STRUCTURAL CHANGE OR COLLECTIVE AMNESIA?

A REVIEW OF *BREAKDOWN: THE INSIDE STORY OF THE RISE AND FALL OF HEENAN BLAIKIE*, NORMAN BACAL (TORONTO: BARLOW BOOKS, 2017)

Times are better. The partners at Canada's largest and most prestigious law firms are breathing a sigh of relief. After a decade of fear and uncertainty, growth and profitability appear to be back.[1] A partner at Stikeman Elliot even states, "Big Law has not only survived, it has thrived."[2] Others, however, are more cautiously optimistic. Torys' managing partner Les Viner believes that "[n]o one can afford to be complacent."[3] Yet the world keeps changing, and the longest period of economic expansion in history will undoubtedly soon come to an end.[4] Are Canada's law firms prepared for the next recession? More importantly, have they adapted to a changing business world or have they merely survived a difficult decade, largely unchanged? Is innovation now part of their DNA? Norman Bacal's recent book, *Breakdown: The Inside Story of the Rise and Fall of Heenan Blaikie*,[5] offers food for thought. Bacal was at the helm of Heenan Blaikie, once a preeminent Canadian law firm.[6] Heenan Blaikie collapsed in early 2014.[7] Bacal offers a rare glimpse into the closely guarded world of Canadian law firms. His unique experience and insight are welcome additions to our understanding of the evolving Big Law business model. Bacal reminds us of the increasing competition which defines the legal landscape, the unfortunate perils of putting people before profits, and the intrinsic fragility of law firm partnerships. His book is especially relevant as we likely approach a recession, which will once again test the resilience of Canada's law firms.

Bacal's book is the tale of a traditional man in a business increasingly driven by economic considerations. The reader gets a sense that Bacal was never driven by profit. While that may be easier said in the world of highly profitable law firms, it was and is an unusual attribute, both during Bacal's tenure at Heenan Blaikie and especially today. Bacal loved the firm to which he dedicated his entire career. He joined the firm as a student in 1980, just seven years after the firm's founding.[8] His book simultaneously traces his career and the rise of the firm. From 1980 to 2014, the firm grew from a 20 lawyer outfit[9] to one of Canada's largest and most prestigious law firms. At its height, it employed some 600 lawyers, including former Supreme Court justices and Canadian prime ministers.[10] The shared values which, according to Bacal, drove the growth of the firm were also his own. From the onset, the firm was dedicated to attracting the most talented lawyers, serving the most prominent clients, and,

---

1 See Tim Kiladze, "Big Law is Back: Relief on Bay Street as Corporate Lawyers Thrive," *The Globe and Mail* (4 March 2019), online: <www.theglobeandmail.com/business/big-deals/article-big-law-is-back-relief-on-bay-street-as-corporate-lawyers-thrive/>.

2 *Ibid*.

3 *Ibid*.

4 See e.g. Ambrose Crofton, "Review of Markets Over January 2020," online: <am.jpmorgan.com/gb/en/asset-management/gim/adv/insights/market-insights-monthly-market-review-January-2020>.

5 Norman Bacal, *Breakdown: The Inside Story of the Rise and Fall of Heenan Blaikie* (Toronto: Barlow Books, 2017).

6 *Ibid* at xiii—xv.

7 *Ibid*.

8 *Ibid* at 1.

9 *Ibid*.

10 *Ibid* at xiv, xviii, 192, 201.

most importantly, putting people before profits.[11] Heenan Blaikie lawyers loved their work and loved servicing their clients.[12] They had lives and passions beyond the firm, and they valued the time they could dedicate to those.[13] Bacal paints Heenan Blaikie as an unusually nice and humane workplace, where everyone loved working. Passion and happiness drove Heenan Blaikie lawyers; money was secondary.[14] Through what became widely known as the "Heenan Tax," the lawyers accepted and even took pride in the fact that they could make more money at other firms. Bacal states:

> This was as important a feature of our firm as anything else we aspired to. There was not a single one of us in the upper range of the grid who did not believe he or she could be making more money at another firm. The social contract we had accepted had us paying a price for the freedom to practice in a way that suited our particular personalities, and for the pleasure we found in working together.[15]

Beyond decisions regarding quality of life, it is worth mentioning that the firm was also structurally less profitable than other firms, as it focused on employment law. Hourly rates for labour lawyers are lower than those for lawyers in other more profitable practice areas, such as corporate and commercial law.[16]

Heenan Blaikie's fall was as spectacular as its rise. It resulted, according to Bacal, from a confluence of factors. First, the firm signed an expensive lease for new office space in Toronto, which encompassed too much space at a cost its main practice area could not justify.[17] Second, it expanded into Africa, led by a partner with poor judgment and unsavory connections.[18] Third, it opened an expensive and unprofitable office in Paris.[19] These poor and poorly timed decisions compounded the impacts of a struggling economy and a temporary decline of approximately 15 percent in Heenan Blaikie's revenue.[20] One could posit that, while lawyers gladly accepted the aforementioned Heenan Tax, this additional decrease in revenue made their income too unattractive relative to what they could earn at other firms. But this overly simple explanation is insufficient. The issue was less the decline in revenue (which the loyalty of Heenan Blaikie lawyers likely could have surmounted) than the disagreement it bred within the firm. The firm had grown from a small, collegial outfit to a national firm employing hundreds of lawyers. While Heenan Blaikie lawyers were united by shared values, they were a diverse group of individuals, spread out across the country.

---

11 *Ibid* at 2–3.
12 *Ibid*.
13 *Ibid*.
14 *Ibid* at 265.
15 *Ibid* at 193.
16 Sharon C Bolton & Daniel Muzio, "Can't Live with 'Em; Can't Live without 'Em: Gendered Segmentation in the Legal Profession" (2007) 41:1 Sociology 47 at 58.
17 Bacal, *supra* note 5 at 197–99, 318–19.
18 *Ibid* at 207, 223–29.
19 *Ibid* at 206–15. The management committee had planned for the office to be profitable after one year.
20 Though Bacal does not specifically address this point in his book, it appears Heenan Blaikie's revenue also declined for factors unrelated to the broader economic climate, see e.g. "How Did Heenan Blaikie Fall So Quickly?" online: <www.lawtimesnews.com/news/general/how-did-heenan-blaikie-fall-so-quickly/261185>:

> At Heenan Blaikie, the Montreal office, like the Toronto one, had recently completed a large file of work that was keeping cash flow coming for an extended period of time. In Montreal, a case recently came to an end with a Supreme Court decision issued Jan. 9 involving Pricewaterhouse Coopers/Coopers Lybrand and Montreal-based Castor Holdings Ltd. About 10 to 15 Heenan Blaikie lawyers were reportedly on the file for 15 years. For the Toronto office, a key factor in the firm's troubles was a large arbitration file that had huge monthly billings and also wound up recently.

They disagreed on the risks the firm took in trying economic times. Bacal's strategy, when at the helm of Heenan Blaikie, was: "To protect ourselves we [embark] on expansion."[21] One insider's account, not quoted in Bacal's book, best encapsulates the increasing internal differences. Regarding the recent proposal to hire a former Ontario premier, he states: "A lot of us just rolled our eyes and said, 'You've got to be out of your mind! Why would you just want to bring in another retired politician to the firm and pay him a lot of money? We need to develop the business; we need to actually have a strategy.'"[22]

The business had changed. In a challenging economic environment defined by decreasing law firm profitability, competition for clients and top talent was growing fiercer.[23] Would Heenan Blaikie gain and maintain a competitive advantage by becoming more profit-driven, generating money to attract talented lawyers, or by sticking to the values which defined its rise? In the end, indecisiveness brought the firm down. In an almost Shakespearean manner, both visions clashed within the firm. Two new managing partners were appointed. Robert Bonhomme, in Montreal, wanted the firm to aggressively cut costs and part ways with underperforming partners. Kip Daechsel, in Toronto, disagreed.[24] Neither prevailed, but the strife set the stage for Heenan Blaikie's collapse. The final collapse was quick. Some key partners left, leading the remaining partners to question the viability of the firm. Then more partners left. And more.[25]

Bacal's conclusion is that Heenan Blaikie would have survived if it had stuck to the principles which had made it successful.[26] He may be right. However, I believe it is more helpful and interesting to see his book, and Heenan Blaikie's fall, as a microcosm of the generational issues facing large and prestigious law firms, and their traditional business model.

John Quinn, founder and managing partner of Quinn Emmanuel, one such large and prestigious law firm, states: "While litigating complex cases is challenging, the business of law 'is a pretty dumb business.… You're taking people with legal problems and bringing them together with legal talent and mostly charging their time by the hour.'"[27] It is, indeed, a very simple business model, but also one with few levers one can pull to impact profitability. Lawyers can increase their hourly rates. If clients balk at the increases, their main remaining options are to work more billable hours (thereby increasing revenue) or reduce fixed costs to increase profitability. It is a business model which seems intrinsically unfit to create the happiness which defined Heenan Blaikie. Partners, who share the firm's profits, are incentivised to work associates, who are paid fixed salaries, harder. Partners are also incentivised to work more billable hours. Recognizing the firm's paralegals and assistants, through higher wages or benefits, reduces their income.

---

21 Bacal, *supra* note 5 at 201.

22 Sandro Contenta, "How the Heenan Blaikie Law Firm Collapsed," *The Star* (8 February 2014), online: <www.thestar.com/news/insight/2014/02/08/how_the_heenan_blaikie_law_firm_collapsed.html>.

23 Bacal, *supra* note 5 at 250–51.

24 *Ibid* at 256.

25 *Ibid* at 289–90. See also Contenta, *supra* note 22 (which quotes an insider describing the events as a "run on the bank").

26 Bacal, *ibid* at 321.

27 Christine Simmons, "'Alpha Dog' Still Rules as Quinn Emanuel Sees Growth and Partner Exits," *The American Lawyer*, online: <www.law.com/americanlawyer/2018/10/18/alpha-dog-still-rules-as-quinn-emanuel-sees-growth-and-partner-exits/>.

Beyond reducing their income, it inhibits their ability to compete in an increasingly competitive marketplace. While the firm's partners may agree, as Heenan Blaikie's did, that they are happy to work fewer hours and make less money, such a decision has a structural impact on the firm. It prevents the firm from having the financial resources to attract top talent in a competitive marketplace. Top talent is synonymous with large client accounts and the ability to charge clients premium rates.

Heenan Blaikie's business model was intrinsically fragile. It relied on the consensus within the firm that the firm's benefits outweighed the higher income partners could earn at competing firms. But law firms are all intrinsically fragile. They are true partnerships. For law firms to exist and survive, their partners must stick together. Partnerships are built on mutual trust. Once that trust disappears, the firm's days are counted. Heenan Blaikie's story proves that a few partner defections, in a climate of doubt and mistrust, are enough to cause a firm to collapse.

Law firm profitability may be a misnomer. It hides the characteristic short-term outlook which defines law firms. While mistrust undoubtedly fueled a justifiable anxiety about the future at Heenan Blaikie, the reaction of the firm's partners to a yearly drop in profitability uncovers their limited horizon. Why did a one year, relatively minor drop in profitability make some partners want to jump ship? The main focus of law firm partners seems to be their income for the current year.[28] Any decrease is cause to take recruiters' calls. Law firm partners seem to be less invested in their firm's future than owners of traditional businesses. They seem to view the firm as a platform upon which to build their practice, without being invested in its future growth.[29] The obsession with yearly profit prevents them from creating long-term value, for their firm and its clients.[30] Spending time training and mentoring younger lawyers may create long-term value but it does not increase the year's profits. An investment in opening a new, less profitable office or in making a strategic hire in a practice area to better serve clients are seen as inimical to the partners' interests. Even a one-year drop in yearly profits can mean partner defections and lower resources which the firm can dedicate to attracting top talent.

A first step to solving these issues may be increasing capital contributions (the money partners invest in their law firm). They have historically been very low, generally amounting

---

28 See Bacal, *supra* note 5 at 192–195. See also Sara Randazzo, "Being a Law Firm Partner Was Once a Job for Life. That Culture Is All but Dead," *The Wall Street Journal* (9 August 2019), online: <www.wsj.com/articles/being-a-law-firm-partner-was-once-a-job-for-life-that-culture-is-all-but-dead-11565362437>; Ward Bower, "Law Firm Economics and Professionalism" (1996) 100:3 Penn St L Rev 515; Daniel Fish, "How Big Firms Decide What to Pay Each Partner," *Precedent* 13:1, online: <lawandstyle.ca/law/cover-story-how-big-firms-decide-what-to-pay-each-partner/>.

29 This is exemplified by the lateral market for law firm partners, which keeps getting more active. See e.g. Robert Half News Release, "Survey: One-Third Of Lawyers Would Make Lateral Career Move For Promise Of Greater Pay Down The Road" (10 October 2018), online: <rh-us.mediaroom.com/2018-10-10-Survey-One-Third-Of-Lawyers-Would-Make-Lateral-Career-Move-For-Promise-Of-Greater-Pay-Down-The-Road>; Derek Schutz, "The Secret to Lateral Hiring Success in Law Firms Rests in Preparation," online: <www.aderant.com/think-tank/lateral-hiring-preparation/> (which reviews the data on this point). In contrast, Bacal spent his entire career at Heenan Blaikie.

30 On long-term value versus short-term profitability more generally, see Bernard S Sharfman, "Activist Hedge Funds in a World of Board Independence: Creators or Destroyers of Long-Term Value" (2015) 2015:3 Colum Bus L Rev 813; Raj Aggarwal, "Using Economic Profit to Assess Performance: A Metric for Modern Firms" (2001) 44:1 Bus Horizons 55.

to less than half of the partner's yearly income.[31] If law firms' financial benefits are distributed to partners every year and partners can readily derive similar benefits elsewhere, it is unsurprising that partners are not invested in the long-term growth of their firm. This model stands in contrast to traditional businesses, whose owners may derive most of the financial benefits from the value of the business they own.

More broadly, if the traditional law firm business model is poorly suited to tackling present and future challenges, it should change. Has it? Have law firms adapted through innovation? Or have they merely survived a challenging era, largely unchanged? In this piece's introduction, I cited a Stikeman Elliot partner's assertion that "Big Law has not only survived, it has thrived."[32] After a trying decade, growth and profitability are back.[33] This context makes it easy to forget the Heenan Blaikie story. Yet as we likely approach the end of a growth cycle, there is little evidence that law firms have learned from their mistakes. Though they have responded to client outsourcing of low-value work and reduced their costs, their fundamental billable hour business model remains largely unchanged.[34] In that context, Bacal's book is an untapped source of wisdom and a cautionary tale for scholars, practitioners, and law students alike. It can help us turn our apparent collective amnesia into genuine innovation, hopefully before it is too late.

Phil Lord
LLB, BCL (McGill)
ACIArb. Partner, Vezno Capital

---

31 See Bacal, *supra* note 5 at 243; "Partner and Law Firm Capital Contribution Trends," online: <lion grouprecruiting.com/partner-law-firm-capital-contribution-trends/>.

32 Kiladze, *supra* note 1.

33 *Ibid*.

34 See e.g. Marg Bruineman, "Steady Optimism – 2019 Legal Fees Survey," *Canadian Lawyer*, online: <www.canadianlawyermag.com/surveys-reports/legal-fees/steady-optimism-2019-legal-fees-survey/276027> (which finds that the billable hour model is still the dominant fee arrangement for 87 percent of lawyers); Kiladze, *supra* note 1 (which discusses cost reduction); Daniel Fish, "The Lucrative Days of Document Review Are Over," *Precedent* 11:1, online: <law andstyle.ca/law/cover-story-the-lucrative-days-of-document-review-are-over/> (which discusses client outsourcing of low-value work).

[*this page is intentionally blank*]