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SPECIAL LAW STUDENT
RECRUITMENT ISSUE

Two men in dark suits and ties stand in a restaurant setting. The man on the left is looking slightly to the right, while the man on the right is looking directly at the camera. They are standing near a table with a white tablecloth and a chair.

SUCCESSFUL ENERGY

An Inside look
at the \$1.25B
URS/Flint
deal and how
it went right

Art of the Deal:

What is it really like working on an energy deal? **A look at how URS Corporation acquired** Flint Energy Services Ltd. for \$1.25 billion

BY MARZENA CZARNECKA

They tell you about deals like this in law school. Textbook, they call them — the deals that unfold just the way they should...And then they tell you that this is *theory*, and that in real life a deal will never play out like this.

Except that, Virginia, there is a Santa Claus, and everything on a deal *can* go right. All you need is an experienced buyer that knows exactly what it wants (and what it's willing to pay for the goods), a prepared target that knows what it's worth (and what it's willing to give up), management teams that hit it off even when engaging in hardball negotiation, boards that know what fiduciary duty means, and financial and legal advisors who go the distance.

The \$1.25-billion acquisition by San Francisco-based giant URS Corporation of Calgary-grown Flint Energy Services Ltd. is proof such deals aren't just a



PHOTOGRAPHY BY COLIN WAY



figment of a corporate law professor's dreams.

"Lots of deals have issues that blow up in your face at the worst possible moment," says Charles

Szurgot, the securities and corporate counsel who worked on the deal for URS. "This is probably one of the calmer deals I've dealt with. It's a testament to the good attorneys involved: all of the issues at the end were small, technical issues, because of all the work everyone put in up front.... That's a sign of a great deal."

HERE'S HOW THEY PLAYED IT

> ENTER THE BUYER URS may not be a household name in Canada, but it is an American construction behemoth. The company provides engineering, construction and technical services to public agencies and private-sector clients around the world. Pre-Flint, it deployed some 47,000 employees at sites in more than 40 countries around the world. One of its major clients is the United States federal government, for which URS does everything from routine site operations and maintenance to developing disaster-response and security programmes for the US Department of Homeland Security.

But, no Canadian footprint — and while URS supported some energy-services projects, it had no presence in the Western Canadian unconventional oil and gas field. Translation: It didn't have a piece of the oil sands story. It wanted in.

> TARGET IN SIGHT Calgary's Flint Energy Services was *in*. With 10,000 employees supporting oil, oil sands and gas-producing projects at some 82 locations across Western Canada, as well as in parts of the United States, Flint was an obvious choice if URS wanted to get into the game via an acquisition.

At the time when Martin Koffel, CEO and Chair of URS, started eyeing Flint, it looked like a mighty attractive target for URS. The company was under the leadership of Bill Lingard, who joined Flint as President and CEO in 2005. Lingard's impressive resume, by the way, included a stint with Haliburton Canada Ltd. In other words, the perfect CEO to negotiate

a cross-border acquisition.

The only problem? Flint wasn't for sale. At least not yet.

> THE PHONE CALL Here's the first challenge facing a potential buyer: you need to suss out whether the target is interested in the deal...but without sending any ripples through the marketplace, which might drive up the target's share price, send other bidders into the fray and land you in



ANDREA WHYTE

> OSLER, HOSKIN & HARCOURT LLP



This is what stands out in my mind as the most memorable moment of the deal. The speech [URS CEO] Martin Koffel gave to the team. ... You could feel the excitement and the recognition of each person there that they could be part of transaction that would be transformational for both URS and Flint.



the middle of a bidding war. So your first approach has to be casual. This was URS's first sally: a personal phone call from Koffel to Lingard, noting that they would both be at an industry investment conference in San Francisco in mid-September 2011. Would Lingard like to meet? Just because?

Why not? But if the phone call leading to the meeting was casual, the thrust of the actual meeting was not. Koffel was frank: URS was interested in acquiring Flint.

Lingard demurred. Flint was not shopping for a merger. But the meeting ended with Lingard agreeing "he would receive Mr. Koffel's calls if URS wished to continue the discussions."

Flint wasn't too excited. "It wasn't the first time Flint had heard rumblings of an overture," says David Spencer, the partner with Bennett Jones LLP in Calgary who would lead the Flint legal team on the file. "Still, this one seemed far more serious than any of the others from the beginning."

On September 28, 2011, Koffel gave proof of *how* serious. He asked Lingard for a meeting of the senior representatives of both companies. The game was on.

> ENTER THE ADVISORS Meanwhile, Frank Turner, partner with the Calgary office of Osler, Hoskin & Harcourt LLP was having a series of very interesting conversations with the in-house legal team at URS — Szurgot, his boss, General Counsel Joseph Masters — as well as the men who would be the URS deal team, Koffel and CFO Thomas Hicks.

"It was clear to us they were looking at a transaction here," says Turner. "They spent a lot of time really understanding the landscape here." Turner took them through "the nuts and bolts of Canadian M&A," trying not to speculate too much on *what* the target was.

Meanwhile, Spencer and his team at Bennett Jones were prepping Flint. Whatever happened, Spencer thought Flint's negotiating team and legal team had a big ace in the hole, and his name was Stuart O'Connor. O'Connor was Flint's Chair, and in a previous life he was "a very, very good M&A lawyer." At Bennett Jones, to boot, where, perhaps not coincidentally, he had mentored Darrell Peterson, the corporate Bennett Jones partner who'd be Spencer's second-in-command on the file.

> THEY COME TO CALGARY On October 21, 2011, Koffel, Hicks and Robert Zeist, President of URS's energy and construction business met with Flint's O'Connor, Lingard and Paul Boechler, the company's CFO. That the meeting went well can be inferred from what followed: Flint immediately asked Bennett Jones to get working not just on advising the board on its duties and responsibilities, but to

explore potential structures and processes for the transaction.

URS, meanwhile, felt confident enough to tell Osler what the target was. And, as soon as Osler cleared its conflicts and confirmed its ability to act, the company deluged Turner with questions. “They asked us, did we know the people on their board of directors, did we know the management team, who were they likely to use as counsel,” recalls Turner. Calgary being Calgary, he was able to provide answers to most of these market-intelligence questions without resorting to a search engine.

By November 7, both sides had executed the confidentiality and standstill agreements, and scheduled a mega-meeting for the end of the month in Denver.



★ FLINT OPERATES IN KEY ENERGY PLAYS ACROSS NORTH AMERICA.

> WHERE A CANADIAN ENERGY SERVICES COMPANY WORKS

Flint provides upstream and midstream construction, transportation, production and maintenance services to the onshore oil and gas at 80+ centres in Alberta, British Columbia, Manitoba, Newfoundland, the Northwest Territories and Saskatchewan in Canada and in Oklahoma, Texas, Louisiana, North Dakota, New Mexico, Colorado, Utah, Wyoming, North Dakota, Pennsylvania and West Virginia in the United States.

> **THEY GO TO DENVER** Between November 30 and December 2, 2011, management and directors of both companies met in Denver, Colorado, for three days of discussion about synergies and strategies. As the meetings drew to a close, Koffel made his intentions crystal clear. URS wanted to make an all-cash offer for Flint. Flint would become a fourth business segment for URS — its oil and gas division, with its existing management team. Additionally, Lingard, as Koffel had suggested before, would join the URS senior management team after the deal was done.

How much would the all-cash price be? URS still needed a few more days to figure that out.

> **THE FIRST OFFER COMES** O'Connor, Lingard and Boechler — Flint's deal team — reported to Flint's board on the

Denver meetings, URS's stated intentions and the calls Boechler had been fielding from Hicks about financial modelling of oil and gas services companies and various business valuation methodology. The prospective buyer was serious. But how serious? On December 8, 2011, the closing price for Flint's common shares on the TSX was \$13.27. On December 9, the offer came in: \$20 per common share for all outstanding common shares of Flint.

“After they put a price on it, Flint went quiet for a little bit,” recalls Turner. And URS fretted, just a little. “We had some calls from them about the board's fiduciary obligations,” Turner continues. “What could they do? Could they simply say no?” Well, this being Canada — not really. Moreover, Turner felt confident in reassuring the client that “having offered such a premium, we were quite confident that they would at

least continue the discussion.”

Flint, meanwhile, wasn't quiet just to be strategically coy. It was in a real quandary. “There are really two kinds of deals in this city,” says Spencer. In the first type, a company, “for whatever reason, ends up putting itself up for sale.” The drill's simple: they put together a data room, finalize a confidentiality agreement with standstill provisions, find a few companies to sign it, send them into the data room, get a bunch of bids, pick the best couple, negotiate with those companies, and pick a winner.

“That deal is a lot easier for lawyers to do than the Flint deal,” says Spencer. “Flint was the other kind of deal — it was *not* for sale. Along came a company that made a very attractive offer...but you can't compare it to anyone else's offer. You don't know, really, what another company might be prepared to do.”

DEAL TIMELINE:

What happened when, to get the deal done

MAY 1, 1957
> URS incorporated in California

SEPTEMBER, 2011
> Initial approach by URS to Flint

DECEMBER 8, 2011
> Flint common shares trading at \$13.27 in TSX

DECEMBER 9, 2011
> First Offer by URS, at \$20/share

DECEMBER 20, 2011
> REJECTED

APRIL 9, 1998
> Flint incorporated in Alberta as HMW Services Group (name change to Flint November 12, 1998)

What do you do? “Who wants to be the guy who chased away URS and its 50-per-cent-premium share offer? Doesn’t look very good on the resumé. But who wants to be the guy to hear through the grapevine that there was another offeror, and they would have paid more, but you had agreed to this horrific break free or some

> THE SECOND OFFER COMETH

Immediately post-New Year, the CFOs of both companies discussed valuation methodologies. URS was getting its valuations from Morgan Stanley. “They did a stellar job,” says Turner. “URS had a very, very good idea of what they were prepared to pay and still have it be an accretive transaction for the company.” So, yes, they could pay more than \$20 a share. The question was, how much more? And what could they get from Flint – other than Flint – in return?

At this point, Koffel and Hicks asked the Flint deal team for another face-to-face

we’re probably going to hit that price, but tell us the four or five things that you as counsel would like to get agreement on,” Turner says. If you can give a deal lawyer a gift, this is it. What four or five critical points do you *not* want to fight – er, negotiate – with your counterparts over? “So Andrea Whyte and I huddled together for an hour and we put together our wish list. We were quite careful; we did not want to overreach. We asked for things that were bidder-friendly but that were within market,” says Turner.

The next day, URS accepted the Counter Offer. With a few “ifs.” Among other things, Flint had to agree to a break fee of three per cent, grant a lengthy period of exclusivity for URS to do its due diligence, and the right for URS to match any competing offers that Flint might receive.

“And then things started to move at a very quick pace,” says Turner. On January 20, the companies executed an exclusivity agreement that would be valid through February 24, and scheduled four weeks of intensive due diligence; simultaneously, Flint and URS’s lawyers started to draft and negotiate the arrangement agreement and plan of arrangement.

> “EVERYBODY WHO WORKS

in this area is very conscious of the fact they need to have very solid inputs for modelling, cost parameters. They certainly they also do business the work to me on a silver platter”

other provision that scared them away?” says Spencer.

So Flint moved cautiously. It retained Credit Suisse Canada to crunch the numbers on Flint and on the URS offer. Armed with Credit Suisse’s opinion — and their own sense of what the company was worth (and how much URS seemed to want it), the Flint board decided to deliver an unpleasant early Christmas present to URS.

On December 22, the Flint deal team officially advised the URS deal team that the initial offer was “insufficiently compelling.” The softener: Flint was “receptive” to continuing discussions. Translation: the 50-per-cent premium’s nice. But we know you really want us. Can you do any better than that?

meeting. They would come to Calgary. The message, even before URS put its second on the table, was clear. “We want you.”

The meeting took place on January 11; its fruit, a second offer of \$24.50 a share. Five days later, the Flint board met to discuss the offer and made the decision to authorize its deal team to respond to it “as most appropriate in the context of the ongoing discussions with URS.”

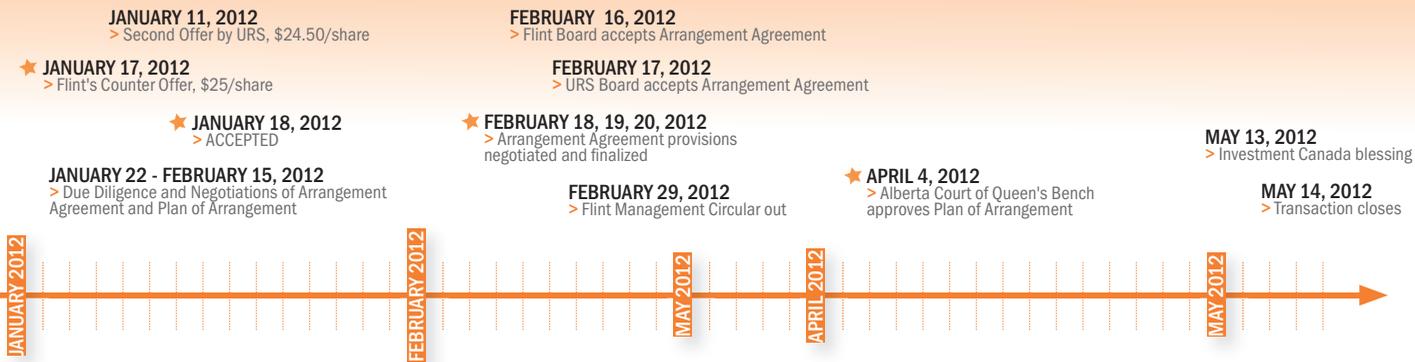
> **THINGS GET INTERESTING** What did that mean? Something like, don’t play too hard to get, but don’t be too obvious about jumping up and down in delight either. On January 17, the Flint deal team made a counter offer: \$25 a share.

URS called Osler. “And they said, ‘Okay,

> KOFFEL LAYS DOWN THE LAW

In addition to getting Osler to do due diligence work on the target, URS sent a not-so-small army of its internal people down to Calgary for the exercise. They were to find out *everything* URS needed to know to feel comfortable about closing the transaction — without letting a whisper about the deal tip the market.

Andrea Whyte, a corporate partner with Osler and Turner’s second-in-command on the deal, wasn’t sure that they could do it. Until she heard Martin Koffel rally his troops. “URS had assembled a very signifi-



cant internal team," she recalls. "There were probably 50 people engaged at this stage of the transaction." How were they going to keep the activities of this army under wraps?

Koffel put all of them, plus URS's legal and financial advisors, in one room (at the Palliser Hotel in Calgary, where else) and laid down the law.

"This is what stands out in my mind as the most memorable moment of the deal," Whyte says. "The speech Martin Koffel gave to the team." He emphasized the need for confidentiality, and the need to perform the due diligence both thoroughly and expeditiously — with the utmost respect for Flint and its people. At the end of it, says Whyte, everyone in the room fully understood the strategic importance of the transaction, and what they had to do to see it across the finish line. "You could feel the excitement and the recognition of each person there that they could be part of transaction that would be transformational for both URS and Flint," Whyte says.

From that point, says White, "I never felt that there was anything that was going to hamper this deal. This deal really showed... that good leadership from the top makes all the difference in a transaction."

> **THE DEAL GOES PUBLIC** By mid-February, URS knew everything there was to know about Flint that could be known without actually owning the company and watching it operate. On February 16, the Flint board gave its thumbs-up to the draft arrangement agreement; on February 17, the URS board did likewise.

Over the next three days, the deal teams and their lawyers hammered out the final provisions of the agreement, and at noon on February 20, 2012, they issued a joint press release announcing the transaction.

Flint's stock jumped. And, somewhat surprisingly, given how it was planning to pay for the transaction, so did URS's (more on its financing plan anon). More surprisingly



PETER GLOSSOP
> OSLER, HOSKIN & HARCOURT LLP



It's very difficult to say to a client, 'You just have to agree to everything the government wants and you'll get your approval.' They still want to negotiate their commitments, and they don't want to take their commitments lightly. They'll be stuck with them for three years.



still, share prices across the entire Western Canadian energy-services sector popped up as well. Immediately, pundits predicted a whole slew of energy-services cross-border deals. "They probably would have come if not for the price of gas, and then the drop

in the price of oil," says Peterson.

At the time, there was no time to ponder the future of the Canadian energy-services sector. Spencer, Peterson and their colleagues at Bennett Jones had to get a management information circular out to Flint's shareholders pronto. Turner, Whyte and the rest of the Osler team had to get shaking on getting the transaction all of its regulatory approvals.

And a bunch of American lawyers had to also get their fingerprints all over this Canadian deal.

> **FINDING THE MONEY** URS made an all-cash offer of \$1.25 billion for Flint, but that didn't mean URS had a billion-plus bucks sloshing around in its bank accounts. It went into the deal with acquisition financing in place, but as Spencer points out, "That kind of money is typically very expensive." Right after announcing the deal, the company launched a bond offering to pay for the transaction, with the hope that it would close in time to pay for Flint, so there would no need to access the pricey acquisition line.

"They needed Flint's cooperation to do the bond offering, because the bond investors would want to know about this acquisition — they might have questions for Flint's senior management," says Spencer. That meant Flint had to formally agree to *what* it would do to assist URS to get the bond deal done.

"This was difficult for us," says Spencer. "We did not want to turn a promise to cooperate into a condition on financing the deal." In the end...they agreed to a lot. "The Flint business guys were willing to do whatever they could to help URS with that bond deal," says Spencer. "You have to judge it in the context. When we're sitting there with



> **“ALONG CAME** a company that made a very attractive offer ... but you can’t compare it to anyone else’s offer. You don’t know, really, what another company might be prepared to do.”

stock at \$13 and we have an offer of \$25 — you can get talked into a lot.”

With URS’s American counsel, which was running the bond financing, swooping in to examine the URS-Flint deal, and underwriters’ lawyers wanting to peek at the deal too, the Osler team found itself “the meat in the sandwich,” says Turner.

deal done, so the lawyers didn’t get too out of hand.”

> **INVESTMENT CANADA TAKES ITS TIME** Neither did most of the regulators. The deal cleared the *Competition Act* and the *Transportation Act* hurdles quickly; its American *Hart-Scott-Rodino Act* approval

enants to the government?”

Turner empathized — but couldn’t do much else than reassure them that Osler regulatory guru Peter Glossop knew what he was doing. The lawyers understood that URS didn’t want to give up any flexibility on how to deal with the Flint assets, but for better or worse, making promises you have to keep to Investment Canada is the reality of doing business in Canada these days.

Glossop won’t comment specifically on the back-and-forth with Investment Canada on this transaction (all that matters here is that the approval came, and within the timeline he told the client to bank on) but, generally speaking, he sees the Investment Canada clearance causing more and more frustration to cross-border clients.

“We often find Investment Canada in most multi-jurisdictional deals is the last approval obtained. Everyone’s ready, everyone’s ready to close — and this is the last one,” Glossop says. And it’s a tough one for the deal lawyers to navigate. “It’s very difficult to say to a client, ‘You just have to agree to everything the government wants and you’ll get your approval.’ They still want to negotiate their commitments, and

they don’t want to take their commitments lightly. They’ll be stuck with them for three years,” Glossop says. And, given the volatility of the economy post-2008, who wants to make 36-month-long promises?

At Flint, the deal team and legal team watched the process from the sidelines, but with some degree of anxiety. “All of us were a little bit surprised at how rigorous the whole thing was, considering URS is a US-headquartered, NYSE-traded company,” says Spencer. “None of us are surprised when we’re representing a state-owned enterprise from Asia and there are Invest-

THE INGREDIENTS OF SUCCESS

Why did the URS/Flint deal run as smoothly as it did? It has six magic ingredients:

1. **GOOD LEADERSHIP FROM THE TOP** > “Good leadership from the top makes all the difference in a transaction,” says Osler’s Andrea Whyte. “This deal really showed that.”
2. **BOARDS THAT KNOW THEIR STUFF** > The URS board was a veteran buyer. The Flint board knew its duties and obligations inside out. “They did everything textbook,” says Flint General Counsel Sean James.
3. **HUMMING LINES OF COMMUNICATION** > The deal teams were in constant communication with each other, with their boards, and with their advisors. “Everyone was in the loop—everyone knew what they needed to know as soon as it happened,” says Bennett Jones’ David Spencer.
4. **FINANCIAL ADVICE AND VALUATIONS THAT MESH** > The financial advisors on the deal “did a stellar job,” says Osler’s Frank Turner. Trusted financial metrics let both companies negotiate price efficiently.
5. **LEGAL ADVISORS WHO PLAN FOR THE BUMPS** > The first time Bennett Jones went before an Alberta judge to get the ball rolling on the Plan of Arrangement, they built into the process the ability to inform Flint shareholders of any material changes to the planned transaction by press release rather than reissuing an information circular; Osler planned for the Investment Canada review to take 75 days—and even had a proviso built into the Plan of Arrangement to easily extend the bid date if things took longer. No one needed to panic as the clock ticked.
6. **A BUSINESS IMPERATIVE TO GET THE DEAL DONE** > “The principals really wanted to get this deal done,” sums up Turner. So it got done. By the book.

“We took heat from both sides. Bennett Jones was saying, ‘You’re over-papering this. The US lawyers, the underwriters’ counsel, said, ‘This looks skimpy. Why didn’t you address this issue?’”

Spencer knows it must have been a hard time for the Osler team. “We got it — we knew why they wanted it this way — but in true Canadian style, we thought it deserved two-thirds of a page, but the Americans in true American style thought 13 pages would be better,” he quips.

Fortunately, as Turner summarizes, “The principals really wanted to get this

in the US took a little bit longer, but in good time. Shareholders voted almost unanimously in favour of the deal on April 3, and the Alberta Court of Queen’s Bench granted its final order approving the plan of arrangement the next day.

The only thing left was the thumbs-up from Investment Canada. And it was about to take URS for a ride. “There’s no equivalent in the US,” says Szurgot. The URS legal team stared at the *Investment Canada Act* and its requirements in incredulity. “First, we needed approvals — okay, that made sense. And then we needed to make cov-



> **“WE TOOK HEAT** from both sides. Bennett Jones was saying, ‘You’re over-papering this.’ The US lawyers, the underwriters’ counsel, said, ‘This looks skimpy. Why didn’t you address this issue?’

KEY PLAYERS ON THE DEAL

Success came because management teams hit it off despite hardball negotiation

1 EXECUTIVE DEAL TEAM: URS

- > Martin Koffel, CEO and Chair
- > Thomas Hicks, CFO

2 EXECUTIVE DEAL TEAM: FLINT

- > Bill Lingard, President and CEO
- > Stuart O’Connor, Chair
- > Paul Boechler, CFO

3 FINANCIAL ADVISORS

- > URS: Morgan Stanley & Co. LLC
- > Flint: Credit Suisse Securities (Canada)

4 LEGAL DEAL TEAM: FLINT

- > Sean James, General Counsel
- > Bennett Jones LLP team led by David Spencer and Darrell Peterson
- > Additional US legal advice from Hall, Estill, Hardwick, Gable, Golden, & Nelson P.C.

5 LEGAL DEAL TEAM: URS

- > Joseph Masters, Vice-President and General Counsel
- > Charles Szurgot, Securities and Corporate Counsel
- > Osler Hoskin & Harcourt LLP team led by Frank Turner and Andrea Whyte
- > Additional US legal advice from Latham & Watkins LLP and Cooley LLP

ment Canada issues.” But this was an American buyer.

“This is a strange world we live in,” Spencer says. “In Canada we say no to Australia, yes to the Chinese, and put Americans through the wringer.”

But...the fat lady finally sung. The Investment Canada sign-off eventually came in. And on May 14, 2012, the transaction closed. Done. Flint is now the new oil and gas division of URS, operating under the name URS Flint. Lingard is still at its helm — and on URS’s board.

> **BUT WHAT YOU REALLY WANT TO KNOW...** Who will be doing URS Flint’s Canadian legal work now that the deal is done? Bennett Jones has the historic rela-

tionship with Flint going back to Year Zero. General Counsel Sean James has favourite associates at the firm that he asks for by name — and not just because their hourly rate is a fraction of Spencer’s.

Osler, on the other hand, has...the relationship with Latham & Watkins, which referred URS to Osler for this acquisition. URS’s primary legal relationships is with its US law firms: Latham and competitor Cooley LLP. So...who will it be?

“I expect it will be us,” says Turner. There’s Osler’s relationships with the US firms, there’s the law firm’s New York office. There’s the fact a US company, for all the autonomy afforded the integrated Flint division, will be calling the shots.

Mmm. Maybe they could share the work?

“Frankly, we’re not very good at sharing,” says Spencer. “And I think my friends at Osler would say the same.” He doesn’t want to “jinx” himself, so he’ll just say this: “There have been a couple of small deals from Flint that have come our way post-closing, so we’re very happy about that.”

How does Flint see this? “We will probably draw on the resources of both firms,” says Sean James. “I fully expect we will continue to rely on Bennett Jones, given their history and knowledge of our operations. And I’m certain Osler will be assisting on the securities issues that may come up from time to time.”

But if neither firm is good at sharing...time will tell. ☹

Marzena Czarnecka is a Calgary-based freelance writer.

