the greatest orators in Canada, so it puts me in a good spot! And I should say, in 1993, I actually wore the right badge, Jean. [LAUGHTER].

Now, today is a wonderful day, and let me start off by congratulating Melissa. I've had the strange journey of crossing paths with Melissa at every point in her career since I was an articling student and did a short stint over at the OSC when she was 26 and I was 24. [LAUGHTER]

MELISSA KENNEDY: Thank you! [LAUGHTER]

WALIED SOLIMAN: In fact, I'd like to tell Melissa that it was my litigation rotation, and I didn't want to be a litigator. I thought that I was going to learn how to play squash while I was at the Ontario Securities Commission. In fact, I bought a squash racquet, and I remember distinctly putting it under my desk, thinking this was going to be the greatest three months of my life. I'm going to be in great shape, I'm going to learn how to play squash. And the first day into it, she came out and said, "Step into my office, young man." We had a great three months, worked on some fabulous stuff, and I learned to like litigation

quite a bit, actually, and that speaks quite a bit to her leadership!

MELISSA KENNEDY: Did you play squash?

WALIED SOLIMAN: I actually didn't! [LAUGHTER]

At all! I then crossed paths with Melissa at CIBC, where, again, I was on a short secondment and she was heading the litigation group. I learned to stay away from the litigation group based on my experience at the OSC, and so we didn't spend as much time together there. And then at Teachers, I had the privilege of representing Agrium on one of their big proxy fights, and there was a thought that Teachers was against Agrium. I picked up the phone, with permission, and called Melissa Kennedy and wanted to tell her why I thought it was wrong that Teachers was not supporting Agrium. To quote her current CEO, she was polite but direct with me of what she thought of my views. [LAUGHTER]

Of course, now at Sun Life, we have the privilege of working together on this Modernization Task Force of the capital markets in Ontario, and we've been spending quite a bit of time together. It's been a lot of fun.

I was thinking about what to talk about when we've got directors, General Counsels and Melissa and the Sun Life team, and how to bring something together that would be relevant and interesting. I have a very short talk here, but it's something that's very dear to me, and that is the importance of providing what I call responsible but bold advice to boards. For those of my partners who are here who work with me, know that this is something that I'm very keen on and very firm on, which is the very important role lawyers play in advising boards, and the very important role that boards play in our capital markets and in the strength of our Canadian economy.

We're advising boards today in a very challenging environment. It's not easy for lawyers to be advising boards today. We're advising boards in a time of very interesting political situations, as we learned with Teck Resources last week. We are advising boards in a time where corporate social responsibility is still taking shape as to exactly what that means, for the duty of the boards. It would seem to be easy to just say that it should just make sense to you, but what does it actually mean when you're doing a financing and you've got an environmental issue at one of your drill sites? What does it actually mean when you're looking to do an M&A transaction, but you've got some possible solvency issues and other parts of your business that may impact employees? These are not easy questions, and they make for difficult advice.

Today, boards, I find increasingly in Canada – unfortunately – are taking a much more conservative route in dealing with these very difficult questions. Sometimes, we, as lawyers advising those boards, need to be reflecting on what we can do to give them more license and to help them through their journeys in terms of thinking through their duties and thinking through what it is that is both right for their corporations and limits their own liabilities.

Look at today on boards of directors; it's quite remarkable. In addition to the great steps that we've been making on diversity, as

both Melissa and Mr. Charest have brought up; we have boards today with extensive experience on proxy battles, on takeover bids. Rarely is there a senior board in this country that wouldn't have at least one or two directors that have been through a difficult restructuring, a difficult takeover bid, a difficult proxy battle. That experience is around the room. Every director in almost every one of the large corporations that we would represent in this country already has received a memo on their fiduciary duties. They've already received the memo on what the business judgment rule means.

In my humble view, it is a process point to make sure that we're spending time on transactions, to be ensuring that our boards are provided that important information. In my view, it shouldn't be the *central* part of what it is that we, as lawyers, are doing spending our time with boards of directors. We need to be able to advise boards and to help boards take those risks that are necessary for them to grow and to help build our economy in Canada.

I often reflect on the fact that boards of directors are not trustees of an estate, where their only duty is to preserve the trust assets in such a manner as to make sure that there isn't any leakage or any risk whatsoever. Managers need to be set free. Managers need to be given license to do things that are bold. Hearing that Sun Life is offering health insurance in China is bold. It's not bold today because of Coronavirus; it was bold when they made that decision all those years ago. There would have been a lawyer around that table that would have said, "You know what? We might lose! We might just lose. But that's okay; we are going to be taking responsible risk; we're not allocating half of our assets to China; we are going to ensure that we have the appropriate partners; we're going to ensure that we are allocating our risks as best as we possibly can – but we're not going to leave a whole part of the world open for a U.S. insurer or a European insurer or someone from Australia to go in and take on the book."



That needs bold and responsible advice from lawyers and decisions by board. That needs management teams that feel that they have license and are free to actually succeed and, yes, sometimes actually make mistakes.

I think of other examples. Canadian Tire recently acquired Helly Hansen. Canadian Tire! Think of all of the Canadian retailers that have gone bust. Think of all the Canadian retailers who have sat around and said, "I'm just going to stick to Canada; thank God that nobody's taken me down yet; I'm just going to take it step-by-step here. A very bold organization decided that they're going to take on one of the iconic world brands. And why not? It was such a proud transaction to have worked on, and it was a point of pride for me, because you'd think, why is LVMH [Moët Hennessy-Louis Vuitton] what it is today in France? Why is it that they've been able to acquire all these global brands of stores all over the place? It takes bold leadership. That bold leadership needs license from lawyers and boards.

I think of Agrium, now Nutrien. I spoke earlier about that proxy fight that I had the privilege of working on seven years ago, believe it or not. I remember very distinctly the very difficult decisions around whether to succumb to an activist who had a very sound thesis. The thesis was "break up this company, because breaking up this company will create value in the short-term for the shareholders." There's absolutely nothing wrong with that, but there was a very bold leader, a fellow named Michael Wilson, who is on many boards now applying that same level of

bold leadership on those boards, who said, “No! I have a vision of making this company a Canadian champion. In order to make the company a Canadian champion, I can’t just break it up so that we can get an extra \$15 a share to a group of shareholders right now.” As you would expect, that would have taken a bold board to say, “Yes, we’re going to stand by you, even though it’s obvious that we can make \$15 a share *right now*.” It took a number of advisors – Blake, Cassells & Graydon and ourselves were involved in that – who said, “Yes. We’ll give you license to take that step, and you *aren’t* breaching your fiduciary duties, and you *don’t* have to slow down and cave to the position of the other side. You don’t even have to compromise. Actually, be bold and move forward.”

The result of that – and truly one of the happiest days of my career – was the merger of Agrium and PCS [Potash Corporation of Saskatchewan], which created Nutrien, which just created one of the largest fertilizer companies *on the planet*, all from bold leadership, which works hand-in-hand with bold advice.

I often think about the business judgment rule when advising boards, and I reflect on it because, for me, the business judgment rule is one of the most beautiful tools that directors are given. It’s this incredible opportunity that says, “You’re allowed to be wrong.” You need to go through a process; you need to be responsible. You certainly can’t be unethical – but you are allowed to take steps based on sound business reasons and end up not succeeding. Look, we’re an economy of a maximum of 23% of the world’s GDP. It’s quite remarkable that we have the capital markets that we have in this country, with that small footprint on the global stage. But we have the institutional frameworks to do significant things around the world, provided that we continue down the path of bold leadership.

I want to close with one last thing, which I think is something that is quite important as we advise both boards and as we advise stakeholders in our markets here in Canada. There is a significant issue that is arising

“At Sun Life Legal Department, we’ve even developed our own mission statement. We’ve gone all corporate! It is to develop strategic, proactive solutions for our partners. And notice we don’t even use the word ‘legal’ or ‘advice’ in that.”

– Melissa Kennedy

in this country between the duties that we are socially imposing on public companies and private companies that interact with the government, and on the other hand, private companies or private companies that don’t interact with the government. Let me explain the two.

Corporate social responsibility is very important. One of the most exciting files that I’m working on right now is acting *for* an activist that is driving a corporate social responsibility measure at one of the large companies in this country (stay tuned). *But* it does strike me that that opportunity presents itself only in the context of a public company, and that *private* companies – whether they’re in the oil sands or in the railway industry or in other industries in this country – don’t have those same pressures, and we ought to be careful in advising stakeholders and boards about driving all of the social responsibility on the backs of our *public* companies in this country, and driving behaviors that may be leading them to either foreign buyers that won’t be a part of our public markets, or to privatizing this country. That’s an important element that we need to be carefully reflecting on when we’re giving advice, both to boards and to stakeholders.

The second one is political. The most fascinating thing – and Jean would know this very well – that I have learned since taking on a leadership role at my firm is truly how delicate our federation is. Our federation is very delicate. It is remarkable to me how the views of partners of mine in Calgary, who are great people and culturally aligned from a business perspective – single profit pool and all those good things – could have such dramatically different views, and equally decent partners in Montreal or Québec City, how folks who both vote conservative

around both in Montreal and Calgary, for example, one could be absolutely opposed to pipelines and the other is absolutely in favor. It’s a delicate federation.

We ought to be sending a very clear signal to our public officials that in managing this very delicate federation, we cannot make those organizations and companies that we advise, that have issues from a government perspective, drive the type of results that we’ve seen, and to drive the type of letter that we’ve got, that we’ve all seen, it’s a very *bad* result for business in this country. It’s something that I would hope that more of us are advising our clients to push forward on, and actually not give up opposite government, and to take as firm stances as we possibly can.

All this to say, successes at places like Sun Life, Melissa, are a direct result of the bold advice that folks like you and Trish and your team provide on a daily basis. Sometimes even just implicitly, by providing that cover and license and strength to your management team and board, in order to do the good work that they do.

Thank you very much for having me. Congratulations on your honor, and I’m happy to take your question and that’s the end of this! Thanks! [APPLAUSE]

KAREN TODD: In terms of boldness, do you find that bigger is always better, or could divestiture also be given some consideration?

WALIED SOLIMAN: Let me maybe answer that question by giving you my observations on the behaviors of boards and management teams. There is no correlation between bold management teams and boards of large companies, or smaller companies, and whether



we're dealing with bolder folks. It's a function of culture; it's a function of the type of individuals around the table. Which is why, again, when I was reflecting on what to talk about here, is the importance of having people like Melissa on her team, driving the discussion. You can easily take an organization like Sun Life and truly cripple it with the advice that's given. You can truly cripple it. You can truly sit down and say, "It is irresponsible to go to China and allocate that much of your assets to China." A very easy piece of advice for a lawyer and/or external law firm to give.

There's no or very little correlation; it's very much to do with individuals. In terms of whether bigger is better or smaller is better, it depends. For *this* country, in Canada, I'm a big believer in "bigger is better," because it's the only way that we can compete on the global stage.

KAREN TODD: Thank you. From your M&A practice area, are you seeing any developing trends for this year?

WALIED SOLIMAN: I talked to Jeff Jones from *The Globe and Mail* yesterday, who writes about M&A, and my first question to him is, "How many lawyers have lied to you that they're very busy in M&A?" [LAUGHTER]

He laughed – we had a good laugh together – look, the biggest trend in M&A is that there is a little bit of M&A happening, and thank God for those companies that continue to

employ all the good lawyers at all of our law firms, but the truth is that there's a lot more for all of our firms in the pipe, as they say politely, than at the table where we have students docketing for due diligence – which we hope to have back very soon!

KAREN TODD: I totally understand. Our final speaker is Matthew Cockburn from Torys.

MATTHEW COCKBURN: As some of you may know, I'm moving into a management role at Torys soon, and I was particularly struck, Melissa, in your comments, when you said we're all a quivering mass of insecurities! [LAUGHTER]

I may be tendering my resignation very soon! [LAUGHTER]

But in that vein, I'd like to focus my comments on the business of law as opposed to substantive legal issues.

As many of you know, a lot is changing in law firms these days, and these changes affect how we work and interact with you, Melissa, with your team, and with our clients. I'd like to talk about a couple of those changes today, and how I think we will all benefit collectively from addressing these.

The first, not surprisingly, is an increased focus on pricing and efficiency. It's not super exciting, but it is very interesting to all of us. The second is a growing acceptance within law firms of alternative career paths for our lawyers.

Both of these things are challenges, in the sense of *we* need to change, we need to address them. I also think they present a tremendous opportunity for us to provide better quality service, better quality advice to you and your team; to build better relationships with our clients; and, lastly, for our firms to get better, in terms of how we operate and how we look after ourselves.

So, first, in terms of pricing and efficiency, I am told there was a time long ago where

clients would engage us without asking us how much it cost, and we'd do the work and we'd send them a bill, and we wouldn't talk about it. [LAUGHTER]

Those days are long behind us! Today, much of our billings reflect some kind of alternative fee arrangement. This includes discounting – although I don't really think of that as an alternative – I just think of that as a discount. Caps, fixed fee, structured pricing. I would expect within a couple of years, a significant majority of our billings will be on some kind of structured arrangement.

What this is doing is causing us at law firms to think a lot harder and a lot smarter up front about the work we do, because we have to be thoughtful about the fee proposal, about what we're selling and the price at which we're selling it to you. But we also have to think about how we're going to do it and have a realistic plan for actually delivering really high-quality service, but in a way that we still make some money.

This is an area where we benefit a lot, but I think clients benefit a lot, too, from having a real discussion between us about this topic. I don't mean about "is this good or bad," because this is what's happening, but I think on individual projects, on individual engagements, having really good discussions about what we're trying to do.

I think good alternative fee arrangements that are geared to delivering value to you, and that are thoughtful and that are realistic and achievable, and that we can run to deliver those results, we really need to talk about those a lot. Law firms are actually generally and genuinely interested in doing that well, and in working through alternative fee arrangements. It's no longer something that is just being imposed on us; I mean, we are actually entrusted in doing these well. They not only make for better relationships with our clients; I think they actually make us much better managers of our businesses. When we are working towards an alternative fee arrangement, we actually have to think about not just getting money in the door,

which historically lawyers always think about lots of hours equals lots of revenue and that's all I have to worry about. Now, we have to think about how do we actually make this work profitable for ourselves, and what that leads us to think about is how are we going to do the work, or how are we staffing the work, what processes are we using to do the work more efficiently in order to deliver what we promised, but in a way that still works for us.

At the same time, done well, these really *can* deliver value for you, Melissa, and for your team, in the sense that you get the same high quality of work and you get the same service, but you are actually getting it more efficiently and more cost-effectively.

That leads us to think about how do we do our work – in the old days of just saying the work comes in, let's just throw a bunch of bodies at it and we'll do it – that doesn't work anymore in this model. What we're having to do is with complex work, which is really what we, and I think all of the firms here today really want to do, is the high-end, complex work. We're having to deconstruct the process of our files – how do we do a deal and how do we litigate a case. Now we have to take it, break it down into its constituent parts, and how do we deliver each of those parts separately. We're 50 years behind the automotive industry in terms of thinking about supply chain and how do you deliver each part effectively, but I think we're getting a lot better at that. There are some things that probably don't lend themselves to technology or more efficiency, such as cross-examining a witness or advising a board, those are really hard things to whittle down. People want quality advice in that, in that instance.

There's a lot of other things we're doing now that can be done more efficiently so due diligence on corporate transactions, document review on litigation, where I think it is incumbent upon us to get better at that. We welcome the pressure that you put on us to do that, because I think it makes us get a lot better at it.

The other thing is the work that isn't super complex, but stuff that is repetitive in nature, stuff that is high volume, often; sometimes that work, in its entirety, lends itself to a new way of doing work. Just as an example, we opened a legal services center in Halifax five years ago, and that office is really geared towards doing that kind of work – high-volume, repetitive work, where process improvements and technology can actually make us very efficient. Melissa, you were actually – you may not know this – but you were part of the impetus for opening that office. When you were at your previous employer, we did an enormous number of non-disclosure agreements for them every year, hundreds and hundreds of them, and we could do them, but they were always at the side of people's desks and it would take longer than it should, and it cost a lot of money for a five-page agreement. Melissa was one of the people who said, "You guys have got to get better at this. You need to figure out a way to do this more effectively."

We opened our office in Halifax, and what we focused on in Halifax is partly using technology, but also, more importantly, developing good processes to do this kind of work. When I talk about process, when you think about NDAs [non-disclosure agreements], we've gotten very fast on the matter intake, so it comes in and we don't spend a day running around doing conflict searches; we can start the work immediately. We're much better at allocating the work within the office; we have people dedicated to do this, so we're not walking around trying to find an associate who has a couple of hours to do the work; it starts right away; it's allocated to someone. We've agreed ahead of time with the client what the focus of the work is going to be, what we're looking for in each of these agreements; and we've agreed what the work product's going to be at the end.

Where we are now is we can turn these around in less than 24 hours, guaranteed. The price, every year, has come down, cheaper, cheaper, cheaper. But we're actually making more money than we used to doing



this work, because we got a lot better at it and we're doing a lot more of them.

Again, this is an area where as clients, we are very open to thinking about ways – and I don't just mean Torys – I mean all of our law firms are very open to thinking about ways to deliver those kinds of services much more efficiently to you, and we would encourage you to speak up and talk to us about it and think about how we can do that.

The second topic I just wanted to touch briefly on, because I know I'm the last hurdle to getting back to work, is alternative career paths in law firms. Historically – when in a law firm, it was very much an up-or-out environment; you came in, you worked really hard for five or six years, or seven years, and you became a partner, or you left. We are increasingly finding that doesn't really work anymore; it doesn't work for students; it doesn't work for our lawyers. People are very open about that. During our student recruiting periods, people will say to us right up front, "I just want to be clear – I don't plan on being in a law firm in five years. Is that okay?" These are super-talented, type-A people who are really good and very successful at all sorts of things before they ever get to interview with us, and they're very open about this probably isn't a long-term career.

I think that's good, actually. That is a really healthy thing, and it's incumbent upon us as law firms to figure out how to work with

that and create alternative careers for people within our firm, or help them find an alternative career outside of our firm at Sun Life or at other companies, but to create careers for them that are engaging and challenging and interesting, so they may not become a partner at our place – if they don't want to be a partner anymore. This is hard work; I don't want to do all that other stuff; I just want to be a really good lawyer." We're working now to find ways to create those paths for our people. We now have our concept of senior associate or essentially permanent associate; you can stay and work as an associate in our office as long as you like. We've also developed a counsel position for people who have greater specialty areas of practice and are a little more committed to sticking with us but, again, don't want to do all of the other partner-like stuff – billing and relationships and all of that. We're finding these different paths are working really well. They're working well for us, because we get to keep some very talented people who we've helped develop. They stay with us. It helps a lot for clients, because it avoids the churn, and I hate to use that word, but it avoids the churn of associates rolling off your files all the time. You're getting some continuity; you're getting relationships with people who are going to stick with you for the longer-term. That also creates efficiencies within our firm, because you're working with people who know you well and have worked with you a lot. At the end of the day, that makes us more efficient, *and* makes our relationships that much stickier than they have been before, which is always a real focus for us.

When we think about in-house legal departments, Melissa, there's a lot of great cross-fertilization among our firms and our organizations when you think about these alternative career paths. We have lots of people go to secondment; there's somebody that's at Sun Life right now. But we encourage people to go on secondments to meet our clients, learn our clients' business; also see what the other side looks like, to see what alternatives are out there. We work very hard, as well, to help place our talent in your



organizations when they don't want to be at a law firm any longer. More recently, we've seen people come from in-house departments and come and join us as lawyers and partners at our firm. It's been very interesting. One associate, who was at our firm many years ago, left, worked at one of the big financial institutions for 15 years and has now rejoined us. She brings a lot of really interesting thinking to our practice about stuff she saw at the bank, about how the bank does their work, how the bank thinks about pieces of work and breaks it down and works through it. We're learning a lot from having her join us. It's a useful two-way street between in-house legal departments and law firms, and we're all benefitting from that.

So, I'll just say, in conclusion, what will make this work, will make it work well for all of us, is that we talk to one another about this stuff – the pricing and efficiency, that works really well when we talk to each other about what you want to achieve and how we're going to do it, and thinking about what people are doing within the law firms. It works within our law firm when we have honest discussions with people about "what do you want to do, and how can we help you do that." Then that becomes a discussion with our clients, too, about how can we help them by placing people there or us having people come back to us on secondment or otherwise.

There's a lot of changes going on, but they're exciting and terrific changes, and through a lot of continued communication through all the people in this room, we're all going to benefit from that.

That's it! Thank you. [APPLAUSE]

KAREN TODD: Matt, do you find that most companies provide clear guidelines with respect to their objectives and requirements in hiring outside counsel?

MATTHEW COCKBURN: It varies, Karen. There are some very clear instructions from some people, and others, it's a little bit – well, there aren't any instructions. [LAUGHTER] This is an area where it's beneficial to talk about it. Sometimes we get these outside counsel guidelines, and they're five pages long and there's a lot of rules in there, and they make sense, but they don't all make sense, and they don't always work for us. The better course of action is okay, let's talk about what's going on here. That's really helpful, because I do think the clients learn from us a bit, where we say we actually can't do that, or other clients have asked us to do it differently and we actually think that's a better way to do it. I do think clients benefit from those interactions, and we learn, too. We learn what's driving some of these requests.

KAREN TODD: Great. Do you find that diversity or technology is going to create the bigger change in the relationship between outside and inside counsel?

MATTHEW COCKBURN: I think diversity. There's a lot of talk about technological change in our business, and there's no doubt that things *will* change as a consequence of technology. But at the end of the day, our business is a people business, and I think giving great advice and being a trusted advisor is a people business. Melissa said it very eloquently earlier, we all benefit from a diverse set of views and experiences and perspectives at the table, and being able to provide that as a law firm will be far



more important than having slightly faster technology in some area.

KAREN TODD: Thank you. Because we are Directors Roundtable and our audience typically involves boards of directors and their advisors, what I wanted to do was ask a more general question to all of the panelists, which is, what issues should board members be giving priority to, from each of your practice areas or positions? Let's start with Jeremy.

JEREMY FORGIE: In my case, I guess the main observation is that you all know in the markets these days in the broader community there is increasing focus on executive compensation, and you need to take that seriously, and you need to take your compensation philosophy and strategy seriously, because we may be required to defend in all sorts of contexts. It's a real, live issue that boards need to get their heads around and deal with it.

KAREN TODD: About that, do you find that the whole idea of the golden parachute is going to have to go?

JEREMY FORGIE: In a certain context, you're going to have to carefully think through when it's appropriate, and there may be some transactions and situations where you can't avoid protection at the back end. It's a lot of pressure and turnover maybe contemplated, but I think you need

to have a foundation of thought it through properly, rather than looking at it as an inevitable benefit; it isn't.

KAREN TODD: Thank you. Jean?

THE HON. JEAN CHAREST: This is a very good time for a board to do a reset and ask themselves, in this new environment, what the culture of the company is. It's not just about sustainability, but what is the culture of our company, and what are our values, and what do we represent. Then, from there going forward, how do we want to express that to the constituencies with whom we work, which includes, obviously, clients, and shareholders. This is a very opportune time to do that, and not take for granted, not just ride on, assuming that this is an issue that is, there's a question that is answered by, implicitly, needs to be fleshed out and defined and shared.

KAREN TODD: Thank you. Melissa?

MELISSA KENNEDY: One of the things that our board has been concentrating on and paying a lot of attention to, of course, is the geopolitical risk around the world as we talked about, or I talked about earlier. We operate in a number of different countries, many in Asia, but also in the U.S. and UK, and there is a lot of movement in many different directions. Navigating your way through that as a company, being true to our values, which is occupying the culture question, which is occupying the board, too, but in the context of the local traditions and cultures is a challenge, particularly today.

KAREN TODD: Thank you. Walied?

WALIED SOLIMAN: After assessing geopolitical risks, I think that's actually a big issue right now. For me, the number one issue is always who are you? What is your vision? What is your thesis for existence? I always like to tell boards, if you don't have one, someone will try to define it for you, whether it's by way of a takeover bid or a proxy fight or a regulator getting mad at

you or something else, but knowing who you are and where you want to go is so important and, sadly, I think I'm fair to say most boards don't have that discussion.

KAREN TODD: Alright. Matt?

MATTHEW COCKBURN: I would say talent management. I think in a world where there are increasing opportunities for people to work all over the place, in all sorts of different industries, and we see people repurposing themselves all the time now. We see young people coming out of school with the idea that they're going to work at three or four or five different places during their lifetime, so attracting and retaining talent and really building it and supporting it. Part of that is recognizing people have different plans, focusing on diversity to get that – not just get diverse people in the door, but to promote diverse people and support them and keep them. Today, that's the biggest challenge for boards.

KAREN TODD: Alright. The next question is specific to Sun Life. I'd like each of you to comment on what you've noticed in dealing with Melissa's legal department that they are really doing right. Matt, you want to start?

MATTHEW COCKBURN: They hire a lot of people from Torys. [LAUGHTER]

I used to actually do a lot of work, myself, for Sun Life. I haven't so much recently, but I do know the people who work there, and just back to my comment of a minute ago, it's an incredibly talented group of people. Sorry, I don't mean to suck up, here – but I've observed how people have been given opportunities to do a lot of different things and move throughout the organization. They're not siloed in the legal group; they get a lot of experience across the organization, and they get a lot of experience with different people and different challenges. That speaks very well of the organization and makes for a much richer and stronger legal team.



KAREN TODD: Thank you! Walied?

WALIED SOLIMAN: As I was saying earlier, you need to just look at the results of the organization to determine whether or not there are strong inputs into it. It's definitely through your strong and bold advice.

KAREN TODD: Great! Melissa, you want to comment?

MELISSA KENNEDY: I just want to reiterate that this really isn't about me; it's about the team. There are over 100 lawyers and hundreds of people on my team globally, and they are the experts. Although many of them are long-time Sun Lifers, they are the ones who are in the trenches sometimes, but also provide great leadership across the organization globally. So, I think that's what makes the difference, is the talent.

KAREN TODD: Thank you. Jean?

THE HON. JEAN CHAREST: I had the opportunity of hearing Dean Connors speak in Bangkok at a meeting of the Canada-ASEAN [Association of Southeast Asian Nations] Business Council, and hearing him share with the audience his story and the story of Sun Life. After that, I think we were in Singapore together, Melissa and I, at another meeting of the Canada-ASEAN Business Council. I was very impressed by how Canadian they were in their approach in this way. Quite clearly, they operated on the principle that you have to know what you don't know, which is a great survival skill - I highly recommend it to everyone

in the room, if you want to survive and do well, and in a very difficult environment. I was impressed by the high level of sensitivity they had. This very complex and diverse environment of ASEAN, in particular - it's 10 countries, different languages, cultures, religions. It's a very tough neighborhood, one in which you would think to operate successfully as a business requires a very high level of cultural sophistication, and which clearly the teams at Sun Life have. That's what impressed me.

KAREN TODD: Thank you. Jeremy?

JEREMY FORGIE: Karen, mine's really a personal anecdote, but late last year, I was asked by a Sun Life Asset Management and some of the Sun Life other business areas, to join in a webcast they did. The reason that I wanted to comment on that is that I was invited by a couple of the counsel there, and the seamlessness of the team that Melissa was describing is really there; it's quite impressive. Just the different disciplinary areas, the team position. The physical layout of the office was promoting it, and you could really see it in an action all leading to a production. It was fun to be a part of that process and to see that team construct, with the lawyers taking a very leading role that most of us are describing in action.

KAREN TODD: Wonderful. Now, I'm turning to the audience. Is there anyone who has a question for our panel today that they would like to ask?

[AUDIENCE MEMBER]: Thanks for the heads up! I was very interested in Matt Cockburn's comments about alternative career paths and the kinds of things that well-educated graduates of law schools now need to be thinking about; and so, on that note, I would like to ask Melissa if there is a particular thing that you wish you had learned in law school, or a particular content area or approach to your career that you would have appreciated knowing when you graduated from law school.

MELISSA KENNEDY: A couple of things. First of all, I wish I had been taught how to read a financial statement. That took a while, and that happened in my first big case when I was a litigator. I do seriously think that lawyers in law school need to be encouraged to be more financially literate, and to encourage them to have some STEM [science, technology, engineering and mathematics] experience, because I do think the lawyer of the future is part-business, part-lawyer, but also part-technology. That would have been really helpful for me. Thank you.

KAREN TODD: Thank you for that question. Does anyone else on the panel want to comment on that? Alright.

I would like to thank Melissa for accepting our invitation to honor her and the Sun Life Legal Department. Again, I want to thank McCarthy for hosting this program with us today, and I want to thank the speakers and everyone from Sun Life and all the outside law firms for participating. [APPLAUSE]



Jeremy Forgie
Partner



Jeremy advises some of the largest pension plans and pension fund investment managers in Canada on plan and fund governance, pension fund investment, divestiture, acquisition, funding and de-risking issues. He also works with some of Canada's largest public corporations in advising on the design, implementation and taxation of executive and directors incentive and stock compensation plans.

In addition, Jeremy advises private- and public-sector employers, numerous Canadian and foreign consulting firms and financial institutions on pension fund investment structures, crossborder, pension legislation, tax, trust and benefit issues arising in connection with corporate transactions, privatizations, insolvencies, funding issues, ongoing compliance with regulatory requirements and the development and documentation of pension and employee benefit plans and related funding and custody arrangements.

Jeremy is recognized as a leader in pension and employee benefits law in many publications, such as the following:

Chambers Canada: Canada's Leading Lawyers for Business 2020 (Ranked in Band 1 - "Jeremy Forgie produces high-quality transactional pensions and benefits work. 'He is my trusted adviser and ranks as number one

among all my service providers. He understands issues quickly and finds practical solutions,' explained one source.")

The Best Lawyers in Canada 2020 (Employee Benefits Law)

The Legal 500 Canada 2020 (Pensions - Leading Lawyers)

Acritas Stars 2019: Independently Rated Lawyers (Nominated as a stand-out lawyer)

Chambers Canada: Canada's Leading Lawyers for Business 2019 (Ranked in Band 1)

The Canadian Legal Lexpert Directory 2019 (category ranked in Pensions and Employee Benefits as "Most Frequently Recommended")

Chambers Global: The World's Leading Lawyers for Business 2018 (Ranked in Band 1)

Jeremy was also named Best Lawyers' 2014 Toronto Employee Benefits Law "Lawyer of the Year."

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The Hon. Jean Charest
Partner, McCarthy Tétrault
LLP; former Premier of Québec
(2003 – 2012)

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With an unmatched résumé and a network of global relationships, Mr. Charest provides strategic advice on clients' most pressing business issues around the world

Jean Charest is a Partner in the Montréal office. He provides invaluable expertise to the firm's clients with his in-depth knowledge and experience with public policy, corporate Canada and international matters. As a strategic advisor with a unique perspective, he supports our clients on complex transactions, projects and international mandates, as they navigate the global business environment.

With a public service career spanning almost 30 years, Jean Charest is one of Canada's best-known political figures. Mr. Charest was first elected to the House of Commons in 1984 and, at age 28, became Canada's youngest cabinet minister as Minister of State for Youth.

In 1991, he was named Minister of the Environment and, a year later, he led Canada's delegation at the 1992 Earth Summit on the economy and the environment in Rio. At the summit, he was praised for his leadership role among G7 countries on climate change and biodiversity.

In 1993, Mr. Charest was named Minister of Industry and Deputy Prime Minister of Canada.

In 1994, Jean Charest was chosen Leader of the federal Progressive Conservative Party, becoming the party's first French Canadian leader. He held that post until 1998 when he became the Leader of the Québec Liberal Party. Mr. Charest then broke a 50-year provincial record by winning three consecutive election campaigns in 2003, 2007 and 2008.

Under his leadership, Québec experienced a sustained period of economic prosperity with stronger economic growth from 2008 to 2012 than the U.S., Europe, Canada and Ontario, despite a global financial and economic crisis. His government implemented a major infrastructure investment program.

The Charest government has been a world leader on the environment and climate change, having brought forward the first carbon levy in North America with the implementation of its climate change policy.

His legacy includes a major initiative for the sustainable development of Northern Québec called "Plan Nord." The plan covers a territory above the 49th parallel of 1.2 million sq. km (twice the size of France).

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Walied Soliman
Chair, Norton Rose Fulbright
Global & Canada LLP

Walied Soliman is the Canadian chair of Norton Rose Fulbright. He is also co-chair of our Canadian special situations team, which encompasses Canada's leading hostile M&A, shareholder activism and complex reorganization transactions. Over the past several years, Mr. Soliman has been involved in almost every major proxy battle in Canada, acting for both issuers and activists. He is widely regarded as one of the leading special situations practitioners in Canada. In addition, his practice focuses on mergers and acquisitions, restructurings, financings, corporate governance and structured products.

Mr. Soliman was the only lawyer recognized in the *Globe and Mail's Report on Business Magazine Power 50* list for 2017; designated

as a "Star Lawyer" by Acritas in 2017 for ranking in the top 28 lawyers globally (over 5,000 lawyers) as selected by a panel of over 3,000 senior in-house counsel; was ranked as a leading Canadian corporate lawyer by both *Chambers Canada* and *Lexpert Canada* since 2016; was named one of the 25 most influential lawyers in Canada by *Canadian Lawyer* magazine in 2014; ranked by *Best Lawyers in Canada* since 2013; and was ranked as one of the Top 40 Lawyers under 40 in Canada by *Lexpert* magazine in 2009. Among other philanthropic endeavors, Mr. Soliman is a board member of the Toronto SickKids Hospital Foundation.



Norton Rose Fulbright Global & Canada LLP

Norton Rose Fulbright provides the world's preeminent corporations and financial institutions with a full business law service. We have more than 3,700 lawyers and other legal staff based in Europe, the United States, Canada, Latin America, Asia, Australia, the Middle East and Africa.

Recognized for our industry focus, we are strong across all the key industry sectors: financial institutions; energy; infrastructure,

mining and commodities; transport; technology and innovation; and life sciences and healthcare. Through our global risk advisory group, we leverage our industry experience with our knowledge of legal, regulatory, compliance and governance issues to provide our clients with practical solutions to the legal and regulatory risks facing their businesses.

Wherever we are, we operate in accordance with our global business principles of quality, unity and integrity. We aim to provide

the highest possible standard of legal service in each of our offices and to maintain that level of quality at every point of contact.

Norton Rose Fulbright Verein, a Swiss Verein [a Swiss Association], helps coordinate the activities of Norton Rose Fulbright members but does not itself provide legal services to clients. Norton Rose Fulbright has offices in more than 50 cities worldwide, including London, Houston, New York, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg.



Matthew Cockburn

Member of Executive Committee
& Partner, Torys LLP



Matthew, a member of the firm's Executive Committee, practises corporate and securities law, with an emphasis on private equity and mergers and acquisitions. Matt acts for a wide variety of private equity firms and pension funds, advising on all aspects of their investment activities. He has advised on public takeover bids, plans of arrangement, and private acquisitions and divestitures. Matt also has significant experience in the corporate finance area, advising issuers and underwriters on public and private offerings of debt and equity securities. His experience spans the full spectrum from advising on early-stage investments to multi-billion dollar acquisitions.

Representative Work

- TorQuest Partners in its investment in Joriki Inc., a leading Canadian contract manufacturer of beverages and select food products
- Canada Pension Plan Investment Board in its C\$200 million investment in Premium Brands Holdings Corporation
- Altas Partners in its sale of NSC Minerals, Ltd. to a U.S. subsidiary of Kissner Group Holdings LP
- TorQuest Partners in its acquisition of Cando Rail Services Ltd., a provider of specialized rail support services
- TorQuest Partners and Amenity Holdings in the acquisition of Rubicon Pharmacies Canada Inc.
- TorQuest Partners in its sale of Thinking Capital Financial Corporation, a leading Canadian fintech company, to Purpose Financial LP a private equity firm in its

sale of Canadian Addiction Treatment Centres to BayMark Health Services Inc., a portfolio company of Webster Capital

- Precision Nutrition, a leading nutrition certification and coaching software and services provider, in a strategic investment by BV Investment Partners
- Canada Pension Plan Investment Board in its US\$400 million investment in WME Entertainment Parent, LLC, a global leader in sports, entertainment, media and fashion
- TorQuest Partners in its acquisition of Can Art Aluminum Extrusion Inc., a leading North American manufacturer of aluminum extrusions
- DW Healthcare Partners, a healthcare-focused private equity firm, in its acquisition of American Optics, a manufacturer and distributor of rigid and flexible endoscope optics, and ScopeCare Ltd., a rigid and flexible endoscope service company
- Canada Pension Plan Investment Board, as regulatory counsel, in its proposed £1.1 billion investment alongside Hutchison Whampoa Limited to acquire a 12% interest in the newly formed Hutchison 3G UK Holdings (CI) Limited, an entity created following the £10.3 billion merger of Hutchison Whampoa's UK telecom operator, Three U.K. and Telefónica S.A.'s UK subsidiary O2 UK.
- Torquest Partners and a group of investors in the acquisition of A&B Rail Services, Ltd., a railway construction services company in western Canada, from Fulcrum Capital Partners Inc.

Torys LLP

Torys LLP is a respected international business law firm with a reputation for quality, innovation and teamwork. Our experience, collaborative practice style and the insight and imagination we bring to our work have made us our clients' choice for their largest and most complex transactions as well as for general matters in which strategic advice is key.

We provide Canadian, U.S. and global legal services in a range of key practices including mergers and acquisitions, capital markets, private equity, regulatory, intellectual property, tax, lending and financing, litigation and dispute resolution, competition, and pensions and employment.

Our expertise extends to a number of key industry sectors including: life sciences,

agriculture, financial services, entertainment, technology, mining and metals, manufacturing, infrastructure, energy (power, oil and gas), and retail and consumer products.

Torys has offices in Toronto, New York, Calgary, Montréal and Halifax.