

# Duo launches eSports law firm

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For Law Times

Like many 21<sup>st</sup>-century law students, Evan Kubes and Josh Marcus' limited downtime featured a strong dose of consoles and controllers.

"We probably spent a bit too much time playing video games," admits Kubes of their shared time at the University of Windsor's faculty of law between 2013 and 2016. But the experience appears to have paid off in the long term for the pair, who recently founded Marcus Kubes Management Group, the first full-service law firm and management agency dedicated exclusively to eSports and content creators.

When they weren't putting their thumbs to work on the latest release, Kubes and Marcus liked to spend their time spit-balling far-fetched business concepts with their entrepreneurially minded friends at Windsor Law.

"One would throw out an idea, and the rest of us would come up with all of the reasons why it would fail," Marcus explains. But when Kubes approached him last year with the beginnings of a business case for MKM, Marcus couldn't find a way to shoot it down.

"This was something that would allow us to stay in the legal field and leverage that experience, while working in an area that we both love and found fascinating," Marcus says. "It made a lot of sense to me, and everyone I talked to about it kept validating the idea."

If there was a barrier, it was the progress he had already made as a litigation associate at a prestigious insurance defence firm in Toronto.

"I had the support of my family and friends, which helped, and finally, we made the move and left our cushy jobs," Marcus says. "It was the right time, and I'm glad we did it."

Kubes' initial research had revealed a burgeoning global industry that contributes billions



Evan Kubes says that, before he co-founded his firm, the Canadians he spoke to 'were telling me they had to go to the U.S. to get a lawyer who focused on eSports.'

of dollars per year to Canada's GDP annually, and rising, according to the Entertainment Software Association of Canada. In its recent report on video gaming in Canada, the association estimated the industry's value to the economy in 2017 as \$3.7 billion, up more than 60 per cent since 2013, when the total was pegged at \$2.3 billion.

"What struck me most was that the business model appeared very similar to more traditional sports," Kubes says. "You've got players, teams and sponsors, all interacting in various ways."

Critically, the eSports industry seemed to him underserved by the Canadian legal market, with only a few lawyers professing to practise in the area, even as the country played host to high-profile events such as The International Dota 2 Championships. The tournament, which brought together some of the world's top performers in the multi-player online game, had a total prize purse of \$25 million to share among the participating teams, including \$11 million for the winners.

"The people I spoke to in the space were telling me they had to go to the U.S. to get a lawyer who focused on eSports," Kubes says. "So, we saw a good opportunity to get into the area and help to build the infrastructure and regulatory framework for the



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community in Canada.

"The idea was that, when it gets to the point where it's mainstream, we'll be there," he adds.

But Kubes says the whirlwind pace of the firm's first few months of existence, during which they have been contacted by more than 200 potential clients connected to Canada's eSports industry, suggests he may have underestimated its level of maturity.

"We thought we might be sitting around for a while in our dark office, waiting for things to explode, but it hasn't happened that way," he says.

Jonathan MacKenzie, a corporate commercial lawyer with Toronto firm Aluvion PC, has been watching the growth of the eSports industry with interest over the last few years.

"With the entertainment landscape the way it is and the trend for cord-cutting, money has poured into eSports, which tends to be an indicator of things to come," he says.

"In Asia, they have a very well-established and large market, with mainstream sponsors and huge attendances at events. It hasn't quite caught on to that extent here yet, but it generally seems to be on the uptick," adds MacKenzie, who puts the slower North American development down in part to major brands' unfamiliarity with the field and its demographics.

"Those first few relationships and deals can be difficult, because there's not an established process," he says. But the unique nature of the eSports environment creates its own difficulties for potential sponsors, according to Kubes. In addition to its legal services branch, MKM also offers agency services for eSports players, as well as a consultancy for newcomers looking to enter the business.

"Unlike traditional sports, it's a very 'authentic' industry, which means that everything needs to be done in a way that's accepted by the community. Any time you bring in a sponsor, that needs to be taken into consideration," he explains.

Still, Gary Daniel, counsel to intellectual property law boutique Deeth Williams Wall in Toronto, says the parallels between eSports and its more established athletic counterparts, such as basketball and hockey, are striking.

"Even though you have a new paradigm, in most respects, it's very similar. In traditional sports, you see people acting for athletes, franchises and leagues, and it's the same thing in eSports," he says.

The most significant area in which eSports differ lies in the proprietary nature of the "playing fields" on which the contests take place, Daniel notes.

"Because particular games are owned by someone, it's going to be harder for rival or breakaway leagues to emerge," he says.

Indeed, the Overwatch League, based around a popular first-person shooter game, has already seen one of its first intellectual property disputes after the game developers reportedly asked one team to drop any reference to "Toronto" from its name, in favour of another that had purchased naming rights.

Allan Oziel, founder of Toronto business and technology law firm Oziel Law, predicts that, as the industry matures, open-source games could rise in popu-

larity and result in a decentralization of the sector that will reduce the influence of individual game developers and publishers.

"It would certainly be interesting to see the creation of a league that is based on more open-source games," he says, noting that he was involved in a deal that saw a developer end support for its game and turn over the rights to its community of fans.

"It indicates the possibility that a game can be taken over and made open source," Oziel says.

MacKenzie identifies another apparent distinguishing feature of eSports that he says could boost its longevity:

"The secondary and tertiary levels are almost as popular as the highest level," he says, noting that while support drops off significantly outside the big leagues of traditional sports, gamers of varying skill levels have been known to gain significant online followings by livestreaming themselves and communicating with fans via platforms such as Twitch or YouTube.

"There will be an onus to get butts on seats and, to some extent, broadcast partners, for the big tournaments. But that's just one small part of the more diffuse, multi-faceted delivery model for eSports," MacKenzie says.

Oziel got involved in the sector several years ago as organized leagues and professional teams began sprouting up. However, more recently, he's noticed an influx of calls from parents of young gamers looking for advice about their newfound online fame.

"We're starting to see a lot of people, particularly younger players, who become overnight successes livestreaming or recording walk-throughs of games, which are very popular on YouTube," he says. "Some of them are making a lot of money, and the parents want to know how they should be protecting their rights and setting themselves up as a business."

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