

Waking Up from COVID-19

May 20, 2020

David Tupper, Partner, Litigation
Terri-Lee Oleniuk, Partner, Regulatory
Jeff Bakker, Partner, Securities
Birch Miller, Partner, Employment & Labour



Overview of Presentation

Part 1 – Litigation Strategies

Part 2 – Regulatory changes and strategies for jump-starting project approvals

Part 3 – Considerations for public companies, including disclosure and other securities law issues

Part 4 – Getting employees back to work

Part 1 – Litigation Strategies

Navigating the Courts as they Slowly Return to Business

- All levels of court are hearing urgent matters virtually.
- Court of Appeal is hearing all matters virtually but JDRs are suspended until July 1.
- QB has adjourned all non-urgent matters scheduled until June 26 *sine die*.
- QB Specials scheduled after June 29 will proceed.
- QB is currently hearing summary dispositions virtually.
- Pre-trial conferences, simplified trials, binding JDRs, and some full trials at the Provincial Court can be heard virtually.

Navigating the Courts as they Slowly Return to Business

- Most limitation periods are suspended from March 17 – June 1, 2020.
- Filing deadlines under the *Rules of Court* are suspended until June 26, 2020.
- Filing deadlines are generally suspended for adjourned matters.
- Filing can be done by e-mail, fax, or drop-box.
- Courts are using Cisco WebEx for virtual hearings.
- Non-lawyers attending virtual hearings must complete an undertaking not to record the proceeding.

Navigating the Courts as they Slowly Return to Business

- **Practical Steps**

- Consider steps that can be completed despite the absence of access to the Courts.
- If you are the plaintiff, ask your counsel to engage in discussions with the other side about completion of steps during the Court slowdown or shutdown.
- Although deadlines are suspended, it is still possible to file documents and, in that respect, continue to move an action along.

Preparing Your Clients for Virtual Examinations

- Regular preparation, adjusted for virtual technology.
- Discuss an appropriate location to work from.
- Prepare a means of access to relevant documents and ensure your client does not consult outside sources.
- Remind your client of proper etiquette (attire, conduct, eye contact, no recording).
- Conduct a test run and have a back up plan.
- Refer to The Advocates' Society Best Practices for Remote Hearings [here](#).

Considerations About Whether Court Matters Should be Converted to Arbitration Matters

- All or part of the matter can be converted to arbitration by mutual agreement.
- Arbitration can be done paperless and virtually.
- Benefits include flexibility, efficiency and availability.
- If the court process has already begun, consider procedural fairness when drafting the agreement.
- Ensure the virtual nature of the arbitration cannot later be used as grounds for appeal.

Part 2 – Regulatory Changes and Strategies for Jump-Starting Project Approvals

Environmental Compliance Considerations

- **Compliance testing and reporting flexibility**
 - Relaxations of certain environmental reporting timelines
 - Postponements/deferrals for economic conditions related to COVID?
- **Looking forward**
 - Return to “business as usual” to be determined
 - A trend toward increased environment impact disclosure requirements?

Changes to Regulatory Proceedings and Hearings

- **Indigenous and other stakeholder engagement timelines**
 - Extension/postponement
 - Opposition
- **Alberta Energy Regulator**
 - As of March 17, oral portions of AER hearings will not be held

Changes to Regulatory Proceedings and Hearings

- **Alberta Utilities Commission**

- Bulletin updated on April 17, all public hearings, consultations, or information sessions are deferred until further notice, unless there is an essential economic requirement to proceed
- First oral remote technical session was held on May 14

Changes to Regulatory Proceedings and Hearings

- **Alberta Surface Rights Board**

- In-person hearings will continue to proceed, however for oral hearings scheduled in the next 3 months, parties will be contacted to determine whether there are unique issues that can be addressed by postponement or proceeding based on written submissions or virtual conferences

- **Canada Energy Regulator**

- Confirmed in update on Apr 29, oral portions of hearings will not be held as planned
- All current adjudication processes are being looked at for ways to optimize hearing participant involvement to ensure processes continue in a fair and transparent manner, while protecting the health of those involved

Thoughts on Jump-starting Project Permitting

- Address timing constraints
- Invest in technology and training
- Indigenous/stakeholder consultation
- Virtual/videoconference proceedings
- Written proceedings
- Flexibility and preparedness for change

Part 3 – Considerations for Public Companies, Including Disclosure and Other Securities Law Issues

Disclosure Obligations

- At the start of the pandemic, the CSA moved quickly to provide relief from certain filing requirements
- This relief provided a 45 day extension, subject to certain conditions, in respect of certain filing requirements such as interim financial statements and MD&A
- On May 6, 2020, the CSA also issued a presentation which contains guidance for issuers around disclosure obligations in light of COVID-19

Disclosure Obligations

- Periodic Disclosure Filings – Shift in Focus for Q1 Reports
 - Historical results were less relevant, instead the focus shifted to:
 - where the business stands at the time of filing (operationally and financially)
 - how the business was responding to the COVID-19 pandemic
 - how the operational and financial condition of the business might change depending on how the pandemic progresses
- Risk Factor disclosure around the COVID-19 pandemic also became a focus

Disclosure Obligations

- Going forward it will be important to how the business is impacted as economies start to reopen
 - Historical results will return to being of primary relevance, but with a focus still on how the business is faring in the current environment, particularly in respect of any remaining operational or financial constraints remaining on the business
- Additional risk factor disclosure should focus on how the business would be impacted by a return to stricter measures

Guidance Considerations

- Is there still a reasonable basis for existing guidance?
 - Many issuers have either revised or withdrawn guidance in the face of COVID-19
- If an issuer has revised or withdrawn guidance, when and how should it approach reissuing guidance?

Corporate Governance Considerations in a Changed World

- Phase I of the Response to COVID-19 in the Boardroom
 - Triage, act quickly
 - Manage liquidity
 - Business continuity
 - Adjust capital and growth plans (and cut dividends?), as necessary
 - Safety of the Workforce
 - Effective working from home / oversight of audit and other key functions – manage increased cybersecurity risk?
 - Enhance succession planning?

Corporate Governance Considerations in a Changed World

- Phase II is more nuanced
 - How to adapt the Board Room to a world that may be changed forever
- Fiduciary Duties do not change as a result of COVID-19
- Where will the focus on ESG go from here?
 - Will expectations grow for business to play a stronger role in society?
 - How will this impact the concept of a social license?

Corporate Governance Considerations in a Changed World

- Other Considerations going forward
 - Risk Management and Strategy: will quarter to quarter results become less important with more focus on resiliency?
 - If so, will incentive frameworks need to change?

Other Securities Law Topics

- Shareholder Meetings – Now that we've gone virtual, do we really have to go back?
- Prospectus Offerings
- Insider Trading
- Share buybacks
- Shareholder activism?

Part 4 – Getting Employees Back to Work

Determining Return to Work/Office

- Return-to-work committee
- Legal requirements
- Public health authority guidance
- OHS hazard assessment

Planning for Return

- Phased/staggered approach
- Review of any lay-off recall requirements
- Return to work policies and protocols
- Communication and training
- Consideration of:
 - Ongoing changes in terms and conditions of employment
 - Addressing increased absenteeism, alternative staffing and flexible working arrangements
 - Individual employee accommodations
 - Mental health support services

Mitigation Strategies Upon Return

- Flexible work arrangements
- Medical questionnaires/screening
- Hygiene measures and supplies
- Isolation room
- Physical distancing protocols
- PPE
- Employee concern process
- Illness policies
 - Pay and benefits
 - Remote working, use of vacation and sick days, STD and LTD benefits, leaves of absence
 - Statutory and accommodation requirements
 - Employees with symptoms/who test positive
 - Quarantine and isolation practices
 - Contact tracing
 - Notification and communication
 - Government reporting

Addressing Illness

- Public health guidelines
 - Employees showing symptoms
 - Employees diagnosed with COVID-19
- Payments to employees
- Obligations to other employees/contractors
- Obligations to third parties
- Government reporting

Work Refusals

- Personal or family health conditions
- Lack of childcare options
- Safe workplace concerns

Vacation Issues

- Banking vacation time and pay
- Payout of vacation
- Forcing vacation

Questions?



David Tupper
Partner, Litigation
david.tupper@blakes.com
403-260-9722



Terri-Lee Oleniuk
Partner, Regulatory
terri-lee.oleniuk@blakes.com
403-260-9635



Jeff Bakker
Partner, Securities
jeff.bakker@blakes.com
403-260-9682



Birch Miller
Partner, Employment & Labour
birch.miller@blakes.com
403-260-9613