

GHG Targets Considerations Disclosure, Director Duties and Litigation Risk

Tuesday, February 25, 2020

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Overview of Presentation

Part 1 – Disclosure of GHG Targets and Litigation Risk

- Introduction
- Disclosure Expectations
- Precedent Examples
- GHG Target Development Process
- GHG Target Disclosure Considerations
- Update on Climate-Change Related Litigation

Part 2 – Directors Duties in the Context of Setting GHG Targets

- Introduction
- CBCA Amendments
- CBCA Remedies

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Part 1 – Disclosure of GHG Targets and Litigation Risk

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Disclosure Requirements and Expectations

- Major institutional investors/governance entities are seeking specific/enhanced climate-change risk disclosure including non-boilerplate disclosure of risks, governance processes and voluntary targets and have adopted certain standards set out by various expert groups (e.g., TCFD, SASB and PRI).
- CSA Staff Notice 51-358 – Reporting of Climate Change-related Risks
 - Guidance re identifying material risks and improving related disclosure.
- In 2010, the SEC issued guidance around disclosure related to material effects of environmental legislation and climate change in general, but has been largely silent in recent years under the current U.S. administration.

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The Taskforce on Climate-Related Financial Disclosures (TCFD)

TCFD Recommendations			
Governance	Strategy	Risk Management	Metrics and Targets
Disclose the organization's governance around climate-related risks and opportunities.	Disclose the actual and potential impacts of climate related risks and opportunities on the organization's businesses, strategy, and financial planning where such information is material.	Disclose how the organization identifies, assesses, and manages climate-related risks.	Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.

- Established to help identify information needed by investors, lenders, and insurance underwriters to appropriately assess and price climate-related risks and opportunities.
- TCFD developed four widely adoptable recommendations on climate-related financial disclosures that are tied to: (i) governance, (ii) strategy, (iii) risk management, and (iv) metrics and targets.

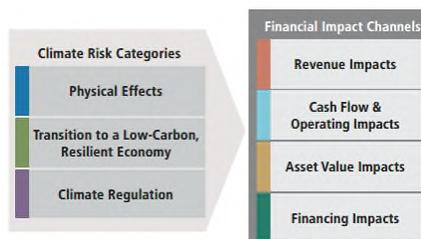
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Sustainability Accounting Standards Board (SASB) Framework

- Addresses three distinct types of climate risk and four channels of financial impact through which climate risk can ultimately impact investment returns.
- Recommended disclosure for oil & gas exploration and production includes descriptions of long-term and short-term strategies or plans to manage Scope 1 emissions, emissions reduction targets, and an analysis of performance against those targets.



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Principles for Responsible Investment (PRI)

- The PRI (a UN supported network of international institutions) defines responsible investment as a strategy and practice to incorporate environmental, social and governance factors in investment decisions and active ownership.
- In 2018, the PRI introduced TCFD-aligned indicators to its Reporting Framework and plans to make the climate indicators within its Reporting Framework mandatory to report within the network but voluntary to otherwise disclose outwardly from 2020 onwards.
- Six guiding principles for responsible investment by investors:

1. We will incorporate ESG issues into investment analysis and decision-making processes

2. We will be active owners and incorporate ESG issues into our ownership policies and practices

3. We will seek appropriate disclosure on ESG issues by the entities in which we invest

4. We will promote acceptance and implementation of the Principles within the investment industry

5. We will work together to enhance our effectiveness in implementing the Principles

6. We will each report on our activities and progress towards implementing the Principles

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TCFD, SASB and PRI Adoption

Name	Adopted TCFD Recommendations	Adopted Other Climate Change Risk Disclosure Recommendations
Glass Lewis	✓	✓ (SASB & PRI)
ISS	✓	✓ (SASB & PRI)
State Street Global Advisors	✓	✓ (SASB & PRI)
AIMCo	✓	✓ (PRI)
OTPP	✓	✓ (SASB & PRI)
Caisse du dépôt	✓	✓ (SASB & PRI)
BlackRock	✓	✓ (SASB & PRI)
CPPIB	✓	✓ (SASB & PRI)

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Setting Targets (Scope)

- GHG emissions can be categorized into three 'scopes':
 - Scope 1: Direct emissions from owned or controlled sources
 - Example #1: Total upstream operations methane intensity of 0.2% (annually)
 - Example #2: Sustainable CO₂ storage capacity of 5M tonnes (2030)
 - Scope 2: Indirect emissions from the generation of purchased energy
 - Example #1: 10% reduction in GHG emissions intensity (2016 vs. 2023)
 - Example #2: 7.9% reduction in refining GHG emissions intensity (2017 vs. 2018)
 - Scope 3: Indirect emissions (not included in Scope 2) that occur in value chain, including upstream, downstream and end use emissions
 - Example #1: 2-3% reduction in GHG emission intensity of products sold, inclusive end use (2016 vs. 2021)
 - Example #2: 15% reduction in GHG emission intensity of products sold, inclusive of end use (2015 vs. 2030)

Sample Targets (Link To Pay)

- 45% of issuers directly link executive compensation to GHG targets
- Additional considerations:
 - How much?
 - What about employee pay?
 - Which targets?
 - More common for near term GHG targets than long term GHG targets
- Important to note that the above is based on public statements only

Issuer Targets (Disclosure)

- 9/11 issuers disclose internal GHG related targets
 - Where?
 - Core disclosure documents: 44%
 - Sustainability reports: 100%
- FLS/Risk Factor disclosure?
 - Nearly all peers include general references to GHGs, particularly in the context of future regulation
 - Degree of detail varies broadly
 - Few issuers specifically reference GHG related targets
 - Relevant considerations?
 - Technological developments; economic viability; regulations; public and investor sentiment

GHG Target Development Process

- Disclosure of the GHG Target will constitute “forward-looking information” (FLI), though will not constitute “FOFI”, under
 - Part 4 of National Instrument 51-102 – *Continuous Disclosure Obligations*
 - Part 17.01 of *Securities Act* (Alberta) – *Civil Liability for Secondary Market Disclosure*
- In order to ensure availability of statutory defence in respect of FLI, the process of developing the GHG Target must align with certain obligations.
- These processes should be carefully managed to avoid actions/communications that may enhance future litigation risk whether founded on a breach of securities laws or otherwise.

Obligations re “forward-looking information” (National Instrument 51-102, Part 4A)

- Must not disclose forward-looking information unless there is a **reasonable basis** for the forward-looking information, meaning:
 - (a) there must be reasonable assumptions underlying the forward-looking information (including in respect of any time horizons in which the information pertains to); and
 - (b) the process followed in preparing and reviewing forward-looking information must be reasonable.

Obligations re “forward-looking information” (Con’t)

- When disclosing material forward-looking information issuers must include disclosure that
 - identifies forward-looking information as such;
 - cautions users of forward-looking information that actual results may vary from the forward-looking information and identifies material risk factors that could cause actual results to differ materially from the forward-looking information;
 - states the material factors or assumptions used to develop forward-looking information; and
 - describes the reporting issuer’s policy for updating forward-looking information if it includes procedures in addition to those described in subsection 5.8(2) of NI 51-102.

Disclosure Relating to Previously Disclosed Material Forward-Looking Information (Section 5.8 of NI 51-102)

- Must discuss in MD&A
 - (a) events and circumstances that occurred during the period to which the MD&A relates that are reasonably likely to cause actual results to differ materially from material forward-looking information for a period that is not yet complete that the reporting issuer previously disclosed to the public [regardless of where it was originally disclosed]; and
 - (b) the expected differences referred to in paragraph (a).

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Civil Liability for Secondary Market Disclosure (Part 17.01 of the Securities Act (Alberta))

- Where a responsible issuer or a person or company with actual, implied or apparent authority to act on behalf of a responsible issuer releases a document that contains a misrepresentation, a person or company who acquires or disposes of the issuer's security during the period between the time when the document was released and the time when the misrepresentation contained in the document was publicly corrected has, without regard to whether the person or company relied on the misrepresentation, a right of action for damages against:
 - (a) the responsible issuer;
 - (b) each director of the responsible issuer at the time the document was released; and
 - (c) each officer of the responsible issuer who authorized, permitted or acquiesced in the release of the document.

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Defences to Civil Liability Claims

- A person or company is not liable in an action under the applicable Securities Act provisions for a misrepresentation in forward looking information if the person or company proves all of the following:
 - (a) the document or public oral statement containing the forward-looking information contained, proximate to that information,
 - i. reasonable cautionary language identifying the forward-looking information as such, and identifying material factors that could cause actual results to differ materially from a conclusion, forecast or projection in the forward-looking information; and
 - ii. a statement of the material factors or assumptions that were applied in drawing a conclusion or making a forecast or projection set out in the forward-looking information;
 - (b) the person or company had a reasonable basis for drawing the conclusions or making the forecasts and projections set out in the forward-looking information.

Defences to Civil Liability Claims (Con't)

- Civil liability under provincial securities laws therefore requires the convergence of two circumstances regarding forward-looking information, including climate-related disclosures:
 - Lack of a **reasonable basis** for such disclosure (and failure to satisfy other prescribed disclosure requirements for forward-looking information), including a GHG Target, and
 - Must be a **misrepresentation** in the forward-looking information.
- Need to carefully, broadly consider what could constitute a claimed misrepresentation. For example:
 - The GHG Target directly, based on factors discussed in the following slide, and
 - Intrinsically connected disclosure – could include associated statements around robust governance processes, strategic alignment/prioritization, capital allocation decision-making etc. which implicitly “validate” the achievability of the GHG Target; these associated or “secondary” statements should also be considered vis-à-vis risk factor disclosure associated with the principal forward-looking statement.

Specific Considerations re Development and Disclosure of GHG Target

- Carefully develop and identify key assumptions supporting the reasonable basis of the GHG Target regarding:
 - Timeline – reasonable having regard to matters such as i) pace/impact of general technological developments (general/industry specific) and internal technology development/adaptation; and ii) level of express quantitative reduction;
 - Specified percentage reduction – measurement methodology (including use of and adherence to recognized framework(s)); and
 - Other exogenous factors – influence of governmental, regulatory and legal developments.
- Disclosure of the GHG Target and assumptions and the risks related thereto should be carefully crafted to be clear and unambiguous.

Update On Climate Change Related Litigation

- Climate change related litigation is a **rapidly evolving** area. To date, there have been very few successfully asserted claims, particularly against corporate defendants.
- However, a **rapidly evolving scientific, political, and legal context** has increased the likelihood of future litigation and the possibility of success in one or more types of claims.
- The vast majority of climate change related actions have been brought in the **United States**. However, actions in Canada and other jurisdictions are becoming more common.

Update About Climate Change Related Litigation (Con't)

- Broadly speaking, there have been two waves of climate change related litigation against corporations:
 - **First Wave (2005-2015):** Actions concentrated in the United States and primarily focused on allegations that corporations have contributed to climate change and caused harm. These actions were unsuccessful. Most cases turned on: (1) procedural questions of standing and jurisdiction (including whether the courts are appropriate to adjudicate political questions) and (2) substantive issues of causation and damage.
 - In 2012, a climate change advocacy group commenced an action against the Export-Import Bank of the United States for funding of LNG Projects – the Court granted summary judgment to the defendants, finding that the plaintiffs did not have standing. The decision was upheld on appeal by the Ninth Circuit Court of Appeals.
 - The Export-Import Bank was subject to another lawsuit in 2013 for providing loans to a coal export business. The Federal District Court for the District of Columbia ruled that the defendant environmental groups did not have standing.

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Update About Climate Change Related Litigation (Con't)

- **Second Wave (2015-present):** Actions still concentrated in the United States but spreading into jurisdictions around the world. Evolution toward targeting corporations and their directors for: (1) contributing to climate change; (2) not reasonably managing the business risks associated with climate change; and (3) misleading investors about the business risks of climate change or for failing to comply with public disclosure laws.
 - Second wave litigants are relying heavily upon tobacco and asbestos precedent cases and improved climate science (particularly the data published by the UN's Intergovernmental Panel on Climate Change (IPCC)).
 - Second wave cases include derivative actions against directors and officers personally (including in Texas: see *von Colditz v Woods* (2019), a shareholder derivative complaint against directors and senior officers of Exxon for allegedly misleading the public concerning climate change and its impacts on Exxon's business.).
 - Success of second wave litigation remains undetermined.

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Update About Climate Change Related Litigation (Con't)

- There are approximately 1000 climate change related actions in the United States. Approximately $\frac{1}{4}$ of these actions were brought against corporations, including:
 - ***People of the State of New York v Exxon Mobil Corporation*** (2018): High-profile action alleging fraudulent scheme by Exxon to deceive investors about the company's management of risks posed by climate change regulation. Allegations involve a disconnect between the company's public disclosures about regulatory risk and internal investment decision-making. Action dismissed in December 2019.
 - ***City of New York v BP PLC; Chevron; ConocoPhillips; Exxon Mobil; Royal Dutch Shell*** (2018): Action based in tort that resembles the 'first wave' tort cases. Plaintiffs claim damages related to the construction costs incurred to prepare for rising sea levels and extreme weather events. Plaintiffs rely heavily on most updated data from IPCC.

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Update About Climate Change Related Litigation (Con't)

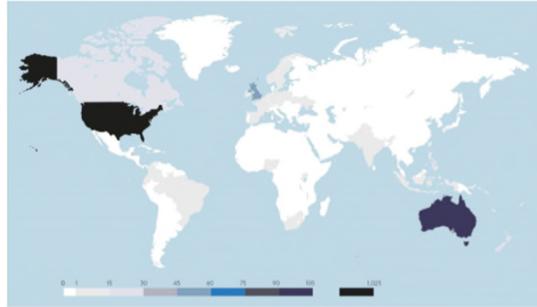
- Outside of the United States, there are approximately 300 ongoing climate change related actions (20 in Canada). Of these 300 cases, approximately 30 of these actions were brought against corporations (none of note in Canada).
 - Only one non-US claim relates to alleged improper disclosure (***Abrahams v Commonwealth Bank of Australia***). In that case, the plaintiffs alleged the Bank failed to disclose climate change related business risks. The case was recently abandoned when the Bank rectified its disclosure issues in its most recent annual report.
 - ***McVeigh v Australian Retail Employees Superannuation Trust*** – Action commenced in 2018 alleging that the pension fund violated the *Corporations Act of 2001* by failing to provide information relating to climate change business risks and any plans to address those risks. The narrow issue in that case is the extent of climate change disclosure requirements by the Fund to its members.

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Concentration of Climate Change Related Litigation Globally



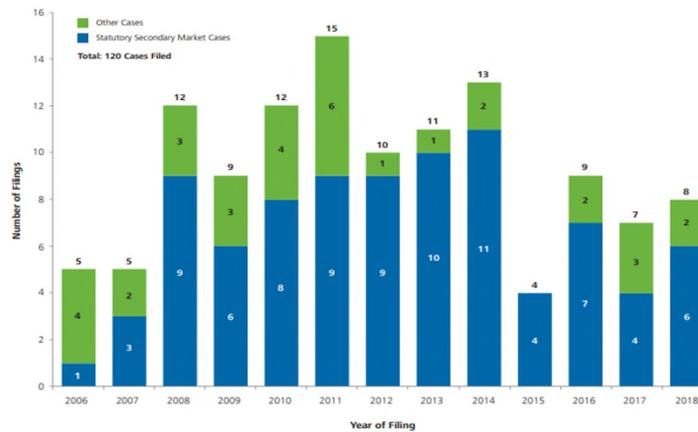
Global Trends in Climate Change Litigation: 2019 Snapshot, Setzer and Byrnes (2019)

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Canadian Securities Class Actions Filed by Year (2006-2018)

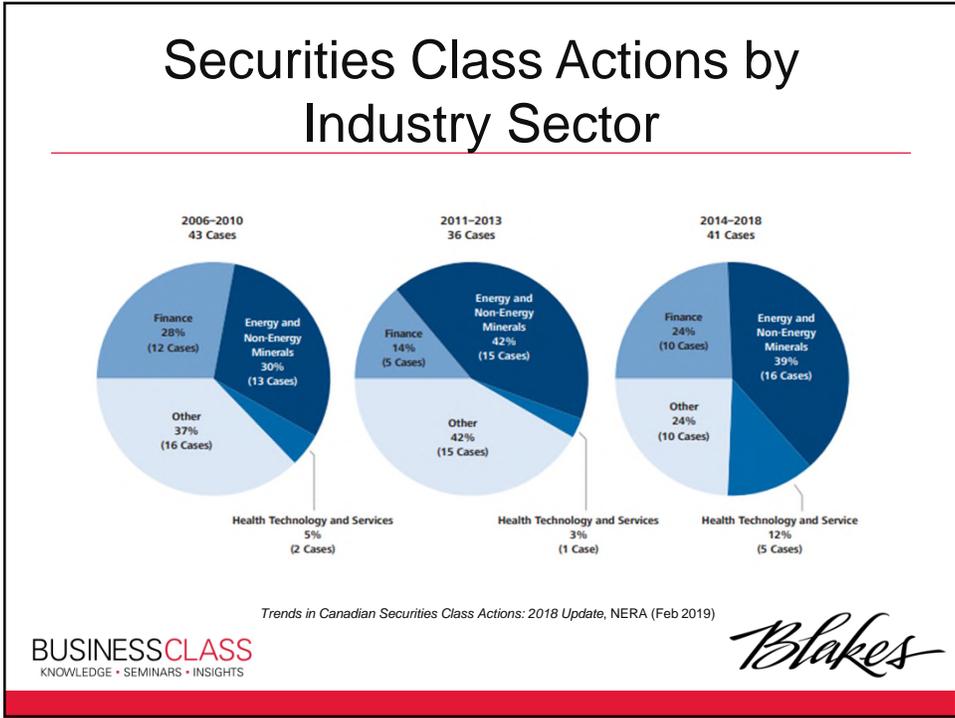


Trends in Canadian Securities Class Actions: 2018 Update, NERA (Feb 2019)

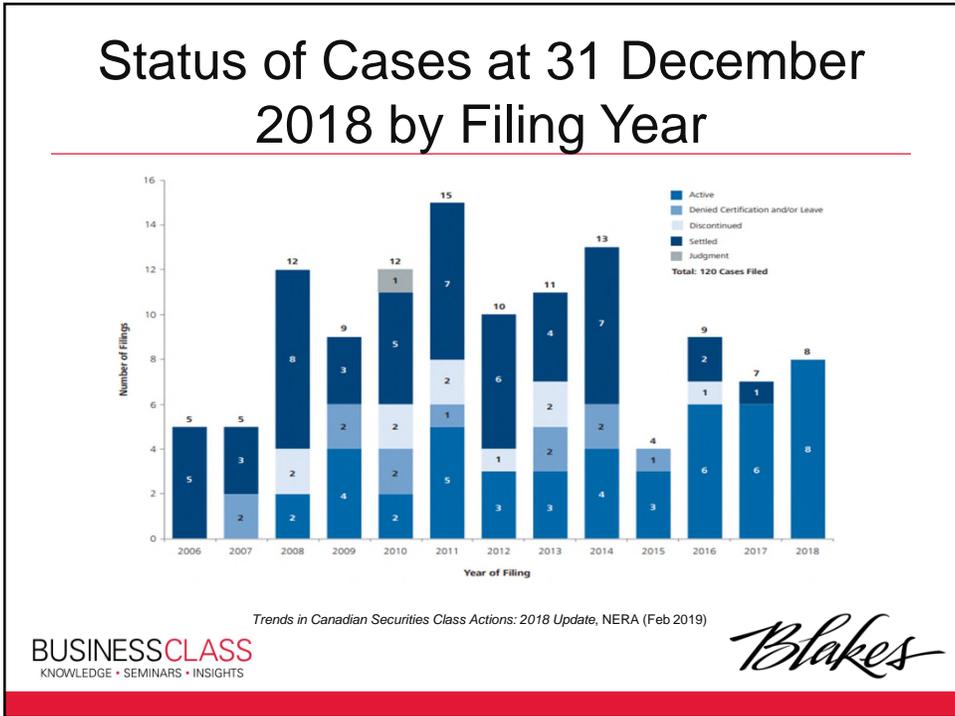
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Successful Securities Class Actions Remain Rare

- The fear that statutory amendments would result in a flood of successful securities class actions has not materialized.
- Indeed, leave from the court to proceed with such cases is becoming even more difficult to obtain.
 - Of the 21 statutory secondary market cases in which a leave application has been contested, leave was granted in nine cases (43%) and denied in 12 cases (57%). However, in the most recent four-year period (2015 to 2018), a somewhat lower proportion of contested applications for leave have been granted as compared to applications decided in the preceding nine years (2006 to 2014): four of the last 11 contested leave applications (36%) have been granted compared to five of the first 10 contested leave applications (50%).

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Part 2 – Directors Duties in the Context of Setting Targets

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CBCA Amendments

- Recent amendments to the CBCA codify and expand on requirements set out by the SCC:

Peoples Department Stores/BCE	CBCA (as amended June 2019)
<p>Supreme Court addressed application of fiduciary duty to act in the best interests of a corporation</p> <p>"...although directors must consider the best interests of the corporation it may also be appropriate, although not mandatory, to consider the impact of corporation decisions on shareholders or particular groups of stakeholders."</p> <p>"In considering what is in the best interests of the corporation directors may look to the interests of, inter alia, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions. Courts should give appropriate deference to the business judgment of directors who take into account these ancillary interests, as reflected by the business judgment rule."</p>	<p>When acting with a view to the best interests of the corporation [fiduciary duty] the directors and officers of the corporation may consider, but are not limited to, the following factors:</p> <p>(a) the interests of</p> <ul style="list-style-type: none"> (i) shareholders, (ii) employees, (iii) retirees and pensioners, (iv) creditors, (v) consumers, and (vi) governments; <p>(b) the environment; and</p> <p>(c) the long-term interests of the corporation.</p>

- Statutory changes affirm no priority/primacy given to shareholder interests in considering how interests of various stakeholders, as well as the environment and "long term interests of the corporation" inform consideration of the best interests of the corporation.

Considerations re Director Duties and Development of GHG Target

- In light of director duties and need for a "reasonable basis" in respect of GHG Target, process followed in preparing and reviewing forward looking information requires the application of appropriate care, diligence and skill:
 - Involve internal functional expertise (legal, strategic planning, operations, financial) and, if required, external expertise, relevant in all cases to preparation of GHG Target
 - Must align, and not conflict with, other corporate strategic priorities regarding project development, research and development, capital budgeting
 - Process should be carefully documented, including involvement of internal legal function (privilege) and overview of how the GHG Target aligns with other corporate priorities
 - Careful choice of metric - "target" (lower risk) vs "expectation" (higher risk)
 - Governance/oversight – who is responsible for developing/approving/monitoring GHG Target
 - Management
 - Board – delegation to, as applicable, Safety, Environment, Responsibility and Reserves Committee (primary); Audit Committee (secondary) with reporting/residual oversight.

CBCA Oppression Remedy

- If, on an application [by a complainant], the court is satisfied that in respect of a corporation:
 - (a) any act or omission of the corporation or any of its affiliates effects a result,
 - (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
 - (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner.
- that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the court may make an order to rectify the matters complained of.
- “complainant” includes securityholders of the corporation and “any other person who, in the discretion of a court, is a proper person” to apply for an oppression order.
- the oppression remedy focuses on harm to the legal and equitable interests of stakeholders affected by oppressive acts of a corporation or its directors and is available to wide range of stakeholders.

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CBCA Oppression Remedy (Con't)

- SCC in BCE developed a two part-analytical framework in a claim for oppression:
 - Does the evidence support the reasonable expectation asserted by the claimant?
 - Does the evidence establish that the reasonable expectation was violated by conduct falling within the terms “oppression”, “unfair prejudice” or “unfair disregard” of a relevant interest?
- Where conflicting interests arise between various stakeholders, the directors must resolve them in accordance with their fiduciary duty to act in the best interests of the corporation. There is no principle that the interests of one stakeholder should prevail over those of another; rather, the question is whether, in all the circumstances, the directors acted in the best interests of the corporation having regard to all relevant considerations including the need to treat affected securityholders in a fair and equitable manner.
- Factors to consider for each item in determining reasonable expectations of the relevant stakeholder: general commercial practice; the nature of the corporation; the relationship between the parties; past practice; steps the claimant could have taken to protect itself; representations and agreements involving the relevant stakeholder; and the fair resolution of conflicting interests between stakeholder.

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CBCA Derivative Action

- An action brought by a complainant under the CBCA in the name of the corporation for the “purpose of prosecuting, defending or discontinuing any action on behalf of” the corporation (such as an action in respect of a breach of fiduciary duty by the directors / officer of the corporation).
- A “complainant” can include shareholders as well as “any other person who, in the discretion of a court, is a proper person to make an application...”.
- Powers of the court include the ability to direct that any amounts adjudged payable to be paid to shareholders / former shareholders instead of to the corporation.

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Questions?



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Jeff practises corporate and securities law. His primary focus is on securities matters, particularly in the areas of mergers and acquisitions, corporate finance, corporate governance and continuous disclosure compliance.

Jeff has experience in representing both private and publicly traded issuers listed on the Toronto Stock Exchange, the New York Stock Exchange and the TSX Venture Exchange. As counsel to offerors and targets, he has acted on a number of domestic and cross-border take-over bids, plans of arrangement and contested proxy contests. He has also acted on behalf of underwriters and dealers in both public and private offerings of equity and debt and assists clients with corporate governance matters and continuous disclosure compliance obligations, as well as general corporate and commercial matters.

SELECT EXPERIENCE

Examples of recent transactions on which Jeff has acted in a significant capacity include acting for:

- Pembina Pipeline Corporation on its C\$10-billion acquisition of Veresen Inc. and its US\$650-million acquisition of the Vantage pipeline and the Mistral Midstream extraction plant
- Cenovus Energy Inc. on its C\$17.7-billion acquisition of assets from ConocoPhillips and its related C\$3-billion offering of common shares
- Agrium Inc. on its US\$38-billion merger of equals with Potash Corporation of Saskatchewan Inc.
- Suncor Energy Inc. on its unsolicited C\$6.6-billion take-over bid and subsequent negotiated acquisition of Canadian Oil Sands Limited
- Canadian Pacific Railway on its US\$500-million debt offering in March 2018
- TransCanada Corporation and its subsidiaries on over C\$20-billion of financing transactions comprised of offerings of hybrid securities, preferred shares, U.S. senior notes, medium term notes and common shares
- Suncor Energy Inc. on the renewal of its C\$2-billion medium term note program and US\$2-billion multi-jurisdictional disclosure system (MJDS) cross-border shelf program and associated offerings thereunder
- Cenovus Energy Inc. on the sale of its wholly-owned subsidiary Heritage Royalty Limited Partnership to Ontario Teachers' Pension Plan for C\$3.3-billion
- Agrium Inc. on over \$6.5-billion of financing transactions comprised of offerings of US\$5.3-billion of senior notes in aggregate and an offering of C\$1.375-billion of common shares
- Private-equity sponsored CanEra Energy Corp. in connection with its C\$1.3-billion acquisition by Crescent Point Energy Corp.

- Nexen Inc. in connection with its C\$15.1-billion acquisition by CNOOC Limited
- Pembina Pipeline Corporation in its C\$3.2-billion acquisition of Provident Energy Ltd.
- Daylight Energy Ltd. in its C\$2.3-billion acquisition by Sinopec
- Suncor Energy Inc. in its strategic merger with Petro-Canada

AWARDS & RECOGNITION

Jeff is recognized as a leading lawyer in the following publications:

- *The Legal 500 Canada* - 2019-2020 (Capital Markets)
- *IFLR1000: The Guide to the World's Leading Financial and Corporate LawFirms - 2020 Edition* (M&A - Energy, Natural Resources)
- *The Best Lawyers in Canada 2020* (Mergers & Acquisitions and Securities)
- *The Best Lawyers in Canada 2019* (Securities Law)
- *The Canadian Legal Lexpert Directory 2018* (Corporate Finance and Securities)
- *The Legal 500 Canada 2018* (Capital Markets)
- *IFLR1000: The Guide to the World's Leading Financial LawFirms 2018* (Rising Star: Energy, Natural Resources)
- *The Best Lawyers in Canada 2017* (Mergers & Acquisitions)
- *IFLR1000: The Guide to the World's Leading Financial LawFirms 2017* (Mergers & Acquisitions)
- *The Lexpert Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada 2014* (Lawyers to Watch)
- *Lexpert* magazine, November/December 2013 (Rising Stars: Leading Lawyers Under 40)

PUBLICATIONS

[Co-author: Climate Change Litigation Heats Up: Emerging Trends and Analysis](#)

Blakes Bulletin on Litigation & Dispute Resolution, December 19, 2019.

[Co-author: Alberta Securities Commission Proposes New Rules to Facilitate Cross-Border Offerings](#)

Blakes Bulletin on Capital Markets, April 26, 2018.

EDUCATION

LL.M., New York University - 2006

Admitted to the Alberta Bar - 2004

LL.B., University of Alberta - 2003

B.Sc., University of Alberta - 2000



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Sarah focuses primarily on corporate and securities law, advising clients with respect to corporate finance, mergers and acquisitions, reorganization transactions, corporate governance, stock exchange matters, and general securities and corporate law compliance. She also advises clients on issues relating to incentive compensation arrangements.

Sarah has experience representing both private companies and publicly traded issuers listed on the Toronto Stock Exchange, New York Stock Exchange and the TSX Venture Exchange. She has been involved in domestic and cross-border M&A transactions, as well as both public and private offerings of equity and debt.

Sarah's focus is on matters primarily involving the energy sector. In the course of her career, she has been seconded to a major Canadian integrated energy company to assist with corporate legal and securities law compliance matters.

SELECT EXPERIENCE

Representative transactions include advising:

M&A and Reorganizations

- Jupiter Resources Ltd. on its US\$1.1-billion recapitalization transaction under the CBCA
- Exxon Mobil Corporation on its C\$2.5-billion acquisition of InterOil Corporation
- Painted Pony Energy Ltd. on its C\$230-million acquisition of UGR Blair Creek Ltd.
- Baccalieu Energy Inc. on its C\$236-million sale to China Oil and Gas Group Limited, a Hong Kong-listed natural gas distributor
- The Forzani Group Ltd. on its C\$771-million sale to Canadian Tire Corporation, Limited
- Stoneham Drilling Trust on its C\$245-million sale to Western Energy Services Corp.
- Canadian Hydro Developers in its defence of the C\$1.6-billion hostile take-over by TransAlta Corp. and the subsequent negotiated transaction

Corporate Finance

- The underwriters on the establishment of AltaGas Canada Inc.'s medium term note program and public offering of C\$300-million medium term notes
- The underwriters on the C\$275-million initial public offering and TSX listing of AltaGas Canada Inc.

- The underwriters on the C\$175-million initial public offering and TSX listing of Source Energy Services Ltd.
- Painted Pony Energy Ltd. on a C\$111-million equity financing
- The underwriters on the C\$251-million equity financing by PrairieSky Royalty Ltd. to finance the purchase price of a concurrent royalty acquisition from Pengrowth Energy Corporation
- The underwriters on the C\$756-million offering of subscription receipts by Tourmaline Oil Corp. to finance a portion of the purchase price for strategic assets of Shell Canada Energy
- The underwriters on the C\$230-million equity financing and C\$100-million offering of unsecured subordinated convertible debentures by Gibson Energy Inc.
- The underwriters on over C\$1.3-billion of financing transactions by Tourmaline Oil Corp. comprised of offerings of C\$1.1-billion of common shares in aggregate and offerings of C\$232.7-million of flow-through common shares in aggregate
- The underwriters on the C\$930-million initial public offering and TSX listing of Seven Generations Energy Ltd.
- The underwriters on the C\$500-million initial public offering and TSX listing of Northern Blizzard Resources Inc.
- The dealers on the renewal of CU Inc.'s C\$2.6-billion medium term note program and subsequent debenture offerings

AWARDS & RECOGNITION

Sarah is recognized in the following publication:

- *Acritas Stars 2016-2018: Independently Rated Lawyers* (Nominated as a stand-out lawyer by senior in-house counsel)

PROFESSIONAL ACTIVITIES

Sarah is a member of The Law Society of Alberta, the Canadian Bar Association and the Calgary Bar Association. She serves on the Board of Directors of Between Friends.

EDUCATION

Admitted to the Alberta Bar - 2010
 J.D., University of Calgary - 2009
 B.A. (Hon.), Queen's University - 2004



Brendan MacArthur-Stevens

Associate | Calgary

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Calgary: 403-260-9603

Brendan has a broad commercial and civil litigation practice. He has experience in a variety of areas, including appellate litigation, arbitration, insurance coverage and defence, administrative law, intellectual property litigation, constitutional law, oil and gas litigation, and aboriginal law. Brendan has appeared before the Alberta Court of Queen's Bench, the Federal Court of Canada, the Court of Appeal of Alberta, and the Supreme Court of Canada.

Brendan is also an Adjunct Professor of Administrative Law at the University of Calgary Faculty of Law.

He completed his J.D. at the University of Toronto, where he was elected President of the Students' Law Society. Upon graduation, he was awarded the Cecil A. Wright Dean's Key and the James B. Milner Bronze Medal.

Brendan was a Summer Student at Blakes in 2012 and 2013 at the Firm's Toronto office. Before returning to the Firm in Calgary, he clerked for the judges of the Court of Appeal for Ontario, and then for the Honourable Justice Andromache Karakatsanis of the Supreme Court of Canada.

SELECT EXPERIENCE

Recent matters in which Brendan has been involved include:

- Representing the respondent, ATB Financial, in a case known as Redwater before the Supreme Court of Canada involving the constitutional doctrine of federal paramountcy and insolvency law (decision reported at *Orphan Wells Association v. Grant Thornton Ltd.*, 2019 SCC 5)
- Representing a public-interest organization to successfully obtain intervenor status in the Alberta Court of Queen's Bench and the Court of Appeal of Alberta to make submissions regarding the constitutionality of an Alberta law that facilitates Gay-Straight Alliances and protects the privacy of LGBTQ+ youth (injunction decision reported at *P.T. v. Alberta*, 2018 ABQB 496, Court of Appeal decision reported at *P.T. v. Alberta*, 2019 ABCA 158)
- Successfully representing Encana Corporation in an appeal to the Court of Appeal of Alberta involving breach of confidence, copyright infringement, and limitations periods (decision reported at *Geophysical Service Incorporated v. Encana Corporation*, 2018 ABCA 384)
- Successfully representing Suncor Energy Inc. in a judicial review application in the Court of Queen's Bench of Alberta involving the calculation of oil sands royalties
- Successfully representing an insured to obtain a C\$362-million award in a private arbitration against its insurer pursuant to a political risk insurance policy

- Successfully representing WestJet Airlines Ltd. in the context of multiple complex plan of arrangement proceedings before the Alberta Court of Queen's Bench, including its C\$5-billion sale to Onex Corporation
- Representing a First Nation in a four-week trial in the Alberta Court of Queen's Bench involving allegations of unjust enrichment and breach of duties by the Federal Crown
- Representing the National Hockey League in the Alberta Court of Queen's Bench to successfully obtain a stay in favour of arbitration of a claim involving an on-ice incident between a referee and a player
- Successfully representing a large energy services company in a five-week intellectual property trial in the Federal Court of Canada, involving both patent infringement and patent validity issues (reported at *Packers Plus Energy Services Inc. v. Essential Energy Services Ltd.*, 2017 FC 1111)
- Advising a large company with respect to plan of arrangement proceedings before the Yukon Supreme Court and the Yukon Court of Appeal

PUBLICATIONS

Author: [The Legal Battle Over Gay-Straight Alliances in Alberta](#)

LGBTQ2+ Law: Practice Issues and Analysis, Emond Publishing, November 2019.

Co-author: [Supreme Court of Canada Overturns Alberta Court of Appeal in Redwater Decision](#)

Blakes Bulletin on Restructuring & Insolvency, January 31, 2019.

Co-author: [SCC Affirms Law Society's Authority to Suspend Lawyers for Failing to Comply With CPD Requirements](#)

Blakes Bulletin on Litigation & Dispute Resolution, April 4, 2017.

PROFESSIONAL APPEARANCES

Speaker: [Effective Appellate Advocacy](#)

Blakes Business Class Seminar, Calgary, Alberta, December 12, 2019.

Speaker: [Privilege: A Primer and Update for In-House Counsel](#)

Blakes Business Class Seminar, Calgary, Alberta, June 19, 2019.

Speaker: [Effective Strategies for Alternative Dispute Resolution](#)

Blakes Business Class Seminar, Calgary, Alberta, April 30, 2019.

Speaker: [Strategies to Include Public Interest Work in Your Practice](#)

University of Calgary Faculty of Law, Calgary, Alberta, March 14, 2019.

Speaker: [An Insurance Discussion About Sue and Labour, Business Interruption, and Related Issues](#)

Blakes Business Class Seminar, Calgary, Alberta, February 12, 2019.

Co-speaker: [The Art of Arbitration: Role of In-House Counsel](#)

In-House Counsel Network Luncheon Seminar, Calgary, Alberta, May 17, 2018.

Speaker: [Top Five Court Decisions with a Significant Impact on Business](#)

Blakes Business Class Seminar, Calgary, Alberta, January 31, 2018.

PROFESSIONAL ACTIVITIES

Brendan volunteers with the Civil Claims Duty Counsel Program and the Queen's Bench Amicus Program, where he provides pro bono legal advice to unrepresented litigants.

Brendan is also the Alberta Chair of the Canadian Bar Association's Sexual Orientation and Gender Identity Community Forum (SOGIC), a member of the Young Advocates Standing Committee of the Advocates' Society, and an editor of the Canadian Bar Association publication, Law Matters.

Brendan helped found the first Trans ID Clinic in Alberta, which provides pro bono legal services to assist trans individuals in updating their name and gender markers on government-issued identification.

EDUCATION

Admitted to the Alberta Bar - 2017

Admitted to the Ontario Bar - 2015

J.D. (with Distinction), University of Toronto - 2014

B.A. (Hon.) - University of Western Ontario (Richard Ivey School of Business, Valedictorian) - 2011