Directors' Duties Navigator: Climate Risk and Sustainability Disclosures*

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**Previously titled 'Primer on Climate Change: Directors' Duties and Disclosure Obligations'*

Commonwealth Climate and Law Initiative

Climate Governance Initiative

Canada (English)

1. Legal and Regulatory Landscape Regarding Climate Change

1.1. Government approach to climate change

1.1.1. Climate change legislation

The *Canadian Net-Zero Emissions Accountability Act* (**NZEEAA**, which came into force in June 2021, enshrines Canada's commitment to achieve net zero emissions by 2050.[1]

1.1.2. Transition plans and targets

The NZEAA establishes the 2030 GHG emissions target as Canada's Nationally Determined Contribution (**NDC**) under the Paris Agreement. The NZEAA requires the Minister of the Environment to set progressive and NDC aligned GHG emission targets for certain interim years with a view to reaching the net zero target. In setting GHG emissions targets, the Minister of the Environment must account for the best scientific information available, Canada's international commitments with respect to climate change, and Indigenous Knowledge The NZEAA also requires emission reductions plans and progress reports to be produced by the Minister of the Environment. In 2025, Canada is due to submit a new round of NDCs.

Building on *Canada's 2020 climate plan*[2] and the *2016 Pan-Canadian Framework*,[3] in 2022, Canada announced its *2030 Emissions Reduction Plan*, which provides a roadmap of how Canada will meet its enhanced Paris Agreement target to reduce emissions by 40-45% from 2005 levels by 2030.[4] In December 2023, a *2023 Progress Report* was published on the *2030 Emissions Reduction Plan.*[5] This reported that Canada will require additional actions and new measures to be implemented to reach 40% below 2005 levels by 2030. Such actions include collaborating with provinces, territories, Indigenous partners and key stakeholders to identify and accelerate clean-growth opportunities, exploring how board carbon adjustments may fit into Canada's climate strategy, and advancing industrial decarbonization.

The final version of Canada's first-ever National Adaptation Strategy was released in 2023 after undergoing a consultation process.[6] It sets out a common direction for action across five interconnected systems: disaster resilience; health and well-being; nature and biodiversity; infrastructure; economy and workers.

1.1.3. Wider government approach to climate change

The federal Government's 2023 budget included measures to accelerate the transition to a net zero economy, including: $8 billion for large-scale investments in clean technologies; $4.2 billion for its Low Carbon Economy Fund to support the installation of emission-reducing technologies; and $3.8 billion for Canada's Critical Minerals Strategy.[7] The federal Government's 2024 budget includes further measures, such as launching a $903.5 million Canada Green Buildings Strategy, a clean electricity investment tax credit costing $7.2 billion over five years starting in 2024-25, and $776.3 million to be deployed from 2024-25 to 2029-30 to support clean fuel projects.[8]

The Net-Zero Advisory Body (**NZAB**) was launched in February 2021. The NZAB is

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1 Canadian Net-Zero Emissions Accountability Act, SC 2021, c 22, See also Government of Canada, "Net-Zero Emissions by 2050" <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050.html>.

2 Government of Canada, A Healthy Environment and a Health Economy, Canada's strengthened climate plan to create jobs and support people, communities and the planet, (2020), <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/healthy-environment-healthy-economy.html>.

3 Government of Canada, Pan-Canadian Framework on Clean Growth and Climate Change (2016) <https://www.canada.ca/en/services/environment/weather/climatechange/pan-canadian-framework.html>.

4 Government of Canada, "2030 Emissions Reduction Plan: Clean Air, Strong Economy" (2022) <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reduction-2030.html>.

5 Government of Canada, 2030 Progress Report on the 2030 Emissions Reduction Plan (December 2023) <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/climate-plan-overview/emissions-reduction-2030/2023-progress-report.html>

6 Government of Canada, Canada's National Adaptation Strategy: Building Resilient Communities and a Strong Economy (June 2023) <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/national-adaptation-strategy.html>

7 Government of Canada, 2023 Federal Budget (28 March 2023) <https://www.budget.canada.ca/2023/pdf/budget-2023-en.pdf>.

8 Department of Finance Canada, Budget 2024 (May 2024) <https://budget.canada.ca/2024/report-rapport/budget-2024.pdf>

mandated under the NZEAA to provide independent advice - based on the best available scientific information and knowledge, including Indigenous Knowledge - to the Minister of Environment and Climate Change with respect to achieving Canada's target of net zero emissions by 2050.[9] The NZAB has submitted two reports: *Compete and Succeed in a Net-Zero Future,*[10] on 30 December 2022, and *What We Heard Report*[11] in March 2024.

In March 2023, the Canadian government's Sustainable Finance Action Council (**SFAC**) released a taxonomy roadmap for green and sustainable finance (the **Taxonomy**). The governance model of the Taxonomy will include a Taxonomy Council and advisory groups from financial, multi-level governmental, Indigenous, and civil society groups.[12] The Taxonomy's objective is be science-based and to foster the issuance of green and transition financial instruments and the financing of projects that are consistent with Canada's goal of achieving net zero emissions by 2050, and with the Paris-aligned commitment to keep global temperature rise to below 1.5°C (based on pre-industrial levels) across all Scope 1, 2, and 3 emissions. To be taxonomy-eligible, companies must set net zero targets, and undertake transition planning and effective climate disclosure; must use the categorization framework to determine whether the project meets the "green" or "transition" eligibility criteria under the taxonomy or is, by default, ineligible; and must assess the project against "do no significant harm" criteria to ensure the project is not detrimental to other environmental, social, and governance (**ESG**) objectives.

The draft Taxonomy will be published for consultation early-2025, and the approved Taxonomy is intended to be published end-2025.

Recognising the role that carbon pricing can have in reducing GHG emissions, Canada enacted the *Greenhouse Gas Pollution Pricing Act 2018* (the **GHG Act**).[13] The GHG Act reduces GHG emissions by ensuring that carbon pollution pricing applies consistently across Canada through establishing a framework for and implementation of a federal carbon pollution pricing system. The framework consists of a fuel charge, an output-based pricing system, and GHG offset credit system.[14]

In December 2023, Canada announced a *Regulatory Framework to Cap Oil and Gas Sector Greenhouse Emissions* (the **O&G Cap Framework**) in order to achieve net zero by 2050.[15] The O&G Cap Framework will establish reporting and verification requirements and a legal upper bound on GHG emissions. Consideration will be given to how to phase in the system between 2026 and 2030.

Recognising the role the private sector has to play in helping Canada achieve net zero emissions, in August 2022, the Government launched the Net Zero Challenge to encourage businesses operating in Canada to develop and implement credible and effective plans to transition to net zero by 2050.[16] As of 2 August 2024, 216 participants have signed up.

1.2. Regulatory approaches to climate change

1.2.1. Climate change as a systemic financial risk

Regulatory and Government actions and policies on climate change risks and impacts indicate that there are material financial risks for Canadian corporations and the Canadian economy.

9 Government of Canada, Net=zero emissions by 2050 <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050.html>

10 NZAB, First annual report to the Minister of Environment and Climate Change - Compete and succeed in a net-zero future <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/advisory-body/first-annual-report-to-minister.html>

11 NZAB, What we heard : 2022-2023 engagement report / Net-Zero Advisory Body <https://publications.gc.ca/site/eng/9.934546/publication.html>

12 SFAC, Taxonomy Roadmap Report Mobilizing Finance for Sustainable Growth by Defining Green and Transition Investments, https://www.canada.ca/content/dam/fin/publications/sfac-camfd/2022/09/2022-09-eng.pdf

13 Greenhouse Gas Pollution Pricing Act, SC 2018, c 12.

14 Government of Canada, Greenhouse Gas Pollution Pricing Act: Annual report for 2022 (May 2024) <https://www.canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/greenhouse-gas-annual-report-2022.html>

15 Environment and Climate Change Canada, A Regulatory Framework To Cap Oil and Gas Sector Greenhouse Gas Emissions (December 2023) <https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/oil-gas-emissions-cap/Regulatory%20Framework_OG%20Emissions%20Cap_Dec%206_full.pdf>

16 Government of Canada, The Net-Zero Challenge <https://www.canada.ca/en/services/environment/weather/climatechange/climate-plan/net-zero-emissions-2050/challenge.html>

1.2.2. Financial regulation and guidance

Bank of Canada: The Bank of Canada and the federal Office of the Superintendent of Financial Institutions (**OSFI**) joined the Network for Greening the Financial System (**NGFS**, a group of central banks and financial supervisors) in 2019 and 2021 respectively.[17] The NGFS aims to accelerate the scaling up of green finance and develop recommendations for central banks' role with respect to climate change.

In December 2023, the Bank of Canada published a paper on the systemic implications of climate transition risk.[18] It observed that the financial system's overall climate-relevant exposures within the scope of the study constitute about 8% of total assets, with exposures varying across types of entities (e.g., life insurance companies have about 19%. exposure to climate-relevant assets).

In May 2024, the Bank of Canada released its 2023 Annual Report.[19] The 2023 Annual Report outlines the risks climate change poses to the Bank of Canada's operations and mandate, evaluates how its ability to perform its core functions could be affected by climate change's physical effects and the potential disruptions of transitioning to a low-carbon economy. The 2023 Annual Report also outlines the bank's efforts to manage these risks, including reducing its carbon footprint, and protecting its balance sheet and pension fund. Also in May 2024, the Bank of Canada released its second annual disclosure of climate-related risks for 2023 in accordance with the Taskforce on Climate-related Financial Disclosures (**TCFD**), outlining the risks that climate change poses to its mandate and operations.

Despite these actions, the Bank of Canada ranked 10th on the Green Central Banking Scorecard 2022 and graded D.[20] A score Grade C+ and below means that a central bank is yet to implement concrete, meaningful and impactful environmental measures.

Office of the Superintendent of Financial Institutions: In 2021, the OSFI published a study recognizing that climate-related transition risks can lead to reduced profitability, stranded assets, inability to make loan repayments and/or attract investments, and loss of market capitalization.[21]

In March 2023, the OSFI brought into force its *B-15 Guideline on Climate Risk Management* (**B-15 Guideline**), introducing mandatory climate-related financial disclosures aligned with the TCFD framework and requiring more than 400 financial institutions to develop transition plans.[22] The B-15 Guideline builds on outcomes from a pilot program by the Bank of Canada and OSFI, which examined scenario analysis and stress testing in respect of climate-related financial risks.[23] The B-15 Guideline is discussed further in section 3.1.3.

Canadian Securities Administrators (**CSA**): The Canadian Securities Administrators (**CSA**), a coalition of all provincial and territorial securities regulators, has issued draft *National Instrument 51-107 Disclosure of Climate-related Matters* (**NI 51-107**),[24] which is aligned with the TCFD framework, but is very out of date with respect to international securities law standards. NI 51-107 remains in draft at the time of writing,[25] as securities regulators have not yet

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17 Bank of Canada, (January 2022) <Bank of Canada/OSFI pilot helps Canadian financial sector assess climate change risks>

18 Bank of Canada, Understanding the Systemic Implications of Climate Transition Risk: Applying a Framework Using Canadian Financial System Data (December 2023) <https://www.bankofcanada.ca/wp-content/uploads/2023/12/sdp2023-32.pdf>

19 Bank of Canada, The Bank of Canada releases its 2023 Annual Report and Report on Climate Risks (3 May 2024) <https://www.bankofcanada.ca/2024/05/bank-canada-releases-2023-annual-report-climate-risks/#:~:text=The%20report%20evaluates%20how%20the,deliver%20on%20its%20core%20functions.>

20 Green Central Banking (2022) <Green Central Banking Scorecard>

21 OSFI, 'Navigating Uncertainty in Climate Change, Promoting Preparedness and Resilience to Climate-related Risks, (January 2021), 9 <https://www.osfi-bsif.gc.ca/Eng/Docs/clmt-rsk.pdf>.

22 Office of the Superintendent of Financial Institutions (OSFI), Guideline B-15: Climate Risk Management, (March 2022) <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b15-dft.aspx>.

23 Bank of Canada and OFSI, Using Scenario Analysis to Assess Climate Transition Risk (January 2022) <https://www.bankofcanada.ca/wp-content/uploads/2021/11/BoC-OSFI-Using-Scenario-Analysis-to-Assess-Climate-Transition-Risk.pdf>. OFSI, Building Federally Regulated Financial Institution Awareness and Capability to Manage Climate-Related Financial Risks (14 January 2022) <https://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/clrsk-mgm_let.aspx

24 Canadian Securities Administrators (CSA), draft National Instrument 51-107 Disclosure of Climate-related Matters, 51-107 - Consultation Climate-related Disclosure Update and CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters (osc.ca) (hereafter NI 51-107).

25 CSA, Canadian securities regulators consider impact of international developments on proposed climate-related disclosure rule (12 October 2022) <https://www.securities-administrators.ca/news/canadian-securities-regulators-

reached a consensus on the disclosure standards.[26] NI 51-107, when finalized, will set the disclosure requirements for issuers (publicly-traded companies and other issuers) registered under securities law.

Effective April 2023, a new Canadian Sustainability Standards Board (**CSSB**) is working with the ISSB to support the uptake of ISSB standards in Canada and facilitate interoperability between ISSB standards and any forthcoming CSSB standards.[27] Accounting standards (generally) are broader than securities law standards as they apply to all company and publicly accountable enterprises.

In March 2024, the CSSB issued its proposals on the first standards - Canadian Sustainability Disclosure Standards (**CSDS**) 1 and CSDS 2, aligned with ISSB standards but modified (minimally) for Canadian context.[28] The CSSB has completed a public consultation period regarding CSDS 1 and CSDS 2 and is working on the final form of the standards, which will be voluntary once finalized (not finalized as of 31 August 2024). In order to become mandatory under Canadian securities legislation, the CSSB standards would first be incorporated into a CSA rule.[29]

<u>Canadian Association of Pension Supervisory Authorities (**CAPSA**)</u>: In June 2022, CAPSA developed a draft *Environmental. Social and Governance Considerations in Pension Plan Management* (the **Draft ESG Guideline**).[30] The Draft ESG Guideline provides guidance for the consideration of ESG issues in pension plan management, and is discussed further below. In August 2023 the committee on Integrating ESG Factors in Pension Plan Supervision was made into a sub-committee of the Risk Management Guideline Committee, with a mandate to "*provide pension plan administrators with principles based guidance as to how to integrate Environmental, Social and Governance (ESG) risks and opportunities within the fiduciary framework of pension fund investment and risk management*."[31] CAPSA will be releasing its guidance in September 2024.

With respect to greenwashing, an online survey from Ecojustice and Environmental Defence Canada found that three-in-four Canadians concerned about greenwashing by companies and the financial sector.[32] The *Competition Act* was amended on 20 June 2024 to strengthen the deceptive marketing practices provisions. Following these amendments, the Competition Bureau is conducting a public consultation until 27 September 2024 on guidance to help companies comply with the new greenwashing provisions.[33] These provisions mandate that companies substantiate environmental claims made to promote their products or business interests.

1.2.3. Liability risk: enforcement action by regulators

At the time of writing, we are not aware of any regulatory investigations or enforcement action against companies in relation to climate matters (excluding greenwashing in advertising).

2. Directors' Duties and Climate Change

2.1. Legal framework for directors' duties

consider-impact-of-international-developments-on-proposed-climate-related-disclosure-rule/>.

26 Canada Climate Law Initiative, Canada's North Star in Climate Disclosure: Submission to the Canadian Securities Administrators (CSA) on proposed National Instrument 51-107 Disclosure of Climate-related Matters (NI 51-107) (5 February 2024) <https://ccli.ubc.ca/resource/submission-to-the-canadian-securities-administrators-csa-on-proposed-national-instrument-51-107-disclosure-of-climate-related-matters-ni-51-107/>

27 Canadian Sustainability Standards Board <https://www.frascanada.ca/en/cssb>.

28 CSSB (March 2024) <CSSB Consultation Paper – Proposed Criteria for Modification Framework>

29 CSA, Canadian securities regulators issue statements on proposed sustainability disclosure standards and ongoing climate consultation (13 March 2024) <https://www.securities-administrators.ca/news/canadian-securities-regulators-issue-statements-on-proposed-sustainability-disclosure-standards-and-ongoing-climate-consultation/>

30 CAPSA, CAPSA Guideline: Environmental, Social and Governance Considerations in Pension Plan Management (December 2022) <https://www.capsa-acor.org/Documents/View/1914#:~:text=The%20effects%20of%20climate%20change,different%20investment%20beliefs%20and%20strategies.>

31 CAPSA, Committee on Integrating Environmental, Social and Governance Factors in Pension Plan Supervision <https://www.capsa-acor.org/CommitteeonIntegratingEnvironmental,SocialandGovernanceFactorsinPensionPlanSupervision>

32 Ecojustice (2023) <https://ecojustice.ca/wp-content/uploads/2023/11/Ecojustice-Sustainable-Finance-Media-Deck-002.pdf>

33 Competition Bureau Canada, Competition Bureau statement regarding guidance on Competition Act's new greenwashing provisions (4 July 2024) <https://www.canada.ca/en/competition-bureau/news/2024/07/competition-bureau-statement-regarding-guidance-on-competition-acts-new-greenwashing-provisions.html>

Canada is a bijuridical country, meaning it has both common and civil law systems. Matters of private law in Québec are governed by the provincial civil law and federally-regulated entities in Québec are regulated by federal common law. The common law applies in the other provinces.[34]

The *Canada Business Corporations Act* (**CBCA**) and its sister corporation statutes in the provinces and territories codify and enhance directors' common law duties of loyalty and care. The corporate statutory duty of loyalty requires the directors and officers of a corporation to "*act honestly and in good faith with a view to the best interests of the corporation*".[35]

2.2. Guidance on interpretation of directors' duties

2.2.1. Legal guidance

The Supreme Court of Canada has held that the duty of care requires the directors and officers to "*exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances*".[36] Courts in Canada will defer to the reasonable business judgment of directors who have been duly diligent in their oversight of the company ("business judgment rule").[37]

In June 2020, corporate board governance expert Carol Hansell issued a legal opinion on directors' obligations to address climate change under Canadian law (the **Legal Opinion**).[38] The Legal Opinion identifies both directors' fiduciary duty of loyalty[39] and their duty of care[40] as requiring engagement and consideration of climate-related risk. In order to discharge their duty to act in the best interests of the company, directors must consider the long-term interests of the company and, to this end, any environmental risks.[41] Directors' duty of care requires that they solicit reports and recommendations from management and external sources on climate-related risk as necessary and be satisfied that the company is addressing climate change risk appropriately.[42]

In 2022, Hansell updated the Legal Opinion (the **Updated Legal Opinion**). The Updated Legal Opinion observes that the obligation of directors to consider the implications of climate change risk is grounded in the duties each director owes to the corporation, and in managing or overseeing the management of risk, directors must meet the objective standard of what a reasonably prudent person would do in comparable circumstances; they must require reports and recommendations from management and external sources as necessary and be satisfied that the corporation is addressing climate change risk appropriately.[43]

In addition to the above, in May 2021 Toronto-based pension and benefits lawyer Randy Bauslagh issued an opinion titled 'Climate Change: Legal Implications for Canadian Pension Plan Fiduciaries and Policy-Makers' (the **Pension Opinion**).[44] According to the Pension Opinion, pension funds have a duty to understand and manage the financial risks and opportunities that climate change poses to funds and beneficiaries. The Pension Opinion concludes that "*pension fund fiduciaries who fail to consider or manage climate-related financial risks and opportunities, may find*

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34 Department of Justice, Canada's System of Justice <https://www.justice.gc.ca/eng/csj-sjc/just/img/courten.pdf>

35 Canada Business Corporations Act, note 24, s. 122(1) and its sister provincial and territorial corporations statutes.

36 Peoples Department Stores Inc (Trustee of) v Wise, 2004 SCC 68, [2004] 3 SCR 461; BCE Inc v 1976 Debentureholders, 2008 SCC 69 at [39], [2008] 3 SCR 560; Janis Sarra, Canada Climate Law Initiative Fiduciary Obligations in Business and Investment: Implications of Climate Change (April 2018) <https://ccli.ubc.ca/wp-content/uploads/2021/04/Fiduciary-Obligation-in-Business-and-Investment.pdf>; Cynthia Williams, Canada Climate Law Initiative 'Disclosure of Informaton Concerning Climate Change: Liability Risks and Opportunites' < https://ccli.ubc.ca/resource/disclosure-of-information-concerning-climate-change-liability-risks-and-opportunities/>,

37 Ibid.

38 Carol Hansell, Hansell LLP, 'Legal Opinion: Putting Climate Change Risk on the Boardroom Table' (June 2020) <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>.

39 CBCA, s. 122(1)(a)

40 Peoples Department Stores Inc (Trustee of) v Wise, 2004 SCC 68, [2004] 3 SCR 461.

41 Hansell LLP, 'Legal Opinion: Putting Climate Change Risk on the Boardroom Table' (June 2020), 16-17 <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>.

42 Hansell, 2020 at 13-15 <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>. See also Janis Sarra, Duty to Protect: Corporate Directors and Climate-Related Financial Risk (January 2021) <https://ccli.ubc.ca/wp-content/uploads/2021/04/Duty-to-Protect-Corporate-Directors-and-Climate-Related-Financial-Risk.pdf>.

43 Carol Hansell Legal Opinion, Climate Change Risk on the Boardroom Table, (7 June 2022), <https://www.hanselladvisory.com/publication/climate-change-risk-on-the-boardroom-table/>.

44 Randy Bauslaugh Legal Opinion 'Climate Change: Legal Implications for Canadian Pension Plan Fiduciaries and Policy-Makers' < https://ccli.ubc.ca/wp-content/uploads/2021/05/Bauslaugh-Pension-Opinion-1.pdf>

themselves personally liable for economic, reputational or organizational loss resulting from that failure." In addition, pension fiduciaries may also have an obligation to disclose how they manage climate change financial risks and opportunities on an ongoing basis. The Pension Opinion outlines basic actions pension fund fiduciaries can take to evidence good fiduciary behaviour with respect to identing and managing climate change risk and opportunity, including: expressly address climate change in the written statement of investment policies and procedures; follow through and be consistent with written policy initiative; maintain minutes of material decisions; and keep abreast of legal and other relevant climate change developments and industry practices.

2.2.2. Regulatory guidance

At the time of writing, the Draft ESG Guideline issued by CAPSA states that as part of their fiduciary duties, pension plan administrators should consider ESG characteristics, including climate risk, that may have material relevance to the financial risk-return profile of the pension fund's investments, and that pension plan administrators, as part of their standard of care, need to assess whether their plan governance, risk management and investment decision-making practices are sufficient to identify and respond to material climate and other ESG information in a manner proportionate to their plans and appropriate for their investment beliefs.[45]It remains to be seen whether this guidance remains in any final document released by CAPSA.

OSFI issued a *Corporate Governance Guideline* in September 2018 which outlines OSFI's expectations with respect to corporate governance and director duties of federally-regulated financial institutions (**FRFIs**).[46] Specifically in relation to climate risks, OSFI issued a report in January 2021 that recognized that directors of federally-regulated financial institutions and trustees of federally-regulated pension funds have a fiduciary duty to identify and manage climate risks as part of their prudential duties, and failure to do so may give rise to liability risks.[47]

The CSA has given notice that the board of directors and management should assess their expertise with respect to sector-specific climate-related risks, and augment that expertise, as necessary.[48] CSA *Staff Notice 51-358 Reporting of Climate Change-related Risks* (**Staff Notice 51-358**) states that the audit committee and the board of directors should be provided with appropriate orientation and information to help members understand sector-specific climate-related issues.[49] It suggests that the board ask itself whether directors have been provided sufficient information, including management's materiality assessments in respect of the issuer's climate-related risks, to appropriately oversee and consider management's assessment of these risks.[50] Staff Notice 51-358 states:

> *An assessment of materiality in relation to climate change-related risks may require issuers to adapt their existing approaches to risk assessments in order to better understand the potential impacts of climate change-related risks and their materiality. In some cases, this may involve adjusting their approaches to consider the longer time horizon associated with and how to effectively quantify these types of risks.*[51]

2.3. Directors' liability and litigation risk

The oversight of significant risk factors, including risks related to the environment, is a core function of the board.[52]

The CBCA sets out a list of factors directors *may* consider when acting with a view to the best interests of the corporation, including consideration of interests beyond the

45 Canadian Association of Pension Supervisory Authorities, CAPSA Guideline Environmental, Social and Governance Considerations in Pension Plan Management, (9 June 2022), <1914 (capsa-acor.org)>.

46 OSFI, Corporate Governance – Guideline (September 2018) <https://www.osfi-bsif.gc.ca/en/guidance/guidance-library/corporate-governance-guideline-2018>

47 OSFI, 'Navigating Uncertainty in Climate Change, Promoting Preparedness and Resilience to Climate-related Risks, (January 2021), 9 <https://www.osfi-bsif.gc.ca/Eng/Docs/clmt-rsk.pdf>.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid at 8.

52 Canada Coalition for Good Covernance, The Directors' E&S Guidebook (May 2018) <https://ccgg.ca/ccgg-press-release-the-directors-es-guidebook/#:~:text=The%20Directors'%20E%26S%20Guidebook%20provides,and%20employee%20health%20and%20safety.>

shareholder, such as employees, consumers, the environment and the long-term interests of the corporation.[53] As it is optional for directors to consider these wider interests, they will not be held personally liable for failing to do so.

The Supreme Court of Canada (**SCC**) has clarified that the duty of care is not *"owed solely to the corporation, and thus may be the basis for liability to other stakeholders in accordance with principles governing the law of tort and extracontractual liability*". [54]

An organization's handling of climate change risk may also inform the director election votes of some institutional investors.[55]

In summary, directors have a duty to act in the best interests of the company, viewed as a good corporate citizen and can consider a broad range of interests in exercising that duty. In *BCE Inc v 1976 Debentureholders,* the SCC held that it will assess whether directors acted in the best interests of the corporation, having regard to all relevant considerations:

> [81] As discussed, conflicts may arise between the interests of corporate stakeholders *inter se* and between stakeholders and the corporation. Where the conflict involves the interests of the corporation, it falls to the directors of the corporation to resolve them in accordance with their fiduciary duty to act in the best interests of the corporation, viewed as a good corporate citizen.
>
> [82] The cases on oppression, taken as a whole, confirm that the duty of the directors to act in the best interests of the corporation comprehends a duty to treat individual stakeholders affected by corporate actions equitably and fairly. There are no absolute rules. In each case, 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, but not confined to, the need to treat affected stakeholders in a fair manner, commensurate with the corporation's duties as a responsible corporate citizen.[56]

To date, there are no judicial decisions that address the issue of directors' liability for oversight of climate-related risks.

3. Directors' Duties and Sustainability Disclosure Obligations

3.1. Narrative sustainability disclosures

3.1.1. Sustainability disclosure frameworks

At the time of writing, mandatory climate disclosure rules have not been introduced in Canada. Therefore, companies are reporting on a voluntary basis. However, in the 2022 Budget, the federal Government announced its commitment to moving towards mandatory reporting of climate-related financial risks across a broad spectrum of the Canadian economy, based on the TCFD framework.[57]

In addition, Canadian securities legislation requires public companies to disclose material risks to their business, which could include climate-related matters, which means companies must determine whether the "reasonable investor" would consider the climate-related information material to their decisions to invest, and if so, must disclose that information.[58]

Canadian securities regulators have advised that climate change risk is now widely recognised as a mainstream business issue and that companies must disclose material climate risks and how they are addressing them.[59] A CSA report states that despite the potential uncertainties and longer time horizon associated with climate change-related risks,

53 Canada Business Corporations Act (R.S.C., 1985, c. C-44), Section 122(1.1)(a)

54 BCE Inc. v 1976 Debentureholders, 2008 SCC 69 at para 44.

55 Glass Lewix, 2024 Benchmark Policy Guidelines – Canada (2024) <https://www.glasslewis.com/wp-content/uploads/2023/11/2024-Canada-Benchmark-Policy-Guidelines-Glass-Lewis.pdf> ; ISS, Proxy Voting Guidelines for TSX-Listed Companies – Canada (2024) <https://www.issgovernance.com/file/policy/active/americas/Canada-TSX-Voting-Guidelines.pdf>

56 BCE Inc v 1976 Debentureholders, [2008] 3 SCR 560 (SCC at paras 81-82.

57 Government of Canada, Budget 2022 <https://www.budget.canada.ca/2022/home-accueil-en.html>

58 Canadian Bar Association, Disclosure Requirements <https://www.cba.org/Publications-Resources/Practice-Tools/Business-and-Human-Rights/Business-Risk-and-Corporate-Responsibility/Disclosure-requirements>

59 CSA Staff Notice 51-358 Reporting of Climate Change-related Risks (2019), <https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20190801_51-358_reporting-of-climate-change-related-risks.htm>. See also CSA Staff Notice 51-333 Environmental Reporting Guidance (SN 51-333).

boards and management should take appropriate steps to understand and assess the materiality of these risks to their business.[60]

However, accounting standards are also forthcoming. As discussed above, on 13 March 2024, the CSSB released exposure drafts of CSDS 1 and 2. Both of these are closely modelled on the International Financial Reporting Standards (**IFRS**) standards. CSDS 1 and 2 envision obligations being voluntary for reporting periods on or after 1 January 2025, and CSDS 2 provides transition relief for scope 3 emissions disclosures.[61]

3.1.2. Specific sustainability disclosure requirements for listed entities

NI 51-107 will apply to all reporting issuers.[62] The disclosure requirements relate to the four core elements of the TCFD recommendations: governance; strategy; risk management; and metrics and targets. With respect to governance, NI 51-107 will require reporting issuers to describe the board's oversight of climate-related risks and opportunities and management's role in assessing and managing climate-related risks and opportunities, irrespective of materiality.[63] With respect to strategy, reporting issuers will be required to describe, where such information is material: the climate-related risks and opportunities the issuer has identified over the short, medium, and long term, and the impact of climate-related risks and opportunities on the issuer's businesses, strategy, and financial planning.[64] With respect to risk management, reporting issuers will be required to describe their processes for identifying, assessing and managing climate-related risks, and how processes for identifying, assessing, and managing climate-related risks are integrated into the issuer's overall risk management.[65] Finally, with respect to metrics and targets, reporting issuers will be required to disclose the metrics used by the issuer to assess climate-related risks and opportunities in line with its strategy and risk management process where such information is material.

Pursuant to proposed NI 51-107, issuers are to disclose Scope 1, Scope 2, and Scope 3 greenhouse gas emissions on a comply or explain basis, although the CSA is considering whether to make Scope 1 emissions reporting mandatory.[66] Issuers will also be required to disclose the targets used by the issuer to manage climate-related risks and opportunities and performance against targets where such information is material.[67] Finalization of NI 51-107 has been delayed so that securities regulators could align requirements with new proposed ISSB and CSSB standards.

3.1.3. Specific sustainability disclosure for financial institutions

As referenced above, the B-15 Guideline became effective in March 2023. The B-15 Guideline applies to FRFIs, including banks and insurance companies. The guideline states that the OSFI expects FRFIs to: have in place appropriate governance and management structures to manage climate-related risks; incorporate the implications of climate-related risks into their business models and strategy; carry out scenario analysis to assess the impact of climate risks on their business models and strategy; and maintain sufficient capital and liquidity buffers for their climate-related risks. The B-15 Guideline also requires FRFIs to make TCFD-aligned disclosures.[68] The OSFI expects FRFIs to evaluate and measure their capital available to protect against material risks, including climate-related risks, and reflect their assessments in the banks' Internal Capital Adequacy Assessment Process (**ICAAP**) or the insurers' Own Risk and Solvency Assessment (**ORSA**), as well as the adequacy of their liquidity to protect against FRFI-specific and market-wide severe, yet plausible, climate-related stress events.[69]

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60 CSA Staff Notice 51-358, ibid at 4.

61 FRAS, In Brief – A plain and simple overview of the recently issued Exposure Drafts, "Canadian Sustainability Disclosure Standard (CSDS) 1, General Requirements for Disclosure of Sustainability-related Financial Information" and "CSDS 2, Climate-related Disclosures" (13 March 2024) <https://www.frascanada.ca/en/sustainability/projects/adoption-csds1-csds2/cssb-in-brief-csds-1-and-csds-2>

62 Other than investment funds, issuers of asset-backed securities, designated foreign issuers, SEC foreign issuers, certain exchangeable security issuers and certain credit support issuers; NI 51-107.

63 Proposed NI 51-107, at 7.

64 Proposed NI 51-107, at 7.

65 Proposed NI 51-107, at 7.

66 Proposed NI 51-107, at 7.

67 Proposed NI 51-107, at 8.

68 Office of the Superintendent of Financial Institutions (OSFI), Guideline B-15: Climate Risk Management, (March 2022) <https://www.osfi-bsif.gc.ca/Eng/fi-if/rg-ro/gdn-ort/gl-ld/Pages/b15-dft.aspx>, Annex 2-2.

69 OSFI, Climate Risk Hub, May 2023.

Domestic systemically important banks (**D-SIB**) and internationally active insurance groups (**IAIG**) headquartered in Canada are required to disclose for fiscal years ending in 2024.[70] The disclosure obligations for small and medium sized deposit taking institutions (**SMSBs**) and all other federally regulated insurers will begin in relation to fiscal year 2025.[71]

Disclosure of scope 3 emissions and the related risks and associated reporting standards begin in relation to fiscal year 2025 for D-SIBs and IAIGs, and 2026 for SMSBs and other federally regulated insurers.

3.1.4. Directors' duties regarding sustainability disclosures

The Legal Opinion concluded that public companies' disclosure obligations under securities law extend to the disclosure of climate-related risks (and opportunities) and that directors should be aware that their decisions regarding disclosure under securities law are not subject to protection of the business judgement rule.[72]

3.1.5. Liability risk arising from narrative sustainability disclosures

The Legal Opinion notes that "*[p]ublic issuers, in particular, are being prompted to examine climate change issues as they represent material risks for the corporation. Disclosure can thus impact both what a corporation discloses externally and how it operates internally. These disclosures also have important legal consequences, including potential liability*."[73]

The Legal Opinion further notes that:[74]

> *As is the case for any disclosure, misrepresentations about climate change risk can expose the corporation, its officers and its directors to both regulatory and civil liability. In respect of potential civil liability, an important factor for directors is that investors need not be aware of a misrepresentation about climate change to seek damages based on it; securities law deems them to have relied on the misrepresentations.*

To reduce risks associated with disclosures, the board of directors should avoid vague or boilerplate disclosures, and instead use "*[r]elevant, clear and understandable entity-specific disclosure(s)*".[75]

3.2. Climate-related disclosures in financial statements

3.2.1. Climate-related disclosures in financial statements

Climate risks are being incorporated into financial statements by national and international standard setters. The IFRS has confirmed that whilst the IFRS Accounting Standards do not refer explicitly to climate-related matters, companies "*must consider climate-related matters in applying IFRS Accounting Standards when the effect of those matters is material in the context of the financial statements taken as a whole*". Canada adopted IFRS Accounting Standards for most 'publicly accountable enterprises' for financial years beginning on or after 1 January 2011.[76]

The Canadian Accounting Standards Board (**CASB**) is participating in the International Accounting Standards Board's (**IASB**) project to explore whether and how financial statements can better communicate information about climate-related and other uncertainties.

The CASB has also recently highlighted that *"[w]hen preparing financial statements in accordance with Part II of the CPA Canada Handbook – Accounting Standards for Private Enterprises (**ASPE**), management may need to assess how material climate-related matters should be recognized, presented, and/or disclosed, and how they impact elements of financial statements. While there is no specific*

70 OSFI, Guideline B-15 – Climate Risk Management <https://www.osfi-bsif.gc.ca/sites/default/files/import-media/guidance/guideline/2023-04/en/b15-dft.pdf> 16
71 Ibid.
72 Hansell LLP, 'Legal Opinion: Putting Climate Change Risk on the Boardroom Table' (June 2020) at 20, <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>.
73 Hansell LLP, 'Legal Opinion: Putting Climate Change Risk on the Boardroom Table' (June 2020) at 18, <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>
74 Hansell LLP, 'Legal Opinion: Putting Climate Change Risk on the Boardroom Table' (June 2020) at 18, <https://www.hanselladvisory.com/content/uploads/Hansell-Climate-Change-Opinion.pdf>
75 CSA, Staff Notice 51-358 Reporting of Climate Change-related Risks (2019) <https://www.osc.ca/sites/default/files/pdfs/irps/csa_20190801_51-358_reporting-of-climate-change-related-risks.pdf>
76 IFRS, IFRS Standards – Jurisdiction Profile: Canada (October 2023) <https://www.ifrs.org/content/dam/ifrs/publications/jurisdictions/pdf-profiles/canada-ifrs-profile.pdf>

climate-related accounting standard, many existing principles within ASPE call for an entity to consider material climate-related matters." This statement is significant as climate-related financial disclosures (e.g., in line with the TCFD) are normally confined to the narrative portions or 'front end' of the annual report.

The CASB is planning to publish a series of awareness documents, including on the topic of sustainability risks and opportunities that may be considered when reporting, disclosing, and analyzing financial statements.[77]

3.2.2. Directors' duties regarding climate-related disclosures in financial statements

Directors of a corporation are required to place before shareholders at every general meeting prescribed comparative financial statements, an auditor's report, and any further information respecting the financial position of the corporation and the results of its operations required by the corporation's articles or by-laws, or any unanimous shareholder agreement (subject to certain exceptions).[78] The directors are required to approve the financial statements evidenced by the manual signature of one or more directors.[79]

In the UK, the *Companies Act 2006,* as amended, requires directors of a company to only approve accounts if satisfied they give a true and fair view of the assets, liabilities, financial position and profit or loss. A recent legal opinion in the UK clarified that directors of UK companies have a positive duty to consider whether to reflect relevant sustainability issues (e.g. contribution to climate change), in their financial statements, to provide a true and fair view of their company's position.

Whilst we understand a similar statutory "true and fair" provision does not exist with respect to directors in the CBCA, the recognition of climate and nature-related impacts on a company and, therefore, its financial position, cannot be overlooked.

3.2.3. Liability risk arising from financial statements

If a corporation, without reasonable cause, fails to comply with the requirement that directors approve the financial statements, it may be guilty of an offence and liable to a fine not exceeding $5,000.

In very limited circumstances, directors may be personally liable under the oppression remedy provisions of the CBCA.[80]

Biodiversity risk

Canada is recognised as one of five countries that, together, host 70% of the world's remaining untouched wilderness areas,[81] with Canada being number 2 on that list,[82] and is considered to hold a greater capacity to supply ecosystem services than the global average.[83] Canada hosts approximately 10% of the world's forest cover and 25% of the world's wetlands.[84] A 2021 study determined the economic value of ecosystem services in Canada's ecozones is estimated to be at least USD3.6

77 CASB, What You Need to Know about Effects of Climate-related Risks and Opportunities on ASPE Financial Statements: Awareness Document <https://www.frascanada.ca/en/aspe/resources/climate-related-risks-and-opportunities-aspe>

78 Section 155, Canada Business Corporations Act (R.S.C., 1985, c. C-44)

79 Section 158, Canada Business Corporations Act (R.S.C., 1985, c. C-44)

80 Wilson v. Alharayeri, 2017 SCC 39, [2017] 1 SCR 1037, which held: At least four general principles should guide courts in fashioning a fit remedy under s. 241(3). First, the oppression remedy request must in itself be a fair way of dealing with the situation. It may be fair to hold a director personally liable where he or she has derived a personal benefit in the form of either an immediate financial advantage or increased control of the corporation, breached a personal duty or misused corporate power, or where a remedy against the corporation would unduly prejudice other security holders. These factors merely represent indicia of fairness. The presence of a personal benefit and bad faith remain hallmarks of conduct attracting personal liability, but like the other indicia, they do not constitute necessary conditions. The fairness principle is ultimately unamenable to formulaic exposition and must be assessed in light of all the circumstances of a particular case. Second, any order should go no further than necessary to rectify the oppression. Third, any order may serve only to vindicate the reasonable expectations of security holders, creditors, directors or officers in their capacity as corporate stakeholders.

81 Watson, J.E.M., et al.,Protect the last of the wild, Global conservation policy must stop the disappearance of Earth's few intact ecosystems (2018) Nature 563, 27-30

82 Government of Canada, Canada's 2030 Nature Strategy: Halting and Reversing Biodiversity Loss in Canada (2024) 5

83 J, Rice., et al., The IPBES regional assessment report on biodiversity and ecosystem services for the Americas (2018) IPBES

84 The Canadian Encyclopaedia, Biodiversity (last accessed 10 November 2021).

trillion per year - more than double the country's GDP in 2018.[85] The CCLI has published a report on how companies in Canada and other jurisdictions may depend on biodiversity for the functioning of their business models.[86] In particular, biodiversity risks may constitute material financial risks that boards are required to consider within the purview of directors' duties.

In 2022, Canada hosted the 15th Conference of the Parties (**COP15**) to the United Nations Convention on Biological Diversity (**CBD**) and agreed to the Kunming-Montréal Global Biodiversity Framework, to safeguard nature and halt and reverse biodiversity loss in partnership with Indigenous Peoples and other stakeholders, putting nature on a path to recovery by 2050 and committing to conserving 30 percent of lands and oceans by 2030.[87] Canada's 2030 Nature Strategy outlines a number of measures that the Canadian Government plans to take to protect and restore biodiversity.

The Taskforce for Nature-related Financial Disclosures (**TNFD**) published its final recommendations in September 2023 (the **TNFD Recommendations**). The TNFD Recommendations are potentially significant for Canadian corporations and their directors because in addition to the recommended baseline of disclosing information that is material for users of general-purpose financial reports ('financial materiality'), the framework provides for optional additional disclosure of "*topics that represent its most significant impacts on the economy, environment and people, including impacts on their human rights*" ('impact materiality'). The Canadian government has expressed its commitment to positioning Canada as a leader in sustainability reporting,[88] indicating its endorsement of the TNFD in public statements by the incumbent Minister for the Environment and Climate Change.[89] Eight of the 'early adopters' of the TNFD Recommendations are headquartered in Canada.[90]

The Canadian Pension Plan Investment Board recognises biodiversity as one of the factors redefining environmental risks and opportunities.[91] In 2020, ESG reports of 38% of Canadian issuers discussed biodiversity.[92]

Canadian corporations may be affected by nature-related physical risks arising in Canadian ecosystems. They can also (via their or their subsidiaries' activities in other jurisdictions or via their supply chains) be affected by physical risks arising in ecosystems around the world. The level of exposure of Canadian corporations and financial institutions to nature-related physical risks, both chronic and acute, depends on their own impacts and dependencies on nature and biodiversity, direct or indirect. Three of Canada's largest industries - real estate, rental, and leasing; manufacturing; and mining, quarrying, and oil and gas extraction[93] - are all recognised as industries with high-level supply chain dependencies on biodiversity,[94] and are therefore exposed to nature-related physical risk.

Canadian corporations are also exposed to nature-related transition risks. For example, Canada, as a signatory to the Sustainable Critical Minerals Alliance signed at COP15, has agreed to take voluntary actions to develop sustainable mining practices and sourcing critical minerals that employ a nature-

85 Molnar, M., et. al. Ecosystem Services; Chapter 5 in Canada in a Changing Climate: National Issues Report (2021), (eds.) F.J. Warren and N. Lulham, Government of Canada, Ottawa, Ontario, 271

86 CCLI, Biodiversity Risk: Legal Implications for Companies and their Directors (December 2022) <https://commonwealthclimatelaw.org/wp-content/uploads/2022/12/CCLI_Biodiversity_risk_paper_2022.pdf>.

87 Government of Canada, "Canada at COP15", UN Biodiversity Conference: COP15 in Montréal - Canada.ca.

88 Government of Canada, Federal Sustainable Development Strategy (2024)

89 Government of Canada, Minister Guilbeault speaks at the World Sustainable Development Summit and outlines Canada's leadership role at home and abroad (February 2022)

90 Taskforce for Nature-related Financial Disclosures, Home/Engage (website), TNFD, TNFD adoption now over 400 organisations and new sector guidance released (June 2024); TNFD, List of Adopters (as at July 2024).

91 Canada Pension Plan Investments, 2021 Report on Sustainable Investing (2021) <https://cdn3.cppinvestments.com/wp-content/uploads/2021/11/CPPIB-2021ReportonSI-FinalEN.pdf>.

92 Millani, Millani's 5th Annual ESG Disclosure Study: A Canadian Perspective (September 2021) <https://www.tsx.com/resource/en/2722>; International Comparative Legal Guide, Environmental, Social & Governance Law 2022 (2022) <https://iclg.com/practice-areas/environmental-social-and-governance-law>.

93 Statistics Canada, Gross domestic product (GDP) at basic prices, by industry, annual average (x 1,000,000) (2024)

94 WEF, Nature Risk Rising (January 2020) 8, 12-14

positive approach, IPLCs, restore ecosystems, build a circular economy and foster ethical corporate practices.[95]

Canadian corporations may also be exposed to nature-related legal risks. For example, there is a recent pattern of litigation in Canada based on the Species at Risk Act and Ecojustice has a successful track record of protecting endangered species and their habitats through public interest litigation.[96] Furthermore, as evidenced by case law, Canadian courts have demonstrated positive progression in judicial thinking and scrutiny regarding directors' risk management, disclosure breaches as a result of failure to manage risk,[97] environmental risk disclosures,[98] and accountability of corporations active in Canada in relation to activities in their subsidiaries in other jurisdictions.[99]

The Canadian legal system has also recognized Indigenous titles and the cultural relationship with land (although how this recognition is implemented in specific cases is still a live issue in Canadian courts),[100] and has adopted federal legislation recognizing the United Nations Declaration on the Rights of Indigenous Peoples.[101] A local Indigenous council and municipality have recognized the rights and legal personality of the Magpie River (*Muteshekau-shipu*) in northern Québec.[102] Nine rights have been established for the Magpie River, including the right to live, exist, and flow; the right to be preserved and protected; and the right to take legal action, such as to safeguard the river from potential industrial projects.[103] There have also been a number of developments regarding the legal personhood of the St. Lawrence River, including a resolution passed by the Assembly of First Nations Québec-Labrador and the introduction of a private members Bill seeking to introduce private legal rights for the river.[104]

All of these factors indicate that biodiversity protection is of importance in Canada, and that biodiversity loss could potentially pose a risk that directors need to pay attention to.

Practical Implications for Directors

Given that Canada has adopted an approach to directors' obligations, both by statute and by opinions of the Supreme Court of Canada to act in the best interests of the company, allowing them to have regard for multiple stakeholder interests and the environment; given the CSA's direction that material climate risks need to be disclosed under current securities law; and given new federal guidelines requiring transition plans and disclosure for financial institutions, well-counselled boards will:[105]

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95 Government of Canada, Critical minerals in Canada (2024)

96 Rodríguez-Garavito, C., & César Rodríguez-Garavito and Boyd, D.R., David R. Boyd, A Rights Turn in Biodiversity Litigation? (2023) Transnational Environmental Law (2023) 12(3):498-536; Canada (Fisheries and Oceans) v. David Suzuki Foundation, 2012 FCA 40 (CanLII); Western Canada Wilderness Committee v. Canada (Fisheries and Oceans), 2014 FC 148 (CanLII)

97 Green v Canadian Imperial Bank of Commerce, 2012 ONSC 3637, Superior Court of Justice of Ontario, paragraph 463.

98 Drywall Acoustic Lathing and Insulation, Local 675 Pension Fund v Barrick Gold Corporation 2021 ONCA 104, Court of Appeal of Ontario.

99 Nevsun Resources Ltd. v Araya 2020 SCC 5, Supreme Court of Canada.

100 Guerin v The Queen, [1984] 2 S.C.R. 335, Supreme Court of Canada established that the Crown had a fiduciary duty to protect Aboriginal title for Aboriginal peoples; Delgamuukw v British Columbia [1997] 3 S.C.R. 1010, Supreme Court of Canada set out how courts will deal with Aboriginal title; Indigenous Foundations, Aboriginal Title (2009) <https://indigenousfoundations.arts.ubc.ca/aboriginal_title/>; Terri-Lynn Williams-Davidson and Janis Serra, CCLI Canada, Haida law of gina 'waadluxan gud ad kwaagiida and Indigenous rights in conservation finance (2021) <http://ccli.ubc.ca/wp-content/uploads/2021/04/Haida-law-of-gina-%E2%80%98waadluxan-gud-ad-kwaagiida-and-Indigenous-rights-in-conservation-finance.pdf>; Haida Nation v British Columbia (Ministry of Forests), 2004 SCC 73 [Haida Nation]; Conservation partnerships with Indigenous peoples have been made in the Gwaii Haanas Agreement, Gwaii Haanas Marine Agreement, Great Bear Rainforest (Forest Management) Act and Great Bear Rainforest Land User Order.

101 United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.

102 Reuters, Canadian river wins legal rights in global push to protect nature (24 February 2021) <https://www.reuters.com/article/us-land-rights-nature-trfn-idUSKBN2AO2I3>; United Nations, Harmony With Nature Platform, Rights of Nature Law and Policy <http://www.harmonywithnatureun.org/rightsOfNaturePolicies/> (last accessed 10 November 2022).

103 International Rivers, Why Recognize a River's Rights? Behind the scenes of the Magpie River case in Canada (15 March 2021), <https://www.internationalrivers.org/news/why-recognize-a-rivers-rights-behind-the-scenes-of-the-magpie-river-case-in-canada/>.

104 CTV News Montreal, First Nations chiefs adopt resolution declaring St. Lawrence River a legal person (24 April 2023) <https://montreal.ctvnews.ca/first-nations-chiefs-adopt-resolution-declaring-st-lawrence-river-a-legal-person-1.6369335>; Bill C-271 An Act to give legal capacity to the St. Lawrence River and to provide for measures respecting its protection <https://www.parl.ca/LegisInfo/en/bill/44-1/C-271>.

105 Canada Climate Law Initiative (CCLI), Agriculture Guide (July 2024) <https://ccli.ubc.ca/resource/cultivating-effective-climate-governance-a-guide-for-small-farm-corporations-in-canada/>; CCLI, Mining Sector Guide (April 2024) <https://ccli.ubc.ca/resource/unearthing-a-greener-future-digging-deeper-into-effective-climate-governance-in-the-canadian-mining-sector/>; CCLI, Credit Union Guide (June 2023) <https://ccli.ubc.ca/resource/canadian-credit-unions-and-effective-climate-governance-cooperating-for-a-sustainable-future/>; CCLI, Junior

a) delegate climate risk identification and evaluation to a clearly-identified team in management that reports directly to the CEO and board, always keeping in mind that directors retain overall fiduciary responsibility for oversight of identification and management of climate-related risks and opportunities;[106]

b) put on the agenda for the board, as soon as possible, a process to initiate the development of a climate transition roadmap to 2050 with transparent carbon neutrality or reduction targets, with clear interim targets to 2040, 2030 and the current rolling multi-year strategic plan, and periodically thereafter report back to the board;

c) consider adopting and implementing IFRS S2 in the company's financial reporting, disclosing information about climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term;

d) delegate to the appropriate committee(s) of the board, such as risk, audit, legal and governance, scenarios/strategy, nominations/remuneration, or sustainability/ corporate responsibility, the task of translating the long-term strategy into a clear decision-making process for each aspect that is relevant to each committee;

e) consider aligning executive compensation to meeting the company's targets and timetables in transitioning to net-zero emissions; and

f) discuss with disclosure counsel, to develop an external engagement and communications plan and ensure rigorous securities disclosure.

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56 Janis Sarra, with contributing authors Roopa Davé, Meghan Harris-Ngae, and Ravipal Bains, Canada Climate Law Initiative, Audit Committees and Effective Climate Governance, A Guide for Boards of Directors, (December 2020) <https://law-ccli-2019.sites.olt.ubc.ca/files/2020/12/CCLI-Guide-for-Audit-Committees-on-Effective-Climate-Governance.pdf>.