

# Heenan Blai~~k~~ie

THE MAKING  
AND UNMAKING  
OF A  
GREAT CANADIAN  
LAW FIRM

ADAM DODEK

**ADAM DODEK**

# Heenan Blaikie

**THE MAKING  
AND UNMAKING OF A GREAT  
CANADIAN LAW FIRM**



**UBC**Press · Vancouver

# CONTENTS

*Preface ix*

Prologue: What a Party! 1

.....

## FOUNDATIONS

- 1 | The Handshake: Creating a New Law Firm 5
  - 2 | Building a Law Firm: The First Decade in Montreal 16
  - 3 | The Game Changer: Pierre Trudeau Comes on Board 26
  - 4 | “A Different Kind of Law Firm”: Creating a Unique Culture 34
  - 5 | On the Verge: A Law Firm Seeking to Go Where? 44
  - 6 | Launching Toronto: Moving to the Centre of the Universe 54
  - 7 | Joe Groia: An Outsider among Outsiders 64
  - 8 | Toronto in the 1990s: Building an Office, Building a Brand 74
  - 9 | The Culture Crystallizes: “A Kinder, Gentler Law Firm” 83
  - 10 | Not Tories? Struggling to Define an Identity and a Vision 93
- .....

## EROSION

- 11 | The Donaldson Interlude: Everyone Deserves a Second Chance 105
- 12 | The Lure of Growth: Becoming a National Law Firm 115
- 13 | The Critical Years: 1993–98 125
- 14 | The New Millennium: The Culture Begins to Fray 133

- 15 | A “Hotel for Lawyers”: Law Firm Partnerships 144
- 16 | “A Family Business”: Governance and Management 152
  - 17 | Bigger than the Firm: Marcel Aubut 163
- 18 | The Persistence of White Male Power: Women and Diversity in Big Law 174
- 19 | The End of the Decade: End of the Dream 187

.....

## COLLAPSE

- 20 | The Money Wells Dry Up: Castor Holdings and Atomic Energy 199
  - 21 | We’ll Always Have Paris: International Follies 209
  - 22 | Lawyers, Guns, and Money: African Misadventures 218
    - 23 | Double Trouble: Botched Succession 229
    - 24 | Quicksand and Crisis: Coffee and Kleenex 239
      - 25 | Implosion: The Final Weeks 252
      - 26 | Cleaning Up: When a Law Firm Fails 261
- Conclusion 272

*Acknowledgments* 279

*Notes* 282

*Selected Bibliography* 350

*Index* 355

## PREFACE

**THE DRAMATIC COLLAPSE** of Heenan Blaikie in February 2014 is a singular event in Canadian history. It was the first – and remains the only – national law firm to have failed. Heenan’s demise sent shock waves through the Canadian legal and business communities. Within a span of weeks, nearly five hundred lawyers and a thousand staff in Toronto, Montreal, Ottawa, Quebec City, Trois-Rivières, Sherbrooke, Calgary, and Vancouver were suddenly out of work. The two-hundred-plus partners of Heenan Blaikie saw their equity disappear and found themselves owing hundreds of thousands of dollars to the bank. Some had to take out a second mortgage or even sell the house to cover their debts.

This book tells the story of Heenan Blaikie’s dramatic rise to prominence and its precipitous fall. It also chronicles the challenges and changes in the Canadian legal profession over the four decades between 1973 and 2014, set against the broader context of changes in Canadian society during this period, including the oil crises of the 1970s, the rise of Quebec separatism, the shift of Canadian business from Montreal to Toronto, the great economic expansion of the 1980s, 1990s, and early 2000s, and the global recession of 2008–09.

Heenan Blaikie was one of Canada’s largest law firms. At its height in 2012, it boasted over 560 lawyers, making it the seventh-largest law firm in Canada.<sup>1</sup> This book describes what it is like to work in a large law firm, which has much in common with working in any big organization. Many readers will recognize their own experiences in the story of Heenan Blaikie: the importance of corporate culture, workplace bullying, the challenges faced by women and BIPOC employees, and the continuing prevalence of sexual harassment. These experiences occur at the intersection between the legal profession and the business of law.

**LAWYERS GO BY MANY** names in Canada and around the world: barristers, solicitors, attorneys, advocates, counsellors, and so on. For hundreds of years, lawyers by any name have argued about whether the practice of law is a profession or a business. The argument may be interesting, but it is not particularly useful, because the practice – at least as far as private practice in a law firm setting – is clearly both.<sup>2</sup> However, for lawyers, the magnetism of the professional ideal remains powerful, and the tension between it and the business of law is strong.

Roscoe Pound, a respected American legal scholar, educator, and dean of Harvard Law School, defines a profession as a group of people “pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.”<sup>3</sup> The practice of law clearly qualifies; indeed, law has historically been seen (along with medicine and the priesthood) as the paradigmatic profession. That is the idealized vision. At the other extreme is the stereotype of the law as little more than a money-grubbing exercise. The truth lies somewhere between the two, and the tension between the professional ideal and the business reality varies from time to time and from place to place.

This book reveals how that tension played out in a law firm as it grew over four decades. Many lawyers don’t think much about the business side of things, preferring to focus on practising their profession. But from its inception, the lawyers at Heenan Blaikie fancied themselves “entrepreneurs,” a specific class of businesspeople. And the firm did indeed have many characteristics of an entrepreneurial business, particularly start-ups.

Although the practice of law is undoubtedly a business, it differs from most businesses in that the owners are at the same time the means of production, the service providers, and the managers. They control the clients, and they are often responsible for marketing or business development. Historically, lawyers have been reluctant to accept the need for external professional expertise. In this, Heenan Blaikie was no exception. By the time it realized that it needed expert help with strategic planning, business-plan development, and management, it was too late. For far too long, it had been run much like a family business. This theme – family – is critical to understanding both its success and its ultimate failure.

### A NOTE ON METHODOLOGY

This book is based on over one hundred and eighty interviews that I conducted with former Heenan Blaikie lawyers and an additional forty-plus interviews with other legal-industry insiders (such as law firm managing partners, senior lawyers, recruiters, and suppliers). Most interviewees consented to be identified only as a “former Heenan Blaikie partner,” a “Heenan Blaikie lawyer in the Montreal office,” a “former managing partner of a major Canadian law firm,” and the like. A few kindly agreed to be identified by name. The interviews were supported by broad research using available sources on large law firms, the practice of law, business, management, and corporate governance. Unfortunately, there are no “Heenan Blaikie archives,” but I was provided access to key documents and correspondence from Heenan Blaikie insiders. In addition, I consulted archival material at Library and Archives Canada and relevant oral histories from the Osgoode Society for Canadian Legal History. Empirical research on large law firms in Canada is sparse, and I believe that my research represents the largest Canadian qualitative study of lawyers working in such firms undertaken to date.

**DURING MY INTERVIEWS** with former Heenan Blaikie lawyers, I repeatedly heard the phrase “it was like a family.” But, as one long-time Canadian legal-industry expert observed, “If it was a family, it was a very dysfunctional one.”<sup>4</sup> How can a law firm with more than fifteen hundred lawyers and employees be like a family? How can any large organization?

During its relatively short existence, between 1973 and 2014, Heenan Blaikie developed a strong and unique culture, as well as a distinctive brand as “a different kind of law firm,” one that was “kinder” and “gentler.” Issues of culture, management, governance, and succession planning are critical to understanding its collapse and the challenges that law firms face today. Heenan Blaikie was unable to sustain its values, and, at times, it even acted in opposition to those values. It neglected the business side of the equation, and it was cavalier about its finances until it was too late.

Ultimately, Heenan Blaikie failed spectacularly. But it was a great ride.

## PROLOGUE

### WHAT A PARTY!

ON THE MID-NOVEMBER evening in 2013 when Heenan Blaikie celebrated its fortieth anniversary, you could feel the chill in the Montreal air. The day had started off clear, but by the afternoon the sky had turned cloudy and the weather had warmed to just above freezing.<sup>1</sup> Walking from Heenan Blaikie's posh downtown offices at 1250 René-Lévesque Boulevard to the party venue at the Centre Eaton took only ten minutes, so most of the Heenan lawyers would have traversed the distance through Montreal's famed underground city.

The event was being held at the Musée Grévin, a wax museum that had opened earlier that year in the Centre Eaton,<sup>2</sup> named for the iconic Canadian business that had gone bankrupt years before. Like all Heenan Blaikie parties, it was a lavish affair, albeit in a strange locale. Guests sipped wine and snacked on fancy hors d'oeuvres amid wax figures of Céline Dion and former prime minister Pierre Elliott Trudeau, who had been counsel at Heenan Blaikie from 1984 until his death in 2000.<sup>3</sup> The figure of Trudeau appeared to tower over that of his political nemesis, Quebec premier René Lévesque, whose name graced the street that housed the Heenan offices.<sup>4</sup>

All three founding members of Heenan Blaikie were in attendance: Roy Heenan, Peter Blaikie, and Don Johnston. The three men were living icons who had founded the firm on a handshake in 1973 and watched it grow into one of Canada's largest law firms – a national behemoth with more than five hundred lawyers and over a thousand staff at its zenith.

One might have expected the firm's lawyers from across the country to attend the grand soirée. But almost none of them did. A few days earlier, Heenan Blaikie's nationwide leaders had flown in for discussions



about the future direction of their imperilled firm. Its executive committee met with independent legal consultants in Montreal over two days. The fractious meetings erupted into an open clash between the co-managing partners, Montreal's Robert Bonhomme and Toronto's Kip Daechsel, which led to a successful palace coup by Bonhomme to push Daechsel aside.<sup>5</sup> With conflict now boiling to the surface, few of the firm's leaders were in the mood for a party. Daechsel attended but found himself treated like one of the wax figures: eyed with curiosity from a distance though largely ignored. In any event, the Toronto office had thrown its own party the month before, at its fancy Bay Adelaide offices, which now had many noticeably empty rooms due to the exodus of lawyers plaguing the firm.<sup>6</sup>

Like the wax figures in the museum, Heenan Blaikie seemed to be the real thing – unless you were able to get a very close look at it. To the outsider, it looked like a single national firm, but it had become little more than a collection of its constituent offices. Lawyers working in Vancouver and Sherbrooke, Calgary and Paris, Ottawa and Quebec City, Trois-Rivières and Toronto, or Montreal and Victoria shared little in common. Over the previous several years, tensions had flared between Toronto and Montreal, the two largest offices.

Just two months after the bash at the museum, Heenan Blaikie partners from all across the country would descend on Montreal. But this time, the event would not be a celebration. Instead of Chardonnay and cupcakes, anger and tears were the only items on the menu. The partners met in a spartan hotel ballroom to vote on the firm's dissolution. By February 2014, Heenan Blaikie would be no more.

# Foundations

.....

*This page intentionally left blank*

# 1

.....

## THE HANDSHAKE CREATING A NEW LAW FIRM

*Over the years the regular repetition of [stories about the Handshake] and other stories became woven into the fabric of the firm.*

NORMAN BACAL, *BREAKDOWN: THE INSIDE STORY  
OF THE RISE AND FALL OF HEENAN BLAIKIE*

**IN 1973, THREE AMBITIOUS** young men shook hands and founded a law firm in Montreal. In taking this step, they shunned a formal written agreement to govern the arrangements of their partnership. It would be based on trust.

Within three decades, the firm that would become Heenan Blaikie grew to be one of Canada's largest, with offices in Montreal, Toronto, Ottawa, Calgary, Vancouver, Quebec City, Sherbrooke, Trois-Rivières, and Paris. Although it celebrated its fortieth anniversary in grand style at the Musée Grévin, it would not survive to mark its forty-first. By February 2014, it was no more. But all of this was a long way off in November 1973, when Donald Johnston (known to all as "Don"), Roy Heenan, and Peter Blaikie shook hands and set out to build their firm.

Don, Roy, and Peter were exceptional men who would go on to have extraordinary careers, both with and away from Heenan Blaikie. In 1973, they were all under forty – Don was thirty-seven, Roy thirty-eight, and Peter thirty-six – and were all graduates of the law faculty at McGill University, the bastion of Montreal's anglophone community. An important link between them, the McGill connection would remain significant in the firm they created. Who were these three men?

Don Johnston was a man on the rise. Born on a small farm about fifteen miles outside of Ottawa in 1936, he grew up in very modest surroundings.

Until the age of nine, he and his older brother trekked to a one-room schoolhouse each day. Their dad was away most of the time; he had joined the Royal Flying Corps and was commissioned as a flying officer during the First World War. When the Second World War broke out, he was too old to be retrained as a pilot, so he enlisted as a flight sergeant, training others. Smart, hard-working, and handy, he spent most of his life moving from one odd job to another, ultimately making his way to McGill where he worked as the supervisor of Athletic Facilities.<sup>1</sup> Don got his lifelong love of music from his mother, Florence; in his political memoirs, the most prominent photograph of her shows her sitting in front of a piano.<sup>2</sup> At the end of the war, Don's father returned, and the family moved to Ottawa, but they didn't stay long, as they followed his quest for work to St. Jean, Quebec, and ultimately to Montreal. The time away, the frequent moves, or other factors created stress on the marriage, and Don's parents divorced when he was twelve; as he put it, his life "seemed to fall apart."<sup>3</sup> Divorce and single-parent families were not common in the late 1940s, and the breakup added to the financial hardships of the family. The memory of those days and the desire to take care of his mother would later motivate Don to make one of the biggest decisions of his professional career.

Don attended the High School of Montreal, which boasted such illustrious alumni as Oscar Peterson, Christopher Plummer, and Stanley Hartt.<sup>4</sup> In 1953, he entered McGill. After studying arts for two years, he switched to law, where one of his classmates was Leonard Cohen, who dropped out after a year at the suggestion of professor and poet F.R. Scott, with whom Don would maintain a lifelong connection. Don and Leonard shared a cold-water flat during Don's last year of law school; Leonard's late-night partying and womanizing did not seem to affect Don, who graduated in 1958 with the gold medal for the highest standing in his class.<sup>5</sup> However, he was not called to the bar as a lawyer until 1961. His route could be described as circuitous; Don's fast-tracked education proved a stumbling block to becoming a lawyer.

The Barreau du Québec – the body that controls entry to the legal profession in the province – had an archaic rule that required prospective lawyers to possess a BA and to have studied Latin and philosophy. Moreover, candidates could not be called to the bar and licensed as lawyers until at least four years after they had completed their bachelor's degree. As one senior lawyer in the province notes critically, "A Nobel Prize winner in astrophysics, who had taken a law

degree thereafter, would not have been able to practise in Quebec because he did not have a B.A.”<sup>6</sup>

While he attended law school, Don worked at the Montreal law firm of Stikeman Elliott. It had been launched in 1952 under the powerful personalities of Heward Stikeman and Fraser Elliott, who clearly saw something in the young Johnston.<sup>7</sup> However, Don had to find a way to satisfy the Barreau du Québec’s requirements before he could begin work as a lawyer. Don may not have been a Nobel Prize winner, but he was creative and he was brazen. He won a scholarship to spend a year studying in Grenoble, and he convinced McGill’s dean of arts to credit that year toward a BA and to allow him to do a fourth year of arts concurrent with a fourth year of law school at the Université de Montréal. This enabled him to obtain the requisite degree for the Barreau du Québec. However, four years had not elapsed since he received this cobbled-together degree. So Stikeman Elliott sponsored (paid for) a private bill before the Quebec legislature to enable him to be called to the bar.<sup>8</sup> This was an unusual but not unprecedented solution; six other putative lawyers also had private bills enacted that same session to allow them to be called to the bar, including Michael Pitfield. Don’s future colleague in the Trudeau government, Pitfield would serve as a senior adviser and clerk of the Privy Council – the head of the public service.<sup>9</sup> Stikeman lawyer, future justice minister, and future prime minister John Turner personally took Don to the *batonnier* (bar president) to be sworn in as a lawyer as soon as the bill passed into law.<sup>10</sup>

Don joined Stikeman in 1961 and became a recognized tax expert. In 1967, he left the firm with two colleagues to found McCarthy, Monet and Johnston. That arrangement lasted six years, until Don, Roy, and Peter broke away in 1973 to create their own firm – initially known as Johnston, Heenan and Blaikie.

In 1978, Don left the firm after being elected to Parliament as a Liberal in a by-election. He would remain a Liberal MP for a decade, serving as a minister in various capacities in Pierre Trudeau’s government from 1980 to 1984 and as minister of justice and attorney general of Canada in John Turner’s short-lived 1984 government. Don was president of the Liberal Party of Canada between 1990 and 1994, and from 1996 to 2006 he was the secretary-general of the Organisation for Economic Co-operation and Development (OECD), headquartered in Paris. Although his name was removed from that of the firm

when he departed in 1978 (as required by the Barreau du Québec), he maintained an affiliation with it over the decades and was listed as counsel to the firm after he completed his term with the OECD.<sup>11</sup>

Born in Mexico City in 1935, Roy Heenan was a man who embraced life, the law, and his adopted Canada to the fullest. His mother, Yvonne Lacaud, came from a French family that first immigrated to Argentina and later settled in Mexico, running various ventures in mining and banking.<sup>12</sup> In the 1910s, Roy's maternal grandfather created what would later become la Banque Française du Mexique, which collapsed in 1922.<sup>13</sup> Roy's father was a well-travelled insurance salesman, and the family lived in China for two years, beginning when Roy was two.<sup>14</sup> He was raised partly by his maternal grandfather because, with China and Japan at war at the end of the 1930s, his mother returned to Mexico with Roy and his older sister while his father remained in China.<sup>15</sup> As with Don's parents, the physical separation probably strained the relationship of Roy's parents. They divorced, and Roy's mother moved to Canada with the two children in 1947, settling in Montreal.<sup>16</sup> Roy, who was twelve, was soon sent to boarding school in Port Hope, Ontario. He returned to Montreal to attend McGill where he earned a BA in 1957 and his law degree in 1960.<sup>17</sup> After being called to the Quebec bar in 1961, he began his legal career at the Holden Hutchison firm in Montreal.<sup>18</sup>

Roy quickly established himself in the developing field of labour law. In 1968, he departed Holden Hutchison – then known as McMaster Meighen – to join McCarthy, Monet and Johnston. In 1973, he, Don Johnston, and Peter Blaikie split with their partners to found Johnston, Heenan and Blaikie. Roy spoke English, French, and Spanish and was actively involved in the community, especially in the arts, serving on the boards of the CBC, the Montreal Museum of Fine Arts, the Beaverbrook Art Gallery, the Art Gallery of Ontario, and the Musée d'art contemporain de Montréal, among others.<sup>19</sup> He had a lifelong friendship with Pierre Trudeau, and he was the founding chair and a director of the Pierre Elliott Trudeau Foundation from 2002 to 2012.<sup>20</sup>

Of the three founders, Roy maintained the longest and strongest link to Heenan Blaikie. After Don left in 1978, the firm bore various official names, but its unofficial moniker was Heenan Blaikie. The firm was an amalgam of the visions and personalities of the two strong-willed men. Peter left in 1993, and from that point on, Heenan Blaikie essentially became "Roy's firm." Roy was its first and only chairman for

almost four decades, until 2012, and he remained with it until it closed its doors in 2014. When he passed away in 2017, tributes flowed in.<sup>21</sup>

Peter Blaikie was the most junior of the three founders in terms of legal experience, but he was their peer in age and would prove to be their equal in leadership of the new firm. He was born in Shawinigan in 1937, the birthplace and home of future prime minister Jean Chrétien, who would later join Heenan Blaikie. Peter's roots were Scottish via South Africa. His great-grandfather left Scotland to settle in South Africa in 1861, dying in battle during the Boer War in 1900. His father was a Rhodes Scholar who immigrated to Canada in 1924 and who worked as chemist in the lab of the Shawinigan Chemical Industries, marrying Mary Petrie Black in 1932. During the Second World War, he served overseas as an artillery major.<sup>22</sup>

Peter received his BA from Bishop's University in Lennoxville, Quebec, in 1958. Like his father before him, he won a prestigious Rhodes scholarship to study at Oxford. He remained at Oxford after his Rhodes year and earned the equivalent of a master's degree in 1960.<sup>23</sup> While Don and Roy were beginning their legal careers, Peter returned to Shawinigan to teach high school.<sup>24</sup> After two years of teaching, Peter too went off to McGill, receiving his law degree in 1965. Like Don, he secured a position at Stikeman Elliott, completing his *stage* (articling) there and was called to the bar (in the ordinary way) in 1966.<sup>25</sup> Don recruited Peter to leave Stikeman Elliott to form McCarthy, Monet and Johnston in 1967. Here, the three founders of Johnston, Heenan and Blaikie would work together for the first time.

Peter was Heenan Blaikie's managing partner from its founding in 1973 until 1993. That year, he departed to become the president and CEO of Ucan Security Systems, a Montreal company that had achieved global success by supplying locks to the likes of the Pentagon and the United Nations.<sup>26</sup> In 1998, Peter returned to the firm that bore his name, but though he maintained an office and a connection, he was no longer a partner and was not involved in the management of Heenan Blaikie. He was still there at the time of its collapse.

The three men were all highly educated and well travelled. All had fathers who were absent during long periods of their childhood. In the case of Don and Roy, their parents divorced, a rare and stigmatizing event in the 1940s. They were raised by single mothers, which probably pressured them to become independent. They all spoke English and French (Roy also spoke Spanish). As educated anglophone white



men coming of age in Quebec in the 1960s, they would have found a world full of opportunities. They had seen the world, and their visions extended beyond themselves and beyond the world of the law.

### THE STIKEMAN ELLIOTT CONNECTION

To understand what transpired in 1973 between these three young men, we need to go back more than a decade to 1961, the year that Don Johnston began his legal career. He was already recognized as “an individual of great talent” when he joined Stikeman Elliott as a lawyer.<sup>27</sup>

Once there, Don quickly became the golden child. Highly successful, Stikeman Elliott was run autocratically by its two founding partners, Heward Stikeman and Fraser Elliott. There were no other partners, and though the lawyers were paid well, they were effectively employees. Stikeman and Elliott ran the show.

Various important lawyers worked there, but Don was the only one whom both Stikeman and Elliott “had identified as having the most potential to develop into a real superstar.”<sup>28</sup> He was all of twenty-seven when he came aboard, and this was high praise considering that John Turner was also at the firm. It therefore came as a shock to his colleagues when, in early 1967, Don and two other lawyers left Stikeman Elliott to form their own firm: McCarthy, Monet and Johnston. They took with them a first-year lawyer because they needed a junior to do the grunt work. That lawyer was Peter Blaikie.

According to Stikeman Elliott’s official history, Don had been unhappy with his remuneration. He was supporting his dying mother and planning on getting married, and he needed more money. But since its inception in 1952, Stikeman Elliott had had a clear policy: no one except Stikeman and Elliott would be made partner. This constraint frustrated quite a few of its lawyers and served as a catalyst for the departure of Don and his three colleagues.<sup>29</sup>

When they left Stikeman Elliott in 1967, Gerry McCarthy, Jean Monet, and Johnston did not set off to change the world or even the legal profession. However, they did succeed in changing Stikeman Elliott. In the annals of that firm, their departure was described as “by far the most dramatic event faced by the new firm.”<sup>30</sup> It sparked a policy change permitting the admission of new partners and an emphasis on recognizing initiative and talent at the earliest opportunity rather than limiting upward mobility.<sup>31</sup> Those modifications helped Stikeman

Elliott recruit some of Canada's best legal talent and become and remain one of its most prestigious law firms. Yet the obstinacy of Heward Stikeman and Fraser Elliott – not unusual for its time – paved the way for the eventual creation of Heenan Blaikie a few years later.

For Don Johnston, Roy Heenan, and Peter Blaikie, their experience, or perhaps their experiment, at McCarthy, Monet and Johnston could be considered a failure. The small firm existed for about six years and left no legacy of note other than being a springboard for the creation of Johnston, Heenan and Blaikie, as it was first called. But failure is often the best teacher, and their tenure at McCarthy, Monet and Johnston would affect Don, Roy, and Peter and would mark the firm they created for decades.

With Peter Blaikie, McCarthy, Monet, and Johnston were four lawyers working together.<sup>32</sup> In 1968, they were joined by Roy Heenan, who left the small Montreal firm of Holden Hutchison, and the firm became McCarthy, Monet, Johnston and Heenan.<sup>33</sup> Three other lawyers would come on board, including Guy Dufort, who later moved to Johnston, Heenan and Blaikie.<sup>34</sup> However, their mutual dissatisfaction with Stikeman Elliott was insufficient to bind the partners together and sustain them as a firm. The five were not a good fit, and their partnership did not last long.

A firm made up of Monet, McCarthy, Johnston, Blaikie, and then Heenan made sense on paper. Jean Monet had small-business clients, especially in the francophone community, Don Johnston was a creative tax lawyer, and Gerry McCarthy was an academic who happened to be in private practice. Their clients were small and growing businesses, members of what would later be termed “the entrepreneurial community.” Roy Heenan brought with him an impressive labour practice. Nevertheless, this union did not function well.

After a few years, it became clear that the five lawyers had very different visions of the practice of law. McCarthy and Monet were satisfied with the status quo in terms of the size of the firm and the work they were doing. They were content to live in the moment – concentrating on the files at hand and sending out bills for them. For their part, Johnston, Heenan, and Blaikie were looking to the future. They had visions of expanding to build a full-service firm. After discussing their plans for several months, they decided to cut ties with McCarthy and Monet and pursue their own course.

And so, in November 1973, the firm split into two – literally. A divider ran through the office, with McCarthy and Monet on one side and Johnston, Heenan, and Blaikie on the other. Accompanying the latter were three students who would become fixtures at Heenan Blaikie: Claudette Bellemare, Kip Cobbett, and Suzanne Thibaudeau. The breakup was rather cordial, as these things go. The partners had haggled over multiple versions of a partnership agreement, an experience that had an immediate and long-lasting impact on Heenan Blaikie. With a simple handshake, Johnston, Heenan, and Blaikie embarked on a venture whose ultimate trajectory none could have imagined at the time.

### **FOUNDING MYTHS: THE HANDSHAKE**

Every firm has an origin story. Some are rather vague, relaying little more than the who, the what, the when, and maybe the where. For example, the origin stories of Osler, Hoskin & Harcourt and McCarthy Tétrault – two of Canada’s largest and most successful law firms – are intertwined:

In the fall of 1862, when Britton Bath Osler began to practise law in the village of Dundas, Upper Canada, forty miles west of Toronto, he was twenty-three years old. The man with whom Osler went into partnership was one of the few Canadian lawyers of the late nineteenth century who would rank as his equal. At forty-five, D’Alton McCarthy was two and a half years older than B.B. Osler when they formed McCarthy, Osler, Hoskin & Creelman in 1882.<sup>35</sup>

Not much excitement there.

Other origin stories are rather quaint, conveying a bit more about the people involved. At Stikeman Elliott, the story goes that on a Sunday night in late 1951 or early 1952, Heward Stikeman was in his basement painting a table for an electric train for his children. Fraser Elliott dropped in for a beer, and they agreed to create a firm.<sup>36</sup> Stikeman Elliott was born over beer in a basement – though it’s not a tale that this top-flight firm promotes.

In contrast, Heenan Blaikie’s origin story of the Handshake achieved legendary status. That does not mean it is exaggerated or untrue. Quite the opposite: no one has ever challenged the veracity of its core

elements. Rather, as people at Heenan Blaikie repeated the tale for decades, to each other and to the outside world, it took on meanings that involved more than simply explaining how the firm came to be.

The Handshake has all the characteristics of a myth – a means of explaining the significance of something’s existence.<sup>37</sup> According to Walter Bennett, author of *The Lawyer’s Myth*, myths “help us define ourselves in relation to our communities and to our greater society and help explain our and our society’s eternal significance. They help us interpret the unknowable so that we can begin to comprehend it and to envision our role in the universe.”<sup>38</sup> Myths articulate and carry the values of a society; they support and justify a certain social order.<sup>39</sup> In his book *Breakdown: The Inside Story of the Rise and Fall of Heenan Blaikie*, Heenan Blaikie partner Norman Bacal writes, “Over the years the regular repetition of [stories about the Handshake] and other stories became woven into the fabric of the firm.”<sup>40</sup> The Handshake was not simply an account about how the firm was founded; it reflected how the lawyers at Heenan Blaikie saw themselves. Repeated time and time again, it was retold in many media articles published after the collapse.<sup>41</sup> It was central to the firm’s identity but also contributed to its demise. But what did it mean to found a law firm on a handshake, without a written partnership agreement?

Failing to secure such an agreement was both romantic and reckless. Legally, a partnership does not need a written agreement to be valid. If none exists, default provisions under the applicable provincial statute automatically apply.<sup>42</sup> But getting it in writing enables the partners to vary the statutory provisions or expand upon them. An agreement can be as short as a few paragraphs or a few pages, or it can run to tens or even hundreds of pages.

The founders’ refusal to have a written agreement represents a romantic vision of the practice of law. The Handshake clearly conveys a relationship based on trust rather than on rules. It reflects eighteenth- and nineteenth-century notions of honour and chivalry: a gentleman’s word is his bond. The Handshake was an optimistic view of the practice of law and of the relationship between partners. According to Norm Bacal, later co-managing partner of Heenan Blaikie, Roy Heenan had absorbed two principles from the evidently fractured experience of McCarthy, Monet, Johnston, Heenan and Blaikie – that the partners of Heenan Blaikie would have no rules and that they would devote their time and energy to fighting their competitors, not each other.<sup>43</sup> These

goals were optimistic and perhaps naive, if not arrogant. Ultimately, the absence of a written partnership agreement was reckless.

Lawyers are taught to identify potential problems, to look out for their clients' best interests, and to avoid, mitigate, or manage risk. It is hard to imagine a situation where a lawyer would advise a client not to demand a written partnership agreement. Indeed, such advice could probably constitute malpractice. So, on one hand, it is surprising that Don, Roy, and Peter did not follow the advice they would have given to any client. On the other hand, it is not unusual to see lawyers doing the exact opposite of what they advise their clients to do. This occurred later in the behaviour of some Heenan Blaikie partners, in the governance of the firm, and in how it made decisions, even big ones such as opening an office in faraway (and expensive) Paris.

In the nineteenth century, it was not uncommon for law firms to lack written partnership agreements.<sup>44</sup> Most were sole proprietorships (by definition one cannot be in partnership with oneself, at least not in a legal sense) or partnerships of two or three lawyers.<sup>45</sup> Throughout most of the nineteenth century and into the twentieth, Canadian law firms were not in "growth mode"; their size remained relatively stable.<sup>46</sup> But by the 1960s, the legal profession was proliferating, with more lawyers entering it and more business for them as the economy expanded. By the early 1970s, when Heenan Blaikie was founded, written partnership agreements were the norm.<sup>47</sup>

Johnston, Heenan and Blaikie did not expect to remain a firm of five or six lawyers; it hoped to provide the full range of legal services to its clients, from corporate commercial to tax to labour to litigation. Indeed, as we shall see in the next chapter, it had already tripled in size within several years. Ultimately, the principles underlying the Handshake would contain the ingredients for the firm's remarkable success but also the seeds of its eventual downfall.

The firm was not founded on a whim. The three founders put considerable thought into their venture, meeting at their alma mater, McGill, to discuss their plans. With just three lawyers, the new firm may have been small, but its goals were lofty. The founders were young, but they had seen enough of the practice of law to know what they wanted and what they did not. Writing in 2014, as the firm teetered on collapse, Peter looked back upon four decades to articulate what he described as its "Founding Principles."<sup>48</sup> First, there would be no written partnership agreement. This was partly in response to the

rigidity at McCarthy, Monet and Johnston. Second, large discrepancies in compensation between different types of lawyers would not be the norm. Third, the most highly remunerated partners would not be paid a great deal more than the most junior ones. And fourth, not only would work be delegated to younger lawyers as soon as possible, but so would responsibility for client relationships.<sup>49</sup> These principles lay at the heart of the firm.



## LAW AND SOCIETY SERIES

W. Wesley Pue, Founding Editor

*We pay tribute to the late Wes Pue, under whose broad vision, extraordinary leadership, and unwavering commitment to sociolegal studies our Law and Society Series was established and rose to prominence.*

The Law and Society Series explores law as a socially embedded phenomenon. It is premised on the understanding that the conventional division of law from society creates false dichotomies in thinking, scholarship, educational practice, and social life. Books in the series treat law and society as mutually constitutive and seek to bridge scholarship emerging from interdisciplinary engagement of law with disciplines such as politics, social theory, history, political economy, and gender studies.

Recent books in the series:

John W. Burchill, Richard Jochelson, Akwasi Owusu-Bempah, and Terry Skolnik, *Ancillary Police Powers in Canada: A Critical Reassessment* (2024)

Laszlo Sarkany, *The Independence of the Prosecutor: Controversy in the Creation of the International Criminal Court* (2024)

James B. Kelly, *Constraining the Court: Judicial Power and Policy Implementation in the Charter Era* (2024)

Mandi Gray, *Suing for Silence: Sexual Violence and Defamation Law* (2024)

Azar Masoumi, *Refugees Are (Not) Welcome Here: The Paradox of Protection in Canada* (2023)

Jonathan Swainger, *The Notorious Georges: Crime and Community in British Columbia's Northern Interior, 1909–25* (2023)

Emilie Biland, translated by Annelies Fryberger and Miranda Richmond Mouillot, *Family Law in Action: Divorce and Inequality in Quebec and France* (2023)

Kate Puddister and Emmett Macfarlane, eds., *Constitutional Crossroads: Reflections on Charter Rights, Reconciliation, and Change* (2022)

Derek Silva and Liam Kennedy, eds., *Power Played: A Critical Criminology of Sport* (2022)

For a complete list of the titles in the series,  
see the UBC Press website,

[www.ubcpres.ca](http://www.ubcpres.ca).

© UBC Press 2024

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without prior written permission of the publisher.

UBC Press is a Benetech Global Certified Accessible™ publisher. The epub version of this book meets stringent accessibility standards, ensuring it is available to people with diverse needs.

**Library and Archives Canada Cataloguing in Publication**

Title: Heenan Blaikie : the making and unmaking of a great Canadian law firm / Adam Dodek.

Names: Dodek, Adam, author

Series: Law and society series (Vancouver, B.C.)

Description: UBC Press edition. | Series statement: Law and society series | Includes bibliographical references and index.

Identifiers:

Canadiana (print) 20240422872 | Canadiana (ebook) 20240422910 | ISBN 9780774870733 (hardcover) | ISBN 9780774870764 (EPUB) | ISBN 9780774870757 (PDF)

Subjects: LCSH: Heenan Blaikie (Firm) – History. | LCSH: Law firms – Canada – History.

Classification: LCC KE395 .D63 2024 | DDC 340.06/071—dc23



Canada Council  
for the Arts

Conseil des arts  
du Canada

Canada



BRITISH COLUMBIA  
ARTS COUNCIL



BRITISH  
COLUMBIA

UBC Press gratefully acknowledges the financial support for our publishing program of the Government of Canada, the Canada Council for the Arts, and the British Columbia Arts Council.

This book has been published with the help of a grant from the Canadian Federation for the Humanities and Social Sciences, through the Scholarly Book Awards, using funds provided by the Social Sciences and Humanities Research Council of Canada.

*UBC Press is situated on the traditional, ancestral, and unceded territory of the xʷməθkʷəy̓əm (Musqueam) people. This land has always been a place of learning for the xʷməθkʷəy̓əm, who have passed on their culture, history, and traditions for millennia, from one generation to the next.*

UBC Press  
The University of British Columbia  
[www.ubcpress.ca](http://www.ubcpress.ca)