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**Canadian Business History Association/l'association canadienne pour l'histoire des affaires**

Dedicated to the pursuit of Canadian business history and its role both domestically and in world business history. Our specific aims include encouraging more studies of enterprise by Canadians and in Canada; helping build and maintain well-structured and open business archives, providing those who study business history a forum for discussing their research with those who practice business, encouraging research projects on relevant subjects and providing funding for such research, and in general encouraging the study of business history in Canada. Membership in the association is now open to individuals, firms, and groups.

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### **CBHA/ACHA ANNUAL CONFERENCE 2018**

#### **GIVE AND TAKE: THE HISTORY OF CANADA/U.S. TRADE NEGOTIATIONS**

#### **MEMBER CALL FOR PAPERS**

The CBHA/ACHA is in the midst of planning for its 2018 Annual Conference *The History of Canada/U.S. Trade Negotiations*. This one-day conference will be held at the University of Toronto on November 8th, 2018.

The CBHA/ACHA welcomes innovative submissions from members who would like to present on relevant topics to this theme. All submissions will be considered based on their unique insight into the historical progression of trade negotiations and agreements between the two countries, and the impact these negotiations and agreements have had on business development and societal changes. Sample themes include:

Free Trade versus Tariffs  
 Reciprocity Treaty of 1854 - Insights  
 Trade and the Election of 1911 - Insights  
 Canada-United States Free Trade Agreement 1987 - Insights  
 North American Free Trade Agreement 1994 - Insights  
 NAFTA negotiations 2018 - Insights  
 Specific sector discussions (autos, lumber, dairy, etc.)  
 People and personalities in trade negotiations  
 Politics and trade negotiations

Abstracts of articles of up to 500 words should be submitted by 31st July 2018.

A book publication of selected presentations will follow from the conference.

Further information may be obtained from, and submissions may be sent to, Mark S. Bonham, Secretary-Treasurer, CBHA/ACHA at [mbhm1@aol.com](mailto:mbhm1@aol.com).

The CBHA/ACHA provides research and travel grants to attend and present at conferences. Please consult with the Member's Section of the website for further information.

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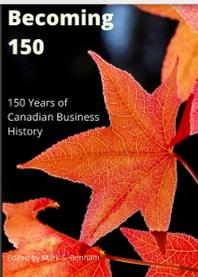
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REPORT FROM M. STEPHEN SALMON  
Book Review Editor

In this issue of *The Prospectus* we are able for the first time to present two book reviews. The reviews below discuss works which might be considered legal-business history. Long ago in graduate school I learned the obvious historical truth that nothing beats a complicated lawsuit for producing the precious raw material we all require, reams of documents. However, as both reviewers note, the legal profession is significant for more than merely churning out piles of paper for historians. The activities of courts and the forms of legal practice shape much of how business has always been conducted. We have much to glean from James Muir's study of eighteenth century Halifax courts and Norman Bacal's dissection of the collapse of Heenan Blaikie in 2015.

Current plans call for more multiple sets of reviews in *The Prospectus*. For that to happen our review pipeline needs to expand. As of this week your review editor has seven books out for review and three reviews in hand. This is not enough to publish two reviews an issue on an ongoing basis. I also have nine books available for review. These range from a study of the IMF and the Greek bailout to a history of *fin-de-siècle* Parisian property developers. The list is appended below. The books are available to creditable reviewers on a first come first serve basis. If you are interested please contact me directly at:

reviews.cbha@gmail.com.

Books Available for Review

Paul Blustein, *Laid Low: Inside the Crisis That Overwhelmed Europe and the IMF* (MQUP, 2016).

Alexia M. Yates, *Selling Paris: Property and Commercial Culture in the Fin-de-siècle Capital* (HUP, 2015).

Alvin Cramer Segal, *My Peerless Story: It Starts with the Collar* (MQUP, 2017).

Anne Reinhardt, *Navigating Semi-Colonialism: Shipping, Sovereignty, and Nation-Building in China, 1860-1937* (HUP, 2018).

Beth Parker, *Unstoppable: The Story of Asset-Based Finance and Leasing in Canada* (Barlow, 2014).

Tirthankar Roy, *A Business History of India: Enterprise and the Emergence of Capitalism from 1600* (CUP, 2016).

Richard J. Grace, *Opium and Empire* (MQUP, 2016).

David Tough, *The Terrific Engine: Income Taxation and the Modernization of the Canadian Political Imaginary* (UBCP, 2018).



## BOOK REVIEWS

Norman Bacal, *Breakdown: The Inside Story of the Rise and Fall of Heenan Blaikie*. Toronto: Barlow Book Publishing, 2017. xix + 331pp., illustrations, index. Cloth; ISBN 978-1-988025-15-5, Cdn \$29.95.

Norman Bacal's *Breakdown: The Inside Story of the Rise and Fall of Heenan Blaikie*, chronicles the evolution of the law firm from its beginning as a Montreal legal boutique founded in 1973, through its improbable ascent to the point where it had become one of Canada's largest firms, before suddenly and unexpectedly collapsing some 40 years later – the largest law firm failure ever in Canadian history.

Such failures in Canada are rare, with the other most significant recent breakups being those of two mid-size Toronto firms, Holden Day Wilson in 1996 and Goodman and Carr in 2007. However, those do not begin to compare to the magnitude of Heenan Blaikie's demise. At one time, the firm had over 575 lawyers and 1,200 support personnel in ten offices across Canada and internationally, making it the fifth largest Canadian law firm. It was still in a relatively secure financial position as recently as one year before finally closing its doors.

So, what actually happened? That is the very intriguing question raised by these events and one that the author does his best to answer. It is important for there to be an answer if this experience is to be instructive to law firm managers in the future. However, it is a complicated story and, as a managing partner at the firm throughout most of this time, Mr. Bacal acknowledges he may have certain biases in telling it. At the same time, he is clearly a natural-born storyteller and, while there may have been some temptation for him to burnish his record of involvement in these events, he seems to have resisted doing so, presenting the story in a balanced and fair-minded manner. He even comes in for some significant self-criticism in the book. Overall, the book's narrative benefits, more than it suffers, from the author being an insider to these events.

While the critical storyline here is the history of the firm's rapid build-up and, ultimately, its abrupt dissolution, it is also, inevitably, autobiographical. The author was both a significant participant in, as well as an observer of, all these events. There are, for example, lengthy sections describing his efforts to build the firm's film finance tax practice. However, that discussion also serves the useful purpose of exemplifying how smaller, more entrepreneurial, specialty practices flourished at Heenan Blaikie.

The firm's story, as told by Mr. Bacal, is well-paced and, even though its outcome would generally be known to most readers, the author still manages to maintain a degree of suspense in its telling. In the course of this narrative, Mr. Bacal presents a kaleidoscope of characters at the firm who make appearances at various times when they have a significant involvement with the story. While this adds to the story's complexity, the author's descriptions of these individuals are well-drawn and help to bring to life the events described. Surprisingly, the profile of the firm's principal founder and leader, Roy Heenan, is not provided in the depth one might expect, given his importance to the story. While the author acknowledges his contributions to the firm's success, the impression one gains from the book is that while he was the keeper of the firm's cultural flame and was an important force in setting its strategic direction, he was also, on occasion, an unrealistic dreamer and a dominating, even menacing, force to be reckoned with in internal firm matters.

From the very beginning, the firm's founders were determined that it would be operated very differently from the larger, more profit-focused, Montreal law firms they had left. This was exemplified by their decision not to have a written partnership agreement. Instead, it was famously established on a handshake, a notion which would be anathema to most lawyers, but was intended to emphasize the importance of trust in their relationships. They sought to create a professional experience which

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would maintain job satisfaction by providing its lawyers with the freedom to pursue independent and entrepreneurial practices in which they flourish.

was encouraged. Personal relationships were understood to stand in priority to economic rewards, thereby precluding the internal rivalries which had caused unhappiness at other firms. In striving to have a consciously different culture from other firms, they accepted that this distinctiveness would come at a price, in the form of lower profits and partner compensation than would be earned at more purely commercially-focused firms. There was even a name for this: the "Heenan Tax".

Another objective of the firm's leadership from its very early days was the goal of expansion, beyond its Montreal base. The first initiative in this regard was the opening of a Toronto office. The responsibility for this mandate fell to the author who moved to Toronto, where he aggressively pursued lateral and new hires to build out its practice, both there and elsewhere. Although the firm's principal practice areas had been labour and employment, litigation and tax, its longer-term objective was for it to be a national, full-service law firm with offices in all major Canadian cities. In this objective, Heenan Blaikie was largely successful. Indeed, these efforts sparked a rapid growth in the firm to the point where, in 2010, it had a presence in all Canadian major markets and was about to open a new fifteen-lawyer Paris office the following year. However, there were serious clouds on the firm's horizon which led to it being in a state of crisis within three years and to its dissolution the following year.

To return to the question posed at the beginning: "What happened", there is no shortage of possible causes. Mr. Bacal exhaustively reviews these and concludes that the firm was brought down by a massive loss of trust and confidence, which ultimately led to a significant exodus of lawyers from the firm on the part of those who had other options. He also expresses the view that a number of those departing the firm at a time when last-minute rescue efforts were being made in an attempt to save it, had betrayed the firm in favour of their own self-interest. However, that seems a little harsh, given the chaos they were leaving behind and the unlikely prospect that the firm could successfully be turned around at that late stage. Indeed, the problems that the firm experienced in the run-up to its collapse made it highly unlikely that they could ever have recovered in those circumstances.

While undoubtedly many factors contributed to Heenan Blaikie's ultimate downfall, a number of these appear to have been self-inflicted. These most certainly would include the Firm's failure to replace, before it was too late, its long time management. To have done so on a more timely basis might have led to its adoption of much needed governance reforms, greater focus on problems associated with the Firm's over-rapid expansion and avoided the seriously divisive problems which it later encountered in its efforts to revamp its compensation distribution regime.

By not resolving issues relating to its long term strategy and inter-partner relationships, Heenan Blaikie had left itself vulnerable if outside events threatened its bottom line, such as occurred during the Great Recession, which devastated its financial health, prompting many partners to depart for greener, and more secure, pastures, and which led, ultimately, to its destabilization.

Yes, the "proximate cause" of the firm's failure was the departure of lawyers for other opportunities to a point where it could no longer carry on its business. However, surely that became inevitable once a majority of partners ceased to have confidence in its management or its possible rehabilitation.

In conclusion, Mr. Bacal's book makes an important contribution to understanding the need for strong law firm management while, at the same time, providing an enjoyable read.

**Tim Kennish**  
Toronto, ON



James Muir, *Law, Debt, and Merchant Power: The Civil Courts of Eighteenth-Century Halifax*. Toronto: [University of Toronto Press for the Osgoode Society](#), 2016. xiv + 282pp., appendices, notes, bibliography, index. Cloth; ISBN 978-1-4875-0103-7, Cdn \$70.00, Paper; ISBN 978-1-4875-2316-9, Cdn \$34.95.

After its foundation in 1749 as the capital of Nova Scotia, Halifax quickly acquired a full range of civil courts: a supreme court; courts for equity,

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admiralty law, and prohibited marriage and divorce, and an inferior court of common pleas. Compared to other contemporary jurisdictions, Halifax was exceptionally litigious: case files and/or court minutes survive for almost 5,000 civil cases during the period to 1766, and there were undoubtedly more cases than this. More than 90 per cent of them were in the inferior court, which is the principal focus of James Muir's book. Although the extent of documentation varies among cases, there is ample evidence for a study focused on who used the courts and on the workings of "day-to-day legal practice (p 9)." For example, more than 1,400 cases provide an occupation for both plaintiff and defendant, which allows a nuanced socio-economic analysis. One finding, explored in a thoughtful appendix on occupational designations in a colonial setting, is that the most frequent litigants nearly all appeared with more than one occupational or status description; fifteen of them had six or more. The implication is that those who were rarely involved in legal actions cannot be assumed to have had a fixed and definitive occupational title either.

Drawing on this large data set and using a few selected cases for detailed illustration, the core of the book is five chapters that address the stages in the legal process from initiation of an action to the exhaustion of avenues of appeal. The chapter on appeals also considers the workings of the other, less frequently used, courts. In Muir's period, there was just one fully trained lawyer in Halifax, Jonathan Belcher, sent from England as Chief Justice of Nova Scotia in 1754. A number of men included the practice of law among their activities, however; and lay justices of the peace sitting in Quarter Sessions, as elsewhere in the British legal system, administered civil and criminal justice at the inferior level. The system worked well for the everyday disputes that dominated court dockets, because fine-grained legal principles were seldom involved.

There were costs to pursuing a case; that plaintiffs did so with such frequency shows that incurring them made sense. Facing costs of their own and the risk of being charged the plaintiff's costs, defendants in turn had to choose whether to defend an action or let it go by default, as often happened. Cases of high value or in which there was a genuine dispute, as in whether a contract had been properly fulfilled or in which the value of offsetting claims was at issue, were the most likely to go to trial. A defendant might take this option also as a delaying tactic or in hopes of negotiating a settlement. Similar calculations were involved in the loser's decision to appeal a judgment. Actions that went to trial were decided by a jury unless the parties chose to refer the case to arbitration. Arbitrators could be expected to understand the workings of the local economy, as could many jurors. In a small community, jury duty was a recurring obligation for those eligible, and some men accumulated a great deal of trial experience, both as jurors and litigants.

A large majority of claims were for debts, typically for amounts of £20 or less, recorded either in book accounts or on notes and bonds. Only about six per cent of such actions were for £100 or more. As Muir's title indicates, he views the courts as part of the business system and a site of merchant power, arguing that the legal system was "framed in such a way as to regularly secure the interests of creditors over debtors, trade over production, merchants over craftspeople (p 9)." Yet in a credit-based economy, as he recognizes, creditors were also debtors. Trade and production were also more intertwined than these dichotomies suggest; if artisans brought fewer actions than merchants and traders, that reflected the differing scales of their business operations. Nor, given the role of knowledgeable juries and arbitrators in adjudicating disputes and the probability that most debtors had voluntarily taken on the debts that they now could not or would not pay, is it clear how the system was unfair to debtors, as this phrasing might suggest.

As Muir would agree, approaching the business system through the courts is akin to studying marriage from the records of divorce. Although he does not directly address the question, it seems that these legal actions, for all their frequency, collectively represented only a small fraction of the business activity in Halifax. What they reveal, he argues, is the particular uncertainty of doing business in a new place, "a community whose members had few ties to one another (p. 185)", where economic prospects fluctuated widely and transiency was common. Because war was one element in those fluctuations, it is of considerable interest that the military hardly appears in the records of the civil courts – it was rare for officers to be involved in civil litigation, and if ordinary soldiers and sailors were, they were not identified as such.

This is the 103<sup>rd</sup> book published by the Osgoode Society for Legal History since 1981, part of a sustained effort to understand the law, the courts, and practitioners over the whole of Canadian history and from many perspectives. Is there a chance that the CBHA can help to shape a comparable collective project on Canada's business past?

**Douglas McCalla**  
**University of Guelph**

The **Canadian Business History Association** has, as one of its mandates, the goal of ensuring the preservation and presentation of

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the history of Canadian business enterprises. Recently one of the greatest of Canadian business entrepreneurs and managers called upon

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away - Mr. Peter Munk. The **CBHA/ACHA** took particular interest in the archiving of Peter Munk's documents and material pertinent to the history of his various business enterprises. You can imagine our pleasure on hearing from his daughter, Nina Munk, that this material has now been safely ensconced in the archives at the University of Toronto. Our kudos to Nina Munk for taking the initiative to preserve this important store of material for future generations. This is a model we hope can be used by all Canadian business enterprises to follow.

**Joe Martin**  
President, **CBHA/ACHA**

### MEET YOUR FELLOW MEMBERS

**Gerry Gummersell** is chairman and managing director of The Gummersell Group Inc., a Canadian-based fund raising and investment financing company. He is also the founding chairman and chief executive officer of CANIFEX International, a non-profit, registered charitable corporation that encourages international business co-operation for sustainable development. Gerry is a member of the Board of Directors of New Federation House, a non-profit corporation and a registered charity dedicated to public education on political, social and economic issues.



### REMEMBER TO RENEW YOUR MEMBERSHIP

The CBHA/ACHA sends out renewal reminders on the yearly anniversary of your membership. Please be sure to renew your membership on a timely basis to continue accessing the Member's Only features of the website, access to travel grants and research funding, and much more.



The following upcoming events are of interest to Members:

**July 17th - July 21st: International Committee for the History of Technology.** Sainte-Etien, France. Annual Conference.

**July 29th - August 3rd: 18th World Economic History Congress.** Boston, United States.

**August 12th - August 18th: Society of American Archivists Annual Conference.** Washington, DC.

**September 6th - September 8th: European Business History Association Annual Conference,** Ancona, Italy

**September 29th - September 30th: Congress of the Business History Society of Japan,** Kyoto University, Japan

**MEMBERS ONLY** can view full details on each of these events on the **CBHA/ACHA** website by logging in and accessing the **MEMBERS ONLY** section - Calendar of Events.

**A reminder that the CBHA/ACHA provides travel and research grants to its members to attend and participate. More information and an application form is available on the website to members in the MEMBERS TAB once logged in.**

### NEW MEMBERS WELCOME

Do you know any individual, group, or corporation that would have an interest in joining the CBHA/ACHA? If so, please encourage them to visit our website or contact us for more information.

There are several types of membership in the **CBHA/ACHA** with different annual membership fees:

- Young Scholars/Students/Retired \$25/year
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Benefits of membership can include:

- Full access to Members Only section of website with unique member id and password;
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- Inclusion of corporate logos, identity, and links on the CBHA/ACHA website;
- Receipt of monthly newsletter;
- Discounts on leading journals and books in the field;
- Assistance and advice on corporate archival record management policies and setup;
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