

This Too Shall Pass –

What Will Life be Like on the Other Side
of COVID-19?

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Introduction

Our way of life will change radically as a result of the ongoing global pandemic and the likely recession (or worse) that will follow. In this essay, a group of Stikeman Elliott partners have collected some of our early thoughts on the challenges and opportunities that may emerge. We recognize that, at times like this, it is even harder than usual to resist the lazy reflex to seize the moment as an opportunity to show why what we already thought has been proven to be true. Hopefully, our readers will challenge us on this!

It's impossible to predict the future. We hope that by sharing with clients and friends some of our thoughts and musings/speculations, those of you inclined to do so might respond in kind with your own. Over time, we hope to "drill down" on some of these issues (and others). We would also be happy to consider the implications of our predictions, and others, for those interested in such discussions.

This Too Shall Pass – What Will Life be Like on the Other Side of COVID-19?

Milton Friedman famously commented that:

Only a crisis – actual or perceived – produces real change. When that crisis occurs the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and credible until the politically impossible becomes the politically inevitable.¹

A Changing Social Contract

Through the course of this crisis, the vulnerability of segments of our own society (and of individual and global inequalities) will be thrown into even greater relief. Think, for example, of the elderly who lack social care or of the low paid and self-employed who have no financial cushion to fall back on and upon whose work society relies. Older workers who have lost much of their savings will likely have to work longer (which, in turn, will impact younger workers for some time to come). The pandemic is placing a dangerous strain on pre-existing inequalities – in personal and national wealth, labour forces, and intergenerationally (as we borrow heavily from the future to try to maintain current standards of living).

A stronger sense that we are members of a collective whole could lead to increased public demands for more interventionist measures to protect our disadvantaged – a development that governments will find harder to resist after their current readiness to override the primacy of markets. Likewise, the massive public expenditures being made could lead to a wholesale redesign of tax mechanisms with an increased focus on issues such as equity, taxing out of country suppliers, and reducing global opportunities for tax avoidance.

In the world of business, companies will increasingly be expected to play a different role than one of pure value maximization. There will be increased demands on companies to address the greater good and act

as leaders and in ways that serve a broad range of stakeholders, often when governments are not up to the task². Those who understand and can effectively respond to this insight, already reflected in the tendency of our courts to respond and give meaning to such expectations³, are more likely to survive and prosper.

Changing Nature of Work, Education, Health Care and other Services

It is likely that many of the new forms of behaviour we adopt through necessity during this crisis will prove to be sticky. Most involve staying at (or closer to) home or how and what we consume, and will likely have profound impacts on how we work (remotely and with substantially less need for commuting), how we are educated, and how we receive health care. A slew of businesses that have hesitated to embrace digital technologies are being forced to do so in order to survive (and are unlikely to revert to traditional operations). This will introduce extraordinary opportunities to innovate and develop more cost-effective business models, while potentially allowing most businesses to be “global” simply by being local. The importance of robust telecommunications, financial and public service delivery infrastructure has become paramount, and the monopolies of localized or geographically concentrated service providers (think, for example, of education) will be contested. The disruption to certain sectors will be extreme while the opportunities that will be afforded to others are virtually unlimited. These

¹ Milton Friedman, *Capitalism and Freedom* (University of Chicago Press 1962).

² The decision of the NBA to suspend its season has been credited for demonstrating the gravity of the pandemic to many Americans.

³ A notable example was the Supreme Court of Canada's decision in *BCE Inc. v. 1976 Debentureholders* [2008] 3 SCR 560, in which the court articulated its stakeholder (vs. shareholder) based view of directors' statutory duties and specifically discussed its willingness to “look beyond legality, to what is fair, given all of the interests at play” to address conduct that is “wrongful even if it not actually unlawful” (para 71). Although behaviour did not change radically, the language of the court did, presaging future changes. We have already seen this begin to play out in a variety of commercial contexts, including judicial intrusions on the concept of limited liability in corporate law and the willingness of courts to re-arrange priorities in the context of insolvency law, in each instance focused on protecting a broader set of stakeholders.

macro changes will introduce other changes. Think again here, for example, of shifts in energy usage patterns.

While innovation is continuous, the singular focus on the pandemic and the responses to it is uniquely engaging the medical and healthcare industry, which is already facing a large population of “baby boomers” with longevity expectations and the means to pursue “healthfulness”. This focus should yield startling results that transcend the current pandemic, potentially altering society in significant ways.

Systems Thinking

One unique aspect of the current crisis is that virtually all systems (including medical, economic, social, governmental and geopolitical) are seeking to cope, both in defining and responding to it. In that sense, the crisis is likely to become a public laboratory for systems thinking — the use of mechanisms such as redundancy, homeostasis (i.e., information and feedback loops that allow a system to adjust to disturbances in its environment and stay within the parameters necessary for its continued functioning), self-organization (i.e., the ability of a system to learn, diversify and evolve in response to shifts in its environment that might otherwise threaten its survival), and resilience. We are also learning how tightly coupled and interdependent systems have become — that the overall health of a system depends on the continued health of each of its essential subsystems, as well as of the larger systems in which it is embedded. Of course, this has been exacerbated by technology and globalization. This awareness is likely to have profound impacts on public policy as we focus on designing better, safer systems.

Epidemics are not the only systemic risk we have turned a blind eye to. Think of the risks to our financial system before the 2008 crisis, or the ongoing risks to our environment. It is reasonable to expect that the pandemic will change perceptions of risk for generations to come (the equivalent to living through WWII) and that we will pay more attention to these systemic risks in the future.

De-Globalization

We believe it probable that supply chains will become more “localized” (i.e. with fewer international dependencies and a reduction of long “just-in-time” delivery systems), resulting in a shift of manufacturing (and potentially agriculture) and energy to domestic or regional sources. This could very well lead, in turn,

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to employment and wage gains (at least in the short term), but also an increased focus on the deployment of automation and artificial intelligence to maximize capital and operational efficiencies, accelerating a trend towards the displacement of employment and highlighting the need for effective public policy in response. A related risk is the entrenchment of exclusionary political narratives, with calls for new borders overseen by leaders who have the political will and legal and technological capacity to enforce them. This may be juxtaposed with immigration requirements as citizens age in certain economies.

Digital Infrastructure and Surveillance

A remarkable feature of the current crisis is the degree to which governments throughout the world, including in the democracies with a long liberal tradition of individual rights, have enacted measures to restrict their citizens for the common good, with little social resistance. With the ubiquity of digital infrastructure and surveillance, the use of these tools as a necessary public sector measure is likely to become normalized and prevalent. Governments may be reluctant to yield these types of measures, once implemented, and the temptation to use them for other public purposes may be too great to resist. Given the ability to use these tools to collect and analyze extreme amounts of personalized information, the related privacy concerns will likely become a dominant focus for regulation and an even greater source of innovation.

Environmental Sustainability

The current crisis will continue to dominate public policy (and Main Street) as we deal with immediate challenges. However, the attitudes embraced by society as the pandemic shifts to the rear-view mirror should reinforce and accelerate the currency of sustainability issues generally. Political choices will have to be made between competing demands.

Accelerating Qualitative Standard Setting

Another outcome of the current crisis is likely to be increased sensitivity to and utilization of qualitative standards and metrics to measure performance.⁴ Until recently, the template has been climate change — with growing acceptance of the need for more comprehensive disclosure of climate financial risks, better climate risk management and a focus on opportunities for firms and investors in the transition. This logic is likely to extend to other systemic issues and help drive the transition to more sustainable economic frameworks.

Conclusion

Confucius is credited with saying, “The humane do not worry; the wise are not perplexed; the courageous have no fear.” In extraordinarily challenging times few aspire to such a high bar, but it’s a good reminder that this type of situation has happened many times in the past. We know that life after the crisis will be very different than what we have come to take for granted. But we also know that the crisis will pass, and in its passing will present many challenges and opportunities.

We are keen to hear from others thinking about the challenges and opportunities that lie ahead and we encourage you to reach out to any of your Stikeman Elliott contacts to continue the dialogue. As noted above, a number of Stikeman Elliott partners contributed to this essay, which may not necessarily reflect the views of all members of the firm.

⁴ One of the authors was a founding director of the Sustainability Accounting Standards Board.