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SPECIAL EDITION: LITIGATION 2021

RESUSCITATING THE COURTS

MOMENTUM BUILDS
AS RECOVERY FUELS
NEW LITIGATION



WHITE-COLLAR CRIME ON THE RISE

Pandemic-driven instability to blame for heightened risk factors

TOP 10 CASES

Top business decisions and honourable mentions from 2020-2021

DISPUTES & BUSINESS CLAIMS

Arbitration favoured as courts have been slow to decide cases

Risk has accelerated as courts are delayed

For commercial litigation, the pandemic's initial story was about delays. Courts closed, and clients in crisis mode stopped making long-term decisions about their cases.

While many of these delays are still with us — courts have rightly prioritized criminal and family matters to the detriment of commercial disputes — the pandemic's effects are now a story of acceleration.

"This is an inflection point now when the attitudes are beginning to change," says Hugh Meighen of Borden Ladner Gervais LLP (p. 16). "Issues of strategic litigation, or dormant litigation, are now more palatable than they previously were, and that may ultimately result in more claims and proceedings."

And it is not just companies that are accelerating their decision-making. Regulators have also ramped up.

"I would have thought that the pandemic would have slowed down the regulators because everyone's working from home [and] a lot of institutions have struggled to keep up," says Christopher Richter at Torys LLP (p. 14). "But our regulators have been quite active, maintaining their activity levels and their enforcement level."

Remote work has sped up technological adoption, which opens more companies up to privacy and data risk.

"The reality is, when we live in a big data world, things will go wrong," says Paul-Erik Veel at Lenczner Slaght LLP (p. 20). "There will be data breaches. There will be circumstances where appropriate consent wasn't obtained."

While social change is not directly attributable to the pandemic, it has no doubt accelerated recently as well.

As the "#MeToo" movement matures, "and there is more of a focus on diverse workplaces, and racism in workplaces or institutions, I think we're going to see more class actions that make allegations about institutional abuse or harassment," says Ranjan Agarwal of Bennett Jones LLP (p. 24).

And while some white-collar crime has decreased — think face-to-face boozy meetings with envelopes of cash — reliance on technology has opened new vulnerabilities. Traditionally, investing in a company meant going to a place to kick the tires, whereas due diligence is harder on Zoom calls.

So, while companies had a chance to regroup in early 2020, that did not last long. Strategic litigation advice is again a critical component of business planning, and there is no time to wait.

Tim Wilbur, Editor-in-Chief

LEXPERT

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