CLIMATE CHANGE RISK
ON THE BOARDROOM TABLE

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HANSELL LLP

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This paper updates our opinion dated June 25, 2020, requested by the Canada Climate Law Initiative.

CLIMATE CHANGE RISK ON THE BOARDROOM TABLE

Executive Summary

The scientific community has identified climate change as an existential threat. World leaders have accepted this view. Governments and regulators have taken action to address the threat and have underscored the implications of climate change for the economy and individual businesses.

Directors must consider the risks that climate change presents for the corporation they serve. Canadian courts have accepted climate change and the risks it presents as self-evident and uncontroversial. So too has the investment community. Climate change risk belongs on the boardroom table.

The obligation of directors to consider the implications of climate change risk is grounded in the duties each director owes to the corporation he or she serves. 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. Among other things, directors must put aside any preconceptions they may have about the reality or imminence of climate change risk and be open to the information relevant to the business of the corporation. 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.

Directors are required to act with a view to the best interests of the corporation. The application of this duty can be complex in practice. The issues may be long term or short term and must be evaluated in the context of a shifting landscape. While the corporation is responding to climate change risk, so too are the corporation's customers, suppliers, employees and investors. Directors may take the interests of the corporation's stakeholders into account, but those interests may be different from one another. It falls to the directors to determine whose interests should prevail.

The governance tools required to address risk are well developed and readily adaptable to deal with climate change risk. Many Canadian boards are deeply engaged in climate change risk assessment and provide exemplary leadership for other boards, both in Canada and abroad. Others must now begin their engagement with these complex issues.

This paper updates our opinion dated June 25, 2020, requested by the Canada Climate Law Initiative.

PART I - CONTEXT FOR THE BOARD

This part of the paper provides directors with some context within which to consider climate change risk. It canvasses the conclusions reached by the scientific community and the actions that political leaders are taking into response. It discusses what the courts and the investment community are saying about climate change risk as well as the reporting frameworks and reporting ratings of which directors should be aware.

1. International Context

(a) The Science

The United Nations Environment Programme and the World Meteorological Organization established the Intergovernmental Panel on Climate Change ("IPCC") in 1988[1] to "provide the world with a clear scientific view on the current state of knowledge in climate change and its potential environmental and socio-economic impacts."[2] The IPCC reported that human activity[3] has caused global warming of approximately 1.0°C above pre-industrial levels and that if global warming continues to increase at its current rate, temperatures will reach 1.5°C above pre-industrial levels as early as 2030.[4]

The scientific research shows that each additional level of global warming increases the risk of long-lasting and irreversible changes that will impact ecosystems[5] and therefore, societies and corporations globally. Businesses will face, and will need to adapt to, physical risks, transition risks and liability risks that arise from the changing climate.[6] Corporate directors should be conversant with risks and consider their potential impact on the corporation and its stakeholders.

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1 Intergovernmental Panel on Climate Change, *History of the IPCC* (Accessed on 27 May, 2022).

2 Justine Sullivan, *The Intergovernmental Panel on Climate Change: 30 Years of Informing Global Climate Action*, *United Nations Foundation* (13 March 2018).

3 Prior to 1990, there was limited consideration given to understanding the human-induced impact on climate change. See Le Treut, H., R. Somerville, U. Cubasch, Y. Ding, C. Mauritzen, A. Mokssit, T. Peterson and M. Prather, *Historical Overview of Climate Change*, (Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change) (2007) at 96.

4 "*Global warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate.*" Intergovernmental Panel on Climate Change, *Special Report: Global warming of 1.5°C – An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, (2018) at A.1, B.4, B.5.

5 Intergovernmental Panel on Climate Change, *Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments*, (8 October 2018).

6 Dr. Michela Coppola, Thomas Krick, Dr. Julian Blohmke, *Feeling the heat? Companies are under pressure on climate change and need to do more*, *Deloitte Insights* (12 December 2019).

There has been a global call for action on climate change.[7] The IPCC emphasizes that policymakers, governments, civil societies and the private sector should be involved in addressing the risks and impacts of climate change.[8] It stresses that the measures already underway should continue.[9] The IPCC suggests several strategies for the reduction of emissions including the adaptation of urban infrastructure.[10] Corporations can contribute to these measures by developing and executing climate strategies in all of the communities in which they operate.

(b) International Climate Action

In response to a growing understanding of climate change, member countries of the United Nations adopted the United Nations Framework Convention on Climate Change ("UNFCCC") in 1992.[11] They recognized that a protocol was necessary to strengthen the commitments of their countries and to set quantified emission reduction objectives to reduce rising temperatures.[12] The parties adopted the Kyoto Protocol in 1997 and committed to reducing global greenhouse gas ("GHG") emissions by at least five per cent by 2012.[13] The Kyoto Protocol created legally binding obligations for each industrialized country to reduce its GHG emissions based on its individualized emissions target. In 2015, the UNFCCC parties adopted the Paris Agreement to build on the commitments they made in the Kyoto Protocol. In 2021, the parties to the UNFCCC adopted the Glasgow Climate Pact.[14] As part of the package of decisions set out in the Glasgow Climate Pact,

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[7] See for example, Intergovernmental Panel on Climate Change, *The evidence is clear: the time for action is now. We can halve emissions by 2030*, (4 April 2022); United Nations, *For a livable climate: Net-zero commitments must be backed by credible action*, (Accessed on 27 May 2022); and International Organization of Securities Commissions, *IFRS Foundation's International Sustainability Standards board on the Right Track, says IOSCO*, (3 November 2021) at 2.

[8] Intergovernmental Panel on Climate Change, *FAQ 6: What is Climate Resilient Development and how do we pursue it?* (Accessed 27 May 2022).

[9] Intergovernmental Panel on Climate Change, *Climate Change 2022, Impacts, Adaption and Vulnerability* (27 February 2022) at 22 (SPM.C). The third contribution to the Sixth Assessment Report builds on the conclusions made in the second contribution. The third report analyzes and proposes possible mitigation strategies to reduce the GHG emissions.

[10] The authors find that the amount of GHG emissions released into the atmosphere can be reduced by making urban areas more resource efficient and adopting low-emission infrastructure pathways. However, a focus on urban initiatives represents one of several other areas of focus. Other initiatives include limiting emissions in the industrial, energy, transport, agriculture and forest sector. Intergovernmental Panel on Climate Change, *Climate Change 2022 Mitigation of Climate Change (Summary for Policymakers)*, (4 April 2022) at C.4, C.5, C.6, C.8, C.9.

[11] The UNFCCC is an international treaty amongst 197 parties. It was adopted in 1992 and came into force in 1994. It has the objective of "[stabilizing] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic human-induced interference with the climate system." United Nations Treaty Collection, *United Nations Framework Convention on Climate Change*, (May 1992) at Article 2. United Nations, *The Convention*, (Accessed 27 May 2022).

[12] Joanna Depledge, *Technical Paper: Tracing the Origins of the Kyoto Protocol*, (November 2000) at 6.

[13] The reduction of GHG emissions is measured against the 1990 levels. United Nations Treaty Collection, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, (December 1997) at Article 3.

[14] UN Climate Change Conference UK 2021, *COP26 Keeps 1.5C Alive and Finalises Paris Agreement* (13 November 2021); United Nations, *COP26: A snapshot of the agreement* (15 November 2021).

the parties completed the Paris Agreement's rulebook as it relates to a number of matters including the transparent reporting of climate actions.[15]

(c) Climate Change Implications for International Financial Stability

Then Bank of England Governor Mark Carney pulled the science of climate change into the business realm in a much-quoted speech in 2015.[16] Governor Carney (then also the Chair of the Financial Stability Board ("FSB")), outlined the three broad channels through which climate change can affect financial stability: physical risks,[17] liability risks[18] and transition risks.[19]

The G20 Finance Ministers and Central Bank Governors asked the FSB to review how the financial sector could better take account of climate change-related issues.[20] As a result of that review, the FSB established the Task Force on Climate Related Financial Disclosures ("TCFD"). In its first report in 2017, the TCFD stated (among other things) that one of the most significant risks that organizations face today relates to climate change. It noted that "the large-scale and long-term nature of the problem makes it uniquely challenging, especially in the context of economic decision making."[21] The TCFD recommends processes to assist companies in understanding their own financial related risks and the implications of managing climate related impacts.[22] It also recommends corporate reporting in accordance with its recommendations to assist investors and others to assess climate change risk.[23]

The TCFD reports annually to the FSB. Its most recent report provides an overview of the current climate-related financial disclosure by public companies and highlights the following findings: [24]

- the number of companies that are disclosing decision-useful climate-related financial information has increased since the last status report; however, the level of disclosure remains insufficient;

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15 United Nations, *The Glasgow Climate Pact,* (Accessed on 27 May 2022).

16 Mark Carney (Former Governor of the Bank of Canada and the Bank of England and Chairman of the Financial Stability Board), *"Breaking the Tragedy of the Horizon – climate change and financial stability"* (Speech at Lloyd's of London, 29 September 2015).

17 Physical risks are the impacts on the value of financial assets arising from climate and weather-related events, such as floods and storms that damage property or disrupt trade.

18 Liability risks are the impacts if parties who have suffered loss or damage from the effects of climate change seek compensation from those they hold responsible.

19 Transition risks are the financial risks which could result from the process of adjustment towards a lower-carbon economy which could prompt a reassessment of the value of a large range of assets as costs and opportunities become apparent.

20 Task Force on Climate Related Financial Disclosures, *Recommendation of the Task Force on Climate-related Financial Disclosures*, (June 2017) at 1.

21 *Ibid*, at ii.

22 Task Force on Climate-Related Financial Disclosures, *About*, (Accessed 27 May 2022).

23 Task Force on Climate-Related Financial Disclosures, *About*, (Accessed 27 May 2022).

24 Task Force on Climate-related Financial Disclosures, *2021 Status Report,* (14 October 2021) at 8.

- companies are disclosing information on their climate-related risks and opportunities more often than any other recommended disclosure;
- the number of companies that use scenario analysis to assess the resilience of their strategies has increased; however, few companies disclose information on the resilience of their strategies.

2. Impact of Climate Change for Canada

2.1 The Science

The Government of Canada has reported that Canada as a whole is warming at more than twice the global warming rate and that northern Canada is warming by about three times the global rate.[25] It has also reported that this warming trend will continue. As climate change intensifies, snow, sea ice and glacier coverage will decrease, resulting in rising sea levels and increased coastal flooding, and coastal erosion. Overall precipitation levels are expected to increase across most of the country and during all seasons, with increased flooding, except for parts of southern Canada. Heat waves are likely to increase in frequency and severity, resulting in higher risks of forest fires and many more wildlife species being at risk.

Human health impacts include:

- increased risk of deaths from dehydration and heat stroke, and injuries from intense local weather changes;
- greater risk of respiratory and cardiovascular problems and certain types of cancers with rising temperatures and exacerbated air pollution; and
- potential increased risk of water-, food-, vector- and rodent-borne diseases (vulnerable populations such as children and the elderly expected to be the most affected).[26]

Several natural disasters, which have been attributed to climate change, occurred in British Columbia very recently. In 2021, floods, mudslides and forest fires had an impact on large regions of the province and affected not only the BC economy but also the national economy, hitting, in particular, Canada's supply chain.[27] Extreme weather-related events and natural disasters are expected to continue in Canada.[28]

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[25] Government of Canada, *Climate change adaptation in Canada,* (Modified 24 January 2022).

[26] Government of Canada, *Greenhouse gas emissions: drivers and impacts*, (Updated 15 April 2021).

[27] Rod Nickel and Nia Williams, *From fire to floods, climate change hits Canada's fragile supply chain*, *Reuters* (19 November 2021).

[28] National Resources Canada, *Canada in a Changing Climate: National Issues Report*, (June 2021) at 33.

2.2 Implications for the Canadian Economy

The Canadian government has reported that the impact on the environment, human health and the economy will become more severe, unless there are united efforts undertaken to reduce GHG emissions. The economic impacts identified by the Canadian government in its report include: [29]

- challenges for agriculture, forestry, tourism and recreation industries as a result of changing weather patterns;
- additional economic stress on health and social support systems; and
- damage to infrastructure such as roads and bridges caused by extreme weather events, thawing permafrost and rising sea levels.

The Bank of Canada has also acknowledged that "climate change itself and actions to address it will have material and pervasive effects on Canada's economy and financial system."[30] It reported that it is incorporating climate change risk into its analysis of the Canadian economy and financial system.[31] In its most recent Financial System Review, the Bank of Canada identified general mispricing of assets exposed to climate change as a vulnerability in the financial system.[32] The Financial System Review highlights the risk of exposure to investors and financial institutions resulting from sudden losses in the value of mispriced carbon-intensive assets, particularly in the transition to a low-carbon economy.

In 2018, the federal government created the Expert Panel on Sustainable Finance to consider how Canada should address climate change and finance issues. The Expert Panel's Final Report,[33] released on June 14, 2019, made fifteen recommendations "focused on spurring the essential market activities, behaviours and structures needed to bring sustainable finance into the mainstream."[34] Among other things, the Expert Panel recommended the development of a Canadian approach to implementing the recommendations of the TCFD.[35]

3. What Canadian Courts Have Said

Canadian courts consider that climate change risk is uncontroversial and beyond reasonable dispute. They have taken judicial notice of the existence of climate change and its impact. In other

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[29] Government of Canada, *Greenhouse gas emissions: drivers and impacts*, (Updated 15 April 2021).

[30] Timothy Lane (Deputy Governor of the Bank of Canada), *Thermometer rising- climate change and Canada's economic future* (Remarks delivered at the Finance and Sustainability Initiative, Montreal, Quebec, 2 March 2017).

[31] Bank of Canada, *Financial System Review – 2019*, (9 May 2019).

[32] Bank of Canada, *Financial System Review – 2021*, (20 May 2021). The Bank of Canada has announced its Financial System Review – 2022 will be published on June 9, 2022.

[33] Government of Canada, Expert Panel on Sustainable Finance, *Final Report of the Expert Panel on Sustainable Finance: Mobilizing Finance for Sustainable Growth* (14 June 2019).

[34] *Ibid* at iv.

[35] *Ibid* at 14-18.

words, Canadian courts have accepted the existence of climate change risk without the need for litigants to prove the point.

In the reference cases regarding the constitutionality of the Canadian federal government's legislation to regulate GHGs, the appellate courts in Alberta, Ontario and Saskatchewan each acknowledged the risk presented by climate change.[36] The Alberta Court of Appeal, for example, stated: "The dangers of climate change are undoubted as are the risks flowing from failure to meet the essential challenge."[37] The Court of Appeal for Ontario stated that anthropogenic climate change poses an existential threat to human civilization.[38] Alberta, Ontario and Saskatchewan appealed the decisions of their respective appeal courts to the Supreme Court of Canada. The Supreme Court held that the GHG legislation is constitutionally valid as a matter of national concern under POGG, the peace, order and good government clause of the *Constitution Act, 1867*. In the course of doing so, it acknowledged that climate change is a genuine risk and threat to humanity.[39]

In another matter, the Federal Court held that the *Renewable Fuels Regulations*[40] were not *ultra vires* the federal government. In its decision, the Federal Court accepted that "[t]he evil of global climate change and the apprehension of harm resulting from the enabling of climate change through the combustion of fossil fuels has been widely discussed and debated by leaders on the international stage. Contrary to [the applicant]'s submission, this is a real, measured evil, and the harm has been well documented."[41]

In another reference case, *Reference re Environmental Management Act (British Columbia)*,[42] the Court of Appeal for British Columbia considered the constitutionality of provincial legislation that restricts the transportation of oil between provinces. While finding that the provincial legislation was unconstitutional, the Court of Appeal noted at the outset of its reasons that "[t]he protection of the environment is one of the driving challenges of our time. No part of the world is now

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[36] In *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544, and *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 SKCA 40, the Courts of Appeal for Ontario and for Saskatchewan found the federal legislation regulating GHGs to be within the jurisdiction of the federal government. In *Reference re Greenhouse Gas Pollutions Pricing Act*, 2020 ABCA 74, the Court of Appeal of Alberta found the same legislation to be *ultra vires* the federal government and therefore unconstitutional. As discussed below, the Supreme Court has upheld the legislation as constitutional. Note that the Supreme Court of Canada has previously held environmental legislation to be *ultra vires* the province, where the legislation restricted the possession and control of oil transported through the province (*Reference re Environmental Management Act (British Columbia)*, 2020 SCC 1, aff'g 2019 BCCA 181).

[37] *Reference re Greenhouse Gas Pollution Pricing Act*, 2020 ABCA 74 at para 1.

[38] *Reference re Greenhouse Gas Pollution Pricing Act*, 2019 ONCA 544 at para 104.

[39] *References re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at para 2.

[40] *Renewable Fuels Regulations*, SOR/2010-189. The Federal Court found that the regulations were not *ultra vires* the federal government.

[41] *Syncrude Canada Ltd. v Canada (Attorney General)*, 2014 FC 776 at para 83, aff'd, 2016 FCA 160.

[42] *Reference re Environmental Management Act (British Columbia)*, 2019 BCCA 181, aff'd 2020 SCC 1.

untouched by the need for such protection; no government may ignore it; no industry may claim immunity from its constraints."[43]

4. What Canadian Investors Are Saying

4.1 Institutional Investors and How They Engage on Climate Change

Canadian institutional investors recognize climate change as a current investment risk that can impact long-term investment values.[44] Institutional investors address climate change both separately and as part of ESG (Environmental, Social and Governance). ESG looks at certain non-financial factors that can have a material impact on an organization's performance and long-term prospects. Investors also refer to climate change risk in the context of responsible or sustainable investing.

Institutional investors consider ESG issues, including climate change risk, in making investment decisions.[45] Some explicitly factor climate change risk into every investment decision, while others consider ESG factors that are likely to have an impact on long-term risk and return. The way in which an organization handles and discloses climate change risks can influence investor decisions and, accordingly, can affect the organization's cost of capital.

Institutional investors engage their investee companies on climate change issues. These engagements include discussions about an investee's strategy and governance of climate change-related disclosure practices.[46] Many institutional investors encourage issuers to adopt the TCFD disclosure framework.[47] The CCGG[48] has also endorsed the TCFD framework.[49]

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[43] *Reference re Environmental Management Act (British Columbia)*, 2019 BCCA 181, at para 1, aff'd 2020 SCC 1.

[44] Caisse de dépôt et placement du Québec, *Climate Change* (Accessed 27 May 2022); CPP Investment Board, *Canada Pension Plan Investment Board Issues 2019 Report on Sustainable Investing*, (6 November 2019).

[45] CPP Investment Board, *Report on Sustainable Investing 2021*, (Accessed 27 May 2022) at 9; Ontario Teachers' Pension Plan, *Annual Responsible Investing and Climate Change Report*, (Accessed 27 May 2022) at 4; OMERS, *Sustainable Investment Policy*, (effective 1 April 2021); Alberta Investment Management Corporation, *2021 Responsible Investment Report*, (Accessed 27 May 2022) at 7; Caisse de dépôt et placement du Québec, *Climate Change* (Accessed 27 May 2022); British Columbia Investment Management Corporation, *2020 ESG Annual Report* at 4 and 5; Public Sector Pension Investment Board, *2021 Responsible Investment Report*, (Accessed 27 May 2022) at 6.

[46] See: Alberta Investment Management Corporation, *2021 Responsible Investment Report*, (Accessed 27 May 2022) at 26; CPP Investment Board, *2021 Report on Sustainable Investing*, (Accessed 27 May 2022) at 20.

[47] See: British Columbia Investment Management Corporation, *BCI's Climate Action Plan and Approach to the TCFD Recommendations*, (Accessed 27 May 2022) at 11; Caisse de dépôt et placement du Québec, *2020 Stewardship Investing Report* (Accessed 27 May 2022), at 47, Alberta Investment Management Corporation, News Release: *Statement Supporting TCFD Final Recommendations Report*, (29 June 2017); CPP Investment Board, *Report on Sustainable Investing 2021*, (Accessed 27 May 2022), at 10.

[48] The CCGG[48] represents the interests of 55 institutional investors with over $5 trillion in assets under management.[48] Its research, policies and engagement initiatives on behalf of its members have significant influence in the Canadian capital markets.

[49] Canadian Coalition for Good Governance (CCGG), *2020 Annual Report*, (Accessed 27 May 2022) at 11.

4.2 Shareholder Proposals

The shareholder proposal mechanism set out in the corporate statutes allows shareholders to put issues on the agenda of shareholder meetings (subject to some restrictions).[50] Shareholder proposals can also influence corporate conduct.

(a) Environmental and Climate Change Related Proposals (Generally)

Shareholder proposals address climate change in numerous ways. Shareholder proposals may seek corporate disclosure in line with the TCFD framework, disclosure regarding how a company intends to meet the targets established by the Paris Agreement, analysis of climate change risk (and disclosure of the analysis) and adoption of targets for the reduction of GHG emissions.

The number of shareholder proposals dealing with climate change risk has increased significantly over the last two decades. In 2003, shareholders submitted proposals calling for increased disclosure on GHG emissions at only three TSX-listed companies' annual shareholder meetings.[51] During the 2022 proxy season to May 1, 2022, there were 47 shareholder proposals addressing climate change-related issues submitted to TSX-listed companies. Eighteen of these proposals (38%) proceeded to a vote at the companies' annual meetings this year; however, none received majority support.[52]

Canada's large institutional investors have provided specific guidance regarding their support for shareholder proposals dealing with climate change.[53] CPPIB[54] encourages companies to implement the recommendations of the TCFD and supports shareholder proposals that seek to do so. CPPIB also supports proposals that request the review of environmental factors that are likely to enhance long-term corporate performance or mitigate environmental risk.[55] While it examines shareholder proposals on a case-by-case basis, OMERS[56] has stated that it generally supports

[50] *Canada Business Corporations Act,* RSC 1985, c. c-44, s. 137.

[51] The proposals were submitted at Imperial Oil Ltd., IPSCO Inc., and Petro-Canada. These proposals were identified using SHARE's *shareholder proposal database*.

[52] These proposals were identified through our internal data collection. Between 2018 and 2021, 51 shareholder proposals addressing climate change-related issues were submitted at TSX-listed companies' annual meetings, 23 (45%) of these proposals proceeded to a vote. Of the proposals submitted to a vote, five (22%) received majority support from shareholders. The successful proposals were at Canadian Pacific Railway Ltd. in 2021, iA Financial Corp. Inc. (two proposals) and Ovintiv Inc. in 2020, and TC Energy Corp. in 2018.

[53] See: CPP Investment Board, *Proxy Voting Principles and Guidelines*, (10 February 2021) at 12; OMERS, *Proxy Voting Guidelines*, (27 February 2021); Alberta Investment Management Corporation, *Proxy Voting Guidelines & Corporate Governance Principles,* (February 2021) at 14; Public Sector Pension Investment Board, *Proxy Voting Guidelines,* (November 2017) at 40.

[54] Canadian Pension Plan Investment Board ("CPPIB").

[55] CPP Investment Board, *Proxy Voting Principles and Guidelines*, (10 February 2021) at 12.

[56] Ontario Municipal Employees' Retirement System ("OMERS").

proposals that request the reasonable disclosure of information or development of policies related to ESG factors.[57]

AIMCo[58] indicates that it will vote for proposals that seek to promote disclosure of material ESG risks and/or mitigation of significant ESG risk exposure and for proposals that request companies to report on ESG protocols and performance.[59] BCI[60] will generally vote against certain members of the board of companies that have not effectively integrated ESG risk oversight or have not disclosed climate risk information that was previously requested.[61]

Proxy advisors (ISS[62] and Glass Lewis[63] in Canada) have also called for enhanced environmental disclosure, and, in certain circumstances, for more prescriptive proposals. ISS assesses how a climate change-related shareholder proposal may enhance or protect shareholder value in either the short term or long term.[64] ISS considers proposals on a case-by-case basis and may consider a wide range of factors in determining a voting recommendation. Similarly, Glass Lewis considers proposals on a case-by-case basis. Glass Lewis will generally support proposals that are believed to promote more and better disclosure of relevant ESG related risks and factors, on the basis that such proposals serve the best long-term interests of shareholders.[65]

(b) Environmental and Climate Change Related Proposals (Say on Climate)

Say on Climate proposals seeking a shareholder vote on a company's climate action plan appeared for the first time in Canada in the 2021 proxy season.[66] CN[67] became the first TSX issuer to introduce an advisory vote on its climate action plan. The vote provided shareholders with the opportunity to determine whether they believed that CN's approach to address climate related issues, as summarized in CN's proxy circular, was appropriate.[68] CN received over 92% of votes

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57 OMERS, *Proxy Voting Guidelines*, (27 February 2021) at 28.

58 Alberta Investment Management Corporation ("AIMCo").

59 Alberta Investment Management Corporation, *Proxy Voting Guidelines & Corporate Governance Principles*, (February 2021) at 14.

60 British Columbia Investment Management Corporation ("BCI").

61 British Columbia Investment Management Corporation, *2021 BCI Proxy Voting Guidelines* (9 February 2021) at 10.

62 Institutional Shareholder Services ("ISS").

63 Glass Lewis Co. ("Glass Lewis").

64 Institutional Shareholder Services, *Proxy Voting Guidelines for TSX-Listed Companies*, (13 December 2021) at 47.

65 Glass Lewis, *2022 Guidelines – ESG Initiatives*, (2022) at 6 - 7.

66 Similar to a Say on Pay vote, which allows shareholders to express their support (or lack of support) for a company's approach to executive compensation, a Say on Climate vote allows shareholders to express their views on a company's climate action plan. See Say on Climate, *Say on Climate Website*.

67 Canadian National Railway Company ("CN").

68 Canadian National Railway Company, *Management Information Circular*, (23 March 2021) at 9.

cast in favour of its Climate Action Plan.[69] One of its competitors, CP[70] received a shareholder proposal requesting that it do the same.[71] CP's board expressed support for the proposal and recommended that shareholders vote in favour, citing the proposal's alignment with CP's sustainability commitment. Given the board's support, the shareholder proposal passed with overwhelming support.[72]

Both ISS and Glass Lewis codified their approach to Say-on-Climate proposals in their 2022 proxy voting guidelines. Glass Lewis will generally oppose shareholder proposals that request an issuer to adopt a Say on Climate vote. Since these proposals are closely linked to the company's strategy, they are concerned that shareholders may approve a company's business strategy with limited information. However, where a company has adopted a Say on Climate vote, Glass Lewis will evaluate it on a case-by-case basis. Glass Lewis will consider a number of factors in its evaluation, including, among other factors, the role of the board in setting company strategy.[73] ISS will evaluate both management and shareholder Say on Climate proposals on a case-by-case basis. Like Glass Lewis, ISS will consider a number of factors when evaluating these proposals. [74]

In the 2022 proxy season, the number of Say on Climate proposals increased significantly. MÉDAC submitted shareholder proposals to the seven largest Canadian banks[75] requesting that each bank adopt an advisory vote on their climate action plan. Aside from Laurentian Bank, all of these proposals proceeded to a vote at their respective shareholder meeting. Although shareholders did not approve any of these proposals, they received considerable support, consistent with the recent trend of increasing shareholder support for Say on Climate proposals.

5. Reporting Frameworks

A number of climate change reporting frameworks have been developed[76] to provide organizations with guidance on how to report on climate change relevant to their business. The framework an organization selects depends in part on the audience for the corporation's report. For example, the

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69 Canadian National Railway Company, *Report of Voting Results*, (28 April 2021) at 2-3.

70 Canadian Pacific Railway Limited ("CP").

71 Canadian Pacific Railway Limited, *Management Information Circular*, (16 March 2021) at 107.

72 85.36% of shareholders vote in favour of the proposal. Canadian Pacific Railway Limited, *Report of Voting Results*, (21 April 2021) at 2.

73 Glass Lewis & Co., *2022 Guidelines – ESG Initiatives*, (15 November 2021) at 7.

74 Institutional Shareholder Services Inc., *Americas Proxy Voting Guidelines Updates for 2022* (7 December 2021) at 4 – 5.

75 Bank of Montreal, Canadian Imperial Bank of Commerce, Laurentian Bank of Canada, National Bank of Canada, Royal Bank of Canada, The Bank of Nova Scotia, and The Toronto-Dominion Bank.

76 Some of these organizations are now merging and consolidating. In June 2021, the Sustainability Accounting Standards Board ("SASB") and the International Integrated Reporting Council merged to form the Value Reporting Foundation. The Value Reporting Foundation was formed to address the evolving corporate reporting landscape by providing clear, and simplified reporting tools focused on long-term value creation. Value Reporting Foundation – Integrated Reporting Framework, *IIRC and SASB form the Value Reporting Foundation providing comprehensive suite of tools to assess, manage and communicate value* (9 June 2021); and Value Reporting Foundation, *About the Value Reporting Foundation*.

GRI framework (discussed below) focusses on the impact that the organization has on the environment (among other things). The TCFD framework, on the other hand, focusses on climate change risk and the corporation's response in a way that is relevant to investors.

Several of these frameworks are discussed below. Many organizations use more than one of these reporting tools in order to address different audiences. A number of large Canadian public companies report in accordance with TCFD and SASB with the investors in mind, and with GRI for a broader base of stakeholders.

While there is requirement for any organization to report in accordance with a particular framework, this is likely to change for public companies, as discussed in Part III of this paper.

5.1 Global Reporting Initiative

The Global Reporting Initiative was created in 1997, following the Exxon Valdez oil spill, with the goal of developing reporting guidelines analogous to "triple bottom line" accounting for economic, environmental and social performance and establishing sustainability reporting as rigorous as financial reporting. It now sets standards for sustainability reporting.

5.2 Task Force on Climate Related Financial Disclosures

The FSB developed the TCFD Framework in 2017 to make recommendations concerning the types of information that companies should disclose to investors, lenders and others to assist them in assessing and pricing risks and opportunities related to climate change.[77] The disclosure recommendations generally apply to all industries and focus on the impacts climate change has on a company's risk profile. Not only does the process allow investors and others to assess climate change risk, it also allows companies to understand their own financial related risks and the implications of managing climate related impacts.

5.3 Sustainability Accounting Standards Board

Like TCFD, SASB focuses on financial materiality. In 2018, SASB developed international sustainability accounting standards designed to provide investors with financially material sustainability information. The SASB Standards focus on the most important issues pertinent to each sector, recognizing that each industry experiences different environmental impacts. Although, a majority of SASB's metrics are quantitative in nature, SASB supplements its standards with qualitative metrics to addresses issues that are not quantifiable.[78]

5.4 The International Sustainability Standards Board

In 2021, the IFRS Foundation formed the ISSB[79] with the goal of delivering a comprehensive global baseline of sustainability-related disclosure standards to assist capital market stakeholders

[77] Task Force on Climate-Related Financial Disclosures, *About*, (Accessed 27 May 2022).

[78] Sustainability Accounting Standards Board, *Developing Your Disclosures*, (Accessed 27 May 2022).

[79] The International Sustainability Standards Board ("ISSB").

to make informed decisions about a company's enterprise value.[80] At the end of March 2022, the ISSB published draft IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and draft IFRS S2 Climate-related Disclosures.[81] The draft standards incorporate elements of the TCFD Framework and elements of SASB's industry-based disclosure requirements.

6. ESG Rating Providers

There are a number of organizations that provide ESG ratings. These organizations include Bloomberg, Corporate Knights, Glass Lewis, ISS, MSCI, Sustainalytics, and Thomson Reuters. Based on information that they obtain from a company's public disclosure or from the company directly, the ESG rating providers assess the company's ESG initiatives against specific ESG performance or risk metrics.[82] They use this information to assist investors and other stakeholders in assessing a company's ESG related practices.[83]

Investors may use a variety of rating providers in their investment strategies to gain a complete understanding of the companies they are assessing.[84] However, because rating providers do not use the same methodology, there are inconsistencies and a lack of clarity in ESG ratings. As a result, a company may receive different ESG ratings. There may also be uneven coverage for companies in different industries or geographical areas. The different ratings could have an impact on a company's ability to attract investors.[85] For example, investors may be reluctant to invest in a company that has a low ESG rating or a company in an industry that has little coverage from rating providers.[86] ESG ratings also have an impact on a company's ability to improve its ESG performance because they do not provide the company with clear guidance.[87]

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80 The IFRS Foundation announced that the International Sustainability Standards Board, formed by the merger of the Value Reporting Foundation and the Climate Disclosure Standards Board in late 2021, will complete its consolidation by June 2022. IFRS, *About the International Sustainability Standards Board*, (Accessed 27 May 2022); and IFRS, *IFRS Foundation announces International Sustainability Standards Board, consolidation with CDSB and VRF, and publication of prototype disclosure requirements*, (3 November 2021).

81 The ISSB is accepting stakeholder comments until July 29, 2022. International Sustainability Standards Board, *[Draft] IFRS S2 Climate-related Disclosures*, (31 March 2022). International Sustainability Standards Board, *[Draft] IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information*, (31 March 2022).

82 In some instances, companies provide data relating to their ESG initiatives to the rating agencies directly. Deloitte, *What is ESG rating?* (Accessed 27 May 2022).

83 Boffo, R., and R. Patalano, *ESG Investing: practices, Progress and Challenges*, *OECD Paris* (2020) at 21.

84 The Board of the International Organization of Securities Commissions, *Environmental, Social and Governance (ESG) Ratings and Data Products Providers Final Report*, (November 2021) at 25.

85 *Ibid* at 1.

86 Nicola Stopps, *Why ESG ratings matter and how companies use them*, *Simply Sustainable* (Accessed 27 May 2022).

87 Florian Berg, Julian F. Kolbel, Roberto Rigobon, *Aggregate Confusion: The Divergence of ESG Ratings*, *MIT Sloan, University of Zurich* (10 August 2019) at 2.

In response to these concerns, there are growing calls to standardize the methodologies used by rating providers to create more consistent and comprehensive ratings[88] and the International Organization of Securities Commissions has been considering the need for regulation.[89]

88 Andrew McLaughlin, *Crowded ESG ratings landscape sows confusion for investors*, The Globe and Mail (24 April 2022); Kurt Wolfe, *Who Regulates the ESG Ratings Industry?*, Bloomberg Law.

89 The Board of the International Organization of Securities Commissions, *Environmental, Social and Governance (ESG) Ratings and Data Products Providers Final Report*, (November 2021) at 14.

PART II - THE BOARD'S ROLE IN CLIMATE RISK MANAGEMENT

Having established that climate change and the risks it poses to business are widely known and accepted, we turn to the role of the directors in connection with these risks. The directors' duty of care and the case law interpreting that standard clearly establish that corporate directors must be engaged in the oversight of climate change risk.

7. The Board's Oversight of Risk

In most commercial enterprises, the board oversees risk management, rather than managing risk directly. We discuss below what oversight means, the importance of risk management and the legal standard that directors must meet in discharging their duty of oversight with respect to risk management.

7.1 What Oversight Means

Corporate law charges directors with responsibility for managing or supervising the management of the business and affairs of the corporation. While the board may delegate much of its authority to management, that delegation does not absolve directors from responsibility. Directors retain responsibility for the business through their duty to oversee management's discharge of the authority delegated to it.

In discharging this duty of oversight, directors are entitled to rely, in good faith, on management. "Good faith reliance" means, among other things, that the directors have no reason to doubt that management is being forthright and candid with them. They must, however, be satisfied that they have the information they need to perform their oversight responsibilities. This includes ensuring that there are reporting systems in place that will allow them to monitor management performance and will alert them to issues that may require closer board scrutiny.

An Ontario court provided the following guidance in respect of the director's oversight function in the context of the organization's compliance with environmental laws:

> (c) The directors are responsible for reviewing the environmental compliance reports provided by the officers of the corporation, but are justified in placing reasonable reliance on reports provided to them by corporate officers, consultants, counsel or other informed parties.
>
> (d) The directors should substantiate that the officers are promptly addressing environmental concerns brought to their attention by government agencies or other concerned parties including shareholders.
>
> (e) The directors should be aware of the standards of their industry and other industries which deal with similar environmental pollutants or risks.
>
> (f) The directors should immediately and personally react when they have noticed the system has failed.[90]

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[90] *R v Bata Industries Ltd.*, 1992 CarswellOnt 211 at para 147, 9 O.R. (3d) 329 (Ont. C.J. (Prov Div.)).

7.2 Importance of Risk Management

Managing the business of a corporation necessarily involves dealing with the risks facing the business of the corporation. It is common practice for the board to delegate responsibility for risk to management. Management identifies risks and develops risk management strategies, often within an enterprise-wide risk management framework. Management may report to one or more board committees on various aspects of the risks facing the corporation as well as to the board as a whole.

Courts and regulators have scrutinized an organization's approach to risk management. In the 1992 decision of the Ontario Securities Commission in the Standard Trustco matter, the Commission was critical of the directors for the way in which they monitored risk. The decision refers to the board's failure to recognize the increased risk involved in certain business activities. It also highlights the board's failure to recognize that the financial information they were receiving suggested that management was not following the company's accrual policy or its policy of obtaining appraisals.

> ***The directors were also aware or should have been aware that some of the mortgage lending activities in which the company was involved, such as participation lending, involved more risk than single family mortgages and that they did not have a long track record in such lending***. Also, the directors should have seen from the OSFI package that the arrears were increasing rather dramatically; in OSFI's view the loan loss provision was substantially understated; a number of the appraisals on mortgaged properties were old ***which suggested that management was not always following the company's policy of obtaining appraisals*** on properties in respect of which legal proceedings had been taken; and in several cases the balance outstanding was in excess of what was shown as the estimated value ***which suggested that management might not be following the company's accrual policy***.[91] [Emphasis Added]

In the context of the 2008 financial crisis, an Ontario court traced a bank's potential breach of its disclosure obligations to a poor risk management strategy. The Court stated:

> This raises the question of why this risk was not anticipated when CIBC acquired its subprime portfolio and why appropriate risk management strategies – including appropriate hedges – were not put in place at that time. ***It also raises the question of whether appropriate risk management strategies should have addressed the challenges of valuation and disclosure that would be encountered during the 'worse case' scenario.*** The evidence suggests that CIBC was left struggling to respond to these challenges as the tidal wave of the subprime crisis was breaking on the beaches. ***Even once-in-a-century tsunamis can be anticipated. The degree of damage they can inflict make it all the more critical to anticipate and prepare for them. Had CIBC anticipated the tail risk, it could have prepared itself to respond to the issues it would face in the heat of the crisis.***[92] [Emphasis added]

There are several points in this passage that can be applied to the management of climate change risk. The Court referred to the evaluation of 'worse case' scenarios as part of an appropriate risk management strategy. It also noted that organizations should anticipate and prepare for material events that may not be imminent or frequently occurring (such as a once-in-a-century tsunami). In

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91 *Standard Trustco Ltd., Re*, 1992 CarswellOnt 140, 15 OSCB 4322 (OSC).

92 *Green v Canadian Imperial Bank of Commerce*, 2012 ONSC 3637 at para 421, var'd on other grounds 2014 ONCA 90, appeal ref'd 2015 SCC 60.

addition, it points to the failure of the organization to put appropriate risk management strategies in place when it acquires a new line of business (in this case, a subprime portfolio).

8. Director's Duty of Care – How Would a Reasonably Prudent Person Oversee Climate Change Risk?

In exercising their powers and discharging their responsibilities, every director must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. This is the duty of care set out in most Canadian corporate statutes.[93] The duty of care sets an objective standard of performance for each director and differs from the director's fiduciary duty (discussed below), which is concerned with the subjective motivations of a director.[94] All directors, even those who are skeptical about the climate change risk alarms that international organizations and governments are sounding, must be informed by more than their personal views about the risks facing the corporation.

In this section, we discuss the three elements of the duty of care in the context of climate change risk. The duty of care requires each director to exercise *care, diligence and skill*, but to what standard? That question is answered by the next phrase in the test – a director must exercise the care, diligence and skill *that a reasonably prudent person would exercise*. The third element of the test addresses the context in which a director is required to act – he or she must do what a reasonably prudent person would do *in comparable circumstances*.

8.1 Care, Diligence and Skill

"Care, diligence and skill" address the means and methods that the director uses to fulfill his or her responsibility. The courts have not defined the words care, diligence and skill in cases considering a director's duty of care and, accordingly, each of these words is ascribed their ordinary meaning. In describing the standard of performance of corporate directors, the Supreme Court said simply, directors must "be diligent in supervising and managing the corporation's affairs."[95]

The concepts of care and diligence speak to the time and effort that a director devotes in order to make an informed business judgment. Directors who are being careful and diligent ask themselves whether they are considering the appropriate issues and whether they have the information they need in order to make the necessary decisions. They consider the information they receive critically. They attend and engage in board and committee discussions, and question management, outside advisors and board committee reports until they are satisfied with the responses they receive. The courts have faulted directors for not seeking sufficient information upon which to ground a reasonable judgment. On the other hand, the courts have found a board chair blameless when a reporting system he had put in place failed to alert him to a problem, because the board chair could not have known that the reporting system was not reliable.[96]

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93 See for example, *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, s. 122(1)(b).

94 *Peoples Department Stores Inc. (Trustee of) v Wise*, 2004 SCC 68 at para 63.

95 *Ibid* at para 32.

96 *R v Bata Industries Ltd*., 1992 CarswellOnt 211 at para 157, 9 OR (3d) 329 (Ont Ct J (Prov Div)).

The concept of skill speaks to the expertise and experience of the individual director. Every director brings a different set of skills to the table. A diverse skillset is an important consideration in developing the composition of the board. Depending on the nature of the business, an organization may need financial, operating, legal, human resources, logistics and communications skills (to name just a few) at the board level. It may also require expertise in particular markets or experience with organizations in different phases of growth. It is nearly impossible to find a director who has all of the skills that a corporation may need at the board level for the entire time the director is on the board. The legal standard does not require a director to apply skills that he or she does not have but does require a director to apply the skills that he or she does have to the work of the board.

8.2 The Reasonably Prudent Person

What degree of "care, diligence and skill" must directors exercise? The statutes provide that they must exercise the care, diligence and skill that "a reasonably prudent person" would exercise in comparable circumstances. The words "reasonably prudent" mean that directors will not be held to a standard of infallibility and need not be extraordinarily conservative or cautious in their judgement. The standard of a "reasonably prudent person" accepts that risk is an unavoidable element of running a business and that outcomes will not always be positive. The standard expected of a director is reasonableness, not perfection.

8.3 In Comparable Circumstances

What a reasonably prudent person would do is modified by the phrase "in comparable circumstances". This phrase does not relate to the competence of the director, but rather to the context in which the director was acting.[97] Directors must make reasonable business decisions in light of all of the circumstances about which the directors knew or ought to have known.[98]

The Supreme Court of Canada has referred to the phrase "in comparable circumstances" as establishing a "contextual approach" allowing directors to take account of prevailing socio-economic conditions, as well as the primary facts. The well-publicized socio-economic implications of climate change risk support the argument that a reasonably prudent person in circumstances comparable to those encountered by directors today would address the climate change risk facing the corporation and its business. Evidence of the risk has been known and accepted for many years. Information about how the risk might affect the corporation is increasingly available or obtainable in most cases.

9. Certain Duty of Care Issues

9.1 Are Some Directors Subject to a Higher Standard than Others?

Even though directors make decisions collectively as a board, each individual director owes a duty of care. Accordingly, it is possible for one director to have discharged his or her duty appropriately and for another director not to have done so. In an extreme example, a director who never reads

[97] *Peoples Department Stores Inc. (Trustee of) v Wise*, 2004 SCC 68 at para 62.

[98] *Ibid* at para 67.

the board materials or never engages in board discussions would have difficulty in making the case that he or she is exercising the care, diligence or skill that a reasonably prudent person would exercise. A director who is thorough, thoughtful and engaged would better be able to prove that he or she satisfied the duty of care.

Directors with particular expertise are sometimes concerned that they will be held to a higher standard than their board colleagues. As discussed above, there is one statutory duty of care which applies to all directors. A reasonably prudent person in the role of a director, would apply his or her skills as the duty of care requires. Accordingly, a CPA would bring greater financial expertise to the work of the board than someone with no financial training and would be expected to use that expertise as a director. As boards consider the need to identify new directors who understand climate change risk, they should, of course, also expect that directors recruited with that skill set will apply their expertise to the work of the board.

Directors may also be concerned that if they sit on a particular committee, they will be subject to a higher standard than those who do not sit on those committees. If there is an issue with the financial statements, will members of the audit committee be subject to a higher standard than those who are not on the audit committee? Again, there is a single duty of care that applies to all directors. Members of the audit committee may have more insight into the financial statements than other board members because of the time they spend reviewing those statements and discussing them with management, the internal auditor and the external auditor. A reasonably prudent person in comparable circumstances would use the information he or she receives as a member of the audit committee in exercising the powers and discharging the responsibilities of a director. Similarly, directors to whom particular responsibility for climate change risk is delegated are expected to incorporate the additional information they receive on the topic into their work on the board.

9.2 To Whom is the Duty of Care Owed?

As discussed below, the corporate statutes provide, and the Supreme Court of Canada has confirmed that directors owe their fiduciary duty solely to the corporation. The corporate statutes do not, however, specify the beneficiary of a director's duty of care.

The *Canada Business Corporations Act* and most other Canadian corporate statutes set out the fiduciary duty and duty of care owed by directors and officers of a corporation. Subsection 122(1) of the *Canada Business Corporations Act*, which is typical of the provisions in the other Canadian corporate statutes, states:

> 122 (1) Every director and officer of a corporation in exercising their powers and discharging their duties shall
>
> (a) act honestly and in good faith with ***a view to the best interests of the corporation***; and
>
> (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. [Emphasis added]

The fiduciary duty (set out in section 122(1)(a)) expressly refers to the best interests of the corporation. There is, however, no question that directors owe their duty of care to the corporation. Importantly, the duty of care (set out in section 122(1)(b)) does not refer to the corporation at all.

This leaves open the possibility that directors may owe a duty of care to persons other than the corporation.

The Supreme Court of Canada has found that creditors are also obvious beneficiaries of the directors' duty of care.

> Indeed, unlike the statement of the fiduciary duty in s. 122(1)(a) of the CBCA, which specifies that directors and officers must act with a view to the best interests of the corporation, the statement of the duty of care in s. 122(1)(b) of the CBCA does not specifically refer to an identifiable party as the beneficiary of the duty. Instead, it provides that "[e]very director and officer of a corporation in exercising his powers and discharging his duties shall ... exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." ***Thus, the identity of the beneficiary of the duty of care is much more open-ended, and it appears obvious that it must include creditors***.[99] [Emphasis added]

In a subsequent decision, the Supreme Court referred to the persons to whom directors could potentially owe a duty of care more broadly as "other stakeholders".

> A second remedy lies against the directors in a civil action for breach of duty of care. As noted, s. 122(1)(b) of the CBCA requires directors and officers of a corporation to "exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances". ***This duty, unlike the s. 122(1)(a) fiduciary duty, 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:*** *Peoples Department Stores*. ***Section 122(1)(b) does not provide an independent foundation for claims.*** However, applying the principles of *The Queen in right of Canada v Saskatchewan Wheat Pool*, [1983] 1 S.C.R. 205, courts may take this statutory provision into account as to the standard of behaviour that should reasonably be expected.[100] [Emphasis added]

To succeed in a claim against a director for breach of their duty of care, a stakeholder must establish that the directors owed the stakeholder a duty, that the duty was breached and that the stakeholder suffered damage as a result. In accordance with the principles set out in the two decisions of the Supreme Court discussed above, the statutory duty of care sets the standard by which the actions of each director should be measured to determine whether a director has breached the duty of care.

10. Director's Fiduciary Duty and Consideration of the Interests of the Corporation's Stakeholders

Directors must act honestly and in good faith, with a view to the best interests of the corporation (the fiduciary duty). The Supreme Court of Canada has been clear that directors must take the long-term interests of the corporation into account. "The fiduciary duty of the directors to the corporation is a broad, contextual concept. It is not confined to short-term profit or share value. Where the corporation is an ongoing concern, it looks to the long-term interests of the corporation."[101]

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99 *Ibid* at para 57.

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

101 *Ibid* at para 38.

While the best interests of the corporation may be co-extensive with the best interests of the stakeholders, the directors owe their fiduciary duty to the corporation, and not to any stakeholders, including shareholders. The director's duty is to act in the best interests of the corporation.

However, within the concept of the "best interests of the corporation", it is well established that in discharging their fiduciary duty to the corporation, directors may also consider the interests of the corporation's stakeholders. When the corporation's stakeholders have competing interests, it is up to the board to determine whose interests will be prioritized, provided that any action taken does not compromise the interests of the corporation. The federal corporate statute expressly permits directors to consider the environment when considering the best interests of the corporation.[102]

11. How the Courts Assess the Decisions Made by Directors – The Business Judgment Rule

Courts will defer to the reasonable business judgment of disinterested directors who have followed an appropriate process. This principle is referred to as the "business judgment rule."

Importantly, the courts have held that while they will not subject the board's decisions to a microscopic examination, they will nevertheless examine their decisions. A court will consider the context of directors' decisions and the extent of the information on which they were based and will measure these against the facts as they existed at the time. If a decision cannot be attributed to a rational business purpose, if directors have made an unintelligent or unadvised judgment, or if they have otherwise been unduly passive, the courts will not defer to the judgment of the directors. Boards must engage in a reasoned analysis before making decisions. Doing so requires directors to inform themselves about the material facts relating to those decisions and, where circumstances warrant, make inquiries to evaluate and seek advice about the information presented to them.

12. How Investors Hold Directors Accountable

Institutional investors consider material climate change to be a board level responsibility. As such, an organization's handling of climate change risk can inform the director election votes of some institutional investors.[103] Some institutional investors have called out the accountability of the board of directors with respect to climate change risk. For instance, OTPP[104] notes that where a company's climate change risks are material, it is the responsibility of the whole board to oversee

[102] *Canada Business Corporations Act*, s. 122(1.1)(b).

[103] This is the case in Canada, as well internationally: BlackRock, *BlackRock Investment Stewardship - Proxy Voting Guidelines for U.S. Securities* (Effective 1 January 2022) at 3-4; and State Street Global Advisors, *Proxy Voting and Engagement Guidelines* (March 2022) at 6. With the support of BlackRock, Vanguard and State Street, activist shareholder Engine No. 1 successfully ousted three directors on the board of ExxonMobil. Engine No. 1 criticized Exxon's long-term climate strategy, while calling on Exxon to do more to reduce its carbon footprint: Matt Phillips, *Exxon's Board Defeat Signals the Rise of Social-Good Activists*, *The New York Times* (9 June 2021).

[104] Ontario Teachers' Pension Plan ("OTPP").

these risks.[105] Some institutional investors have explicitly committed to voting against directors of companies that fail to address climate change risk.[106]

Glass Lewis considers environmental and social risk oversight as part of its voting guidelines for the election of directors, and "may consider recommending that shareholders vote against members of the board who are responsible for oversight of environmental and social risks."[107] While ISS does not explicitly include environmental concerns as part of its baseline proxy voting advisory service, its sustainability guidelines provide that it may recommend that shareholders vote "withhold" for certain directors where the company does not consider or does not report on ESG risks.[108]

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105 Ontario Teachers' Pension Plan, *2021 Corporate Governance Principles and Proxy Voting Guidelines*, (Accessed 27 May 2022) at 29.

106 British Columbia Investment Management Corporation, *2021 Proxy Voting Guidelines*, (2021) at 10.

107 Glass Lewis, *2022 Guidelines – ESG Initiatives*, (2022) at 31.

108 Institutional Shareholder Services, *Sustainability Proxy Voting Guidelines*, (19 January 2022) at 8.

PART III - BOARD OVERSIGHT OF DISCLOSURE

The global issue of climate change crystalizes at the level of individual corporations in their climate change related disclosure. Public issuers, in particular, are being prompted to examine climate change issues because they can 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.

In this Part of the report, we discuss below the disclosure requirements for Canadian public companies and the frameworks that have been developed to help companies with their disclosure.

13. Importance of Climate Change Risk Disclosure

Scientific information and economic analysis published by international organizations about the impacts of climate change are necessarily at a macro level. Each business must identify the risks and opportunities that climate change presents for it. It is of course critical for management and the board to have this information to be able to manage those risks and take advantage of those opportunities. It is also important information for the corporation's financial stakeholders.

The TCFD noted that "while climate change affects nearly all economic sectors, the level and type of exposure and the impact of climate-related risks differs by sector, industry, geography and organization[.]"[109] If investors are misinformed or unaware of climate change risks and opportunities, "investors and others are likely to collectively misprice assets and systematically misallocate capital, threatening financial stability and profit." [110]

14. Disclosure Issues

14.1 Public Company Disclosure Requirements

(a) Canada

Public companies have disclosure obligations that include disclosing the risks facing the corporation. An Ontario court noted that "[a]n issuer is required to provide a balanced discussion of its results of operations and financial condition 'including, without limitation, such considerations as liquidity and capital resources – openly reporting bad news as well as good news.' […] [A]n investor is entitled to know what specific risks are presently threatening the company."[111]

Canadian securities regulators issued guidance more than a decade ago stating that disclosure in respect of climate change and environmental issues is an aspect of an issuers' existing disclosure obligations. In 2019, they acknowledged that "[c]limate change-related risks are a mainstream

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[109] Task Force on Climate Related Financial Disclosures, *Recommendation of the Task Force on Climate-related Financial Disclosures*, (June 2017) at 8, referencing Sustainability Accounting Standards Board research.

[110] UNEP Finance Initiative, *Changing Course: A Comprehensive Investor Guide to Scenario-Based Methods for Climate Risk Assessment, in Response to the TCFD*, (May 2019) at 17.

[111] *Green v Canadian Imperial Bank of Commerce*, 2012 ONSC 3637 at para 32, var'd on other grounds 2014 ONCA 90, appeal ref'd 2015 SCC 60.

business issue"[112] and directed boards and management to "take appropriate steps to understand and assess the materiality of these risks to their business."[113]

Canadian securities regulators have been alert to the way in which issuers disclose climate change risk. In 2017, the Alberta Securities Commission agreed to review a complaint submitted by Greenpeace seeking to prevent a public offering. Greenpeace alleged that Kinder Morgan[114] failed to provide full, true, and plain disclosure of all material facts in a preliminary prospectus. The complaint alleged that Kinder Morgan misled investors by failing to fully disclose climate change risks. Kinder Morgan subsequently reviewed and reissued its prospectus. Greenpeace made a further complaint about Kinder Morgan's annual report, grounding its complaint in an evaluation of the disclosure against the TCFD framework. While the results of this complaint have not been disclosed, it is worth noting its existence.

The CSA[115] recently proposed National Instrument 51-107 *Disclosure of Climate-related Matters*, for comment. The proposed instrument requires disclosure of information in compliance with the TCFD recommendations released in June 2017[116] that relate to four core elements: governance, strategy, risk management, and metrics and targets.[117] Unlike the TCFD recommendations, the proposed instrument does not require a "scenario analysis" to describe the resilience of an issuer's strategies to climate-related risks and opportunities.[118] Issuers may also elect not to make the TCFD recommended disclosure with respect to GHG emissions and their related risks, provided they instead disclose their reasons for not doing so.

The CSA consulted with stakeholders on whether reporting issuers should be required to disclose Scope 1, Scope 2, and Scope 3 GHG emissions, or whether only disclosure of Scope 1 GHG emissions should be mandatory.[119] If Scope 1 disclosure only is mandatory, disclosure of Scope 2 and Scope 3 GHG emissions would not be necessary. However, if an issuer chooses not to disclose Scope 2 and Scope 3 GHG emissions and related risks, it will have to provide reasons for not disclosing the information. The consultation period closed on February 16, 2022. The CSA received 131 submissions, 104 of which addressed Scope 1 and Scope 2 emissions disclosure. Of the 104 submissions, 82 (79%) supported mandatory disclosure of Scope 1 emissions for all issuers and 71 (68%) supported mandatory disclosure of Scope 2 emissions for all issuers, rather than a comply-or-explain approach.[120] Although a majority of the total submissions recognized the

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112 CSA Staff Notice 51-358, *Reporting of Climate Change-related Risks*, (1 August 2019) at 2.

113 *Ibid* at 4.

114 Kinder Morgan Canada Ltd. ("Kinder Morgan").

115 Canadian Securities Administrators ("CSA").

116 Canadian Securities Administrators, *CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters*, (18 October 2021) at 6.

117 *Ibid* at 7-8. See also Form 51-107A – *Climate-Related Governance Disclosure* and Form 51-107B – *Climate-Related Strategy, Risk Management and Metrics and Targets Disclosure*.

118 *Ibid* at 8.

119 *Ibid*.

120 Canada Climate Law Initiative, *Summary of Submissions to Canadian Securities Administrators on Proposed National Instrument 51-107 Disclosure of Climate-related Matters*, (March 2022) at 2.

importance of Scope 3 emissions disclosure, there was no consensus on whether it should be mandatory.[121]

In addition, reporting issuers will be required to disclose information using the GHG Protocol standard. If this standard is not used, reporting issuers must disclose how their reporting standard is comparable.[122] Of the 131 submissions during the consultation period, 53 submissions supported using the GHG Protocol as the reporting standard.[123] If approved, the proposed disclosures will be phased in over a one-year period for non-venture issuers and over a three-year period for venture issuers from the effective date of the proposed instrument.[124] The CSA does not anticipate that the instrument will come into force before December 31, 2022.[125] The proposed Companion Policy 51-107CP will also be released alongside the proposed instrument to provide guidance on the TCFD recommendations, materiality of information, disclosure of GHG emissions, and forward-looking information.[126]

(b) United States

In the United States, the SEC has released proposed rule changes to enhance and standardize climate-related disclosures by registrants in their registration statements and periodic reports.[127] If adopted, the rule changes will require a registrant to disclose climate-related risks that are likely to have a material impact on its business, operations or financial condition. They will also require a registrant to disclose information about the registrant's governance of climate-related risks and its risk management processes. Under the proposed rule changes, a note to the registrant's audited financial statements must also disclose certain climate-related financial metrics. The proposed SEC rule changes will also require registrants to disclose their Scope 1 and Scope 2 GHG emissions, and in some cases Scope 3 GHG emissions. This is a more robust rule than the comply-or-explain approach proposed by the CSA. The SEC expects that the new disclosure requirements will generate more consistent, comparable and reliable climate-related information for investors.

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121 *Ibid* at 2-3.

122 See s. 5(3) of the proposed Companion Policy 51-107CP, *Ibid* at 30.

123 Canada Climate Law Initiative, *Summary of Submissions to Canadian Securities Administrators on Proposed National Instrument 51-107 Disclosure of Climate-related Matters*, (March 2022) at 3.

124 Canadian Securities Administrators, *CSA Notice and Request for Comment Proposed National Instrument 51-107 Disclosure of Climate-related Matters*, (18 October 2021) *at 9*.

125 *Ibid*.

126 See also the proposed Companion Policy 51-107CP, *Ibid* at 26-30.

127 The U.S. Securities and Exchange Commission, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, Proposed Rule, Release No. 33-11042 (21 March 2022); The U.S. Securities and Exchange Commission, *Fact Sheet: Enhancement and Standardization of Climate-Related Disclosures* (21 March 2022). The SEC is seeking comments from the public on the proposed rule until the later of 30 days after the date it is published in the federal register and May 20, 2022.

14.2 Potential Liability Relating to Disclosure

(a) Canada

Misrepresentations in a corporation's disclosure, including misrepresentations in its disclosure about climate change, can expose the corporation, its officers and its directors to both regulatory and civil liability. Directors should be aware that they may be personally liable for misrepresentations about climate change risks in their disclosure to investors who acquire or dispose of securities during the period that the misrepresentation is publicly disclosed and not corrected. For certain types of disclosure misrepresentations, a damages award may be available to investors regardless of whether they relied on the misrepresentations.

Directors should also be aware that their decisions about disclosure are not protected by the business judgment rule. The Supreme Court of Canada considered a claim by shareholders that Danier Leather Inc. had made a misrepresentation in a financial forecast included in a prospectus. At the outset of its analysis, the Court described the purpose of the disclosure obligation as being to ensure that investors are provided with relevant information about companies to inform their investment decisions. The Court considered the nature of the disclosure requirements and concluded that, "while forecasting is a matter of business judgment, disclosure is a matter of legal obligation. The Business Judgment Rule is a concept well-developed in the context of business decisions but should not be used to qualify or undermine the duty of disclosure." [128]

In another instance, the Ontario Superior Court of Justice stated that if the bank "…failed to equip itself with the appropriate tools to assess and control the risks associated with its subprime investments and to accurately value those investments in the collapsing market of the Class Period, its ability to make appropriate judgments about the disclosure of its positions would necessarily be impaired."[129] While this decision did not determine liability, it is significant that the Court held that the claims based on disclosure breaches, anchored in operational failures to adequately assess and manage a risk, had a reasonable possibility of success.

(b) United States

U.S. courts have also dealt with the issue of liability related to climate change disclosure. In 2019, the Supreme Court of the State of New York considered a claim by the Attorney General of the State of New York against ExxonMobil alleging that the company had materially misrepresented and omitted information from its public disclosure about how it managed the risks of climate change and increasing regulations. ExxonMobil was accused of disclosing different values in respect of the risk posed by climate change regulation from those used for its internal decision making. The judge found that the Attorney General "failed to prove by a preponderance of the evidence that ExxonMobil made any material misrepresentations that 'would have been viewed by a reasonable investor as having significantly altered the 'total mix' of information made

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[128] *Kerr v Danier Leather Inc.*, 2007 SCC 44 at para 54.

[129] *Green v Canadian Imperial Bank of Commerce*, 2012 ONSC 3637 at para 463, var'd on other grounds 2014 ONCA 90, appeal ref'd 2015 SCC 60.

available'."[130] While this judge dismissed the claim against ExxonMobil, the finding that it was not material leaves open the possibility that such a claim could succeed with other factual underpinnings, where the disclosure was material.

In another complaint dated October 24, 2019, filed in the Massachusetts Superior Court, the Attorney General for the Commonwealth of Massachusetts sued ExxonMobil under the State's Consumer Protection Act. The complaint alleges that the company systematically and intentionally misled investors and consumers about material climate change risks to its business and the impact its fossil fuel products have on climate change. That case continues to work its way through the courts. In June 2021, a Massachusetts state judge ruled that Exxon must face the lawsuit.[131]

More recently, the State of Vermont commenced a claim against Exxon Mobil, Shell, and Sunoco, amongst other petroleum and energy distributors. It alleges that the companies violated the *Vermont Consumer Protection Act*, 9 V.S.A. § 2453 by greenwashing advertisements and falsely claiming that they are responsible stewards of the environment.[132] The claim alleges that due to deceptive advertising, Vermont consumers were unable to make informed decisions that aligned with their "pro-environmental values and preferences" and, further, that the defendants' deception materially affected their decision-making.[133] The State of Vermont is seeking an injunction prohibiting further engagement in deceptive acts, rectifying past deceptive behaviour, disgorgement of funds as a result of these acts, and $10,000 penalty for each violation.[134] The City of New York has launched a similar claim against three oil and gas companies, including the American Petroleum Institute. The claim alleges that the oil and gas companies have misled consumers about the impact of using fossil fuel products.[135] The Court stayed this case pending the decision in a Connecticut case, which is similar to this action.[136] This case, together with other actions commenced by regulators in connection with climate change serve as another reminder that companies cannot ignore climate change issues.

Investors have also filed shareholder derivative suits in various U.S. jurisdictions alleging that former Exxon executives and board members have violated federal securities law, breached fiduciary duties, wasted corporate assets and lied to investors and the public about the risks of climate change.[137]

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130 *People of the State of New York v Exxon Mobil Corporation*, 452044/2018 at 3 (N.Y. Sup. C).

131 *Commonwealth of Massachusetts v Exxon Mobil Corporation*, 2021 Mass. Super. LEXIS 371.

132 *State of Vermont v Exxon Mobil Corporation* (*et al.*), Super. Ct. Chittenden Civil Division at para 5.

133 *Ibid* at paras 174-5.

134 *Ibid* at para v(a-c).

135 Similar claims are alleged in *The City of New York v Exxon Mobil Corp.,* (et al.), Docket No. 1:21-cv-04807 (N.Y. Sup. Ct.) at para 19; Order at Case 1:12-cv-04807-VEC.

136 *Connecticut v Exxon Mobil Corp*., No. 21-1446, Dkt. 80 (2nd Circuit).

137 *In re Exxon Mobil Corp. Derivative Litigation* (consolidating *Saratoga Advantage Trust Energy & Basic Materials Portfolio v Woods* (Docket No. 3:19-cv-16380 N.J.D.) and *Ramirez v Exxon Mobil Corp.* (Docket No. 3:16-cv-3111) before the U.S. District Court for the Norther District of Texas); *City of Birmingham Retirement and Relief System v Tillerson* (New Jersey) also against Exxon officers and directors.

There are also several class actions currently working their way through U.S. courts alleging that companies have engaged in "greenwashing" (i.e., making misleading statements that their products are more sustainable than they actually are).[138]

The courts have not yet heard any arguments on the merits of the cases referred to above.

The Delaware Chancery Court did, however, reach a decision on the merits in *Jacob v Bloom Energy Corp.*[139] Two shareholders had demanded the right to inspect an energy company's books and records following the release of a published report claiming that the company had misrepresented its financials and the performance of its "green" technology. When the company refused their demands for inspection, the shareholders sought an order from the Court. The Court granted one of the two shareholders the right to inspect limited documents of the company. The other shareholder was unsuccessful because he failed to comply with the procedural requirements of the Delaware General Corporation Law[140] in advancing his claim.

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138 For example: *Smith v Keurig Green Mountain Inc.* (California) alleging that the defendant misrepresented the recyclability of single use "coffee pods"; *Jochims v Oatly Group AB* and *Bentley v Oatly Group AB* (New York), securities class actions against an oatmilk company relating to artificially inflated prices of Oatly shares due to misleading statements related to greenhouse gas emissions and energy consumption associated with its product.

139 See *Jacob v Bloom Energy Corp*, [Case No. 2020-0023-JRS] (Del. Ch.).

140 8 *Del. C.*, § 2.20(b).

PART IV - IN CONCLUSION

There is no universal approach to climate change risk management. Nor are there detailed prescriptions concerning how a board should address climate change risk. Rather, the governance of climate change risk management is a question for each organization and its board. The establishment of good corporate governance rules should be a shield that protects directors from allegations that they have breached their duty of care. Boards, like courts, need to take a contextual approach to devise the structures and systems that are appropriate for their corporation.

15. Climate Change Risk on the Boardroom Table

Who should put the issue of climate change risk on the board agenda? In many cases, management is already reporting to the board on the risks that climate change poses for the organization and the board is actively engaged in the issue. In other cases, management is addressing climate change risk, but has not elevated it to a board level issue. In some cases, management may not yet be addressing climate change risk (or not addressing it adequately).

Since there can be little doubt that directors are aware of climate change risk, they must inform themselves of the risk that climate change poses to the corporation and how that risk is being managed. If this information is not already included in management reports to the board, the board should direct management to deliver the necessary information to them.

This is not to say that climate change has the same impact and importance for every corporation. In our view, however, boards have a positive obligation to consider the issue. While a director may conclude that the corporation need take no action with respect to climate change, the director must base that conclusion on a careful and diligent review of the relevant factors. Following that review, the director's business judgement may be that climate change does not pose any material risk to the corporation. If the actions of the board are challenged, a court will examine whether that business judgement was reasonable.

16. Governance Tools

The board and individual directors have an important role to play in setting the tone in the corporation. Directors may do this in a number of ways. Enhancing the skills of the board with respect to the climate change risks relevant to the corporation is an important first step. This can take the form of seminars developed for the board, led by management and outside experts. Beyond the scheduled programs, directors should receive detailed briefings on the relevant issues as they arise in order to build the board's understanding of the issues. Making room in the board agenda for regular reports from management on climate change risk is an important part of the board's oversight of risk, but also sends a clear message to management that climate change risk is a priority. A board might consider conducting an internal assessment or inventory to see how the corporation is currently engaging with climate change as an issue.

The board should consider the resources that the corporation has to address the risks posed by climate change. Directors should be satisfied that the corporation has the expertise to assess climate change risk or that management is retaining consultants to supplement corporate knowledge.

Each of the board's committees should consider climate change risk in the context of their mandates. Audit committees will need to consider how climate change risk impacts financial reporting and may also be responsible for overseeing other forms of climate change risk reporting. Compensation committees may consider aligning management objectives and incentives with the corporation's progress in addressing climate change risk. The governance committee may look at the governance of climate change risk in the organization as well as the corporation's approach to climate change risk disclosure. The disclosure of climate change issues can help to focus the board's attention on the matter and prompt the board to consider ways to include climate change as an issue subject to its oversight. The board may also consider the role climate change should play in its engagement with stakeholders. The board should also be aware of what others in their industry are doing on the issues.

The board as a whole should integrate climate change risk into its work plan. Strategy, in particular long-term strategy, is perhaps the most important and obvious area of focus. As the board oversees the strategic planning process, it will be important to consider how climate change risks (both transition risks and physical risks) could challenge the corporation's success in executing its strategy. Consideration of the opportunities that climate change presents is also relevant.

Finally, directors should be aware of evolving compliance regulations. Governments will continue to take steps to meet their international obligations and to otherwise mitigate the risks posed by climate change. This may create new cost and compliance challenges. For some corporations, it may also present opportunities.

A great deal of guidance has been published on the governance of ESG matters, including climate change risk. The CCGG, for instance, has published *The Directors' E&S Guidebook* which provides practical guidance for boards in dealing with environmental and social issues.

17. Recommendations for Directors

Directors should recognize that the courts, regulators and investors accept that climate change poses real risks. They expect that management teams and boards are alert to those risks and opportunities and are reflecting their assessment of that risk in their strategic thinking and risk management practices. Directors must put aside any preconceptions they may have about the reality or imminence of the risk. They may not defer to management or simply wait for management to identify and bring the issue forward. Rather, they must put climate change on the board agenda as more than just a discussion point or an education session. They must receive reports and recommendations from management and reports from external sources as necessary, to be satisfied that the corporation is addressing climate change risk appropriately. Among other things, directors should:

- Keep abreast of what the science is saying and how it affects the organization's business.
- Talk to management about how it is currently dealing with climate change risk. In many cases, management has the issue well in hand, but has not elevated it to the board level. Directors should work with management to bring the issues and strategies to the board with the appropriate level of detail.

- Listen to investors. They devote enormous resources to understanding the risks associated with climate change and have informed views about the governance and management of those risks.

- Hear from your investor relations professionals about what investors are saying about your industry and your organization in respect of climate change risk and what they recommend in order to communicate the organization's message effectively.

- Focus on disclosure, both to meet the needs of the investment community and to satisfy legal requirements.

- Integrate climate change risk into the work of the board beyond formal risk management and compliance.

Above all, understand that it remains the responsibility of the board to be satisfied that it is properly informed about the climate change risks facing the organization and the way in which those risks are being managed.

Based on the analysis in this paper, we emphasize the following:

- The fact of climate change and the risks that it poses for the planet have been well researched, documented and publicized.

- The implications of climate change for the global economy, for financial stability and for individual businesses have been called out by governments, central bankers, expert panels, investors and by many corporations.

- Directors have a clear responsibility to be informed about the risks that climate change poses for the business of the corporation they serve and to be satisfied that those risks are being appropriately managed.

- The director's fiduciary duty is not an obstacle to dealing with climate change risk. Directors have the authority to consider the interests of the corporation's stakeholders when making decisions in the best interests of the corporation.

- For public companies, disclosure about the risks that climate change poses for the organization is important. Directors do not need interpreters to understand what kind of disclosure investors require. Investors are open and engaged with organizations about their disclosure needs. In Canada, many institutional investors and the CCGG have endorsed the TCFD framework.

May 30, 2022

About the Firm

Hansell LLP is a team of lawyers and other professionals grounded in corporate and securities law. We are governance experts with extensive experience in corporate transactions, commercial litigation, regulatory enforcement and compliance. We have acted for the full range of corporate and market stakeholders.

Hansell LLP is part of the Hansell McLaughlin Advisory Group. Hansell McLaughlin has senior level expertise in law, governance, government and regulatory affairs and strategic communications, complemented by expertise in data science and analytics. Our integrated thinking results in strategies and solutions that reflect the complexity of the challenges facing our clients.

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