

大成 DENTONS



The Energy Imperative – Innovating the Future

The Legal Challenge for In-house Counsel

Presented to the ACC Ontario Energy Law Committee on May 13, 2021

ACC Ontario Chapter

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Recap – Embrace Change and Drive Collaboration and Innovation

Leading as a lawyer:

- Articulating organizational goals
- Bringing together diverse constituencies
- Leveraging communication skills
- Coaching, guiding and advising others to empower
- Earning and building trust

What is Driving Energy Innovation

- The requirement to future-proof a business to operate in a low-carbon economy:
 - diversification
 - evolving business models
 - embracing opportunity
- The desire to drive an organization to facilitate sustainability and climate change mitigation outcomes
- The demands of customers and key stakeholders
- Regulation
- Access to capital

The Challenge - Regulation

- Regulation will be a key driver to stimulate change
- Full recognition and understanding of the value chain will be essential:
 - supply side regulation to drive energy producers
 - demand side regulation to create markets/level the playing field
- Anticipatory investments may well give rise to challenges for lawyers as projects precede clear regulation
- Consider how best to manage change in law risk and the risk presented by an underdeveloped regulatory framework:
 - reopeners in contracts
 - termination rights in contracts
 - partnering and appropriate risk allocation
 - patience!

The Challenge – Regulation - Examples

- Greenhouse Gas Pollution Pricing Act
 - constitutionality finally determined by Supreme Court
 - “Listed Provinces” may implement provincial pricing mechanisms of adequate stringency to be removed from Schedule 1
 - intended outcomes – price based choices (if alternatives exist), make lower carbon alternatives competitive?
- Ontario’s Emission Performance Standards Program, Alberta Technology Innovation and Emissions Reduction Regulation
- Clean Fuel Regulations – reduction of carbon intensity in liquid fossil fuels
- Cross-border limitations – carbon border adjustments

The Challenge - Incentives

- Environmental Social and Governance performance – measuring outcomes:
 - access to capital
 - equity investments from sustainability focused funds
 - sustainability-linked financial products
- Federal and Provincial Grants – structuring projects and initiatives to most effectively take advantage of funding
- Reporting – ensuring compliance with reporting requirements in relation to foregoing
- Enhancing competitiveness of products – structuring projects/products to satisfy sustainability requirements (carbon neutrality, creation of offsets)

Ongoing Initiatives to Monitor

- Development of changes to tax framework to encourage new projects – changes to CCA classes and introduction of new investment tax credits
- Hydrogen Strategy for Canada
- Alberta – leveraging upstream expertise to facilitate CCUS and geothermal developments
- Ontario Energy Board – Distributed Energy Resources
- Independent Electricity System Operator – Gas Phase Out Impact Assessment
- Industrial Conservation Initiative – Global Adjustment Avoidance