

**SUPERIOR COURT**  
(Commercial Division)

**CANADA**  
**PROVINCE OF QUEBEC DISTRICT OF MONTREAL**  
No.: 500-11-061483-224

DATE: November 23, 2022

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BEFORE THE HONOURABLE CHRISTIAN IMMER, J.S.C.

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**IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:**

**XEBEC ADSORPTION INC. XEBEC RNG HOLDINGS INC.  
APPLIED COMPRESSION SYSTEMS LTD. COMPRESSED AIR INTERNATIONAL INC.  
XEBEC HOLDING USA INC. ENERPHASE INDUSTRIAL SOLUTIONS, INC. CDA  
SYSTEMS, LLC XEBEC ADSORPTION USA INC. THE TITUS COMPANY  
NORTEKBELAIR CORPORATION XBC FLOW SERVICES - WISCONSIN INC.  
CALIFORNIA COMPRESSION, LLC XEBEC SYSTEMS USA, LLC**

Debtors / Petitioners

And

**SIMON ARNSBY**

Mises-en-cause

**URGENT EX PARTE APPLICATION FOR INVESTIGATION**  
**(Sections 11 and 23 of the Companies' Creditors Arrangement Act)**  
**RSC 1985, c C-36**

**TO THE HONOURABLE MR. JUSTICE IMMER J.S.C. OR ONE OF THE HONOURABLE  
JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND  
FOR THE DISTRICT OF MONTRÉAL THE MISES-EN-CAUSE SUBMITS:**

## I. MISES-EN-CAUSE

1. I, Simon David Arnsby (“**Arnsby**”), experienced a catastrophe financial event with Xebec Adsorption’s (“**Xebec**”) filing for CCAA. The result being the almost complete destruction of my net worth. As such I am having to proceed Pro Se, representing myself without benefit of legal counsel. I feel compelled to send this application and see this situation as an example of the minority, in the form of the Board, oppressing the majority.
2. On October 19, 2022 I submitted a letter (“**Arnsby Letter**”), to the Court, requesting it to authorise and fund an Equity Committee (“**EC**”) to represent shareholders, along with a list of concerns. I believe that events prior to Xebec’s filing for CCAA are relevant and uninvestigated they represent a direct risk to the integrity of the CCAA process. The Court responded in Reasons for Issuing the Amended Restated Initial Order dated October 20/24, 2022. I have the utmost respect for the Court, it’s time and assure you of my good faith and efforts to try and properly interact with the Court.

## II. Companies' Creditors Arrangement Act, RSC 1985, c C-36

3. It is trite law that the Courts have wide discretion in matters submitted to them pursuant to the Companies’ Creditors Arrangement Act (“**CCAA**”). Section 11 of the CCAA provides as follows:
4. Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the Court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.  
  
R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128
5. It is indeed a rather frequent occurrence for the Courts to issue amended and restated initial orders under the CCAA, and the Courts increasingly exercise their discretion to address the need for such amendments and restatements where warranted.
6. It is submitted that the complexity of the present matter and the specific circumstances at play serve to justify the amendments and restatements sought herein. The Supreme Court of Canada has described as follows the flexibility, efficacy, and utility of the CCAA for the purposes of addressing complex and rapidly evolving situations, as follows:
7. Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, [2010] 3 SCR 379 [14] [...] [T]he key difference between the reorganization regimes under the BIA and the CCAA is that the latter offers a more flexible mechanism with greater judicial discretion, making it more responsive to complex reorganizations.
8. Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, [2010] 3 SCR 379 [58] CCAA decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly describes as “the hothouse of real-time litigation” has been the primary method by which the CCAA has been adapted and has evolved to meet contemporary business and social needs (see Jones, at p. 484).

9. When large companies encounter difficulty, reorganizations become increasingly complex. CCAA courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the debtor to allow breathing room for reorganization. They have been asked to sanction measures for which there is no explicit authority in the CCAA. Without exhaustively cataloguing the various measures taken under the authority of the CCAA, it is useful to refer briefly to a few examples to illustrate the flexibility the statute affords supervising courts.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

10. The Court plays an important role in critically assessing the requests for initial orders presented to it. I am not aware of any party who foresaw Xebec's filing for CCAA, including all professional analysts issuing reports on Xebec. These analysts' opinions were based on the same public information available to me. Given that all failed to report any risk of a potential filing, there is a concern that the CCAA process is being abused and further surprise events could materialize in liquidation, increasing the risk Creditors not being repaid in full or possibly at all.

11. February 8, 2022 - **Xebec Announces Succession Plan to Next Generation Leadership - Jim Vounassis and Mike Munro to assume CEO and COO roles as of May 12, 2022**

*"....announces today that Kurt **Sorschak** will retire as Chairman, President and CEO effective May 12, 2022, at the company's 2022 annual meeting of shareholders. Jim Vounassis will concurrently be appointed President and CEO of Xebec. At the same time, Xebec's current VP Global Operations, Mike Munro, will assume the role of COO."*

*Mr. Sorschak will remain a member of the Board of Directors to enable a smooth transition and for Xebec to continue benefiting from his experience as the company's founder and alignment as a meaningful shareholder. This plan will ensure continuity while supporting management in executing the next phase of the company's strategic growth plan."*

source:<https://xebecinc.com/news/xebec-announces-succession-plan-to-next-generation-leadership/>

12. March 17, 2022 – **"Xebec announces an accelerated CEO transition and the pending resignation from the board of Kurt Sorschak on 11th May 2022."**

*"...announces that in recognition of the accelerated progress made to date in transitioning Jim Vounassis into the role of President and CEO of Xebec, it has been determined to advance the formal date of such transition from May 12, 2022, such that it will take effect immediately. Mr. Vounassis has also been appointed to the Board of Directors, effective immediately."*

source: <https://xebecinc.com/news/xebec-announces-accelerated-ceo-transition/>

13. Marinus van Driel (“**van Driel**”) joined Xebec as President for Xebec Europe on February 12, 2021, soon after the closing of the HyGear acquisition on December 31, 2020.

*“MONTREAL, (QC), February 12, 2021 – Xebec Adsorption Inc. (TSX: XBC) (“Xebec” or the “Corporation”), a global provider of clean energy solutions for renewable and low carbon gases, today announced that effective immediately, Mr. Marinus Van Driel, who joined Xebec through its recent acquisition of HyGear, has been appointed to lead Xebec’s global hydrogen operations as the new President for the Global Hydrogen Group, in addition to his role as President for Xebec Europe.”*

source: <https://xebecinc.com/news/xebec-announces-organizational-changes/>

*“To further strengthen our Centers of Excellence. I’m pleased to announce that Marinus van Driel, the founder of HyGear, and our current VP of Europe and Asia will transition to the role of Senior Vice President, Special Projects, reporting to me with a focus on delivering our distributed hydrogen hub growth plans.” – Jim Vounassis.*

source: Xebec Adsorption Inc., Earnings Conference Call, May 11, 2022, CEO opening remarks.

14. Within a few months Xebec surprises filing for CCAA. Sorschak and Driel have combined 40+ years of industry expertise and proven capital raising expertise.

15. *“All Directors and executive officers as a group beneficially owned or exercised control or direction over 12,731,964 Common Shares representing 8.23% of the class as of March 31, 2022.”*

Source: Xebec Management Information Circular, March 31, 2022 (“**XBC MIC 2022**”), Page 5

16. Based on the individual shareholdings reported on pages 16 to 23 in the **XBC MIC 2022** it appears the Xebec Board of Directors (“**XBC BOD**”) as a group beneficially owned or exercised control or direction over Common Shares representing approximately 0.5% of the class as of March 31, 2022. Attached as Exhibit 1.

Source: **XBC MIC 2022**

17. As a group it appears Messrs. Sorschack and Driel beneficially owned or exercised control or direction over approximately 12,000,000 of the 12,731,964 Common Shares representing 7.75% of the 8.23% of the class as of March 31, 2022 reported in [12].

18. As of September 28, 2022, the day before the Xebec CCAA Filing and trading halt the three largest shareholders of Xebec according to this source were:

Shareholders	Equities	%
The Caisse de dépôt et placement du Québec	10,754,487	6.95%
Kurt Sorschak	7,611,860	4.92%
Marinus van Driel	4,443,735	2.87%

<https://www.marketscreener.com/quote/stock/XEBEC-ADSORPTION-INC-1411383/company/>

19. “To put it bluntly, something doesn’t smell right to the Court,” bankruptcy judge said. The case: *In re Horsehead Holding Corp.*, 2016 Bankr. LEXIS 3187 (May 2, 2016).
20. *“Kurt Sorschak is the Chairman, President and Chief Executive Office of the Corporation.*  
*Mr. Sorschak co-founded Xebec Adsorption Inc. in 2007 and developed it from a local compressed air and gas dryer manufacturer into an internationally active clean energy company. In 2007, he and two of his managers bought Xebec, a division of Parker-Hannifin, in a management buy-out. In 2009, Xebec executed a reverse take-over transaction of a publicly listed company in Vancouver, making Xebec a public company and re-focused the company’s strategy on renewable gas purification and generation. Starting in 2018, he led efforts to establish a Cleantech Service Network in North America and, in 2020, to acquire HyGear, a Netherlands-based hydrogen generation company with technologies in steam methane reforming (SMR) and electrolyzers. In early 2021, he expanded Xebec’s gas generation business into oxygen and nitrogen by acquiring Inmatec, a Germany-based gas generation company. Mr. Sorschak obtained an Associate Degree from the American University in Paris, France, in 1982, and a Master of Laws Degree from the Ludwig-Maximilians University of Munich, Germany, in 1988.”*  
Source: Xebec Management Information Circular, May 18, 2021 (“**XBC MIC 2021**”)
21. *“Marinus Van Driel, Senior Vice President, Special Projects*  
*Mr. Van Driel has devoted the last 25 years to clean energy, most notably as the CEO of HyGear, a leader in on-site gas production and delivery. After filling various technical and commercial positions at several engineering and production companies, Marinus served as general manager of Plug Power’s Europe division. He later started his own company, Hexion (currently HyGear). As President of Xebec Europe, Marinus is responsible for solidifying the company’s presence in the growing European biogas market, overseeing general management, finance & administration as well as business development. Marinus has a master’s degree in materials science and engineering, focusing on fuel cell research, and an MBA from RSM Erasmus University in Rotterdam.”*  
Source: **XBC MIC 2022**, Page 15
22. **“A Man Comfortable, Alone, in a World of Ambiguity”** a profile of Brian Levitt, member of the Xebec Board of Directors by veteran business journalist Gordon Pitts, in Director Journal, Institute of Corporate Directors (ICD), March/April 2014. The quotes below are taken directly from this article.
23. The following quotes are taken directly from the article and help explain why certain events at Xebec, which happened in the months leading up to the IFO, are particularly relevant to the CCAA filing and process.
- Source: <https://www.osler.com/en/about-us/press-room/2013/brian-levitt-recognized-for-outstanding-performance>
- (a) *“...maintaining proper relations with the CEO.”*
- (b) *“As the ultimate governing body in corporations, boards were natural targets for the finger-pointing.”*
- (c) *“The fact is we are doing okay only if the business is okay.”*

- (a) *"It has to make sure it gets the right people, including the right leader, and then make sure they don't make the one big mistake."*
- (b) *"He (Brian Levitt) guided Imasco through its highly successful breakup in 2000, resulting in the selling-off of subsidiaries"*
- (c) *"...in ensuring CEO succession. Levitt accepts that the CEO will have a view on who succeeds him or her, and if the board trusts that CEO, it would be foolish to disregard those views. In many cases, the CEO's choice will prevail, as long as the trust is there, and the board has been involved in the process."*
- (d) *"Indeed, when managing internal succession, if you have had good planning and talent development, the challenge is often not about selecting the right person but retaining everyone else in the top ranks. "It is usually not the one person – it is the team," he says.*
- (e) *"...the CEO is the leader and so a disorderly leadership transition is not what you wish for, and it is not risk-free." In fact, neither option – maintaining or cutting – is without significant risk."*
- (f) *"What's more, "the sooner you get at a problem, the less likely it is to have an explosive ending."*
- (g) *"...your talent management and development become key elements in the success of a company and a key source of competitive advantage."*
- (h) *"To achieve diversity, he is opposed to any suggestion of board quotas."*
- (i) *"If the board is performing, when the activists show up, they should not be able to identify anything the board hasn't thought of."*

24. The Approved Bidding Procedures Order dated September 29, 2022 included an aggressive liquidation timeline requiring a Qualified Bidders and Bid Deadline of Friday 5 PM EST November 11, 2022.

<u>Event</u>	<u>Date</u>
<b>1. <u>Approval of Bidding Procedures</u></b>	September 29, 2022
Phase 1	
<b>2. <u>Solicitation Letter</u></b> Financial Advisor to distribute Solicitation Letter, to potentially interested parties	Starting on September 29, 2022
<b>3. <u>CIM and VDR</u></b> Petitioners to prepare and have available for parties having executed the NOA (Potential Bidders) the CIM and VDR	By no later than October 6, 2022
<b>4. <u>Phase 1 Qualified Bidders &amp; Bid Deadline</u></b> By no later than November 11, Phase 1 Bid Deadline (for delivery of non- 2022, at 5:00 p.m. (prevailing binding LOIs by Phase I Qualified Bidders Eastern Time) in accordance with the requirement of paragraph 11 of the Bidding Procedures)	

### III. RELIEF SOUGHT

25. In my opinion whatever becomes of Xebec, as a result of the Xebec CCAA filing by the **Xebec BOD** all further actions, decisions, determinations, timelines, restricting versus liquidation options etc. need to be controlled and driven by the potentially invaluable expertise of Xebec's two Founders Mr. Kurt **Sorsack** from Xebec and Mr. Marinus **Van Driel** formerly **HyGear** and now **Xebec**. Under the Court's full supervision and creditor's approval, without **Xebec BOD** interference to ensure the best possible outcome of the CCAA filing and in accordance with the intent and spirit of the Act.
26. I have requested Signed Affidavits from Mr. Kurt **Sorschak** and Mr. Marinus **Van Driel** that they are in support of my motion [23] and ready to assume the duties I ask the Court to entrust them with. I have attached their responses to my request in Exhibit 3 **Sorschak** and **Van Driel** are former and current employees of **Xebec** and therefore subject to many restrictions that potentially even signing an affidavit expressing a willingness to assume the duties I ask the Court to grant, commenting on anything involving Xebec, the CCAA Liquidation filing etc. will expose them to unknown and potential liabilities.
27. In light of the foregoing **Arnsby** hereby respectfully seeks the following Orders pursuant to sections 11 and 23(c) of the CCAA:
  - a. An Investigation Order conducted by an appropriate third party, not Deloitte or Osler due to their conflicts of interest with the **Xebec BOD** individually and collectively to investigate and all issues between the **Xebec BOD**, **Sorschak** and **Van Driel** so they may be granted full releases, authority and indemnifications to file a Signed Affidavit in regards to [23].
  - b. An Order incorporating [23] duties granting **Sorschak** and **Van Driel** the authority, power, releases, indemnifications.
  - c. An Order granting the formation of a funded Ad Hoc Equity Committee so that I **Arnsby** have funds to hire appropriate legal counsel, draft appropriate Orders for the Court to sign etc until these issues are resolved.
28. Nothing in this or any other filing I have or may make in the future should prejudice any future claims or actions for or against Xebec, the Board and Executive Management in place at the time of the Xebec CCAA Liquidation filing. Submitted without prejudice to any of my rights.

AFFIDAVIT

I, the undersigned, Simon David Arnsby, 7 Heathfield Place, Gateshead, Tyne and Wear, U.K., solemnly affirm that all the facts alleged in the present Application for the Expansion of the Monitor's Powers are true. Where the facts in the Application have been obtained from others I believe them to be true.

AND I HAVE SIGNED:



Simon David Arnsby

SOLEMNLY DECLARED BEFORE ME IN  
KUALA LUMPUR, MALAYSIA ON NOVEMBER  
11, 2022



Commission Expiry  
Date: 13/05/2023



TAN SEOK KETT,  
Notary Public  
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Tel: 03-2072 1288



No: 500-11-061483-224

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**SUPERIOR COURT**  
(Commercial Division)  
(Sitting as a court designated pursuant  
to the Companies' Creditors Arrangement Act,  
RSC 1985, c. C-36)  
**DISTRICT OF MONTRÉAL**

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**IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF:-**

**XEBEC ABSORPTION INC. & AL**  
Debtors / Petitioners  
and  
**DELOITTE RESTRUCTURING INC.,**  
Monitor

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**URGENT EX PARTE APPLICATION FOR  
INVESTIGATION**  
(Sections 11 and 23 of the Companies' Creditors  
Arrangement Act, RSC 1985, c C-36)

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**ORIGINAL**

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## Nominees for Election to the Board of Directors

The following pages set forth the name of each person proposed to be nominated for election as Director (each a “**Nominee**”), the position such person holds within the Corporation if applicable, or the present principal occupation or employment of each such person for the five preceding years, the date on which such person was first elected a Director of the Corporation, and the number of voting securities of the Corporation beneficially owned, directly or indirectly, or over which control or direction is exercised by each person. The information related to the number of Common Shares beneficially owned, directly or indirectly, or over which control or direction is exercised, not being within the knowledge of the Corporation, has been provided by the proposed Directors individually, as of March 31, 2022.



### William (Bill) Beckett, Lead Director

Pointe-Claire, QC, Canada

Age: 70

Director Since: 2011

Independent

Bill Beckett is a corporate director who serves as the Lead Director of the Corporation. He is the former President and CEO of Dart Aerospace with extensive operations and executive management experience in the Industrial and Aerospace sectors. He started his career with Canadian General Electric and continued his professional development with other industry leaders including Pratt & Whitney Canada.

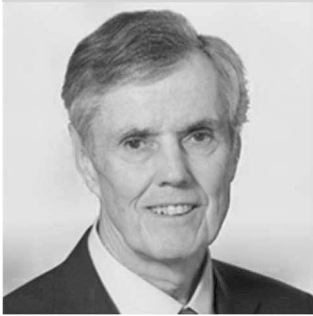
Mr. Beckett is a graduate in Mechanical Engineering (High Distinction) from Carleton University in Ottawa and has completed the Queen’s University Executive MBA program.

Mr. Beckett brings to the Board strong management and technical skills, including expertise in Lean Manufacturing.

**Committees:** Corporate Governance Committee (Chair)

#### No Other Current Public Board Service

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
90.74%	9.27%	209,837	21,875	Yes



## Peter Bowie

Toronto, ON, Canada

Age: 76

Director since: 2020

Independent

Peter Bowie is a corporate director who previously served as the Chief Executive of Deloitte China from 2003 to 2008, as well as senior partner and a member of the board and the management committee of Deloitte China until his retirement from the firm in 2010. Mr. Bowie was also previously Chairman of Deloitte Canada (1998-2000), a member of the firm’s management committee and a member of the board and governance committees of Deloitte International. He is a past member of the board of the Asian Corporate Governance Association and has served on a variety of boards in the private and non-governmental organization sectors.

Mr. Bowie has a B.Comm from St. Mary’s, as well as an MBA from the University of Ottawa. Mr. Bowie completed the Advanced Management Program at Harvard University and is a Fellow of the Institute of Chartered Accountants of Ontario, as well as the Australian Institute of Corporate Directors.

In 2021, Mr. Bowie completed the Cambridge University Business and Climate Change program, the Climate Competent Board’s Certificate Program, and the AICD Essential Director Update. Mr. Bowie brings to the Board financial expertise, a dedication to Audit Committee excellence, a strong understanding of strategy and risk, as well as insight of political and economic dynamics within China.

**Committees:** Audit Committee (Chair), Corporate Governance Committee

**Current Other Public Board Service:**

- Board member since 2012 and Member of the Audit Committee of Magna International Inc. (TSX: MG, NYSE: MGA).

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
86.77%	13.23%	116,950	42,424	Yes



## Sara Elford

Shawinigan Lake, BC, Canada

Age: 52

Director since: 2020

Independent

Sara Elford is a corporate director. She previously worked in capital markets for over twenty years as both an investment banking and equity research analyst where she followed an extensive range of industries and companies in the small to mid cap range and clean tech space. Ms. Elford has served on the boards of several formerly TSX and/or Nasdaq-listed companies including Hydrogenics Corporation (hydrogen technology company) from 2016 to 2019, Carmanah Technologies (solar LED technology company) from 2015 to 2019, TSO3 Inc. (medical device sterilization technology company) in 2019, and Pure Technologies Ltd. (pipeline leak detection company) from 2015 to 2017. In addition to Xebec, she presently serves on the boards of BioSyent Inc., BQE Water Inc., EcoSynthetix and WeCommerce Holdings.

Ms. Elford is a CFA Charter holder and holds a B.B.A. from Bishop’s University with a Finance Major and Economics Minor. She also completed the Institute of Corporate Directors’ education program in 2015.

Ms. Elford brings to the Board substantial financial, capital markets, Cleantech (including hydrogen) and corporate governance experience.

**Committees:** Audit Committee, Human Resources Committee

### Current Other Public Board Service:

- Board member since 2018 and Member of the Audit Committee and Disclosure Policy Committee of BioSyent Inc. (TSXV: RX).
- Board member since 2020 of BQE Water Inc. (TSXV: BQE).
- Board member since 2020 of WeCommerce Holdings (TSXV: WE).
- Board member since 2021 of EcoSynthetix Inc. (TSX: ECO).

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
86.77%	13.23%	–	17,216	To be met by August 25, 2025



## Brian Levitt

Kingston, ON, Canada

Age: 74

Director since: 2021

Independent

Brian Levitt is the Board Chair of TD Bank Group. He is the former president and Chief Executive of Imasco Limited, at the time one of Canada’s largest consumer goods and services companies. Mr. Levitt also serves as a director of the Charles Schwab Corporation and Vice-Chair of the C.D. Howe Institute. He served as a director of Domtar Inc. until November of 2021.

Mr. Levitt brings to the Board a plethora of insight and experience in strategic, commercial and corporate governance matters as well as in mergers and acquisitions and executive compensation.

**Committees:** Human Resources Committee, Corporate Governance Committee

**Current Other Public Board Service:**

- Board member since 2008 of The Toronto Dominion Bank (TSX: TD).

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
n/a	n/a	100,000	28,237	Yes



## Guy Saint-Jacques

St. Lambert, QC, Canada

Age: 70

Director since: 2017

Independent

Guy Saint-Jacques is a corporate director. He joined the Government of Canada's Department of External Affairs in 1977, holding office in New York City, Mexico City, Kinshasa, and Hong Kong as well as twice in Washington, D.C., the last time as Minister and Deputy Head of Mission. He has been Deputy High Commissioner at the High Commission of Canada in London, UK, and has been posted three times to Beijing (he speaks fluent Mandarin). He also served as Deputy Director of the Energy and Environment division and Director General of Human Resources. Before his last posting in China, Mr. Saint-Jacques was Chief Negotiator and Ambassador for Climate Change. His last Public Service posting was as Ambassador Extraordinary and Plenipotentiary for Canada to the People's Republic of China through to October 2016. Mr. Saint-Jacques currently provides strategic advice on China to companies and governments and is a Senior Fellow at the China Institute of the University of Alberta, at the *Institut d'études internationales de Montréal* (IEIM) and at the C.D. Howe Institute. He is also a Director of the Montréal Clinical Research Institute Foundation.

Mr. Saint-Jacques brings to the Board experience-based insight into political and economic conditions in China and other foreign markets of interest to the Corporation, as well as on public policies related to climate change.

**Committees:** Human Resources Committee, Corporate Governance Committee

### No Other Current Public Board Service

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
85.41%	14.59%	68,048	19,829	Yes



## Francis Séguin

Vaughan, ON, Canada

Age: 61

Director since: 2021

Independent

Francis Séguin is a corporate director. He retired from Magna International in 2020 as Executive Vice-President of Corporate Projects and Strategy Development. As Executive Vice-President, Mr. Séguin was responsible for working directly with Magna’s CEO and other members of senior management to support the company’s long-term strategy development. Mr. Séguin is a seasoned engineering and operations executive in the automotive industry, where he has worked throughout the past 32 years. He served as the President of Magna Closures and Mirrors from 2010 to 2016 which included the full financial and P&L responsibility for more than \$5.0 billion US in revenues across 60 manufacturing sites in 29 countries. Mr. Séguin joined Magna in 1988 at Cosma International, Magna’s body and chassis operating unit. Prior to joining Magna in 1988, Mr. Séguin worked for General Motors in Oshawa, Ontario, for five years.

A native of Windsor, Ontario, Mr. Séguin graduated in 1984 with a degree in Electrical Engineering from the University of Windsor.

Mr. Séguin brings to the Board expertise in manufacturing operations and senior executive experience in multinational business operations.

**Committees:** Audit Committee, Human Resources Committee

### No Other Current Public Board Service

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
99.84%	0.16%	100,000	22,777	Yes



## Dimitrios (Jim) Vounassis, President and CEO

Laval, QC, Canada

Age: 51

New Nominee

Non-Independent

Jim Vounassis is a transformational senior executive with strong international experience and a proven track record in driving organizational performance. He was most recently COO at Bombardier Transportation (TSX: BBD. B), now part of Alstom, which is one of the world’s largest rail equipment manufacturing companies. Mr. Vounassis was responsible for the operations aspects of the \$8 billion revenue business and empowered over 15,000 employees to deliver innovative rail solutions across global markets. Before being appointed COO at Bombardier Transportation, Mr. Vounassis held the position of Chief Transformation and Procurement Officer at Bombardier Corporation. Previous to that, he held positions as Vice President Global Operations at Pharmascience, Vice President Global Manufacturing and Strategic Sourcing at Baker Hughes and Vice President Global Strategic Sourcing at Pratt and Whitney.

Mr. Vounassis is a graduate of University of Waterloo with an Honours Bachelor of Science in Mechanical Engineering. He also completed an Executive MBA at the Smith School of Business at Queen’s University.

Mr. Vounassis brings to the Board a solid experience in global operations and strategic vision.

**Committees:** None.

### No Other Current Public Board Service

AGM Voting results for 2021		Securities held or controlled		Director Share Ownership Met
For	Withheld	Common Shares	DSUs	
–	–	11,000	–	To be met by May 31, 2026



## Corporate Cease Trade Orders, Bankruptcies, Penalties or Sanctions

To the knowledge of the Corporation, none of the Nominees (a) is, as of the date of this Circular, nor has been within ten years before the date of this Circular, a director, chief executive officer or chief financial officer of a corporation that (i) was subject to a cease-trade order, an order similar to a cease-trade order or an order which denied the relevant corporation access to any exemption under securities legislation which was in effect for a period of more than 30 consecutive days that was issued while the Nominee was acting in the capacity of director, chief executive officer or chief financial officer, or (ii) was subject to a cease-trade order, an order similar to a cease-trade order or an order which denied the relevant corporation access to any exemption under securities legislation that was issued after the Nominee ceased to be a director, chief executive officer or chief financial officer and which resulted from an event that occurred while that person was acting in the capacity of director, chief executive officer or chief financial officer; (b) is, as of the date of this Circular, nor has been within ten years before the date of this Circular, a director or executive officer of any corporation, including the Corporation, that, while that person was acting in that capacity, or within a year of that person ceasing to act in that capacity, became bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency or was subject to or instituted any proceedings, arrangement or compromise with creditors or had a receiver, receiver manager or trustee appointed to hold its assets; or (c) has, within ten years before the date of this Circular, become bankrupt, made a proposal under any legislation relating to bankruptcy or insolvency, or become subject to or instituted any proceedings, arrangement or compromise with creditors, or had a receiver, receiver manager or trustee appointed to hold the assets of the Nominee.

## Compensation of Directors

The compensation program of the Board of Directors is designed to attract and retain highly talented and experienced directors, leading to the long-term success of the Corporation. This requires that Directors be adequately and competitively compensated.

Directors' compensation is based on a fixed annual retainer paid on a quarterly basis and no additional attendance fee is paid to the members for attending the meetings of our Board and standing Committees. Directors may also elect to receive up to 100% of their compensation in DSUs (as defined herein). In addition, the Corporation reimburses Directors for reasonable travel and out-of-pocket expenses relating to Directors' duties.

No director compensation is paid to Directors who are employees of the Corporation.

The following table displays the annual retainers for non-executive Directors ("**NEDs**") since July 1, 2020.

Director Position	Annual Retainer (\$)
Lead Director and Chair of the Corporate Governance Committee	82,500
Chair of the Audit Committee	80,000
Chair of the Human Resources Committee	80,000
Other Directors	70,000

Each year the ICD presents Fellowship Awards to individuals who have made outstanding contributions to corporate, not-for-profit or Crown corporation boards. The Fellows are nominated by their peers and selected by an independent committee based on several criteria, including leadership and contributions to governance. *Director Journal* is profiling this year's four recipients, beginning this issue with **Brian Levitt**. The chair of Toronto-Dominion Bank sat down recently with veteran business journalist **Gordon Pitts** and offered insights into the importance of capital allocation, talent development and maintaining proper relations with the CEO.



## A Man Comfortable Alone, in a World of Ambiguity

IT'S BEEN ALMOST THREE decades since Brian Levitt first stepped on to the board of a public company – as a 39-year-old corporate lawyer taking a director's role at Canada Trust. Since then, he has witnessed dramatic upheaval: Three recessions, including the hard climb out of the depths of 2008-2009, and a revolution in how the world judges boards.

The recent economic crisis was long and harsh, and there was a search for scapegoats, he says. As the ultimate governing body in corporations, boards were natural targets for the finger-pointing. The result, he believes, has been inordinate emphasis on the process of governance, rather than the business of the company.

Now, as economies finally recover, directors can't lose track of that business, says Levitt, chair of Toronto-Dominion Bank, which, it just happens, is the company that absorbed Canada Trust.

"I think we have had an inordinate emphasis on process and mechanical issues," says Levitt. The process part should never be overlooked, "but it's easy to get mesmerized – to say we will tick all the boxes and that means we are doing okay. The fact is we are doing okay only if the business is okay."

And business can be just as vulnerable during recovery as in recession. Boards have to be vigilant about the business, how it presents itself to the market, and also be prepared to rein in over-aggressive managers.

Coming out of a long slump, companies set high bars in terms of growth, but many can't follow through, he points out. They might be part of onetime growth industries that have matured and consolidated. This requires a re-examination of the framework for capital allocation, as expected returns from reinvesting in the business come down.

"You have to have expectations of the business that are consistent. You don't want to be unambitious, but if you are over-ambitious it can lead you to do foolish things."

It goes to the heart of one of a board's core challenges. "It has to make sure it gets the right people, including the right leader, and then make sure they don't make the one big mistake.

“ A board needs a mix of backgrounds... it is desirable to have people who have had the experience of having no one to talk to. ”



That is what kills companies. Sometimes they just bleed to death over time, but, more often than not, it is a big misallocation of capital that they don't recover from.”

As a director, lawyer and executive, Levitt has had a front-row seat on these patterns. “There are not many benefits of getting old, but one of them is to have seen things before,” says Levitt, now 66 and owner of one of the most wryly self-deprecating wits on the Street.

As a young man, Levitt collected an engineering degree and law degree, joined the Toronto law firm Osler, Hoskin & Harcourt LLP in 1976 and rose to become one of the country's most successful corporate lawyers. In the mid-1980s, he went on the board of Canada Trust, then controlled by the Montreal conglomerate Imasco Ltd. He made the move to the life of corporate executive, becoming Imasco's president in 1991. When CEO (and former Osler lawyer) Purdy Crawford retired in 1995, Levitt was named successor.

He guided Imasco through its highly successful breakup in 2000, resulting in the selling-off of subsidiaries – including Canada Trust, which ended up in the hands of Toronto-Dominion. Levitt's career has seen a bit of circling back – after Imasco he returned to Osler, where he is co-chair, and was appointed to the TD board in 2008 and became chairman on Jan. 1, 2011. He also sits on the board of Domtar Corp. and Talisman Energy Inc., and is chair of the Montreal Museum of Fine Arts.

Not surprisingly, he likes seeing boards liberally sprinkled with former

and present CEOs of other companies – people who know what it is like to be ultimately responsible for a business. Everyone else in the organization can delegate down or up but the CEO has nowhere up to go – and so the board becomes a critical sounding board.

“The higher you go in a company, the more ambiguity you have to deal with – there is a higher and higher level of generality. Your focus is more and more external and on things you can't control,” he observes. Having people around who have experienced that ambiguity can add guidance at a crisis point, or in unlocking decision-making. A board needs a mix of backgrounds, but “it is desirable to have people who have had the experience of having no one to talk to.”

Levitt quotes John Thompson, his predecessor as TD chair, in saying the key qualification for a director is good business judgment. “You look for people who have been successful at whatever they did. You are not usually successful at anything if you don't have good judgment.”

That judgment comes into play in myriad ways, no more so than in ensuring CEO succession. Levitt accepts that the CEO will have a view on who succeeds him or her, and if the board trusts that CEO, it would be foolish to disregard those views. In many cases, the CEO's choice will prevail, as long as the trust is there, and the board has been involved in the process.

Indeed, when managing internal succession, if you have had good planning and talent development, the

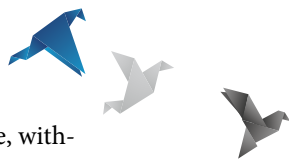
challenge is often not about selecting the right person but retaining everyone else in the top ranks. “It is usually not the one person – it is the team,” he says.

And the choice of CEO is not just crucial for the company's success – it is very difficult to undo. One of the board's toughest jobs is in deciding whether or not CEOs should go because they are not up to the job. Levitt has been on boards that have made that decision and he knows there is a natural predisposition to avoid sacking the boss.

“It is a big event and involves a lot of risk for organizations, and so you don't do it lightly. The board may be in for a change, but the CEO is the leader and so a disorderly leadership transition is not what you wish for, and it is not risk-free.” In fact, neither option – maintaining or cutting – is without significant risk.

To make these kinds of hard choices, Levitt finds value on one innovation in process – the institutionalization of in-camera board meetings without the CEO. It is, he argues, one of the most beneficial outcomes of the Sarbanes-Oxley era. In the past, if the board held a meeting without the CEO, it was bound to arouse the CEO's suspicions and even paranoia. But now, it is an accepted, standard part of the governance process, and thus less threatening.

And it is valuable in managing the dissatisfaction of some directors. “It could be just one director on a hobby horse, riding it around the room. But sometimes a director brings up some issue and another member says, ‘Yeah,



I got that too.” Otherwise, without that in-camera forum, individual board members have a degree of isolation and “no one wants to be seen as a backroom politicker,” Levitt says.

What’s more, “the sooner you get at a problem, the less likely it is to have an explosive ending. If the problem is allowed to fester away, that means there is some impediment to dealing with it.” If suppressed, the infection will get to the point that it blows away the impediment, and “usually it gets pretty ugly.”

Quite often, during an in-camera meeting, it comes out that people simply didn’t hear something right. “I have had situations where we have had a key executive presentation and three different versions from three different directors. The in-camera allows you to deal with it instead of having them go away and fret about it and having that perception harden,” he says.

Over the years, Levitt has taken the view that the role of the board is more limited than many believe. The board’s primary role is to get the right people – the CEO and top executives – and oversee what that CEO does in building the team. The board members have to watch over “how they articulate and propose the strategy and then, more important, [how] to monitor the execution of the strategy.”

Equally important is what happens internally – which means helping drive the agenda on talent development. “Increasingly, as the economy becomes more of a service economy, your talent management and development become key elements in the success of a company and a key source of competitive advantage.

“It may be easy to copy a cellphone, but it is harder to replicate a culture – and particularly at scale.”

“ The case for diversity is a business imperative, not a social or political imperative. ”

Levitt uses the test of talent-development in coming at another touchy issue – the drive for diversity on boards, and particularly, the widespread calls for more women directors. He sees the debates as valuable but sometimes missing the point. “The case for diversity is a business imperative, not a social or political imperative.”

As a director, he is highly aware of the current paradox, whereby the unemployment rate remains quite high, but businesses say they can’t get the right people. So there is a need to remove impediments to get these people. That means taking away reasons why people of a certain colour, gender or sexual preference would say, ‘I don’t want to work for that company, because I would not feel comfortable or I would not get ahead.’

Boards have a leadership role to play in removing this impediment, not only externally but internally. It is important that they be credible with the internal population of the company, which means they must be seen as living by the same kind of imperatives as the company – they have got to get the best people.

“My own view of diversity or anything that goes to board composition is: The purpose of companies is to improve and make money. And the board has to remove the impediments to making money – and that includes any obstacle to advancement. And the board has to reflect this.”

The truth is that shareholders, on the surface, don’t care much about issues of board composition, he argues. The ones who care are the outside commentators. But that is not a reason not to do anything. You have to do it because you want the company to be successful, he insists.

To achieve diversity, he is opposed to any suggestion of board quotas. “They devalue the achievement of people who fall within them.” But he does support the comply-or-explain proposal as articulated by many, including the Ontario Securities Commission.

Shareholder activism, he observes, is another of those cyclical waves – it comes and goes. And when a company is mired in underperformance that is culturally rooted, having a demanding activist investor nipping at its heels is not a bad thing, he argues. The presence of impatient investors provides a kind of market-cleansing mechanism.

He is more worried when a hedge fund or activist investor is advocating something in the short term that prejudices the long-term health of the company. For example, if an activist organization advocates leveraging up the balance sheet in order to pay it to go away, the company could take on more debt than prudent. And that, he says, could impair the company’s capacity to grow in the future by damaging its balance sheet.

It is not a white-hat, black-hat thing. Yes, some activist types are bad guys, he says, but certainly not all of them. And if a board is doing its job, it should be thinking ahead of them. “If the board is performing, when the activists show up, they should not be able to identify anything the board hasn’t thought of.”

## Simon Arnsby

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**From:** Kurt Sorschak <kurt@sorschak.com>  
**Sent:** 23 November 2022 23:58  
**To:** Simon Arnsby  
**Subject:** Re: AFFIDAVIT REQUEST

Dear Simon, thank you for your email and attached documents. I have to say that I was somewhat surprised regarding your request to the judge, and the confidence you put in me to be able to help the situation. Unfortunately, I will not be able to provide the requested affidavit at this time. My lawyers are already in contact with the company and the monitor in relation to the CCAA filing and certain issues as they pertain to me personally.

Having said that, if the court sees value in my involvement in order to secure a better outcome for employees, creditors and shareholders I would certainly be open to get involved.

I hope you are keeping well, good luck with your efforts.

Best regards,  
Kurt

Kurt Sorschak

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**From:** Simon Arnsby <simon.arnsby@273capital.com>  
**Sent:** Wednesday, November 23, 2022 4:37 PM  
**To:** KURT SORSCHAK (kurt@sorschak.com) <kurt@sorschak.com>  
**Subject:** AFFIDAVIT REQUEST

Dear Kurt,

I have attached a copy of a letter that I recently received from the judge presiding over Xebec's CCAA. It was sent in response to me attempting to file Pro Se an Application, also attached here.

Please can you see the penultimate paragraph of the letter from Judge Immer and inform me if you are able to supply the Affidavit that the judge mentions. I have subsequently informed Judge Immer that I do not represent you or Mr Marinus van Driel, nor did I consult either of you on my Application or its content.

I appreciate that your situation may not allow this but please excuse my request here, as I am doing my best to navigate my way in an unfamiliar, legal world and without representation.

Yours sincerely,  
Simon Arnsby.

## Simon Arnsby

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**From:** marinus.van.driel@gmail.com  
**Sent:** 23 November 2022 19:45  
**To:** Simon Arnsby  
**Subject:** RE: AFFIDAVIT

Dear Mr Arnsby,

Thank you for these letters. Unfortunately, I currently can't sign the Affidavit to support your motion to court. As you might be aware, I am a shareholder of Xebec Adsorption Inc, but at the same time, I am also an employee of the company. In order to make sure that these roles don't conflict, I have decided to be a passive shareholder at this time.

In the document you suggest the return of Kurt Sorschak and myself in the leadership team. For me, as I am already an employee of the company, this would simply mean assuming a different role which I would be open to consider, when asked by the board.

Best regards, Marinus van Driel

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**From:** Simon Arnsby <simon.arnsby@273capital.com>  
**Sent:** Wednesday, 23 November 2022 12:21  
**To:** marinus.van.driel@gmail.com  
**Subject:** AFFIDAVIT

Dear Mr van Driel,

I have attached a copy of a letter that I recently received from the judge presiding over Xebec's CCAA. It was sent in response to me attempting to file Pro Se an Application, also attached here.

Please can you see the penultimate paragraph of the letter from Judge Immer and inform me if you are able to supply the Affidavit that the judge mentions. I have subsequently informed Judge Immer that I do not represent you or Mr Kurt Sorschak, nor did I consult either of you on my Application or its content.

I appreciate that your situation may not allow this but please excuse my request here, as I am doing my best to navigate my way in an unfamiliar, legal world and without representation.

Yours Sincerely,  
Mr Simon Arnsby.