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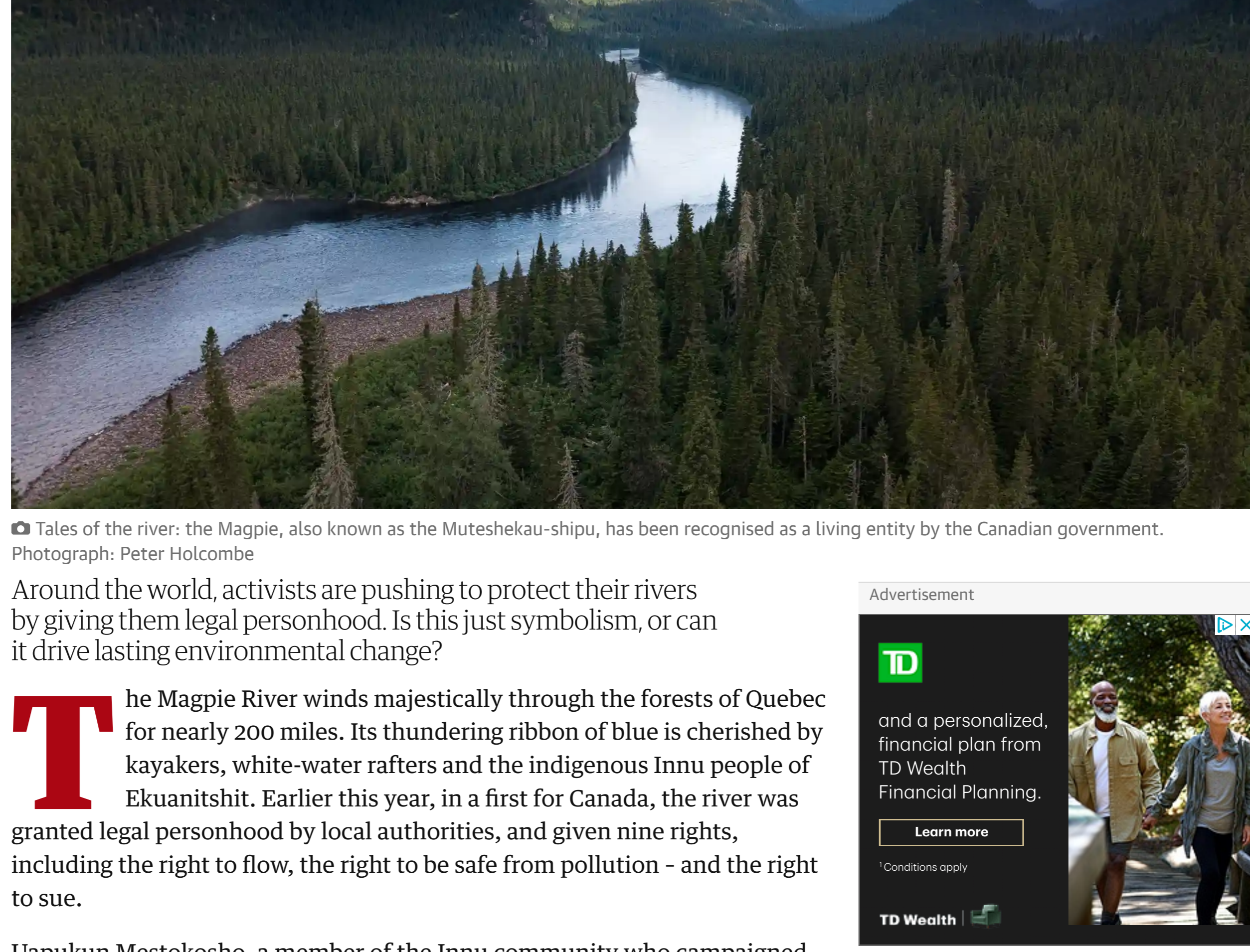
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The Observer Environment

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Should rivers have the same rights as people?



Tales of the river: the Magpie, also known as the Muteshekau-shipu, has been recognised as a living entity by the Canadian government. Photograph: Peter Holcombe

Around the world, activists are pushing to protect their rivers by giving them legal personhood. Is this just symbolism, or can it drive lasting environmental change?

The Magpie River winds majestically through the forests of Quebec for nearly 200 miles. Its thundering ribbon of blue is cherished by kayakers, white-water rafters and the indigenous Innu people of Ekuantshit. Earlier this year, in a first for Canada, the river was granted legal personhood by local authorities, and given nine rights, including the right to flow, the right to be safe from pollution - and the right to sue.

Uapukun Mestokosho, a member of the Innu community who campaigned for the recognition of the Magpie's rights said spending time on the river was "a form of healing" for indigenous people who could revive their traditional land-based practices that had been abandoned during the violence of the colonial era. "People are suffering a lot, with intergenerational traumas linked to the past," Mestokosho told CBC. As well as this benefit for people, she said that her ancestors had always protected the Magpie, known as the Muteshekau-shipu, in the past, and a recognition of its rights would help protect it for future generations.

How the Magpie River in Canada has got the right to flow, but how you enforce that right is very unclear

The Magpie is one of a growing number of rivers to be recognised as a living entity across the world. The burgeoning rights-of-nature movement is pushing local, national and international authorities to recognise natural features - from lakes to mountains - in law, giving them either legal personhood or an independent right to flourish.

Giving rivers the status of people - or more - in courts of law is enlivening environmentalism around the world. Ecuador started the movement when it enshrined rights of nature in its constitution in 2008. Countries such as Bolivia, Mexico and Colombia have created comparable legal mechanisms to protect nature, while New Zealand, Australia and Bangladesh have acted to protect rivers. In the United States, residents of Toledo drew up a bill of rights for Lake Erie. But can legal rights for nature protect it in reality? Who decides when a river can sue? Does it diminish the power of nature to squeeze it into the western legal system? Or do nature's rights challenge the very foundations of capitalism?

Western legal thinkers began probing the prevalent Enlightenment assumption that natural objects were simply property to be exploited in 1972 when a young professor of legal philosophy, Christopher Stone, argued that the environment should be considered as a subject and given legal personhood - as granted to corporations, for instance - with human guardians able to seek legal redress if a natural feature is damaged or destroyed. Today's movement was ignited in 2017 when an act of parliament in New Zealand granted the whole Whanganui River rights as an independent entity, considering it an indivisible whole from source to sea. This was part of the treaty settlement between the government and the Māori people. Guardians were appointed to act and speak on behalf of the river and enforce its rights.

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But what is a river? Most would say not its banks but its flowing water. Unfortunately, the "elephant in the room," says Dr Erin O'Donnell of the University of Melbourne and author of a book on rights for rivers, is the fact that none of the rivers legally recognised as living beings or legal persons actually have any rights to the water that flows within their banks.

"There is increasingly an attempt to give rivers a right to flow and so the Magpie River in Canada has got the right to flow, but how you enforce that right is very unclear," says O'Donnell. "And if that's not actually embedded within water law, which it isn't yet, then it's probably not worth the paper it's written on."

In New Zealand, the Whanganui treaty did not address this key issue, with a water company continuing to divert 80% of the river's flow for hydropower until its licence expires in 2039. If this fact makes rights for rivers appear to be symbolism without legal teeth, O'Donnell and others argue that the concept still possesses real transformative power. In Canada, David Boyd, a professor of law and the UN Special Rapporteur on Human Rights and Environment, has said that legal personhood could succeed where decades of environmental laws have failed, kickstarting a cultural shift away from conceiving of nature as a "warehouse of commodities for human use".

In Australia, that shift is underway with regards to the Yarra, believes O'Donnell. The Yarra was recognised as a living, integrated entity as its traditional owners, the Wurundjeri people, had always known it, in a state act of parliament in 2017. Unlike Lake Erie and other locations in North America, the Yarra has not been made a legal person. "The upside of having legal personality is that you do have extra legal powers, so a river that is a legal person can go to court. The downside is that you immediately focus people's attention on those rights and powers and expect the river to start using them," says O'Donnell. "One of the first questions that I've asked almost every time I speak publicly about the issue of rivers having rights is, 'Can we sue the river when it floods?'" As soon as Lake Erie was granted rights in the United States, farmers - concerned that measures to stop fertilisers running into the lake would threaten their businesses - challenged it in court.

Having the Yarra recognised as a living entity sounds like a weaker step than legal personhood, but it still has "the most transformative potential in terms of the way that people relate to the river," argues O'Donnell. Until very recently, the river was a resource to exploit: a source of water, a stormwater drain and a sewer. "When we see the river as a living being, is that when we start to say, hang on, what do we want for the river? That's the genuine conversational shift I'm seeing with the Yarra away from this western resource extraction model to seeking a partnership with the river in its own management."

Some rights-of-nature sceptics argue that it simply can't fit into western law, which upholds capitalism, property rights and extracting profit from the Earth's resources. After Ecuador incorporated rights of nature into its constitution, in 2011 a provincial court ruled in favour of the Vilcabamba River against damaging road construction. The river won in court but the developer didn't actually take the action required to remediate the pollution. Ecuador's courts have since held more than three dozen lawsuits in the name of nature. Many have been successful but verdicts have not always been enforced on the ground.

In India, a state high court tried to give the Ganges and Yamuna River legal personhood in 2017, but the decision was appealed to the supreme court. Campaigners are still waiting for the verdict while the rivers continue to be polluted and exploited.



Deep feeling: in 2017 the New Zealand parliament granted Whanganui River rights as an independent entity, an indivisible whole from source to sea. Photograph: Oliver Strewie/Getty Images

Rights of nature are being asserted most powerfully in post-colonial countries where indigenous people strive to protect traditional lands. But some indigenous campaigners view legal personhood and "rights" for nature as western constructs. "The use of rights doesn't quite fit into the teachings of many indigenous people," says Michelle Bender of the Earth Law Center, an influential co-operative based in the United States. "Nature is the source of life, it's already an entity to be respected and so some people say we don't need this recognition of rights. To be clear, the rights of nature movement is learning from an indigenous worldview rather than the other way around. The use of rights of nature can help to reorient the law around indigenous relationships and responsibilities to nature."

Europe lags behind other continents where indigenous people have challenged western concepts of owning and exploiting nature. In Britain, nature's rights briefly emerged in 2018 when Frome town council, run by community-minded independent councillors, proposed to pass a bylaw recognising the rights of their stretch of the River Frome and water-meadows to remain pollution-free. Belatedly, in 2020, central government said that the council could not pass its bylaw because they judged it duplicated existing environmental protections.

Mumta Ito, the founder of Nature's Rights and a former environmental lawyer based in Scotland, says it is not possible to make local laws in Britain as municipalities can in North America. "Then you get the backlash, the voices that say it doesn't work," she says. "Of course it doesn't work. How can one part of the River Frome have rights when the stretch flowing through the next county doesn't? All you can achieve with these local-level laws is raise awareness."

How can one part of the River Frome have rights when the stretch flowing through the next county doesn't?

Ito argues that we can't simply drop the rights of nature into the current legal system, but require much more fundamental change. Ultimately the law must recognise that nature's rights come first, followed by human rights and then corporate rights because without living systems such as clean water, air and fertile soils there is no human life. "We are an intrinsic part of nature and our human right to life emanates from the rights of nature. All human rights exist because of nature. It's irrational to say we have rights to life or property rights if nature's rights are not achieved. But we have an economic system that undermines the natural system that we come from."



A living being: The Whanganui River - Video

Such radical legal changes would probably require us to uproot established western concepts of property rights, individualism and ceaseless economic growth. "Where do we start?" says Ito. "We should start with common sense. People becoming connected with nature is really going to help. All of us have experienced how good we feel being in the forest or by the sea. It's hard to get people to care about something if they don't make the connection."

Rather than battling at a local level in Britain, Ito is examining how the EU could recognise rights of nature. Ito says EU commissioners and legislators are paying attention. "At least they are willing to hear what we've got to say."

Other rights of nature advocates are also setting their sights higher. Rivers cross state and national borders and look a particularly daunting task, but Michelle Bender argues that it may be easier to assert nature's rights here because no one owns the high seas. Rights of nature don't conflict with property rights so oceans could more easily be recognised as an independent legal entity. "The ocean would own herself and decisions would be made considering her wellbeing and impact on all life, rather than just the piecemeal approach that the UN or a council of ocean guardians who are legally responsible for representing the ocean's needs. They could set standards for a "healthy" ocean.

In some respects, new rights of nature laws resemble the "net zero" emissions targets set by governments, councils and corporations: worthy aspirations yet to translate into decisive action and change in real life. There is also a chicken-and-egg element to this debate: can law change popular consciousness or is it doomed to fail if it doesn't simply prop up existing values?

Campaigners believe the law can and does change the way we think. For Ito, her ambitious pursuit of rights for nature is not nearly as frustrating as her years as an environmental lawyer seeking to defend nature using inadequate existing structures. "At least on this I'll be able to look my grandchildren in the eye and say I did what I could," she says. "The changes in the legal system deeply affect the psyche. If the law says I'm in relationship with the ocean and the river then it won't be long before people start behaving as if we are interconnected with the other life forms on the planet."

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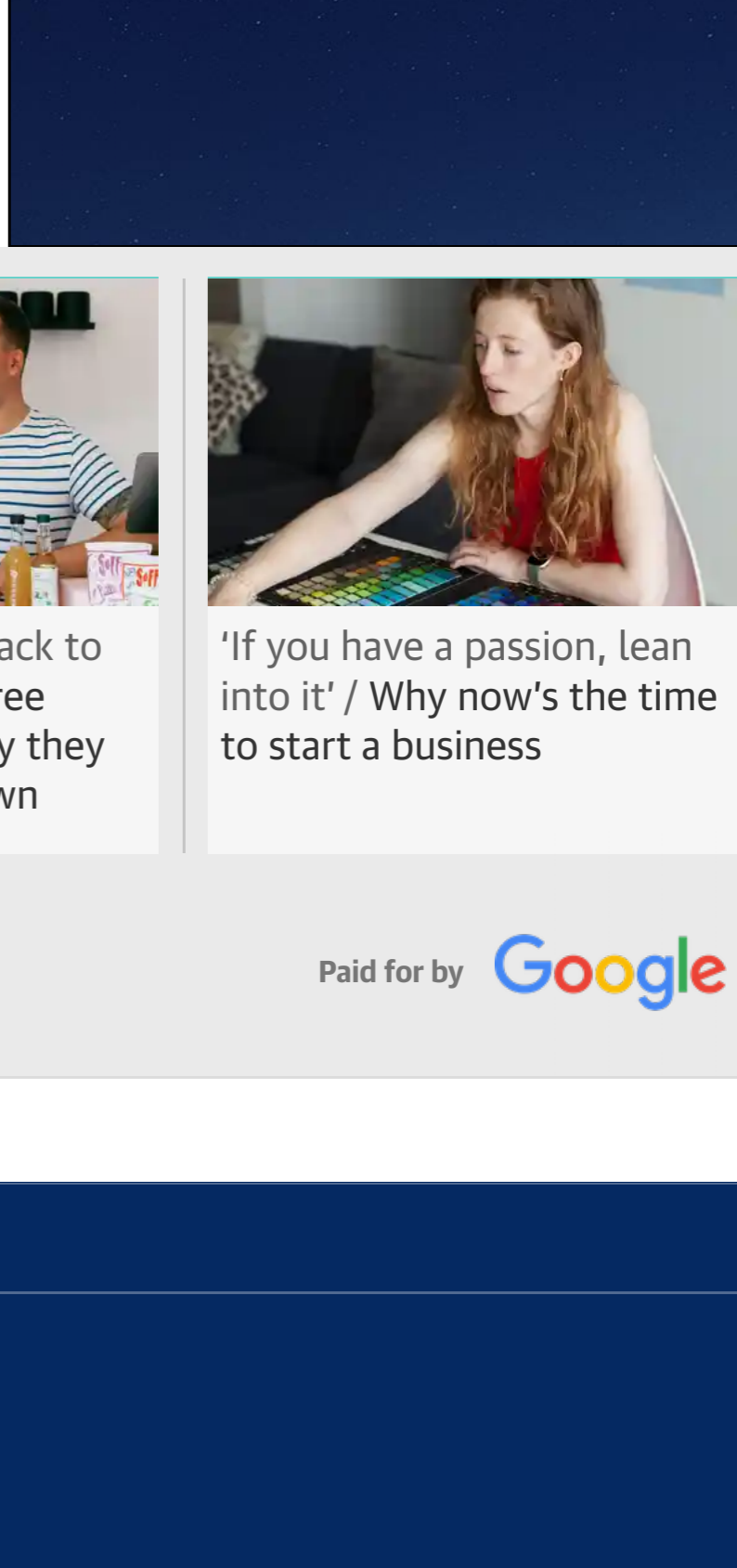
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