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One-on-one with **Stephen Pincus**, a Proven Legal Innovator in the Capital Markets Space

Stephen Pincus

Goodmans LLP Partner
and Practical Law Canada
Advisory Board Member



After more than two and a half decades in private practice, corporate lawyer Stephen Pincus brings a wealth of experience to the Practical Law Canada Advisory Board.

The Goodmans LLP partner, who works out of the firm's Toronto office, is a member of the firm's executive committee. In addition, he heads one of Goodmans' business law groups, and is chair of its REITs (real estate income trusts) and income securities practice.

Pincus has spent his entire legal career at Goodmans after graduating as Gold Medalist from Osgoode Hall Law School's class of 1987. As part of a joint program with York University's Schulich School of Business, he was also awarded an MBA the same year. He has since returned to lecture students at both schools.

Pincus has enjoyed a distinguished and colourful career. From REIT pioneer to capital markets leader and all points in between, he shares his story (and some useful advice) with us.

How has your career evolved to this point? I've always been interested in a broad range of legal areas, and when I graduated from my joint law and MBA program in 1987, one of the projects I was involved in was to prepare what would have been Canada's first law firm guide to initial public offerings. We had the document ready for publication, the galley proof was done, the punctuation was fixed, and on the third Friday in October I remember we submitted the final draft. We woke up on the Monday morning, October 19, and it was Black Monday. The market collapsed and there were very few IPOs in Canada for several years.

So my initial years in practice were spent working on the restructuring of some of Canada's major financial conglomerates and real estate empires in the late 1980s and early 1990s. In the mid-1990s,

when the IPO market was resuscitated, I returned to what I had first set out to do, having had a broad and rich experience learning about what happens when capital markets go south and companies fall apart. Over the last 25 years or so, I have been involved in a broad range of corporate and capital market activity.

What impact has your MBA had on your practice? Some students arrive at law school with some commerce background but I had studied English and philosophy, so the core MBA courses: finance, accounting, economics, and information science, gave me skills that were quite useful on business transactions during my early years as a lawyer.

But an MBA can benefit a young lawyer in more fundamental ways. It encourages an approach different from legal analysis, one that is more strategic and intuitive. And many MBA programs emphasize group work; it's often frustrating because the contribution of group members is rarely equal and you're all dependent on the weakest link in the chain. But once in legal practice you soon feel the benefit of knowing how to work constructively in groups.

How well do the disciplines of law and business complement one another? Law and business can be a very powerful combination, but they often clash. For example, business people may be frustrated by lawyers who don't communicate clearly and are more forthcoming with theoretical problems than practical solutions. And lawyers may find it difficult to distinguish ignorance from intuition and recklessness from entrepreneurial flair.

Yet there is great potential for law and business to illuminate each other. Good business lawyers do much more than document a deal and ensure that it complies with the law. They bring objectivity,

experience and analytical rigor in helping their client to generate creative business outcomes.

Conversely, while law is a profession and an intellectual discipline, law is also a business. Lawyers can learn a lot from their clients about strategy, efficiency, systems, organizational structure and culture, and marketing.

How is your practice divided now? My practice is generally divided into three areas: capital formation activity, which includes IPOs and other public and private offerings, and creating new structures and financial products; M&A, including acquisitions, business combinations, joint ventures, and other strategic transactions; and corporate governance, which involves advising boards and shareholder activism. The balance between them varies from year to year, and when one side is more active, the other often tends to be less active, which keeps life interesting.

What element of your work do you find most challenging? Technology. It is a wonderful tool, but the challenge is to manage it, and make sure it doesn't manage you. Over the years, I have seen a huge evolution in the technology available to us, and I expect that in the next number of years, we will see new forms that we haven't even dreamed of. The key is to prevent it from taking you away from personal contact, as well as giving yourself enough time for reflection.

With a transactional practice, there is a need to be available and responsive to clients on a continuous basis, but it has to be balanced on the other hand with the ability to make space for reflection, imagination, and creativity. You can't let the technology distract you from that.

How have the REIT and M&A sectors changed since you started out working in them? REITs are now two decades

old in Canada. When we started out, they were a fledgling marginal product and many investors were concerned about limited liability. We were involved in drafting the first limited liability legislation for REITs and other public trusts. The sector has come a long way and REITs have evolved into an important asset class in the capital markets.

On the M&A side, one of the biggest changes has been increased shareholder activism. Shareholders have become far less deferential to management. Activism has become a strategy in M&A, and as a result, boards are more focused on the transparency and fairness of their processes, which I think is a fundamental shift.

How do you see them changing in the next few years? I think we will see more REIT M&A and going-private transactions, with new REITs forming to take their place. We should also see, as has happened in the US, REITs in new specialized asset classes. Canadian REITs will look outside our borders to grow, and managers of foreign real estate portfolios will continue to look to Canada as a good place to raise capital.

In the broader capital markets, we can expect increased foreign investment into Canada, as well as cross-border joint ventures. We should also see increased activism by institutional investors, which means boards and management are going to be engaging more with their shareholders. There could well be more proxy fights, but increased engagement between the different constituencies may prevent some of them from breaking out.

What matters stand out to you as the most significant or enjoyable during your career? I have been fortunate to have had the opportunity to be involved in many "firsts." One example was the creation of CPL REIT in 1997, which

was not only Canada's first nursing home REIT, but also the first operating business trust on the TSX. The structure led to the development of a whole sector of business income trusts. It was also the start of our very active seniors housing practice at Goodmans.

Another example is the development of cross-border IPOs, taking non-Canadian companies public on the TSX. Given our efficient regulatory and capital markets environment, Canada can be an attractive place to raise capital. Over the last 15 years, we have been involved in many of these IPOs using a variety of different structures in a broad range of industries. That has been a very exciting area to see develop, and it has required a lot of creativity in responding to changes in the law and the capital markets.

There is a third area that has been very rewarding, and that has been working with many clients to put together boards of directors. Sometimes that is done at the time of forming a new company, when you're taking it public. Sometimes it is done where there has been shareholder activism that has resulted in a change at the board level. And sometimes it's just done on an ongoing basis, for the purpose of board renewal. The first stage involves helping clients identify board members that will create the right mix. After that, you're advising them on their duties and helping them to deal with whatever issues they may have to face.

What is your greatest accomplishment? One of the most fulfilling aspects of my career has been helping to build teams of exceptionally talented and energetic lawyers who have fun working together, and challenging them to generate creative solutions for our clients. Being a part of these teams and seeing younger lawyers develop and flourish has been particularly satisfying.

What three things do you think a lawyer needs to do to attract and impress clients? My shortlist would be identification, creativity, and passion.

First, you have to identify with your clients and their problems. Unless you can put yourself into their position — intellectually and emotionally — you

can't effectively address those problems.

Next, there are a lot of lawyers who can read the law and come up with the right legal answers to a problem, but where a lawyer really adds value is with an especially creative solution. It may be a new structure, an original approach to a client problem, or a win/win resolution to accommodate the different interests of parties in a transaction or dispute.

Third, and most important, is passion. You have got to be passionate about what you are doing. If you're not excited about helping clients, then you're not going to be effective. Really effective lawyers are passionate about whatever they are involved in.

What are the most common mistakes lawyers in practice make? Many lawyers look at things too narrowly. Often lawyers will encounter a question they're asked by the client, and answer it in a narrow context. It might be the right technical answer, but they might not be getting to the real problem. You need to step back and consider the wider context. Then you might be able to say to the client: "actually, I think you need to be thinking of several other things, and here's a creative way to address them."

What one piece of advice would you offer junior practitioners? Improve your writing. I think that in our digital media environment, writing skills are more important than ever. They are not only key to communicating, but also help to refine your thinking process. If you can write clearly and succinctly, it's usually because you've thought through the issues, and you're able to communicate in the most efficient way to people who don't have time to wade through a lot of verbiage.

Your writing also reflects your style of practice and the culture of your firm. We have a writing program at Goodmans called "GOODwriting," which aims to help our lawyers refine their writing skills, and develop a focused, informal, and solutions-oriented style.

If you were not a lawyer, what would you wish to be? I've always wanted to be a teacher. Over the years, I've done a fair amount of teaching in law, business, and

other areas. I find that helping people to learn is one of the most rewarding activities.

What do you do when you are not being a lawyer? I love to learn, in a broad range of areas: not just law and business, but also literature, philosophy, arts, sciences, and history. I do a lot of running and swimming, and generally I'm listening to lectures at the same time on my iPod, including under the water. The broader your knowledge and experience, the more effective you can be as an advisor.

I also do yoga, which is great for clearing my head. I try to give back to the community, and I am involved on the boards of a number of non-profit organizations.

Most important, I enjoy spending time with my family and our two therapy dogs.

Rudyard Kipling had a great line in his poem *If*: "If you can fill the unforgiving minute with 60 seconds worth of distance run."

Time is our scarcest resource, so I try to make as much use of it as possible.

What attracted you to become involved with Practical Law Canada? As lawyers, we're subjected to an increasing daily barrage of information. So a resource like Practical Law Canada, with both breadth and the depth of coverage, is useful for the general practitioner as well as the specialist looking for a refresher.

A resource that is practically focused and well-organized can also provide a model for young lawyers on how to organize their thoughts and communicate well. I think this is one of the objectives of Practical Law Canada, and that's why I was interested in getting involved.