
Business Law

January 2021

A Snapshot of our Recent Activity

A Centennial... Already!

I am pleased to be writing this introduction to our first newsletter of 2021, which highlights some interesting developments in business law and matters in which we have recently been involved.

I will begin by wishing you, our clients, all of our colleagues, friends and business partners a very happy, healthy and prosperous 2021. The year that has just begun is bittersweet for RSS as we continue to meet the challenges presented by a worldwide pandemic and at the same time, mark a significant milestone, namely, RSS's centennial.

In 1921, with a passion for law and an entrepreneurial spirit, Benjamin Robinson and Joseph Shapiro began their practice in humble offices on Saint-Jacques Street. Somehow, they knew that the firm would be a success. Perhaps it had to do with the fact that each of them believed that one of their sons would follow in their footsteps. This is precisely what Jonathan J. Robinson and Barry H. Shapiro did. Claude-Armand Sheppard, who would become one of the country's leading litigation attorneys, joined the firm, which

subsequently became known as Robinson Sheppard Shapiro.

We wonder whether the firm's founders could have ever imagined that from that humble beginning 100 years ago, RSS would one day include 90 lawyers occupying the top floors of a Montreal skyscraper with offices in Saguenay and Saint-Jérôme.

The firm has, in its 100 years, witnessed some of the most profound changes in history: a massive depression, the Second World War and too many other conflicts, incredible technological advances as well as amazing developments and breakthroughs in science and medicine. The firm has also during this remarkable centennial, observed and been a part of significant advances in human rights. RSS's diverse lawyers are proud and stand-up for the rights of others including mutual respect, compassion, and empathy. It is impossible to capture in merely a few words the enormity of what has evolved over the firm's history.

Despite the vast changes and differences between the world then and now, and RSS then and now, there are certain things that have remained constant at RSS. It is a superb firm with special people who are all passionate about law and deeply committed to

IMPORTANT

Our newsletters aim to bring to your attention the contemporary legal issues which we believe are and should be of interest to the public at large and under no circumstances are they to be considered as legal opinions. The newsletters are merely intended to alert readers to interesting topics and/or new developments in law. © RSS 2021. No part of this newsletter may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, unless the source is mentioned in writing on the face of the reproduction.



assisting their clients and the community at large. The notion of “giving back” to the community through volunteering in numerous social and philanthropic organizations has been a key pillar of RSS.

So many professional firms have sadly disappeared from the professional landscape throughout the years and yet, RSS continues to thrive. This continuity can perhaps be best explained by the hard work, commitment and dedication that are deeply embedded in RSS’s culture. Of paramount importance is the high quality of client relationships that are at the core of who we are.

As we celebrate our centennial we deeply and sincerely appreciate the allegiance of our clients, lawyers and staff. Without your trust and loyalty, RSS would not be looking forward with excitement and optimism for the future.

Once again, our very best wishes for the New Year.

Keep safe and healthy.

Herbert Z. Pinchuk

Partner, Head of the Business Law Group

M&As, Financing and Business Transactions

- RSS acted as Quebec counsel to A J Walter Aviation Ltd., an affiliate of Montreal-based AJW Technique Inc., in a USD\$70-million financing with UK-based lenders Wells-Fargo Capital Finance (UK) Limited and Shawbrook Bank Limited, secured by a C\$168-million movable hypothec, as well as an unsecured C\$15-million financing with Fonds de solidarité des travailleurs du Québec (F.T.Q.). **Sharon G. Druker.**
- Advised the vendor in the sale among partners of 50% of a Montreal transportation logistics company. **Sharon G. Druker.**
- Negotiated the exit of a minority shareholder from several related companies in the Montreal restaurant market. **Sharon G. Druker.**
- Represented the purchaser, Fundraising.com, in its acquisition of the assets used to provide online distributorship and organization services for group fundraising activities from Mikla Foods Canada Inc., a subsidiary of Nashville-based Southwestern Fundraising. **Sharon G. Druker, Jean Denis Boucher.**
- Represented a major car dealership enterprise and building owners in the successful completion of a sale of dealership and real estate. **Éric Boulva, Herbert Z. Pinchuk.**
- Representation of the acquirer in the negotiation and structuring of the acquisition of a large private Quebec-based claims adjusting enterprise. **Éric Boulva, Rhona Luger, Herbert Z. Pinchuk.**
- Acted as special Quebec counsel to The Toronto-Dominion Bank and its Ontario counsel, Fogler Rubinoff LLP, in connection with a \$24-million-dollar hypothec on the Quebec assets of an aviation company. **Sharon G. Druker.**
- Represented the founder and minority shareholder of Reflector Entertainment Inc., a Montreal-based studio heavily invested in creating deep narrative worlds through various media including podcasts, visual novels, and video games, and most recently the developer of the *Unknown 9* franchise, in its acquisition by Japanese gaming giant Bandai Namco Entertainment. **Sharon G. Druker, Jean-Pierre Sheppard.**
- Acted as special Quebec counsel to the purchaser and its Ontario counsel in its acquisition of a Quebec-based provider of in-person and virtual diploma and non-diploma post-secondary educational art programs, art training and related services to domestic and international students. **Sharon G. Druker.**



Tax, Estate Planning and High-Net-Worth Individuals

- To achieve the wishes of a client who passed away without having redone his will, we implemented a mechanism drawing from an amendment to tax laws that allowed the estate to make a donation retrospectively applicable to the deceased's last tax return. A \$4M donation to a foundation allowed recovering \$2M in taxes. The authorities, reluctant at first, eventually allowed the plan. **Martin Lord, Marilyn Piccini Roy.**
- Issued an opinion on the responsibility or debt liability between a particular legatee and the residual heirs. **Marilyn Piccini Roy, Lauren Flam.**
- Issued an opinion on dealing with unclaimed property in the context of a trust where beneficiaries cannot be located. **Marilyn Piccini Roy.**
- Advised on an insolvent trust which the income beneficiary and one capital beneficiary tried to salvage by injecting funds into the trust and ultimately rendering it solvent, which provoked some unwarranted claims by some of the beneficiaries to a share in the capital on the income beneficiary's death. **Marilyn Piccini Roy, Lauren Flam.**
- Advised on an exemption from the obligation to do an inventory of the estate and consent to an amicable rendering of account for liquidators. **Marilyn Piccini Roy, Lauren Flam.**
- Advised on legacies with conditions requiring a renunciation to litigation or to alimentary support. **Marilyn Piccini Roy, Lauren Flam.**
- Advised on encroachment on capital power and trust termination. **Marilyn Piccini Roy.**
- Advised on regularizing an "in trust" account by having the "beneficiaries" acknowledge that the account belonged to the original contributor of the funds. **Marilyn Piccini Roy.**

- Represented the liquidator of an estate which the plaintiffs sought to remove on the basis of a draft will. Application dismissed, since the draft was not a valid testamentary document. **Jonathan Feingold.**
- "Estate Planning During a Pandemic: Guidance From an Estate Lawyer", online interview, McGill | Giving, 2020-08-20, <giving.mcgill.ca/all-stories/estate-planning-during-pandemic>. **Marilyn Piccini Roy.**
- "Views from the Civil Law" on the effect of contemporary changes in demographic and family composition in Quebec for liquidators, trustees, mandataries, tutors and curators in STEP Inside October/November 2020. **Marilyn Piccini Roy.**

Real Estate and Leasing

- Providing general advice to the owner regarding the possible multi-use redevelopment of an existing land site. **Herbert Z. Pinchuk.**
- Representation of the seller in a multi-million-dollar apartment complex sale. **Rhona Luger.**
- Obtained a Quebec contractor's license under the exemption from the professional qualifications process for an Alberta unlimited liability company, headquartered in Ontario pursuant to the *Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry (2006)* between the Government of Ontario and the Gouvernement du Québec. **Sharon G. Druker.**

Intellectual Property

- Defending the publisher of writing-assistance software against an application for injunction and damages for having used copyrighted images and text of a third party, in violation of an agreement between the parties. RSS is opposing an application for leave to appeal before the Supreme Court of Canada. **Ann-Julie Auclair.**



- Continued representation of Quebec- and Ontario-based specialty cider producer in intellectual property and real estate matters. **Richard Uditsky, Herbert Z. Pinchuk.**

Labour and Employment

- Defending an interprovincial transportation company, under federal jurisdiction, against a complaint for unjust dismissal under the *Canada Labour Code*. **Eliab Taïrou, Normand Laurendeau.**
- Taking part in a mediation and preparing the employer's response for the Canadian Industrial Relations Board hearing. **Eliab Taïrou.**
- Assisted an employer for a mediation before the Administrative Labour Tribunal in a claim for compensation and a complaint for dismissal without good and sufficient cause. After a layoff due to COVID-19, the employer eventually recalled only half of its employees, because of the decreased business. At the expiration of the six-month period following the layoff, since another employee had been recalled to a similar position, the plaintiff assumed that her position had been abolished. The case was settled. **Marianne Poliquin.**
- Representing the employer, a global firm in the property insurance industry: **Eliab Taïrou.**
 - Defending against a complaint based on an alleged prohibited practice under the *Labour Standards Act*; settled after a virtual hearing;
 - Negotiation of a termination agreement with a long-term employee close to retirement and coming back to work after a long invalidity leave; agreement with the employee and drafting a release to protect the employer.
- Representation, as employer representative, of a food processing company for the negotiation of the renewal of its collective agreement. **Eliab Taïrou.**
- Proceedings before the Administrative Labour Tribunal:
 - Defended an advertising firm against a claim by a vice-president dismissed for his unsatisfactory performance. **David Paradis, Jean Denis Boucher.**
 - Defended a Childcare Centre against a claim by an educator terminated because of the psychological harassment and climate of terror that she imposed on her colleagues and the children. **David Paradis.**
 - Defended a crisis centre for victims of domestic violence against a claim by a shelter worker terminated for incompetence. **David Paradis.**
- Represented a stockbroker for claims for unpaid commissions and damages resulting from defamation by his former employer. **David Paradis.**
- Defended 12 former employees having resigned from a transportation brokerage firm in which a toxic work environment persisted, against injunction and safeguard proceedings by their former employer, based on alleged violations of non-solicitation and non-competition clauses. **Normand Laurendeau, David Paradis.**
- Represented a bakery in a claim for the refund of fees overbilled by an industrial cleaning firm under a contract that was subsequently cancelled. **David Paradis.**
- Advising and representing small and medium businesses (SMEs) compelled to lay off or terminate personnel because of the COVID-19 pandemic. **David Paradis, Marianne Poliquin.**
- Advising and representing SMEs in the investigation and termination of employees for psychological and sexual harassment at work. **David Paradis.**
- Providing advice in relation with the second wave of accusations in the wake of the #MeToo movement: proceedings to block false statements

on social media, notably in one case where an ex-employee was making declarations targeting her former employer and another case where a person's employment was jeopardized because of these allegations. **Marianne Poliquin.**

General Litigation, Arbitration and Mediation

- Assisted a housing cooperative in its defence against a complaint before the Commission des droits et libertés de la personne et des droits de la jeunesse, for alleged discrimination based on race, ethnic or national origin and social condition in providing a dwelling. After its investigation, the Commission ruled that the cooperative had acted legally. **Catherine Jobin.**
- Assisting various school boards facing complaints of discrimination based on handicaps, in which the complainants challenged the adaptative measures implemented by the boards and their decisions on classification, as well as assisting them with complaints raising discrimination based on race or ethnic or national origin, in which complainants claim to be treated differently or victims of intimidation. **Catherine Jobin.**
- Representation of construction project managers in a dispute with property owners. **Annie Claude Beauchemin, Herbert Z. Pinchuk.**
- Continuing representation of a major Quebec-based industrial property owner in an ongoing dispute with a defaulting tenant. **Herbert Z. Pinchuk.**
- Defending a representative of a collective savings broker against a disciplinary accusation for having failed to abide by the rules when swearing a client. **Justin Beeby.**
- Defending a group of teachers against a claim by a colleague alleging that they had conspired to defame him and have him suspended. **Martin Côté.**
- Advising and representing a multi-university student association to enforce the application of the *Act respecting the accreditation and financing of students' associations*. **Martin Côté, David Paradis.**
- Represented the plaintiff in a claim against her mother, who had embezzled money paid to the plaintiff's account by the Commission des normes, de l'équité, de la santé et de la sécurité du travail. **Normand Laurendeau.**
- Defending a university against a claim for damages by a student alleging discrimination based on language and political convictions. **Martin Côté.**
- Defending a mining company, a director of which was allegedly a party in a plan to make false representations to a lender, as to the nature of the loan and likelihood of repayment. **Matthew McLaughlin.**
- Represented a manufacturer of construction products which licensed the right to use and sell its products. After the license expired, the ex-licensee continued to advertise the products on its website, leading clients to believe that it was still authorized to use and sell the products. RSS took injunction proceedings. The ex-licensee removed all references to the products from its website and ceased using the manufacturer's trademark and trade name. **Jean-Pierre Sheppard.**
- Represented a company that operates in the industrial ventilation industry. One of the company's employees left and became involved with a competitor. The ex-employee posted some of the ex-employer's images of projects and buildings on his new employer's website, trying to pass them off as their own projects. RSS forced them to take down the images. **Jean-Pierre Sheppard.**
- Represented plaintiff who was an equal shareholder with her husband in a retail store business. Their divorce led to her exclusion from the business and the loss of trust and confidence,



making the business relationship untenable. The buy-out of the wife’s shares was obtained and she was released from the personal guarantees she had given to the company’s bank. **Jean-Pierre Sheppard.**

- RSS once again co-wrote the chapter on Canada in the International Lawyers Network’s 7th annual edition of *Establishing a Business Entity: An International Guide* (<bit.ly/ILNCorporate7th>) as well as for the first time the chapter on Quebec in its 5th annual edition of *Buying and Selling Real Estate: An International Guide* <bit.ly/ILNRealEstate5th>. **Sharon G. Druker.**

Professional and Social Involvement

- “The Impact of the *Act Respecting the Transfer of Securities and the Establishment of Security Entitlements* in Determining the Validity of a Gift under Québec Law: A Case Comment on *Labis v. Labis*”, (2020), 39 E.T.P.J. 213. **Sharon G. Druker.**
- “‘Not a Case about a Mere Referral’: Reflections on *Salomon v. Matte-Thompson*”, (2020) 39 ETPJ 330. **Lauren Flam.**

New Face!

RSS is happy to welcome **Adrien Tillet**, a notary, who joined our Estates, Wills and Trusts Group last November. As a notary, Adrien’s education and experience will provide a seamless complement to the skills of the team’s other members.

For more information, please contact:



Herbert Z. Pinchuk, Partner, Head of the Business Law Group
T 514 393-4023
hzipinchuk@rsslex.com



Sharon G. Druker, Partner
T 514 393-4014
sgdruker@rsslex.com

Montréal

800 du Square-Victoria Street, suite 4600
Montréal QC H4Z 1H6
T 514 878-2631 • F 514 878-1865

Saguenay

255 Racine Street East, suite 530,
Chicoutimi QC G7H 7L2
T 418 579-3113 • F 418 579-3114

Saint-Jérôme

230 De Martigny Street West, suite 7
Saint-Jérôme QC J7Y 2G3
T 450 710-0971 • F 450 710-0972

rsslex.com

