# M&A Trends to Watch For in 2019

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The Ontario Court of Appeal in *Rivers v. Waterloo Regional Police Services Board* has upheld the Superior Court of Justice's determination that it was without jurisdiction to hear a proposed class action on behalf of current and former female officers with the Waterloo Regional Police Service against the Waterloo Regional Police Services Board and the Waterloo Regional Police Association. The claim alleged systemic gender-based discrimination, Charter breaches, and sexual harassment by male members of the Service, over a 30-year period.

As 2019 commences, it is difficult to tell what lies ahead for M&A in the coming year, particularly as M&A activity seems to have fallen off at the end of the year in the U.S. and around the world to levels not seen for some time, despite a strong year overall in 2018.

What factors are likely to influence M&A activity in 2019?

## Interest Rates

After years of ultra-low interest rates, 2018 saw the Bank of Canada and the Federal Reserve in the U.S. begin to raise their benchmark rates. The benchmark rate in Canada has increased to 1.75 per cent and, after four hikes in 2018, the Federal Reserve's benchmark rate has now hit a range of 2.25 per cent to 2.5 per cent. While there were expectations we would see further increases in 2019, expectations have been tempered somewhat as the market turbulence at the end of 2018 seemed to indicate some pessimism about where interest rates and the overall economy in both Canada and the U.S. were headed in 2019.

Despite these confusing signals, interest rates remain low by historical standards and it may only be a matter of time before the market adjusts. After all, while there is more uncertainty around the general direction of the world economy, employment remains and is expected to continue at high levels in Canada and the U.S., and the drop in valuations may make acquisitions more attractive. The result may be that what we are seeing now is just a pause while market participants take stock of where things are, to be followed by renewed activity as the market adjusts. Commentators have also suggested that recent significant drops in the market, triggered in part by rising interest rates, may make some public companies more attractive as targets to cash-rich private equity funds looking for bargains.

# Shareholder Activism and Take-Overs

Last year we predicted that the trend toward increased shareholder activism would continue, and we were correct. We believe this trend will continue into 2019, particularly since the general fall in the equity markets has left most companies with lower valuations and a potentially grumpier shareholder base. Even with continued high levels of activity, it is likely going to be more difficult for dissidents to be successful as companies are paying more attention to their shareholder base and preparing themselves in case they become targets. Whether this will result in more contested public activist campaigns, or more private settlements with activists achieving fewer of their demands, remains to be seen.

As Canada completes its second year under the new take-over bid regime, it seems clear that hostile take-over bids have become less common, although the trend had been downward over the past 10 years or so in any event. Nevertheless, hostile bids have not gone away completely under the new rules. While the longer time periods have made hostile bids less interesting to watch, we have witnessed a number of them in 2018, including hostile bids in the oil patch which have historically been quite rare.

# Politics

While it is obvious that politics can affect economic activity and M&A, it remains something that should be kept in mind for 2019 when there are so many significant political cards in play. Canada is caught in the cross-fire of the U.S./China conflict over trade, and not just because of the arrest by Canadian authorities of the CFO of Huawei at the request of the U.S. While it had seemed Canada might benefit by selling, for example, agricultural products to China which China was no longer buying from the U.S., this now seems less likely. Domestically, the oil patch continues to suffer from low oil prices and the lack of pipelines to ocean ports. Whether steps can be taken to add pipeline capacity remains one of the most critical, not to mention existential, issues facing the current federal government. Other important matters to address in the coming months include ratification of the new Canada-U.S.-Mexico trade agreement, the hoped-for end to U.S. aluminum and steel tariffs, a federal election in the fall of 2019, the effects of a new Democrat-controlled House of Representatives in the U.S., and the fate of Brexit. All of these elements create uncertainty, which adds to the difficulty in making M&A decisions and may serve to mute M&A activity in 2019.

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By:

Frank Callaghan, Kent Kufeldt

Services:

Capital Markets, Mergers & Acquisitions, Shareholder Activism, United States

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## BLG Offices


**Calgary**

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

**Ottawa**

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

**Vancouver**

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749