



June 2018

## Membership

We are pleased to welcome new member Mike Piche of Groulx-Robertson Venues from Pointe-Claire, Quebec. I look forward to seeing them at our upcoming conference.

We have installed a link to the DLI website. It is located on our website by clicking on **For Members** button and then click on the link button. We are currently working on improving our website and will advise you when it is complete.

As well, DLI is revamping its website and there will be the following changes happening. Effective immediately, the magazine will be printed and distributed quarterly only. However, the magazine will be available on line bi-monthly. In order to access the information in the magazine, you have to input your membership number. As a result of this change, I will continue to include the printed version of my newsletter in the quarterly mailing and will email my bi-monthly newsletter as well. Depending on the importance and volume of information that I need to impart to our membership, I will continue to email my newsletter more often.

## “REBRAND U”

I had the opportunity to listen to a telecast by Antonio Centeno, a specialist in rebranding and want to share what I learned from the program.

80% of business in industry goes to 20% of the businesses. The other 20% fight for the scraps. You know that your service is worth more, so how do you stand out from your competitors? Your answer is to brand yourself. In order to do this you have to have **passion, initiative, and courage.**

If you are dealing directly with your customers, then you have to look the part. What you wear has a direct impact on your own ability and confidence. This is called **the “Unclothed Condition”**

Your goal should be to put your brand on autopilot. It is important to master body language (i.e. Stand face to face = I trust you, do not cross your arms, and keep your hands out of your pockets. Make direct eye contact and give a firm handshake. No eye contact gives off the impression of weakness and should not be less than three seconds and not more than four seconds, otherwise the customer might feel uncomfortable. Be the first to extend your hand and do not hold on for more than a couple of seconds. Smile, because this is the most contagious form of trust.

Develop a unique uniform, whether it is you personally or your staff. Let the customer remember you with their first good impression of when they first met you. Your clothing should reflect the business you are in (i.e. making your customers look good).

Harness the power of accountability. Accountability accelerates your performance, measures your success and progress, keeps you engaged, keeps you responsible and validates your thoughts and ideas.

Not everyone can do this alone and require mentorship, so you may need a coach to help you rebrand yourself and your company.

If you want to get your message out as to why consumers should patronize you, you may want to create a U Tube video to get the solutions out to the masses. If the video is extremely creative, it may get a much larger circulation. You should also put it on a loop and video cast it in your stores for customers to see.

## **LOCATION - LOCATION - LOCATION**

If you are considering expanding your business by opening depots, then the following is what you should consider to be successful.

First of all is to choose the demographics that will benefit your business (i.e. population earnings of \$75,000 or more). Locate your depot on the morning side of incoming traffic with easy in and out access and egress. You should have plenty of parking available and specifically at least two exclusive parking spaces in front of the depot.

Your lease should provide you with exclusivity of being the only dry cleaning location in the plaza and you should make sure that the other tenants of the plaza are reputable in quality and service to insure that there is a crossover of customers using your services. Your rent should not be more than \$2,000 to \$3,000 per month. Your lease should be no less than five years with renewal options and should allow you to allow to transfer your lease, should the need arise.

## **Supreme Court of Canada**

After you read this ruling by the Supreme Court of Canada, I would suggest that whatever vehicles you own or have on your property, that you insure that the keys are not accessible by anyone other than the owners. Regardless of whether you live in an urban or rural community, you never can anticipate what may occur.

## **Car garage does not owe duty to teenager injured in stolen car, says SCC**

May 11, 2018|Written By Tim Wilbur

David Young, who represented the car garage owner, says this decision has confirmed that a motor vehicle is not like a loaded gun.

The Supreme Court of Canada has ruled that a commercial car garage did not owe a duty of care to a person who was injured following the theft of a vehicle from its premises.

In *Rankin (Rankin's Garage & Sales) v. J.J.*, a teenager, J.J., who suffered a catastrophic brain injury, sued Rankin's Garage & Sales, among other parties, for negligence because the car that he and another teenager stole from the car garage while inebriated had been left unlocked with the keys in the ashtray. At trial, multiple parties were found liable for J.J.'s injuries, which occurred after his friend C.C., who was driving the car, crashed it on the highway. The jury found that Rankin's Garage, C.C., C.C.'s mother, who gave beer to the boys, and J.J. were all liable for the injury. Rankin's Garage & Sales appealed the decision, and the Ontario Court of Appeal upheld the trial judge's finding that Rankin owed a duty of care to J.J., dismissing the appeal.

Writing for the majority of the Supreme Court, Justice Andromache Karakatsanis disagreed with the Ontario Court of Appeal's ruling. "Aside from evidence that could establish a risk of theft in general, there was nothing else to connect the risk of theft of the car to the risk of someone being physically injured. For example, Rankin's Garage had been in operation for many years and no evidence was presented to suggest that there was ever a risk of theft by minors at any point in its history,"

Karakatsanis wrote, with Chief Justice McLachlin (as she then was) and Justices Abella, Moldaver, Wagner, Côté and Rowe concurring.

In a dissenting judgment, Justice Brown, with Justice Gascon concurring, disagreed that the garage did not owe a duty of care to J.J., writing that “the lengths to which [Rankin’s Garage owner James Rankin] testified (albeit mendaciously) about the precautions he took to store the vehicles properly and to secure the keys for which he was responsible, provide ample support for the conclusion that a reasonable person in Rankin’s circumstances should have foreseen the risk of injury resulting from the negligent storage of vehicles. Indeed, while the majority sees Rankin’s testimony as revealing only that he foresaw the risk of *theft*, his evidence was clear he also foresaw the risk of *injury*” (emphasis in the original).

On the night that was J.J. was injured, he and his friend C.C., both then minors, were at the home of C.C.’s mother, drinking alcohol and smoking marijuana. Some time after midnight, they left the house to walk around town, with the intention of stealing valuables from unlocked cars. Eventually, they made their way to Rankin’s Garage & Sales. The property was not secured, and the boys began walking around the lot checking for unlocked cars. C.C. found an unlocked car parked behind the garage with keys in the ashtray. C.C. then decided to steal the car and told J.J. to “get in,” which he did. C.C. drove the car out of the garage and on to the highway, where the car crashed.

In rejecting the appellate court’s finding that Rankin owed a duty of care to J.J., Karakatsanis wrote for the majority that “I do not accept that anyone that leaves a vehicle unlocked with the keys in it should always reasonably anticipate that someone could be injured if the vehicle were stolen. This would extend tort liability too far. Physical injury is only foreseeable when there is something in the facts to suggest that there is not only a risk of theft, but that the stolen vehicle might be operated in a dangerous manner.”

David Young of Benson Percival Brown LLP in Toronto, who represented James Rankin, told *Legal Feeds*, “The Supreme Court of Canada has confirmed that a motor vehicle is not like a loaded gun. It is not an inherently dangerous object. What this means is that, for a commercial garage merely having care and control of multiple vehicles, that does not necessarily create a risk of personal injury.

“The risk needs to be assessed on a case-by-case basis,” Benson says of the Supreme Court’s decision. “We are appreciative of having received guidance from the high court on this important issue. The decision reaffirms a long-standing principle that a duty of care requires the risk of harm be reasonably foreseeable and not a mere possibility.”

Maia Bent of Lerner LLP in London, Ont., who represented J.J. by his Litigation Guardian, told *Legal Feeds*, “We are disappointed with the judgment. Our expectation was the courts would reason more in line with the dissent, which we felt was quite compelling.

“This isn’t a novel duty of care,” she says. “There is a well-established duty of care, and that is that the defendant’s act foreseeably causes harm.”

“The moral of the story is that you live and die by your trial record. There was additional evidence of exactly the type that the court said was lacking, but it was excluded by the trial judge. So, we had evidence that all the high school kids in this town knew that you could get an unsecured vehicle at Rankin’s and go joyriding in it, but we were unable to find firsthand evidence and the trial judge said that what she characterized as rumours were insufficient.”

## **Canada: A New Tool For Managing The Cost Of Litigation**

Article by [Tania Sulan](#), [Naomi Loewith](#) and [Nickolas Tzoulas](#) **Bentham Capital LLC**

Managing the risk and cost of litigation is a challenge for many businesses. They may forgo meritorious and potentially profitable litigation due to budgetary pressures — either because they do not have the resources to litigate, or because they choose to direct their capital elsewhere. Businesses and their counsel in the U.S., U.K., Australia and most recently Canada have a new tool to pursue litigation: commercial litigation funding.

### **Q1: What type of claim is right for commercial litigation funding and what are the investment criteria?**

A commercial litigation funder will fund all types of litigation or arbitration, including claims relating to breach of contract, breach of duty, intellectual property and insolvency. The claim should have good prospects of success and a defendant able to satisfy a judgment. The budget should be approximately one-tenth of the realistic claim size to ensure that, on success, the litigant receives the majority of any recovery. A funder will undertake due diligence to ensure the case is strong and also consider factors such as how the litigation is to be managed, exposure to court-ordered costs, and the likely time to resolution.

### **Q2: What can a litigation funder provide and how does the funder get paid?**

Litigation funders typically cover all or a portion of legal fees and disbursements, as well as court-ordered costs. Funders may also provide working capital, enabling a litigant to maintain or expand its business during litigation. The funding is non-recourse, so the funder is paid only on the successful resolution of the case. The funder's fee may be a multiple of the invested amount or a percentage of the resolution sum. If the case is lost, the funder receives no return, and will pay any court-ordered costs. Funding enables a litigant to pursue a case without cost or risk.

### **Q3: Why would a well-capitalized client use litigation funding?**

Sophisticated companies use external sources of capital to finance many parts of their business and see litigation funding as a financing and risk management tool to monetize litigation assets. Since a funder pays the legal fees and disbursements, capital is freed up for other parts of the business. Further, because litigation funding is non-recourse and the funder typically covers any costs if the litigation is unsuccessful, the potential downside of pursuing litigation is removed. Increasingly, shrinking budgets can mean that plaintiff-side litigation is left on the table. Litigation funding enables such claims to be pursued without impact on the budget.

### **Q4: Is there any judicial guidance on funding of single-party commercial actions in Canada?**

In *Schenk v Valeant Pharmaceuticals*, Justice McEwen examined the terms of the litigation funding agreement and found that there was "no reason why such funding would be inappropriate in the field of commercial litigation." He further held that funding agreements are acceptable if the funder does not stir up litigation, does not control the litigation, and takes a reasonable return. *Schenk* also provides guidance on certain ethical issues, including the funder attorning to the court's jurisdiction and a funder's termination rights.

### **Q5: Who controls the proceedings where a litigation funder is involved?**

With a reputable litigation funder, the client controls the litigation. The funder will require updates on key developments and ask to be consulted on important decisions in order to monitor its investment. Where

the litigation funder is an experienced ex-litigator, the funder can be used as a strategic sounding board. This consultative process is often considered valuable by clients and their lawyers.

#### **Q6: Must the plaintiff obtain court approval of a litigation funding arrangement?**

The prevailing view is that court approval is not required outside the class action and insolvency contexts, where the court has an established supervisory role. This approach was confirmed by the recent decision in *Seedlings v. Pfizer Canada Inc.*, where Case Management Judge Tabib held that there was no need to seek court approval, as "the manner in which [a plaintiff] chooses to fund a litigation it has every right to bring is of no concern to the Court or to the Defendant."

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

#### **Canada: Breaking Up Is Hard To Do: Dealing With Departing Employees**

Last Updated: May 4 2018

Article by [Maddie Axelrod](#)

[Borden Ladner Gervais LLP](#)

When a key employee resigns, an employer may be relieved to escape the costs of often-litigated and sometimes significant termination or severance pay. In some situations, however, a resigning employee can end up costing a company even more than if they'd been terminated. If the employment relationship has soured, a disgruntled employee can do considerable damage to a company's resources and reputation.

Employers should be aware of several legal considerations and developing areas of law that may provide relief when key employees leave:

**Notice of Resignation.** Leaving on short notice can sometimes render an employee liable to the employer for damages that arise as a result — such as the costs of recruiting or relocating a replacement. The appropriate length of an employee's reasonable notice of resignation will depend on factors such as the nature of the job, the seniority of the role, and the difficulty the employer will face in finding a replacement. As soon as an employee tells you they're leaving, review their employment agreement to confirm they have provided the required notice.

**Company Property and Confidential Information.** Regardless of whether an employee has a written confidentiality agreement, all employees have a duty to protect the confidential information of their employers, both during their employment and after it ends. Employees should be asked to promptly return all company property and information by their last day — including physical property, such as laptops and phones, as well as non-tangible property, such as documents and client information — and to confirm that they haven't retained any copies of company documents or forwarded anything to their personal email addresses.

**Restrictive Covenants.** An employee generally does not have freestanding or common law obligations to refrain from soliciting a former employer's clients or employees, or from competing with the former employer's business. However, where an employment agreement contains an enforceable non-solicit or non-compete clause (which is a complex and evolving area of law), these should be reviewed and considered if a former employee is contacting clients or other employees. Further, even without an enforceable restrictive covenant in a contract, a departing employee (and potentially his/her new employer) could be liable for the tort of inducing breach of contract. The latter is proven when: there was a valid and enforceable contract; the departing employee knew or ought to have known about the contract; the departing employee intended to and did cause a breach of the contract; and, the old company suffered damages as a result.

**Duty of Good Faith and Loyalty.** All employees owe their employers a duty of good faith and loyalty, or fidelity. Generally, this means that an employee must carry out his employment contract obligations in good faith. An employee's conduct immediately *before* departure — for instance, spending working time on new endeavours, or co-ordinating the exit of other employees — may therefore attract liability. After an employee provides notice of resignation, be vigilant to ensure they have not been acting out of line.

**Fiduciary Duty.** Employees in top management and senior positions owe additional duties to their employers, both during and after the employment relationship. A fiduciary relationship may exist where the employee is in a position of trust, has intimate knowledge of strategic information, and has discretion to exercise power in a way that affects the employer's interests. A fiduciary's duties include: assisting with transition; refraining from taking advantage of opportunities developed from the prior employment; refraining from soliciting clients, business partners, or other employees for a reasonable period of time; and continuing to act in good faith with the former employer. If a C-level employee or an executive resigns, consider whether they are continuing to act in the best interests of your organization.

In addition to the legal considerations above, employers should of course take practical HR and operational steps, such as conducting an exit interview, cutting off corporate email access, issuing tax forms and an ROE, and updating website information as needed. Good employee management and positive relationship-building will help reduce the risk of the above misbehaviour. To further mitigate risk, consider having your employment contracts regularly reviewed to ensure they contain appropriate protections for your organization.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

**It is never too early for you to register for the upcoming conference in October. We have worked diligently to make sure that we present a meaningful and important conference which will benefit you and your business. The benefits derived from attending this conference far out way the cost of registration fee. Remember, we have kept the costs as low as possible and if it were not for the sponsorship and allied trades participation, we would have to charge much more money to cover our costs.**

**I have included a registration form on the back page and it is important that you reserve your rooms at the hotel asap, in order to be guaranteed the lowest rate we have gotten for the event. However, the number of rooms at these rates is limited, so do not be disappointed. You only have to give the hotel your credit card information and the charge will not go through until the event happens.**

**For further information, contact the Executive Director.**

The following companies and individuals reserved a Table Top for the conference in October:

**Check Point Software Technologies** (Jodi Munro, Robert Falzon);  
**Dalex Canada** (Ashlynn McConvey);  
**East Coast Laundry Systems** (Peter Blunden);  
**Extox Industries** (Artur Keyes);  
**EZ Products** (Diane Rue);  
**Green Earth Cleaning Canada** (Robert Kuenzlen);  
**Harco** (Rob Jackson);  
**Lavanett** (Earl Eichen);  
**Laundrapp** (Miguel Galan Davis)  
**Ontario Laundry Systems** (Craig Gibson);  
**Sanitone** (John Regan);  
**Sparkle Solutions** (Bruce Miller)



The following companies and individuals are sponsoring the conference in October:

**Fabricare Cleaning Centers (Clark McDaniel)** – Luncheon on Saturday  
**Green Earth Cleaning Canada (Robert Kuenzlen)** – Coffee Breaks (2)  
**Check Point Software Technologies (Jodi Munro)** – Overall Conference Support  
**East Coast Laundry Systems (Peter Blunden)** – Saturday night wine at dinner (co-sponsor)  
**Richard J. Rivard & Margaret Rivard** - Saturday night wine at dinner (co-sponsor)  
**Newtex Cleaners (Michelle Krulicki & Donna Renault)** - Saturday night wine at dinner (co-sponsor)  
**Sparkle Solutions (Bruce Miller)** – Speakers Gifts  
**Dalex (Ashlynn McConvey)** – Saturday morning breakfast (co-sponsor)  
**Harco (Rob Jackson)** – Saturday night cocktail hour (co-sponsor)  
**Willms & Shier Environmental Lawyers (Jacquelyn Stevens)** - Saturday night cocktail hour (co-sponsor)  
**Laundrapp (Miguel Galan Davis)** – Co-sponsor Saturday morning breakfast



**RMBC LIMITED & RIVARD INVESTMENTS**

The following companies are sponsoring the conference on Friday as well as the Friday night cocktail party. There will be additional sponsors announced shortly.

**Kemco Systems; G.A. Braun; Gurtler Industries Inc.; American Laundry Systems;**



One of our speakers and Table Top Presentations will be from **Check Point\***, a company that will be demonstrating how to protect your customers' information and to prevent hacking of our credit card systems. This will be very important to protecting the image of our members' businesses. They will demonstrate how hackers can attack your credit card systems and your customer information. They will explain the huge fines for non-compliance in protecting the credit and debit card information.

**On behalf of the Canadian Fabricare Association, I would like to extend our sincere thanks to these companies for stepping forward to financially assist our association to conduct a great conference. When considering purchasing goods or services, please give your first consideration to an allied trade member. They are supporting us and we must continue to support them. We are awaiting more support from other companies and allied trade members.**

**Conference Information**

## **PRESS RELEASE FROM LAUNDRAPP**

**Jack de Montiagnac, the CEO of LAUNDRAPP will be speaking at our conference in October and is one of our Conference Sponsors.**

If you are interested in offering a digital solution (via an App), then please contact Laundrapp ([www.poweredbylaundrapp.com](http://www.poweredbylaundrapp.com)). Laundrapp has built an award-winning platform that has helped both revolutionize the way the industry interacts with existing customers and also solved the problem of how to appeal to 'tech savvy' millennials.

Already operational extensively throughout the world, Laundrapp is now also available in Canada and looking for a Master Licensee in each province.



**SIGN IN A SHOE REPAIR STORE IN VANCOUVER READs:** We will heel you; We will save your sole; We will even dye for you.

**A SIGN ON A BLINDS AND CURTAIN TRUCK:** "Blind man driving."

**Sign over a Gynecologist's Office:** "Dr. Jones, at your cervix."

**In a Podiatrist's office:** "Time wounds all heels."

**On a Septic Tank Truck:** Yesterday's Meals on Wheels

**At an Optometrist's Office:** "If you don't see what you're looking for, You've come to the right place."

**On a Plumber's truck:** "We repair what your husband fixed."

**On another Plumber's truck:** "Don't sleep with a drip. Call your plumber."

**At a Tire Shop in Milwaukee:** "Invite us to your next blowout."

**On an Electrician's truck:** "Let us remove your shorts."

**In a Non-smoking Area:** If we see smoke, we will assume you are on fire and will take appropriate action.

**On a Maternity Room door:** "Push. Push. Push."

**At a Car Dealership:** "The best way to get back on your feet - miss a car payment."

**Outside a Muffler Shop:** "No appointment necessary. We hear you coming."

**In a Veterinarian's waiting room:** "Be back in 5 minutes. Sit! Stay!"

**At the Electric Company:** "We would be delighted if you send in your payment on time. However, if you don't, YOU will be de-lighted."

**In a Restaurant window:** "Don't stand there and be hungry; come on in and get fed up."

**In the front yard of a Funeral Home:** "Drive carefully. We'll wait."

**At a Propane Filling Station:** "Thank Heaven for little grills."

**In a Chicago Radiator Shop:** "Best place in town to take a leak."

**And the best one for last...;** Sign on the back of another Septic Tank Truck: "Caution - This Truck is full of Political Promises"

I apologize if the following story offends anyone, but I could not resist telling it.

### **President Trump invited the Pope for lunch on his mega-yacht.**

The Pope accepted. Lunch was served on the deck of the yacht and while they were enjoying the meal, a puff of wind blew the Pontiff's hat off into the water. It floated off about 50 feet and then the wind died down and it just floated in place.

The crew was scrambling to launch a boat to retrieve it, but Trump waived them off and said, "Never mind boys, I'll get it."

Then Donald climbed over the side of the yacht, walked on water to the hat, picked it up, walked back on the water to the yacht, climbed on board and handed the Pope his hat.

The crew was speechless. The security team and the Pope's entourage were speechless. No one knew what to say, not even the Pope.

That afternoon ABC, CBS, NBC, CNN and MSNBC all reported: "*Trump Can't Swim*"

The first five days after the weekend are always the hardest. - Henny Youngman